

The Honorable Robert J. Bryan

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

BRIAN TINGLEY,
Plaintiff,

v.

ROBERT W. FERGUSON, et al.,
Defendants.

No. 3:21-cv-05359-RJB
**AGREED MOTION FOR LEAVE TO
FILE BRIEF OF *AMICI CURIAE* THE
TREVOR PROJECT, INC., AMERICAN
FOUNDATION FOR SUICIDE
PREVENTION, AND AMERICAN
ASSOCIATION OF SUICIDOLOGY, IN
SUPPORT OF DEFENDANTS' AND
PROPOSED DEFENDANT-
INTERVENOR'S MOTION TO
DISMISS AND OPPOSITION TO
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

Note on Motion Calendar: June 28, 2021

Proposed *amici curiae* The Trevor Project, Inc., American Foundation for Suicide Prevention, and American Association of Suicidology, pursuant to this Court's inherent authority, respectfully move the Court for leave to file the attached *amici curiae* brief in support of Defendants' Motion to Dismiss and Opposition to Plaintiffs' Motion for Preliminary Injunction (Dkt. No. 27) and Proposed Defendant-Intervenor's Motion to Dismiss and Opposition to Plaintiffs' Motion for Preliminary Injunction (Dkt. No. 26). All parties have consented to the filing of this amicus brief. A copy of the proposed *amici curiae* brief is appended as an exhibit to this motion.

1 **I. IDENTITY AND INTEREST OF *AMICI***

2 *Amici* are three non-profit organizations who have particular familiarity and knowledge of the
3 significant harms that LGBTQ youth endure as a result of conversion therapy. The attached brief
4 addresses issues that are specifically within their areas of expertise, as they focus on addressing
5 mental health and the disproportionate risk of suicide and suicidality among LGBTQ youth. *Amici*
6 believe that their perspective—developed through decades of work studying mental health and
7 suicide and addressing suicidality in LGBTQ youth—will be useful to the Court as it adjudicates
8 Plaintiff’s motion for preliminary injunction (which it should deny) and Defendants’ and Proposed
9 Defendant-Intervenor’s motions to dismiss (which it should grant). *Amici* have a strong interest in
10 ensuring that protections for LGBTQ youth are upheld, consistent with precedent. Proposed *amici*
11 are:
12

- 13
- 14 • **The Trevor Project, Inc. (“The Trevor Project”)**, the nation’s largest lesbian, gay,
15 bisexual, transgender, queer, and questioning (“LGBTQ”) youth crisis intervention and
16 suicide prevention organization. The Trevor Project offers the only accredited, free, and
17 confidential phone, instant message, and text messaging crisis intervention services for
18 LGBTQ youth, which are used by thousands of youth each month. Through analyzing
19 data obtained from these services and national surveys, The Trevor Project produces
20 innovative research that brings new knowledge, with clinical implications, to issues
21 affecting LGBTQ youth.
- 22 • **The American Foundation for Suicide Prevention (“AFSP”)**, an organization
23 dedicated to saving lives and bringing hope to those affected by suicide. In carrying out
24 its mission, AFSP funds scientific research, educates the public about mental health and
25 suicide prevention, advocates for public policies in mental health and suicide
26 prevention, and supports survivors of suicide loss and those affected by suicide.
- 27 • **The American Association of Suicidology (“AAS”)**, a nationally recognized
28 organization comprised of public health and mental health professionals, researchers,

1 suicide prevention and crisis intervention centers, survivors of suicide loss, attempt
2 survivors, and others, that promotes the prevention of suicide through research, public
3 awareness programs, education, and training. In addition to advancing suicidology as a
4 science—developing and disseminating scholarly research on suicidology and suicide
5 behaviors—AAS promotes public education and training for professionals and
6 volunteers on suicide prevention and intervention.

7 The Trevor Project works firsthand with LGBTQ youth who have endured these harmful practices—
8 and understands the devastating effects that these therapies inflict, including an increased risk of
9 suicide. Due to the increased and substantial risks of suicidality, AFSP and AAS advocate to end the
10 practice of conversion therapy against minors through public policy advocacy, and AAS serves as an
11 accrediting organization for crisis services providers who address the risks of suicidality caused by
12 the practice of conversion therapy. For these reasons, The Trevor Project, AFSP, and AAS have a
13 substantial interest in supporting the enforcement of laws prohibiting the practice of conversion
14 therapy against minors.
15

16 **II. REASONS WHY MOTION SHOULD BE GRANTED**

17 As this Court is well aware, federal district courts possess the inherent authority to accept
18 amicus briefs. *See, e.g., Skokomish Indian Tribe v. Goldmark*, No. C13–5071JLR, 2013 WL
19 5720053, at *1 (W.D. Wash. Oct. 21, 2013) (“The court has ‘broad discretion’ to appoint amicus
20 curiae.” (quoting *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982), *abrogated on other grounds*
21 *by Sandin v. Conner*, 515 U.S. 472 (1995))). District courts frequently accept amicus briefs from
22 non-parties “concerning legal issues that have potential ramifications beyond the parties directly
23 involved or if the amicus has ‘unique information or perspective that can help the court beyond the
24 help that the lawyers for the parties are able to provide.’” *Id.* at *1 (quoting *NGV Gaming, Ltd. v.*
25 *Upstream Point Molate, LLC*, 355 F. Supp. 2d 1061, 1067 (N.D. Cal. 2005)); *see also Miller-Wohl*
26 *Co. v. Comm’r of Labor & Indus. State of Mont.*, 694 F.2d 203, 204 (9th Cir. 1982) (explaining that
27
28

1 the “classic role” of amici curiae is, among other things, to “assist[] in a case of general public
2 interest, [and] supplement[] the efforts of counsel”).

3 The Court should exercise its discretion to permit *amici* to file the attached brief. As a court
4 in the Eastern District of Washington put it, “[a]n amicus brief should normally be allowed when a
5 party is not represented competently or is not represented at all . . . or when the amicus has unique
6 information or perspective that can help the court beyond the help that the lawyers for the parties are
7 able to provide.” *Cnty. Ass’n for Restoration of Env’t (CARE) v. DeRuyter Bros. Dairy*, 54 F. Supp.
8 2d 974, 975 (E.D. Wash. 1999). This brief supplements Defendants’ efforts, by representing interests
9 not otherwise represented in this proceeding and providing unique information and perspective that
10 can assist the Court. *See, e.g., Castañeda Juarez v. Asher*, No. C20-0700JLR-MLP, 2020 WL
11 3104919, at *1 (W.D. Wash. June 11, 2020) (granting leave to file amicus brief where proposed
12 amici had “unique information or perspective that c[ould] help the court” (quoting *Skokomish*, 2013
13 WL 5720053, at *2)). *Amici* are representatives advocating on behalf of the interests of impacted
14 minors who are otherwise not represented in this proceeding. Defendants are not as well-positioned
15 as *amici* to speak to the experiences of minors in conversion therapy and the significant harms that
16 flow from it, particularly because these minors often only disclose their experiences and the harms
17 they are suffering to The Trevor Project counselors, and those harms are most regularly studied and
18 documented by anti-suicide organizations. As such, *amici* believe that their perspective—developed
19 through decades of work studying mental health and suicide and addressing suicidality in LGBTQ
20 youth—will be useful to the Court in understanding the purpose of the statute and the scientific
21 perspective on conversion therapy as it adjudicates the pending motions.

22 *Amici* have reviewed the briefs filed to date in this case so as to avoid unnecessary duplication
23 of the parties’ arguments. *Amici*’s proposed submission relies upon *amici*’s years of expertise and
24 offers the scientific basis and understanding around the importance of the LGBTQ youth protections
25
26
27
28

1 challenged by Plaintiff, Brian Tingley, and offers their unique perspective as providers of crisis
2 services, accreditors of crisis services providers, and advocates for young people experiencing
3 suicidality. Specifically, *Amici*'s submission demonstrates that LGBTQ youth suffer profound harm,
4 including an increased risk of suicide and suicidality, when subjected to conversion therapy. This is
5 in direct contrast to Plaintiff's contention that "[t]here is no statistically valid evidence that
6 counseling of the type that [he] provides is harmful or ineffective." Dkt. No. 2 at 12. The proposed
7 submission then demonstrates that the harm is not only well documented, but that there is an
8 overwhelming medical consensus as to the premise that conversion therapy causes harm and
9 increases the risk of suicide among LGBTQ children, teens, and young adults. Finally, the proposed
10 submission explains that this harm shifts the equities clearly in favor of denying Plaintiff's requested
11 injunction, as uninterrupted enforcement of Washington's conversion therapy ban is crucial to
12 protecting LGBTQ youth.
13
14

15 Accordingly, the proposed brief "concern[s] legal issues that have potential ramifications
16 beyond the parties directly involved" and offers "unique information or perspective that can help the
17 court beyond the help that the lawyers for the parties are able to provide." *Skokomish*, 2013 WL
18 5720053, at *1 (quoting *NGV Gaming, Ltd.*, 355 F. Supp. 2d at 1067). Indeed, some of the data
19 discussed in the proposed brief is only available to proposed *amicus* The Trevor Project, as a provider
20 of counseling and crisis services to LGBTQ youth. The Court should therefore grant the unopposed
21 motion for leave to file the proposed brief of *amici*. If the Court grants the motion, *amici* request the
22 brief be considered filed as of the date of this motion.
23
24
25
26
27
28

1 DATED: June 28, 2021

2 Respectfully submitted,

3 By: /s/ Shireen A. Barday

4 /s/ J. Denise Diskin

/s/ Isaac Ruiz

5 GIBSON, DUNN & CRUTCHER LLP

6 SHIREEN A. BARDAY*

200 Park Avenue

New York, New York 10166

7 Telephone: (212) 351-4000

8 sbarday@gibsondunn.com

9 QLAW FOUNDATION OF WASHINGTON

J. DENISE DISKIN

10 WSBA NO. 41425

101 Yesler Way #300

11 Seattle, WA 98104

12 Telephone: (206) 483-2725

denise@qlawfoundation.org

13 RUIZ & SMART PLLC

ISAAC RUIZ

14 WSBA NO. 35237

1200 Fifth Avenue, Suite 1220

15 Seattle, WA 98101

16 Telephone: (206) 203-9100

iruiz@ruizandsmart.com

17 *Pro Hac Vice Pending

18 *Attorneys for Amici The Trevor Project, Inc., American*
19 *Foundation for Suicide Prevention, and American*
20 *Association of Suicidology*

CERTIFICATE OF SERVICE

I hereby certify that on June 28, 2021, I electronically filed the foregoing Brief of *Amici Curiae* The Trevor Project, Inc., American Foundation for Suicide Prevention, and American Association of Suicidology, In Support of Defendants’ Opposition to Plaintiff’s Motion for Preliminary Judgment with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorneys of record who are registered as such on the CM/ECF system.

Dated: June 28, 2021

/s/ Shireen A. Barday
Shireen A. Barday