

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

WESTFIELD HIGH SCHOOL L.I.F.E. CLUB;)
STEPHEN GRABOWSKI, by and through his)
parents, Edmund and Mary Etta Grabowski;)
TIMOTHY SOUZA and DANIEL SOUZA by and)
through their parents, Ralph and Diane Souza;)
SHARON SITLER and PAUL SITLER, by and)
through their parents, William and Denise Sitler;)
and DUSTIN COOPER, by and through his parents,)
Brian and Amy Turner-Cooper,)

Plaintiffs,)

v.)

WESTFIELD PUBLIC SCHOOLS; DR. THOMAS)
Y. McDOWELL, Individually and in his official)
capacity as Superintendent of Westfield Public)
Schools; and THOMAS W. DALEY, Individually)
and in his official capacity as Principal of Westfield)
High School,)

Defendants.)

C.A. NO. 03-30008 FHF

UNITED STATES' MOTION FOR LEAVE TO PARTICIPATE AS AMICUS CURIAE

The United States hereby moves for leave to participate as amicus curiae in this matter, and in support thereof, would respectfully show the Court the following:

1. On January 13, 2003, Plaintiffs filed a Verified Complaint and Motion for Preliminary Injunction, alleging, inter alia, that Defendants discriminated against Plaintiffs' religious beliefs at the Westfield High School by refusing to allow them to distribute pamphlets containing a religious message even though Defendants permitted the distribution of secular pamphlets by these same students in a prior year. Plaintiffs allege, among other things, that this violates their rights under the Equal Protection Clause of the Fourteenth Amendment to be free

from religious discrimination and the First Amendment to be free from discrimination based on their religious viewpoint.

2. The United States is charged with enforcement of Title IV of the Civil Rights Act of 1964, which authorizes the Attorney General to seek relief if a school deprives students of the equal protections of the laws. See 42 U.S.C. § 2000c-6. The United States also is authorized under Title IX of the Civil Rights Act of 1964 to intervene in cases alleging violations of the Equal Protection Clause that are of general public importance. See 42 U.S.C. § 2000h-2.

3. This case involves important issues regarding the elimination of discrimination in public high schools on the basis of religion. Because of the United States' statutory mandate to prevent discrimination on suspect criteria such as religion, the United States has a strong interest in the outcome of this case.

4. Federal district courts have the inherent authority to permit a non-party to participate as an amicus curiae in a case, and have broad discretion in deciding whether to permit such participation. See Resort Timeshare Resales, Inc. v. Stuart, 764 F. Supp. 1495, 1500-01 (S.D. Fl. 1991); Dunbar v. Landis Plastics, Inc., 996 F. Supp. 174, 179 (N.D.N.Y. 1998); Ellsworth Assocs., Inc. v. United States, 917 F. Supp. 841, 846 (D.D.C. 1996); see also Tutein v. Daley, 116 F. Supp. 2d 205, 209 (D. Mass. 1999) (inviting non-party to file motion for amicus curiae); Resolution Trust Corp. v. Boston, 150 F.R.D. 449, 455 (D. Mass. 1993) (same).

“Generally, courts have exercised great liberality in permitting an amicus curiae to file a brief in a pending case, and, with further permission of the court, to argue the case and introduce evidence.” United States v. Davis, 180 F. Supp. 2d 797, 800 (E.D. La. 2001). Courts typically permit amicus participation if the information offered is “timely and useful.” Ellsworth Assocs., 917 F. Supp. at

846; Avellino v. Herron, 991 F. Supp. 730, 732 (E.D. Pa. 1998). The United States' proposed amicus brief satisfies both of these elements.

9. First, The United States' amicus brief is timely. If accepted by this Court, the United States' amicus brief will be filed less than six weeks after the Motion for Preliminary Injunction was filed and two business days after Defendants filed their responses to the motion. The Court has not yet heard oral argument on the matter and has not issued a ruling on the motion.

10. Second, the proposed brief provides information that the United States believes is both useful and critical to the Court in considering Plaintiffs' Motion for Preliminary Injunction. Courts have deemed amicus participation useful when, for example, a party has a special interest in or is particularly familiar with the issues in a case,¹ a party has expertise in a particular area of law,² and a party offers a different approach to resolving a particular issue.³

11. As outlined above, the United States has a special interest and is particularly familiar with enforcement proceedings concerning Equal Protection violations. Furthermore, while this case involves important issues of the students' rights under the First Amendment against the imposition of prior restraints on speech, as stated in Plaintiffs' motion, the United States' brief addresses the issues of Equal Protection and the First Amendment violations that

¹See Ellsworth Assocs., 917 F. Supp. at 846; Martinez v. Capital Cities/ABC-WPVI, 909 F. Supp. 283, 286 (E.D. Pa. 1995) (permitting EEOC's amicus participation to explain significance of letter it sent to plaintiff in employment discrimination case).

²See Pennsylvania Env'tl. Def. Found. v. Bellefonte Borough, 718 F. Supp. 431, 434-35 (M.D. Pa. 1989) (permitting United States' amicus participation based on its primary responsibility for insuring that Clean Water Act is properly enforced).

³See Overton Power Dist. No. 5 v. Watkins, 829 F. Supp. 1523, 1527-28 (D. Nev. 1993), vacated for lack of standing, 73 F. 3d 253 (9th Cir. 1996).

parallel Equal Protection, which are raised in the Verified Complaint but not fully addressed in Plaintiffs' motion.

Wherefore, the United States requests that the Court grant the United States leave to file the attached brief as amicus curiae.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Amy I. Berman, attorney for the United States, certify that on February 19, 2003, I have mailed by federal express, a true and correct copy of the United States' Motion for Leave to Participate as Amicus Curiae and Amicus Curiae Memorandum Supporting Plaintiffs' Motion for Preliminary Injunction, to the following counsel:

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