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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
EASTERN DIVISION

12 CHILD EVANGELISM FELLOWSHIP OF
SOUTHERN CALIFORNIA - POMONA
13 VALLEY CHAPTER, et al.,

14
15 Plaintiffs,

16 v.

17 P. JOSEPH LENZ, et al.,

18 Defendants.

) CASE # ED-CV-04-839
) -VAP-(SGLx)

) **UNITED STATES'**
) **EX PARTE**
) **APPLICATION**
) **TO PARTICIPATE AS**
) **AMICUS CURIAE**

) Date: October 25, 2004
) Time: 10:00 a.m.
) Courtroom: 2
) Judge: Virginia A. Phillips

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1 The United States hereby submits this Ex Parte Application for an order
2 granting it leave to participate as amicus curiae in this matter to file a
3 Memorandum in Support of Plaintiffs’ Motion for Preliminary Injunction. In
4 support thereof, the United States respectfully submits the following:

5 1. On July 9, 2004, Plaintiffs filed a Verified Complaint for Injunctive
6 and Declaratory Relief, alleging, inter alia, that Defendants discriminated against
7 Plaintiffs’ religious beliefs by refusing to allow them free access to school facilities
8 even though Defendants permit secular organizations whose speech concerns the
9 same subject matter as the Plaintiffs free access to school facilities. Plaintiffs
10 allege, among other things, that this violates their rights under the Equal Protection
11 Clause of the Fourteenth Amendment to be free from religious discrimination and
12 the First Amendment to be free from discrimination based on their religious
13 viewpoint.

14 2. The United States is charged with enforcing Title IV of the Civil
15 Rights Act of 1964, which authorizes the Attorney General to seek relief if a
16 school deprives students of the equal protections of the laws. See 42 U.S.C. §
17 2000c-6.

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

22 4. In similar cases involving religious discrimination in public schools,
23 federal courts have granted the United States amicus status. See e.g., Westfield
24 High School L.I.F.E. Club v. Westfield, 249 F. Supp.2d 98, 101 (D. Mass. 2003);
25 Campbell v. St. Tammany Parish Sch. Bd., 2003 WL 21783317, *7 (E.D. La. July
26 30, 2003).

27 5. Federal district courts have the inherent authority to permit a non-
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1 party to participate as an amicus curiae in a case, and have broad discretion in
2 deciding whether to permit such participation. See, e.g., Hoptowit v. Ray, 682
3 F.2d 1237, 1260 (9th Cir. 1982); Ellsworth Assocs., Inc. v. United States, 917 F.
4 Supp. 841, 846 (D.D.C. 1996); In re Roxford Foods Litigation, 790 F. Supp. 987,
5 997 (E.D. Cal. 1991); see also Tutein v. Daley, 116 F. Supp. 2d 205, 209 (D. Mass.
6 1999) (inviting non-party to file motion for amicus curiae). “Generally, courts
7 have exercised great liberality in permitting an amicus curiae to file a brief in a
8 pending case” In re Roxford Foods Litigation, 790 F. Supp. at 997 (quoting
9 United States v. Louisiana, 751 F. Supp. 608, 620 (E.D. La. 1990)). Courts
10 typically permit amicus participation if the information offered is “timely and
11 useful.” Ellsworth Assocs., 917 F. Supp. at 846; Avellino v. Herron, 991 F. Supp.
12 730, 732 (E.D. Pa. 1998). The United States’ proposed amicus brief satisfies both
13 of these elements.

14 6. First, The United States’ amicus brief is timely. If accepted by this
15 Court, the United States’ amicus brief will be filed less than three weeks after the
16 Motion for Preliminary Injunction was filed and seven (7) business days after
17 Defendants filed their responses to the motion. The Court has not yet heard oral
18 argument on the matter and has not issued a ruling on the motion.

19 7. Second, the proposed brief provides information that the United States
20 believes is both useful and critical to the Court in considering Plaintiffs’ Motion
21 for Preliminary Injunction. Courts have deemed amicus participation useful when,
22 for example, a party has a special interest in or is particularly familiar with the
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1 issues in a case,¹ or has expertise in a particular area of law.²

2 8. Pursuant to the Central District of California's Local Civil Rules L.R.
3 7-19 and 7-19.1, the United States has contacted the Plaintiffs and Defendants in
4 an attempt to gain their stipulation to the United States' participation as amicus
5 curiae. While Plaintiffs consented to such participation, Defendants withheld
6 consent. The United States has notified the parties of its intention to file this Ex
7 Parte Application.

8 Wherefore, the United States requests that the Court grant the United States'
9 Ex Parte Application (the United States attaches a Proposed Order) and allow it to
10 participate as amicus curiae by submitting a Memorandum in Support of Plaintiffs'
11 Motion for Preliminary Injunction.

12 Respectfully submitted this 19th day of October, 2004.

13 **U.S. DEPARTMENT OF JUSTICE**
14 **CIVIL RIGHTS DIVISION**

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

27 ²See In re Roxford Foods Litigation, 790 F. Supp. at 997 (permitting USDA to
28 participate as amicus and noting its general oversight authority over the Poultry
Producers Financial Protection Act).

1 **CERTIFICATE OF SERVICE**

2 I, Leslie M. Gardner, attorney for the United States, certify that on October
3 19, 2004, I mailed by Federal Express a true and correct copy of the United States'
4 Ex Parte Application to Participate as Amicus Curiae and United States'
5 Memorandum as Amicus Curiae in Support of Plaintiffs' Motion for Preliminary
6 Injunction, to the following counsel:

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