

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

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NICHOLAS K. MERIWETHER,	:
	:
Plaintiff,	:
	:
vs.	:
	:
THE TRUSTEES OF SHAWNEE STATE	:
UNIVERSITY, ET AL.	:
	:
Defendants	:
	:
and	:
	:
JANE DOE and SEXUALITY AND GENDER	:
ACCEPTANCE,	:
	:
Proposed Defendant-Intervenors.	:
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Case No. 1:18-cv-753  
Judge Susan J. Dlott  
Magistrate Judge Karen L. Litkovitz

**PROPOSED DEFENDANT-INTERVENORS JANE DOE AND SEXUALITY AND  
GENDER ACCEPTANCE’S RESPONSE TO PLAINTIFF’S FIRST  
NOTICE OF SUPPLEMENTAL AUTHORITY**

Plaintiff cites *Masterpiece Cakeshop, Inc. v. Elenis*, Case No. 1:18-cv-02074 (D. Colo. Feb. 28, 2019) (“*Elenis*”), as supplemental authority in support of its opposition to Jane Doe and SAGA’s motion to intervene. *Elenis* does not support Plaintiff’s position.

In *Elenis*, the proposed intervenor, Autumn Scardina, filed a charge of discrimination against Masterpiece Cakeshop with the Colorado Civil Rights Division. *Elenis*, Doc. 40-1, at PageID 1932. The Division issued a formal complaint against Masterpiece Cakeshop and set the matter for hearing before an administrative law judge. *Id.* Masterpiece Cakeshop then sued the Division in federal district court. *Id.* Scardina filed a motion to intervene limited to “[Masterpiece

Cakeshop]’s motion for preliminary injunction and the related evidentiary hearing.” *Id.* at PageID 1933.

The District Court denied the motion. It concluded Scardina could not intervene as of right because Scardina’s interests were adequately represented by the Division “at the preliminary injunction stage.” *Id.* at PageID 1935. It rejected Scardina’s argument that she was asserting private interests, as opposed to public interests, because “the public and private interests converge under the unique circumstances of this case.” *Elenis*, Doc. 40-1, at PageID 1935. It explained: “the Commission also represents private interests in enforcing the statute. For example, by statutory and regulatory mandate, the Commission’s agents or attorneys—the attorney general’s office—must present the case ‘in support’ of Scardina’s discrimination charge at the state administrative hearing.” *Id.* at PageID 1936 (citing Colorado statute and regulations). “Thus, by enforcing Colorado’s antidiscrimination laws in the state proceeding through Scardina’s discrimination claim, Defendants are simultaneously representing the indistinguishable interests of the public and Scardina.” *Id.*

Here, however, Shawnee is not a state agency charged with enforcing the rights of complainants, and it is not acting as a plaintiff in support of Ms. Doe in any legal proceeding. Instead, Shawnee is responding to this lawsuit in its role as an employer, making its interests and motivations significantly different than the interests advanced by Ms. Doe and SAGA, who represent transgender students at Shawnee. The reasoning in *Elenis* is therefore not applicable. Moreover, as Ms. Doe’s motion to intervene pointed out, Ms. Doe contends that Title IX—along with other antidiscrimination laws—impose a legal obligation on Shawnee to prevent discrimination against transgender students. Because this argument implicates Shawnee’s own legal liability, Shawnee has the incentive not to make this argument. By contrast, in *Elenis*, there

was no allegation that the Division faced potential competing interests that would cause the Division's interests to diverge from Scardina's private interests.

In *Elenis*, the District Court also denied permissive intervention on the same ground: that the Division adequately represented Scardina's interests. Doc. 40-1, at PageID 1938. As explained above, the court's reasoning does not apply here.

Date: March 8, 2019

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 8, 2019, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Asaf Orr \_\_\_\_\_  
Attorney for Jane Doe