

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 23-2681

DYLAN BRANDT, *et al.*,

Plaintiffs-Appellees

v.

TIM GRIFFIN, *et al.*,

Defendants-Appellants

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS

UNOPPOSED MOTION OF THE UNITED STATES AS AMICUS CURIAE
TO PARTICIPATE IN EN BANC ORAL ARGUMENT

Pursuant to Federal Rule of Appellate Procedure 29(a)(8), the United States respectfully seeks permission to participate in en banc oral argument in this case.

In support of this motion, the United States provides as follows:

1. On October 6, 2023, the Court granted defendants-appellants' petition for initial hearing en banc.
2. On December 15, 2023, the United States filed an amicus brief in support of plaintiffs-appellees.
3. On March 8, 2024, this Court scheduled oral argument in this case for April 11, 2024.

4. This case presents an important question whether Arkansas Act 626, which prohibits certain medical care for transgender minors, violates the Equal Protection Clause. The district court issued a permanent injunction enjoining defendants' enforcement of that Act.

5. As discussed in its brief (at 1), the United States has a strong interest in protecting the rights of individuals who are lesbian, gay, bisexual, transgender, and intersex. The President has issued an Executive Order that recognizes the right of all people to receive equal treatment regardless of gender identity or sexual orientation. Exec. Order No. 13,988, § 1, 86 Fed. Reg. 7023 (Jan. 20, 2021). In addition, the Attorney General has authority to intervene to address sex-based denials of equal protection of the laws under the Fourteenth Amendment. *See* 42 U.S.C. 2000h-2. The United States filed a statement of interest in the district court and an amicus brief in the previous appeal supporting plaintiffs' equal-protection claim.

6. Given the United States' substantial interest in this appeal, the United States now requests leave to participate in oral argument and believes that its participation will be helpful to the en banc Court.

7. Counsel for plaintiffs-appellees consent to the United States' participation at oral argument and has agreed to cede five (5) minutes of their

argument time to the United States. Therefore, the United States' participation at oral argument will not affect the overall time allotted for this case.

8. Counsel for defendants-appellants has no objection to the United States' participation at oral argument.

WHEREFORE, the United States respectfully requests leave to participate in the en banc oral argument of this appeal.

Respectfully submitted,

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Assistant Attorney General

s/ Barbara Schwabauer

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CERTIFICATE OF COMPLIANCE

I certify that the attached UNOPPOSED MOTION OF THE UNITED STATES AS AMICUS CURIAE TO PARTICIPATE IN EN BANC ORAL ARGUMENT:

(1) complies with the type volume limitation imposed by Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 354 words; and

(2) complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word for Microsoft 365 in Times New Roman, 14-point font.

s/ Barbara Schwabauer
BARBARA SCHWABAUER
Attorney

Date: March 12, 2024

CERTIFICATE OF SERVICE

I hereby certify that on March 12, 2024, I filed the foregoing UNOPPOSED MOTION OF THE UNITED STATES AS AMICUS CURIAE TO PARTICIPATE IN EN BANC ORAL ARGUMENT with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the appellate CM/ECF system, which will send notice to all counsel of record by electronic mail. All participants in this case are registered CM/ECF users.

s/ Barbara Schwabauer
BARBARA SCHWABAUER
Attorney