

No. 23-16031

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

AURORA REGINO,
Plaintiff-Appellant,

v.

KELLY STALEY,
Defendant-Appellee.

**On Appeal from the United States District Court
for the Eastern District of California**

No. 23-cv-00032

Hon. John A. Mendez, District Judge

**REPLY IN SUPPORT OF MOTION BY AMICUS CURIAE THE STATE
OF CALIFORNIA FOR LEAVE TO PARTICIPATE IN ORAL
ARGUMENT**

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April 17, 2024

REPLY IN SUPPORT OF MOTION

The State of California's request for leave to participate in the oral argument in this appeal as amicus curiae is appropriate and well founded. Plaintiff-Appellant's arguments in opposition are based on a misunderstanding of the role of an amicus and this Court's regular practice regarding amicus participation in argument. Plaintiff also misunderstands the State's arguments in support of affirmance.

Plaintiff's principal basis for opposing the State's request to participate in oral argument is that the State did not seek to intervene as a party in the district court and cannot satisfy the standard for party intervention. Opp. 2-3. That argument improperly conflates the standard for intervention as a *party* with the more limited role of an amicus curiae. Plaintiff cites no case in which this Court has held or suggested that an amicus must satisfy the standard for intervention to participate in argument. To the contrary, this Court regularly allows amici to present argument, particularly government institutions with substantial experience and interests in the matter on appeal. *See, e.g., Olson v. State of California*, No. 21-55757 (9th Cir. argued Mar. 20, 2024) (argument presented by amicus curiae United States of America); *Northwestern Band of the Shoshone Nation v. Wooten*, 83 F.4th 1205 (9th Cir. 2023) (same for amici United States of America and State of Utah); *Epic Games, Inc. v. Apple, Inc.*, 67 F.4th 946 (9th Cir. 2023) (same for

amici United States of America and State of California); *San Luis Obispo Coastkeeper v. Santa Maria Valley Water Conservation District*, 49 F.4th 1242 (9th Cir. 2022) (same for amicus State of California); *Advanced Integrative Medical Science Institute, PLLC v. Garland*, 24 F.4th 1249 (9th Cir. 2022) (same for amicus State of Washington on behalf of multi-State coalition); *Hardeman v. Monsanto Co.*, 997 F.3d 941 (9th Cir. 2021) (same for amici United States of America and State of California).¹

Plaintiff also suggests that the State seeks argument time in order to “misrepresent the operative facts” to this Court. Opp. 1. That assertion is unfounded. The State’s disagreement with plaintiff is legal in nature: Plaintiff and the State disagree as to whether Plaintiff has stated a claim that respecting a student’s pronouns is medical or psychological treatment that gives rise to a substantive due process parental right. In arguing that the district court correctly dismissed Plaintiff’s complaint, the State’s amicus brief engaged with the

¹ Plaintiff’s reliance on *Mirabelli v. Olson*, No. 3:23-cv-00768-BENWVG (S.D. Cal.), rests on the same mistaken understanding of the distinction between the role of a party and the role of an amicus. See Opp. 4-5. In *Mirabelli*—which involves different claims from those presented in this case—the California Governor and Attorney General have opposed efforts to give them *party* status. See *Mirabelli*, No. 3:23-cv-00768, ECF Nos. 95, 96 (S.D. Cal. Feb. 23, 2024) (motions to dismiss Governor Newsom and Attorney General Bonta as defendants). Their opposition to party status in *Mirabelli* has no bearing on the State’s request for argument time as an amicus here.

arguments plaintiff made in her opening brief, including the declarations she cited, as well as relevant case law. *Compare* OB 32-34, *with* Dkt. 46 at 13-15. That is appropriate adversarial argument, not misrepresentation. And for the reasons detailed in the State's motion, allowing the State to present those arguments and respond to questions from the Court at the oral argument would assist the Court in resolving this case.

CONCLUSION

The State respectfully requests that the Court grant it leave to participate in oral argument in support of Defendant-Appellee Chico Unified School District Superintendent Kelly Staley, and allocate it ten minutes of argument time, or whatever allocation of time the Court deems appropriate and equitable.

Dated: April 17, 2024

Respectfully submitted,

s/ Julie Veroff

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing Reply in Support of Motion complies with the type-volume limitation of Fed. R. App. 27 because it contains 616 words. This Reply in Support of Motion complies with the typeface and type-style requirements of Fed. R. App. P. 27 because it has been prepared in a proportionally spaced typeface using Word 14-point Times New Roman font.

s/ Julie Veroff
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Deputy Solicitor General