

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

JANE DOE,

Plaintiff,

v.

Civil Action No. 1:17-CV-12255-RGS

MASSACHUSETTS DEPARTMENT OF
CORRECTION; THOMAS A. TURCO III;
SEAN MEDEIROS; JAMES M. O’GARA JR;
And STEPHANIE COLLINS,

Defendants.

**MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE IN SUPPORT OF
PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION AND IN OPPOSITION
TO DEFENDANTS’ MOTION TO DISMISS**

Proposed *amici curiae* the National Center for Transgender Equality, the Massachusetts Transgender Political Coalition, the Disability Rights Defense and Education Fund, the Bazelon Center for Mental Health Law, and Health Law Advocates, Inc. (collectively “*Amici Curiae*”), through undersigned counsel, respectfully request leave of this Court to submit the attached brief with appendices *amici curiae* in support of Plaintiff’s Motion for Preliminary Injunction and in opposition to Defendants’ Motion to Dismiss. *See, e.g., Boston Gas Co. v. Century Indem. Co.*, No. 02–12062–RWZ, 2006 WL 1738312, at *1 n.1 (D. Mass. June 21, 2006) (“[Federal district] courts have inherent authority and discretion to appoint amici.”); *NGV Gaming, Ltd. v. Upstream Point Molate, LLC*, 355 F. Supp. 2d 1061, 1067 (N.D. Cal. 2005) (“District courts frequently welcome amicus briefs from non-parties concerning legal issues that have potential ramifications beyond the parties directly involved. . . .”); *see also Massachusetts Food Ass’n v. Massachusetts Alcoholic Beverages Control Com’n*, 197 F.3d 560, 567 (1st Cir. 1999) (“[A] court is usually delighted to hear additional arguments from able amici that will help the court toward right

answers”); *Portland Pipe Line Corp. v. City of S. Portland*, No. 2:15-cv-00054-JAW, 2017 WL 79948, at *6 (D. Me. Jan. 9, 2017) (granting motions for leave to file amicus briefs and giving plaintiff and defendant opportunity to respond “within two weeks of the date of this order”); *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 308 F.R.D. 39, 52 (D. Mass. 2015) (“The role of an *amicus curiae*, meaning friend of the court, is to assist the court in cases of general public interest by making suggestions to the court, by providing supplementary assistance to existing counsel, and by insuring a complete and plenary presentation of difficult issues so that the court may reach a proper decision.”) (citation and internal quotation marks omitted), *aff’d*, 807 F.3d 472 (1st Cir. 2015).

The motion for leave to file is based upon the following:

1. *Amici Curiae* have an interest in this case and are well-placed to submit a brief *amicus curiae*.

The Judge David L. Bazelon Center for Mental Health Law is a national non-profit legal advocacy organization founded in 1972 to advance the rights of individuals with mental disabilities. The Bazelon Center uses litigation, public policy advocacy, education, and training to advocate for laws and policies that ensure equal opportunities for people with psychiatric or intellectual disabilities in all aspects of life, including education, housing, community living, employment, health care, voting, parental and family rights, and other areas. The Bazelon Center has significant expertise with respect to the Americans with Disabilities Act (“ADA”), and has participated as amicus in numerous cases involving the rights of people with disabilities under the ADA.

The Disability Rights Education & Defense Fund (“DREDF”), based in Berkeley, California, is a national nonprofit law and policy center dedicated to protecting and advancing

the civil rights of people with disabilities. Founded in 1979 by people with disabilities and parents of children with disabilities, DREDF works through education, advocacy and law reform efforts. DREDF is nationally recognized for expertise in the interpretation of federal disability rights laws, including Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990.

Health Law Advocates, Inc. is a public interest non-profit law firm whose mission is to provide *pro bono* legal representation to Massachusetts residents experiencing difficulty accessing or paying for needed medical care. Health Law Advocates is committed to ensuring universal access to quality health care in Massachusetts, particularly for those who are most likely to be subject to discrimination, including transgender individuals.

The Massachusetts Transgender Political Coalition, founded in 2001, is dedicated to ending discrimination on the basis of gender identity and gender expression. It envisions a world where persons of all genders are treated with respect and fully participate in all areas of society, free from fear of discrimination, harassment or violence based on their gender identity and/or expression.

The National Center for Transgender Equality (“NCTE”) is a national social justice organization devoted to ending discrimination and violence against transgender people through education and advocacy on issues of national importance to transgender people. Founded in 2003, NCTE advocates for policy reform at the federal level on a wide range of issues affecting transgender people; provides technical assistance to organizations and institutions at the state and local levels; and works to create greater public understanding of issues affecting transgender people.

2. *Amici Curiae*’s expertise is timely and useful to this Court.

Amici Curiae seek to provide information to this Court regarding the vital importance of allowing individuals with gender dysphoria to bring claims under the ADA and Section 504 of the Rehabilitation Act (“Section 504”) when they have experienced discrimination. At the heart of the ADA and Section 504 is the protection of people with disabilities from discrimination based on stigma, prejudice, and ignorance. People with gender dysphoria routinely experience such discrimination and should be protected by these laws. A contrary interpretation would attribute to Congress an unconstitutional purpose and therefore must be avoided.

Only one court in the Nation has analyzed whether the ADA’s exclusion of “gender identity disorders not resulting from physical impairments” and “transsexualism” applies to gender dysphoria. *See Blatt v. Cabela’s Retail, Inc.*, No. 5:14-CV-04822, 2017 WL 2178123, at *4 (E.D. Pa. May 18, 2017) (denying defendant’s partial motion to dismiss and holding that the ADA does not exclude gender dysphoria). No court has analyzed whether an identical exclusion under the Rehabilitation Act applies to gender dysphoria, nor has any court addressed the rights of individuals with gender dysphoria to bring claims under the ADA and Section 504 in the prison context. Additionally, no court has focused on the ADA’s and Section 504’s prohibition of discrimination against people with gender dysphoria based on stigma, prejudice, and ignorance, as gleaned from legislative history, statutory text, and judicial interpretations.

3. No party’s counsel authored the attached *amici curiae* brief in whole or in part. No party or party’s counsel, and no person other than *Amici Curiae*, its members, or its counsel, contributed money intended to fund preparing or submitting the brief.

WHEREFORE, the proposed *Amici Curiae* respectfully request that this Court grant leave to file the attached brief with appendices *amici curiae*.

Respectfully submitted,

Amici Curiae

By their attorneys,

/s/ Joshua M. Daniels

Joshua M. Daniels (BBO# 673034)
The Law Office of Joshua M. Daniels
P.O. Box 300765
Jamaica Plain, MA 02130
Local Counsel for *Amici Curiae*
(617) 942-2190
attorneyjoshdaniels@gmail.com

Kevin M. Barry
(admitted *pro hac vice*)
QUINNIPIAC UNIVERSITY SCHOOL OF LAW
LEGAL CLINIC
275 Mount Carmel Ave.
Hamden, Connecticut 06518
Counsel for *Amici Curiae*
legalclinic@quinnipiac.edu

Dated: February 27, 2018

CERTIFICATE OF SERVICE

I, Joshua M. Daniels, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and paper copies will be sent to those indicated as non-registered participants on February 27, 2018.

/s/ Joshua M. Daniels

LOCAL RULE 7.1(a)(2) CERTIFICATION

I, Kevin M. Barry, hereby certify that I have conferred and attempted in good faith to resolve or narrow the issue with counsel for Plaintiff and counsel for Defendants. While counsel for Plaintiff do not oppose the relief requested herein, counsel for Defendants have stated that they do oppose.

/s/ Kevin M. Barry