

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

**DREW ADAMS, a minor, by and through
his next friend and mother, ERICA
ADAMS KASPER,**

Plaintiff,

v.

Case No.: 3:17-cv-00739-TJC-JBT

**THE SCHOOL BOARD OF ST. JOHNS
COUNTY, FLORIDA,**

Defendant.

**DEFENDANT’S RESPONSE IN OPPOSITION TO MOTION/APPLICATION
FOR LEAVE TO APPEAR AS AMICUS CURIAE AND MOTION TO STRIKE
PROPOSED AMICUS BRIEF**

Defendant, **the School Board of St. Johns County, Florida**, responds to the Motion/Application for Leave to Appear as Amicus Curiae (“Motion”) filed by Holland & Knight, LLP and Jenner & Block, LLP on behalf of the list of Amici set forth in the Motion (collectively referred to herein as the “Amici”), as follows:

1. As an initial matter, the opinions offered by Amici in the late-filed proposed Amicus Brief are, by Plaintiff’s own admission and indeed at his insistence, irrelevant to the sole, narrow issue before the Court.¹

¹ *The Court’s Case Management and Scheduling Order established November 29, 2017 as the deadline by which all pre-trial Motions must be filed. (Doc. 59 at p. 2).*

Counsel for the Amici have represented that the Motion and proposed Amicus Brief have been filed, although they do not appear on the docket as of the filing of this Response and Motion to Strike. As such, Defendant is unable to cite to the Docket Number of the Motion in this Response.

2. The Amici “are leading, medical, nursing, mental health and other health care organizations that collectively, represent hundreds of thousands of physicians and mental health professionals, including specialists in pediatrics and adolescent care, family medicine, internal medicine, and endocrinology; and millions of nurses.” The stated purpose of the proposed Amicus Brief is “to inform the Court of the medical consensus regarding what it means to be transgender; the protocols for the treatment of gender dysphoria; and the predictable harms to the health and well-being of transgender adolescents when they are excluded from restrooms that match their gender identity.” (*Motion at pp. 1-2*).

3. And yet, the day before the Amici filed their Motion and proposed Amicus Brief containing their uncorroborated hearsay opinions, in Plaintiff’s filings with this Court, Plaintiff and his counsel represented *ad nauseam* that medical evidence and opinions from the medical community have nothing to do with the claims in this case.

4. It is hard to fathom how generalized medical opinions from the Amici on the issue of gender dysphoria and its treatment, the treatment of transgender individuals and similar medical information will assist the Court at all in light of the following types of statements made throughout the five motions in limine filed by Plaintiff on November 29 [(*Doc. 107, 108, 109, 110 and 111*)]:

- “The underlying causes or most effective treatments for gender dysphoria are not before this Court.”
- “Put simply, this is not a case about the propriety of Plaintiff’s medical treatment...”
- The issue in this case is narrow, limited solely to whether Defendant’s policy prohibiting transgender students – in this case a transgender boy – from using the restroom consistent with their gender identity is

discriminatory and violates Title IX and the Equal Protection Clause of the United States Constitution.”

- “The underlying causes or most effective treatments for gender dysphoria are not before this Court.”
- “Put simply, this is a case about unlawful discrimination based on Plaintiff’s transgender status and sex, not a case about the propriety of the medical treatment Plaintiff has received.”
- “Plaintiff here is not seeking the type of damages that would put his mental condition at issue, or that would require expert or other testimony.”
- “This is a short three-day trial, the focus of which is whether Defendant’s policy violates the Equal Protection Clause or Title IX.”

5. Apparently, either Plaintiff failed to inform the Amici of his very recent change in strategy that not only fails to rely on medical and expert evidence, but posits that such evidence is wholly immaterial to the issues in this case, or Amici attempt to submit a gratuitous filing the Court should simply reject out of hand.

6. Notwithstanding the irrelevance of the information contained in the proposed Amicus Brief, it does not meet the recognized conditions under which amicus briefs are accepted at the district court level. Magistrate Judge Kelly articulated these conditions in Leal v. Secretary, Department of Health and Human Services, 2009 WL 1148633 (M.D. Fla. April 28, 2009):

The circumstances under which an amicus brief is considered desirable, however, are limited:

An amicus brief should normally be allowed when a party is not represented competently or is not represented at all, when the amicus has an interest in some other case that may be affected by the decision in the present case ...or when the amicus has unique information or perspective that can help the court beyond the help that lawyers for the parties are able to provide. Otherwise, leave to file an amicus brief should be denied.

Id. at *1-2 (citing Citizens Against Casino Gambling in Erie County v. Kempthorne, 471 F.Supp.2d 295 (W.D.N.Y.2007) and (quoting Ryan v. Commodity Futures Trading Comm'n, 125 F.3d 1062-3 (7th Cir.1997) (Posner, J.)).

7. Here, Plaintiff is represented by a team of lawyers, formidable in size and breadth of experience. The proposed Amicus Brief fails to note any other cases that may be affected by this Court's ruling and the unique nature of the information the Amici are able to provide – medical opinions – have been deemed inapposite to the issues in this case by the very party on whose behalf it is being offered: Drew Adams.

8. Finally, several of the statements contained in the proposed Amicus Brief call into question the reliability of the information presented. First, Amici note that “[m]any transgender individuals, like Plaintiff, have a condition called gender dysphoria.” (Brief at p. 4). Inasmuch as the Amici do not claim to have treated or diagnosed Plaintiff, they are not in a position to weigh in on any diagnosis related to Plaintiff.

9. Similarly, under the guise of an amicus brief, the Amici are in reality attempting to offer expert medical opinions while at the same time trying an end run the requirements of Daubert v. Merrill Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993). For example, the Amici render numerous medical opinions but fail to disclose the contraindications and controversies involved in the issues on which they opine.

10. Finally, and curiously, the Amici opine that single sex bathroom use is essential for treatment but fail to disclose (as Plaintiff's own experts Dr. Deanna

Adkins and Dr. Diane Ehrensaft were forced to concede in their depositions) that the controversial recommendation on bathroom usage is not supported by any reliable, peer reviewed research.

11. Defendant has a lot on its plate heading into trial and should not have to move for leave of court to file a Daubert motion to address the hearsay medical opinions the Amici are attempting to foist upon the Court. More importantly, the Court should not be required to consider an amicus brief that runs contrary to the actual issues in play.

12. For the foregoing reasons, the Court is respectfully urged to deny the untimely Motion and to strike the proposed Amicus Brief filed by the Amici pursuant to Rule 12(f), along with such other and further relief as the Court deems appropriate.

Dated this 30th day of November, 2017.

[THIS SECTION LEFT INTENTIONALLY BLANK]

Respectfully submitted,

/s/ Terry J. Harmon

TERRY J. HARMON

Trial Counsel

Florida Bar Number: 0029001

tharmon@sniffenlaw.com

/s/ Robert J. Sniffen

ROBERT J. SNIFFEN

Florida Bar Number: 0000795

rsniffen@sniffenlaw.com

/s/ Michael P. Spellman

MICHAEL P. SPELLMAN

Florida Bar Number: 937975

mspellman@sniffenlaw.com

/s/ Kevin C. Kostelnik

KEVIN KOSTELNIK

Florida Bar Number: 0118763

kkostelnik@sniffenlaw.com

SNIFFEN & SPELLMAN, P.A.

123 North Monroe Street

Tallahassee, Florida 32301

Telephone: (850) 205-1996

Facsimile: (850) 205-3004

Counsel for St. Johns County School Board

CERTIFICATE OF SERVICE

The undersigned certifies that on this 30th day of November, 2017, a true and correct copy of the foregoing was served via-electronic mail to Plaintiff's counsel of record. A true and exact copy has also been served via electronic mail to Counsel for the Amici.

/s/ Robert J. Sniffen

ROBERT J. SNIFFEN