

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

DREW ADAMS, et al.,

Plaintiff,

v.

THE SCHOOL BOARD OF ST. JOHNS
COUNTY, FLORIDA,

Defendant.

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

**PLAINTIFF’S OPPOSITION TO DEFENDANT’S MOTION TO STRIKE
AMICUS CURIAE BRIEF OF THE AMERICAN MEDICAL ASSOCIATION, ET AL.**

Plaintiff Drew Adams, by counsel, hereby files his opposition to Defendant’s Response in Opposition to Motion/Application for Leave to Appear as Amicus Curiae and Motion to Strike Proposed *Amicus Curiae* Brief (the “Motion”) filed on November 30, 2017. Dkt. 118. The proposed *amicus curiae* was filed by the American Medical Association, and nine other preeminent national medical, mental, and behavioral health organizations, each of which have extensive knowledge in the areas of transgender individuals, gender dysphoria and the effects of access to single-sex facilities that correspond to one’s gender identity on a person’s social transition. These are the very issues that this Court will be addressing by this action. Although the Motion for Leave to Appear as *Amicus Curiae* was not filed by Plaintiff, he files this

opposition because Defendant's arguments rely on grave mischaracterizations of Plaintiff's position in this litigation.

ARGUMENT

I. The Proposed *Amicus Curiae* Brief is Directly Relevant to the Issues in This Case.

As a threshold matter, Defendant distorts Plaintiff's position, suggesting that Plaintiff's recent motions *in limine* ask this Court to exclude any and all medical information from the case. Defendant is mistaken. Plaintiff only seeks to exclude medical information that has no relationship to the merits of this case, *to wit*: expert testimony regarding desistance, the efficacy of hormone therapy and conversion therapy because by Defendant's expert's testimony confirms that this "evidence" has no application to Drew or this case. Further, in an effort to move this case forward expeditiously, Plaintiff produced all of his medical records even before Defendant served any document requests. But by and large this evidence has no relationship to the facts here as Defendant's witnesses and experts have confirmed that they do not dispute that he is transgender or that he was diagnosed with gender dysphoria; nor do they question the medical treatment protocol prescribed by his treating physicians.

Defendant's experts presented fringe theories that transgender people are "delusional," and that transgender children should be made to suffer through gender dysphoria without treatment so that they can be "converted" to non-transgender. *See, e.g.*, Dkt. 85-1 (Report of Allan M. Josephson, M.D. ¶¶ 24-25 (stating that transgender people meet the criteria for a "delusion," and such children must be "met by firm . . . redirection")). But under the facts presented, these theories are irrelevant and properly excludable. Notably, these outlier theories have nothing to do with Defendant's function of running the high school that Drew attends, or

the facts of the case that this Court will entertain. Dkt. 107, 108. Indeed, Defendant's own school administrator witnesses have disclaimed any interest in such extreme ideas in their depositions. For these reasons, the majority of expert testimony and medical information Defendant seeks to introduce has no relationship to the merits.¹

Notwithstanding the above, there are narrow areas of medical testimony that are relevant to the claims and issues pled. As alleged in the Complaint (Dkt. 1), the Amended Complaint (Dkt. 60) and throughout discovery, Plaintiff intends to present the Court with evidence to establish that Drew is a transgender boy, that he has been diagnosed with gender dysphoria, and that the well-established treatment protocols for that diagnosis require that he be permitted to live as a boy in all aspects of his life, including use of the boys' restroom. Although Plaintiff attempted to get stipulations on these points—some of which Defendant's experts concede—Defendant refused; as such, Plaintiff will introduce evidence on these narrow issues at trial.

The proposed *amicus curiae* brief is directly relevant to the focused issues, claims and evidence that Plaintiff intends to present about his experience and treatment as a transgender adolescent, and why that requires that he have access to the boys' restroom at school. The Motion/Application for Leave to Appear as *Amicus Curiae* makes clear that “*Amici* are leading, medical, nursing, mental 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”

¹ Defendant has listed all of Plaintiff's medical records on its exhibit list.

and that “*Amici* have a significant and strong interest in addressing issues relating to transgender individuals, gender dysphoria and the effects of access to single-sex facilities that correspond to one’s gender identity of a person’s social transition, and physical and mental well-being.” Motion, ¶¶1 and 3.

The matters raised by the proposed *amicus* brief are the very issues that are to be considered by this Court. Clearly the world’s leading health organizations are in a better position to advise the Court on these important matters than Defendant, who has no expertise in this area whatsoever, and its two proposed experts, neither of whom have any expertise in the treatment or care of transgender people and people with gender dysphoria. The information included in the *Amicus* brief is, thus, directly relevant to this case and will aid the Court in its understanding of the limited medical issues presented here.

II. The Proposed *Amicus Curiae* Brief Meets the Standards for Submission.

As an initial matter, *amici curiae*’s proposed brief is not late-filed, as Defendant suggests. Dkt. 118 at 1. In fact, no local rule governs the submission of such briefs, and the analog in the Federal Rules of Appellate Procedure, Rule 29(a)(6), requires that an *amicus* brief be filed no later than seven days *after* the principal brief of the party being supported. The parties have yet to file briefs in support of their positions at trial; instead, their preliminary findings of fact and conclusions of law are due on December 7, 2017. The proposed *amicus* brief was thus submitted seven days *before* the Plaintiff’s principal brief for this trial, well within the standard time frame for such briefs.

“It is well-settled that a district court has broad discretion to grant the request of a non-party to file an *amicus* brief.” *Conservancy of Sw. Florida v. U.S. Fish & Wildlife Serv.*, No.

2:10-cv-106, 2010 WL 3603276, at *1 (M.D. Fla. Sept. 9, 2010). Because the proposed *amici curiae* are not parties and do not represent any party, “it is solely within the discretion of the court to determine the fact, extent, and manner of participation by the amicus.” *Id.* (internal quotation omitted). In fact, the proposed brief easily satisfies the very standard Defendant quotes in its motion to strike, which establishes that an amicus brief is desirable “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.” Dkt. 118 at 3 (quoting *Leal v. Sec’y, U.S. Dep’t of Health & Human Servs.*, No. 6:08-cv-1062, 2009 WL 1148633, at *2 (M.D. Fla. Apr. 28, 2009)). That is undeniably true here. Indeed, the Court has raised questions regarding certain of the medical issues implicated here. Who better to answer some of those questions than the world’s leading health organizations with explicit expertise on the very issues to be confronted in this case? This is precisely the scenario where a brief of this type is warranted.

Defendant also argues, without basis, the proposed brief contains “uncorroborated hearsay opinions” and that their “generalized medical opinions” have no bearing given the motions in limine. As noted above, that is just not accurate as the motions are only directed to evidence and issues that are irrelevant, not the narrow issues that will be addressed at trial. There can be no serious question that the proposed *amici* offer a unique perspective that extends far beyond the perspective that Plaintiff can offer as an individual, adolescent boy, or that Defendant can offer given it is a school board with no medical expertise. Neither of Defendant’s experts have expertise in the areas covered by the *amicus* brief either. In stark contrast, the proposed *amici* consist of the American Academy of Pediatrics, American Nurses Association, American Academy of Child and Adolescent Psychiatry, American Academy of

Nursing, American College of Physicians, American Medical Association, American Medical Women's Association, Association of Medical School Pediatric Department Chairs, GLMA-Health Professionals Advancing LGBT Equality, Endocrine Society, and Pediatric Endocrine Society. Dkt. 119 at 1. It is beyond peradventure that proposed *amici* offer the Court a valuable perspective that extends far beyond that of the parties.

Finally, Defendant seems to confuse the role of *amici*, who are not presenting expert testimony subject to *Daubert v. Merrill Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). Rather, such briefs have long played a role in providing courts with pertinent sociological, scientific, policy, and anecdotal information, perhaps most famously in the Supreme Court's reliance on the "Brandeis Brief" in *Muller v. Oregon*, 208 U.S. 412 (1908). This practice finds support in many Supreme Court decisions that rely such information from *amicus* briefs. *See, e.g., Grutter v. Bollinger*, 539 U.S. 306 (2003) and *Gratz v. Bollinger*, 439 U.S. 244 (2003) (relying on *amicus* briefing). In *Muller v. Oregon*, the Supreme Court "specifically relied" on "[t]he famous Brandeis Brief" which went far beyond legal precedent and presented the Court with economic and sociological information. *Kahn v. Shevin*, 416 U.S. 351, 356 n.10 (1974). This case is no different. Indeed, another federal district court recently explicitly relied upon an *amicus* brief similar to the one at issue here from proposed medical *amici*. *See, Doe 1 v. Trump*, No. CV 17-1597 (CKK), 2017 WL 4873042, at *27 (D.D.C. Oct. 30, 2017) (repeatedly citing brief by "medical *amici*," which "assisted the Court in reaching its decision"). This Court will likely address issues of a medical nature that may seem complex at first glance; these are precisely the types of issues that lend themselves to argument by *amici*, so that those

learned in the important medical literature can provide this Court with valuable information, which the Court can give the weight it deems appropriate.

CONCLUSION

For all of the reasons above, Plaintiff respectfully requests that this Court deny Defendant's motion to strike the proposed *amicus* brief, and grant *amici's* motion to file their proposed brief.

Dated: December 5, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 5, 2017, I caused a true and complete copy of the foregoing document, to be served upon the following parties hereto via email:

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