

**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 TO FILE AMICUS
BRIEF OF AMICI CURIAE SCHOOL ADMINISTRATORS**

Defendant, **the School Board of St. Johns County, Florida**, responds to the Motion to File Amicus Brief of Amici Curiae School Administrators (“Motion”) (Doc. 124). The Motion should be denied because it is untimely and it will not aid this Court in any way in rendering a determination on the ultimate issues in this case.

1. The Motion was filed and docketed five calendar days, and two and a half business days, before the trial in this matter. It was filed well after the deadline to file motions established by this court.¹ On this basis alone the Motion should be denied.

2. Nevertheless, as set forth in the Motion, the Amici are school administrators from 29 states and the District of Columbia that have implemented the type of transgender bathroom policies advocated by Plaintiff. They intend to offer their insights on the

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).*

implementation of those policies. Some of the insights include how those administrators addressed their district's purported necessity to balance the needs of transgender students with the larger population of students in these administrators' schools and the effects of implementing transgender inclusive policies in *their* school districts.

3. The administrators claim to have a unique perspective to offer to this Court and believe their experiences are timely and useful to the matter at hand. In reality, they do not have any perspective or insight that will aid this Court in resolving the issues at bar and their late-filed proposed brief is anything but timely.

4. The amicus brief is nothing more than a compilation of rank hearsay statements taken during interviews conducted by an organization that sees eye-to-eye with Plaintiff, often including hearsay within hearsay, of administrators in far-flung sections of the country. Notably, Plaintiff has already listed three school administrator witnesses on his witness list for trial who are prepared to discuss the same thing: Thomas Aberli (from Louisville), Michelle Kefford (Broward County) and Michaelle Valburn-Pope (Broward County). Ironically, but perhaps not surprisingly, two of these witnesses – Aberli and Valburn-Pope – are also listed as Amici.

5. Defendant is entitled to confront and cross examine all of the Amici in the same manner it did Plaintiff's three school administrator witnesses, during which Defendant was able to draw out palpable distinctions between these witnesses' home districts and the St. Johns County School District.

6. This attempt to end run the rules that have governed this proceeding since the Court entered its Case Management and Scheduling Order and pile on with cumulative evidence over the same issue on which Mr. Aberli, and Ms. Valburn-Pope may speak does not

assist the Court at all in reaching its determination on the core issues of statutory construction and interpretation of Title IX and the Fourteenth Amendment present in this case and is fundamentally unfair to Defendant.

7. Moreover, it is all well and good that, for whatever reason, a small subset of schools in this country have implemented policies similar to the one advocated by the Plaintiff in this case. The fact that the Amici implemented a policy similar to the one advocated by the Plaintiff and have chosen to disregard the important governmental interest in protecting the bodily privacy of the students in their schools, is their concern and the concern of the local, elected school officials that govern their respective school districts. The St. Johns County School Board has chosen a different path, one that preserves and protects the basic, fundamental and constitutional right to bodily privacy enjoyed by its students. What might have worked in Denver, Broward County, or Louisville does not have any bearing on whether the St. Johns County School Board's policy of requiring students to use a bathroom consistent with their biological sex passes statutory and constitutional muster.

8. Similarly, a substantial portion of the proposed amicus brief misses the mark in another important respect; namely, it focuses on how the larger community in the Amici's districts reacted to these changes and how the implementation of the transgender inclusive policies have helped transgender students. If history has taught us anything, it is that what works well in one part of country is not necessarily something another part of the country finds within community norms. Both Title IX and the February 22, 2017, Dear Colleague Letter from the U.S. Department of Justice and U.S. Department of Education recognize as much. See, Battle, Sandra and Wheeler, II, T.E. (2017, February 22). Dear colleague letter.

Washington, DC: U.S. Department of Education, Office for Civil Rights and U.S. Department of Justice (noting that with respect to sex segregated facilities authorized by Title IX, states and school district should play the “primary role” in “establishing educational policy.”).²

9. While Defendant appreciates the Amici’s attempt to portray a tidal wave of public opinion on this issue, at the end of the day their opinions and the experiences of their localities do not matter one bit. To the extent “community feelings” or “community values” are important at all to this case, they are only germane insofar as St. Johns County is concerned, as expressed by the will of its citizens through their election of a school board who chose to proceed with a policy that differs from the home counties of the Amici. This principle of local decision-making, in addition to being codified in Title IX and articulated in the Dear Colleague Letter, is the fabric of this country’s federalist principles that preserve broad state and local decision-making authority, “secur[ing] decisions that rest on knowledge of local circumstances, [and] help[ing] to develop a sense of shared purposes and commitments among local citizens.” Stephen Breyer, *Active Liberty* (Vintage Books 2006), at 57.

10. In any event, the parties have already entered into a stipulation on how a segment of the St. Johns County population believes the policy impacts their children. If Plaintiff wishes to present evidence to the contrary, he should have listed witnesses that could have been deposed and cross-examined during discovery and at trial.

Dated this 7th day of December 2017.

² Online at: <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201702-title-ix.pdf>.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on this 7th day of December, 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