



response to the above-referenced Motions for Leave to File an Amicus Brief be filed at or before noon on Monday, November 28, 2016. The Parties are scheduled for argument on Plaintiffs' Motion for Preliminary Injunction on December 1, 2016.

### **STANDARD OF REVIEW**

“There is no statute, rule or controlling case defining a federal district court’s power to grant or deny leave to file an amicus brief.” *Mumia Abu-Jamal v. Martin Horn*, Judge Yohn, Memorandum and Order, Civ. A. No. 99-5089, p. 5 (E.D. Pa. 2000). Federal Rule of Appellate Procedure 29 sets forth the standard for filing an amicus brief in the Court of Appeals. Fed. R. App. Proc. 29 requires the brief to set forth “the reason why the brief is desirable.” See, Fed. R. App. P. 29 (b)(2). Second, the amicus must present “a concise statement of . . . the source of its authority to file.” See, Fed. R. App. P. 29(a)(3). Additionally, Fed. R. App. P. 29 sets forth the page limitations and filing deadlines.

District courts have required a similar showing. It is within a district court’s discretion whether to permit the filing of an amicus brief. See *Sciotto v. Marple Newton Sch. Dist.*, 70 F. Supp. 2d 553, 554 (E.D. Pa. 1999); *Waste Mgt. of Pa., Inc. v. City of York*, 162 F.R.D.34, 36 (M.D. Pa. 1995); *Yip v. Pagano*, 606 F. Supp. 1566, 1568 (D.N.J.), *aff’d* 782 F. 2d 1033 (3d Cir. 1985). Courts, mindful of exhaustion and efficiency, have inquired whether proposed amicus filings present information which is “timely and useful.” See *Sciotto*, 70 F. Supp. 2d at 555; *The Hawksbill Sea Turtle v. FEMA*, 11 F. Supp. 2d 529, 541 (D.V.I. 1998); *Waste Mgmt. of Pa., Inc.* 162 F.R.D. at 36; *Yip*, 606 F. Supp. at 1568. As a result, courts have denied leave to file an amicus when it is unnecessary and the parties are adequately represented. See *Sciotto*, 70 F. Supp. 2d at 555; *Goldberg v. Philadelphia*, Civ. No. 91-7575, 1994 U.S. Dist. 9392 at \*2 (E.D. Pa. July 14, 1992). “[A]n amicus brief is supplemental . . . It should treat only matters not adequately addressed by a party.” See, Fed. R. App. P. 29(d) Adv. Comm. Notes to 1998 Amend.

## ARGUMENT

Defendants recognize the sincere interests of Amici in the ultimate question presented as to the interpretation of “on the basis of sex” under Title IX of the Education Amendments of 1972 and whether “separation of the sexes” in the use of restrooms according to biology is impermissible under the Equal Protection Clause of the United States Constitution. However, these issues are not before this Court at this juncture. At the preliminary injunction stage, it is Plaintiffs’ burden to prove individualized and specific irreparable harm. Amici do not assist in this endeavor as they do not present “timely and useful” information as to Plaintiffs’ irreparable harm.

The Amici briefs are also not necessary as the Plaintiffs are adequately represented. See, *Sciotto*, 70 F. Supp. 2d at 555; *Goldberg*, 1994 U.S. Dist. LEXIS 9392 at \*2 (citing *Liberty-Lincoln-Mercury, Inc. v. Ford Mktg. Corp.*, 149 F.R.D. 65, 82 (D.N.J. 1993)). Plaintiffs currently have the benefit of counsel from Lambda Legal who are highly qualified to represent them in this matter. Lambda Legal has extensive experience in litigating matters on behalf of transgender individuals. By the standards set forth above, this Court should deny the Motions for Leave as “unnecessary as there appears to be little to no need for additional assistance for Plaintiffs’ counsel from these outside organizations.” *Mumia Abu-Jamal v. Martin Horn*, Judge Yohn, Memorandum and Order, Civ. A. No. 99-5089, p. 8, (E.D. Pa. 2000).

Amicus briefs should only be considered where “a party is not represented competently . . ., when the amicus has an interest in some other case that may be affected by the decision in the present case<sup>2</sup> . . . or when the amicus has unique information for perspective that can help the court beyond the help the lawyers for the parties are able to provide.” *Ryan v. Commodity Futures*

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<sup>2</sup> Amici cannot argue that there is potential for prejudicial impact on other litigation as a result of any decision this Court may make because Amici’s interests are currently before the United States Supreme Court in the matter of *Gloucester Cty. Bd. v. G.G.*, 2016 U.S. LEXIS 6408, 2016 WL 4565643. See, *Sciotto*, 70 F. Supp. 2d at 555 (distinguishing between “special interest” in an action and “generalized interest,” characterized by policy-based interest).

*Trading Comm'n*, 125 F. 3d 1062, 1063 (7<sup>th</sup> Cir. 1007). Amici do not have a specialized interest in this action, they do not raise issues as to the adequacy of current representation, and they do not raise additional issues not addressed by Plaintiffs' counsel. Consequently, with no question of the professional skill possessed by Amici's counsel, this Court should deny Amici's Motions for Leave as unnecessary, unhelpful and burdensome to the parties at this stage of the proceedings.

**CONCLUSION**

As Judge Yohn found in the case of *Mumia Abu-Jamal v. Martin Horn*, Plaintiffs have highly experienced and qualified counsel who have already competently identified and addressed all legal issues. The Amici will not be prejudiced from any denial of the Motions for Leave, and the information offered is unnecessary and unhelpful at the preliminary injunction stage.

RESPECTFULLY SUBMITTED,

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**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on this 28<sup>th</sup> day of November, 2016, I have filed the foregoing Defendants' Response to Motions Seeking Leave to File Amicus Briefs with the Clerk of Courts via the District Court Electronic Case Filing System which will send notification of such filings to the following counsel of record:

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