

No. 18-1917

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

SPEECH FIRST, INC.
Plaintiff-Appellant

v.

MARK SCHLISSEL, *et al.*,
Defendants-Appellees

ON INTERLOCUTORY APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE EASTERN DISTRICT OF MICHIGAN

**MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE* OF
FOUNDATION FOR INDIVIDUAL RIGHTS IN EDUCATION AND
ALLIANCE DEFENDING FREEDOM**

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I. Nature of Motion and Movant's Interest

A. Nature of Motion

Pursuant to Federal Rule of Appellate Procedure 29(a)(3), the Foundation for Individual Rights in Education (“FIRE”) and Alliance Defending Freedom (“ADF”) (collectively, “*Amici*”) respectfully move for an order granting leave to file the accompanying brief (attached hereto as Exhibit 1) as *amici curiae* in support of Plaintiff-Appellant Speech First, Inc. (“Speech First”) and reversal of the district court’s order.¹

B. Statement of Movants' Interest

FIRE is a nonpartisan, nonprofit organization dedicated to promoting and protecting civil liberties at our nation’s institutions of higher education. Since 1999, FIRE has worked to protect student First Amendment rights at campuses nationwide. FIRE believes that to best prepare students for success in our democracy, the law must remain unequivocally on the side of robust free speech rights on campus.

¹ Speech First consented to the filing of this brief. *Amici* sought Defendants-Appellees’ leave to consent by electronic mail on November 12, 2018. On November 15, 2018, counsel for Defendants-Appellees informed *Amici* that Defendants-Appellees would not consent in advance to *amici*’s filing.

FIRE coordinates and engages in targeted litigation to ensure that student First Amendment rights are vindicated when violated at public institutions. The students FIRE defends rely on access to federal courts to secure meaningful and lasting legal remedies to the irreparable harm of censorship.

Alliance Defending Freedom is a non-profit, public interest legal organization that provides strategic planning, training, funding, and direct litigation to protect our first constitutional liberties—religious freedom and freedom of speech.

This case significantly concerns ADF because it implicates the free speech rights of students nationwide. ADF has represented students in numerous cases challenging campus speech codes, often housed in harassment policies, that stifle free speech on campus.

II. Legal Standard

A motion for leave to file an amicus brief must state “(A) the movant’s interest; and (B) the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.” Fed. R. App. P. 29(a)(3) ““An amicus curiae brief which brings relevant matter to the attention of the Court that has not already been brought to its attention by the parties is of considerable help to the Court.”” Fed. R. App. Proc. 29, 1998 advisory comm. note (quoting S. Ct. R. 37.1). An *amicus* brief can assist the court by elaborating on issues raised by the

parties. *See Garner v. Cuyahoga Cty. Juvenile Court*, 554 F.3d 624, 636 (6th Cir. 2009); *see also Shoemaker v. City of Howell*, 795 F.3d 553, 562 (6th Cir. 2015) (“The traditional function of an amicus curiae is to assist in cases of general public interest by supplementing the efforts of private counsel and by drawing the court’s attention to law that might otherwise escape consideration[.]”) (quoting 3-28 Moore’s Manual—Federal Practice and Procedure § 28.84 (2014)). As then-Judge Alito wrote, “[O]ur court would be well advised to grant motions for leave to file amicus briefs unless it is obvious that the proposed briefs do not meet Rule 29’s criteria as broadly interpreted.” *Neonatology Assocs., P.A. v. Comm’r*, 293 F.3d 128, 133 (3d Cir. 2002).

III. Argument

Amici bring a new and valuable perspective to this case given their role in defending students’ constitutional rights. *Amici* have a unique ability to provide the Court with information about how situations like the one before the Court have played out at institutions across the country over the past two decades. *Amici* are also in a position to provide the Court with a broad perspective on the barriers facing student-plaintiffs who seek to vindicate their constitutional rights in court.

IV. Conclusion

For the foregoing reasons, the undersigned *amici* respectfully request that the Court grant this motion and permit them leave to appear as *amici curiae* and file the accompanying brief in support of Plaintiff-Appellant Speech First.

Dated: November 20, 2018

Respectfully Submitted,

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