

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

SILVANA COOK, on behalf of her minor daughter; SHARI ROBINSON, on behalf of her minor daughter; ERNESTINE BREWER, on behalf of her minor daughter; SCOTT PIRIE, on behalf of his minor daughter; GRETCHEN GOODLET, on behalf of her minor daughters; OMAR PASOLODOS, on behalf of his minor daughter;

Plaintiffs.

v.

FLORIDA HIGH SCHOOL ATHLETIC ASSOCIATION,

Defendant.

Case No.: 03:09-cv-547- J-32HTS

**Request for Oral Argument**

**UNITED STATES’ MOTION FOR LEAVE TO PARTICIPATE AS AMICUS CURIAE  
AND FOR LEAVE TO FILE AMICUS BRIEF IN EXCESS OF PAGE LIMITS**

The United States hereby moves for leave to participate as amicus curiae in this matter and to file the attached amicus curiae brief in excess of Local Rule 3.01 page limits. In support of its motion, the United States asserts the following:

1. On June 16, 2009, six parents, filing on behalf of their student athlete daughters who attend Florida High School Athletic Association (FHSAA) member schools, sued FHSAA under Title IX, the Equal Protection Clause, and 42 U.S.C. § 1983. Plaintiffs claim that FHSAA’s new Policy 6 intentionally discriminates against female athletes by denying them equal opportunities with respect to game scheduling.

2. Plaintiffs also filed a Motion for a Temporary Restraining Order (“TRO Motion”)

on June 19, 2009, and a Motion for a Preliminary Injunction (PI Motion) on June 22, 2009, supported by affidavits from three of the parents. This Court bypassed the TRO Motion and set an evidentiary hearing on the PI Motion for July 17, 2009. This Court ordered FHSAA to file any response to the PI Motion by July 8, 2009, with any supporting evidentiary materials, and authorized Plaintiffs to file an optional reply by July 14, 2009.

3. On July 1, 2009, FHSAA filed a Motion to Dismiss arguing, in part, that Plaintiffs pled a disparate impact claim under Title IX and the Equal Protection Clause. On July 8, 2009, FHSAA filed an Opposition to the PI Motion (Opposition), supported by an Affidavit from Samuel Hester, the Associate Executive Director and Chief Administrative Officer of FHSAA.

4. The United States plays a central role in the enforcement of Title IX. The United States Department of Education promulgates regulations interpreting and enforcing Title IX. 34 C.F.R. Pt. 106. Under Title IX and its implementing regulations, no individual may be discriminated against on the basis of sex in any interscholastic athletic program of an institution covered by Title IX. 34 C.F.R. § 106.41(a). The United States Department of Justice, through its Civil Rights Division, coordinates the implementation and enforcement of Title IX by the Department of Education and other executive agencies. Exec. Order No. 12,250, 45 Fed. Reg. 72,995 (Nov. 4, 1980); 28 C.F.R. § 0.51 (1998).

5. The United States Department of Justice also has significant responsibilities for the enforcement of the Civil Rights Act of 1964, which prohibits Equal Protection violations on the basis of sex, Title IV, 42 U.S.C. § 2000c-6, and the Attorney General may intervene in any lawsuit in federal court seeking relief from a denial of equal protection under the Fourteenth Amendment. 42 U.S.C. § 2000h-2.

6. The United States has participated as an intervenor and amicus curiae in numerous cases with Title IX claims and Equal Protection claims. See, e.g., Davis v. Monroe County Bd. of Educ., 526 U.S. 629 (1999); Communities for Equity v. Mich. High Sch. Athletic Ass'n, Inc., 459 F.3d 676 (6th Cir. 2006); A.B. v. Rhinebeck Central Sch. Dist., 224 F.R.D. 144 (S.D.N.Y. 2004); Hoffman v. S.D. High Sch. Activities Ass'n, CIV 02-4127 (D. S.D. July 23, 2002); Lovins v. Pleasant Hill Pub. Sch. Dist., No. 99-0550-CV (W.D. Mo. July 31, 2000); Pedersen & United States v. S.D. High Sch. Activities Ass'n, CA: 00-4113 (D. S.D. 2000).

7. This case poses questions regarding the proper interpretation and application of Title IX and the Equal Protection Clause to a state high school athletic association's rules for athletic programs throughout the State of Florida. The United States has a strong interest in ensuring these two federal laws are interpreted and applied correctly given its responsibility for enforcing them.

8. The Federal Rules of Civil Procedure do not specifically provide for the filing of amicus curiae briefs at the district court level. Nevertheless, the Eleventh Circuit has stated that district courts have inherent authority to appoint "friends of the court" to assist them in cases. In re Bayshore Ford Truck Sales, Inc., 471 F.3d 1233, 1249 n.34 (11th Cir. 2006).

9. "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." Does 1-7 v. Round Rock Ind. Sch. Dist., 540 F. Supp. 2d 735, 739 n.2 (W.D. Tex. 2007); Avellino v. Herron, 991 F. Supp. 730, 732 (E.D. Pa. 1998); Ellsworth Assoc. v. United States, 917 F. Supp.

841, 846 (D. D.C. 1996). The United States' proposed amicus brief satisfies both of these elements.

a. The United States' amicus brief is timely. The Court has not yet held a hearing on Plaintiffs' Motion for Preliminary Injunction nor has it ruled on FHSAA's Motion to Dismiss. The Court further allowed Plaintiffs to file a reply brief to Defendant's Opposition by July 14, 2009.

b. The amicus brief provides information that the United States believes is both useful and critical to the Court in evaluating Defendant's Motion to Dismiss and Plaintiffs' Motion for Preliminary Injunction. Courts have deemed amicus participation useful when the party has a special interest in the issues raised in the litigation<sup>1</sup> or expertise in the relevant area of law.<sup>2</sup> As stated above, the United States has both a special interest and expertise concerning Title IX and the Equal Protection Clause.

10. To further explain our position and answer any questions the Court may have, we request to participate at any argument or hearing concerning Plaintiffs' Motion for Preliminary Injunction and FHSAA's Motion to Dismiss.

11. Pursuant to Local Rule 3.01(d), the United States requests leave to file its 28-page amicus brief in excess of Local Rule 3.01 page limits. The United States' brief exceeds the page

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

<sup>2</sup> See Pa. Envtl. Def. Found. v. Bellefonte Borough, 718 F. Supp. at 431, 434-35 (M.D. Pa. 1989) (permitting United States' amicus participation based on its "primary responsibility for insuring that the Clean Water Act is properly enforced").

limits because it addresses both the Plaintiffs' Motion for Preliminary Injunction and the Defendant's Motion to Dismiss in one brief.

Wherefore, the United States requests that the Court grant (a) leave to file the attached brief as amicus curiae, and (b) the United States' request for oral argument concerning the Preliminary Injunction Motion and the Motion to Dismiss.

Respectfully submitted,

/s/ Emily McCarthy  
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Dated: July 14, 2009

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**CERTIFICATE OF CONFERRAL**

Pursuant to Local Rule 3.01(g), I hereby certify that:

1. Iris Goldschmidt, Trial Attorney in the Educational Opportunities Section of the United States Department of Justice, called Leslie Goller, Esquire, litigation counsel for Plaintiffs on July 14, 2009, and informed her of the United States' intent to file a Motion for Leave to Participate as Amicus Curiae and for Leave to File Brief in Excess of Page Limits, and its request for oral argument. She consented to the United States' filing on behalf of all Plaintiffs' counsel.
2. Ms. Goldschmidt spoke by telephone with Mark Alexander, Esquire, counsel for Defendant on July 14, 2009. He consented to the United States' Motion for Leave to file its amicus brief and its request for oral argument. He expressed no opinion regarding the United States' request for an extension of the page limit.

/s/ Emily McCarthy \_\_\_\_\_  
LORETTA KING  
Acting Assistant Attorney General  
Civil Rights Division

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 14, 2009, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

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I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participants:

Nancy Hogshead-Makar, Esquire  
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Jacksonville, Florida 32256.

Dated: July 14, 2009

/s/ Emily McCarthy  
Counsel for the United States