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

CHIANNE D., *et al.*,

Plaintiffs,

Case No. 3:23-cv-00985-MMH-LLL

v.

JASON WEIDA, in his official capacity as Secretary for the Florida Agency for Health Care Administration, and SHEVAUN HARRIS, in her official capacity as Secretary for the Florida Department of Children and Families,

Defendants.
_____/

DEFENDANTS' RESPONSE TO AMERICAN PUBLIC HEALTH ASSOCIATION'S MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

Defendants respectfully oppose the Motion for Leave to File Amicus Curiae Brief in Support of Plaintiffs' Position at Trial ("Motion for Leave") (ECF No. 112) filed by the American Public Health Association ("APHA") and others.

INTRODUCTION

The Proposed Amicus Brief is not meant to help this Court navigate any complex issue of law. Instead, proposed amici seek to taint the trial record in advance with 37 pages and 86 footnotes of data and expert opinion criticizing Florida's healthcare system and exciting sympathy for Medicaid recipients. The Proposed Amicus Brief is a blatant subversion of the Rules of Evidence and the expert-witness disclosure requirements of

Federal Rule of Civil Procedure 26. Because it offers nothing to this Court beyond irrelevant datapoints that no party intends to introduce into evidence at trial, and which Defendants now have no opportunity to rebut, this Court should deny the Motion for Leave.

## LEGAL STANDARD

"Amici curiae typically appear at the appellate level, and are not usually necessary or helpful at the trial level." *Florida ex rel. McCollum v. United States Dep't of Health & Human Servs.*, 3:10-cv-00091-RV/EMT, 2010 WL 11570635, at *1 (N.D. Fla. June 14, 2010). Thus, "acceptance of an amicus curiae should be allowed only sparingly, unless the amicus has a special interest, or unless the Court feels that existing counsel need assistance." *News & Sun-Sentinel Co. v. Cox*, 700 F. Supp. 30, 32 (S.D. Fla. 1988) (internal marks omitted).

In exercising its discretion to grant or deny a motion for leave to participate as amicus curiae, district courts consider whether: "(1) the petitioner has a 'special interest' in the particular case; (2) the petitioner's interest is not represented competently or at all in the case; (3) the proffered information is timely and useful; and (4) the petitioner is not partial to a particular outcome in the case." *Save the Manatee Club v. United States Env't Prot. Agency*, No. 6:22-cv-00868-CEM-LHP, 2022 WL 19918052, at *1 (M.D. Fla. Nov. 22, 2022).[1]

[1] The Motion for Leave does not cite this legal standard but misleadingly cites Chief Judge Walker's six-sentence, unpublished order in *Madera v. Detzner*, No. 1:18-cv-00152-MW/GRJ (N.D. Fla.) (ECF No. 31)—a case in which one of the undersigned attorneys was counsel of record for several Supervisors of Elections. Strikingly, the

## ARGUMENT

The Proposed Amicus Brief might make a fine white paper for presentation to a legislature, but it has no place in federal court litigation. This Court should reject the proposed amici's invitation to admit 37 pages and 86 footnotes' worth of untested expert opinion and unverified data into the trial record, in clear disregard for the Federal Rules of Evidence and Rule 26's expert-disclosure requirements. The Proposed Amicus Brief treats the proposed amici as super-parties who, unlike the actual parties, are not subject to the Rules of Evidence, including rules governing hearsay, relevance, and authenticity; the Rules of Civil Procedure, which control the disclosure and testing of expert opinion; and this Court's orders, which limit the parties' pretrial briefs to 30 pages. ECF No. 114 ¶ 3.

"An amicus brief should normally be allowed when a party is not represented competently or is not represented at all, when the amicus has an interest in some other case that may be affected by the decision in the present case . . . , or when the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide. Otherwise, leave to file an amicus curiae brief

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quoted language that the Motion for Leave attributes to the *Detzner* Order does not appear anywhere in that Order, *see* ECF No. 112 at 3, nor does the Order purport to comprehensively articulate the legal standard for evaluating amicus curiae motions. The same is true of Judge Winsor's three-sentence Order granting an unopposed motion to file an amicus brief in *M.A. v. Florida State Board of Education*, No. 4:22-cv-00134-AW-MJP (N.D. Fla.), which does not articulate the standard that the Motion for Leave purports to quote, and which the Motion for Leave erroneously cites as ECF No. 147. The Order in *M.A.* is found at ECF No. 148, while the *unopposed* motion is found at ECF No. 147.

should be denied." *McCollum*, 2010 WL 11570635, at *1 (quoting *Ryan v. Commodity Futures Trading Comm'n*, 125 F.3d 1062, 1063 (7th Cir. 1997) (Posner, J.; chambers opinion)).

Proposed amici failed to establish that (i) they have a special interest in this case, (ii) their interests and Plaintiffs' are not already adequately represented, (iii) they can offer useful information or argument to this Court, or (iv) they are impartial. This Court should therefore deny the Motion for Leave.

***First***, the proposed amici do not have any special interest in the outcome of this case. They have a generalized, philosophical interest in Medicaid and healthcare policy and in achieving reforms in those policy areas. The APHA concedes that its true interest is to "advocate[] for public health policies and issues" and to "influence federal policy" related to public health. ECF No. 112 at 2. And the individual amici—who are "deans, chairs, and scholars"—try to claim as their own the interests of "individuals who face systemic barriers to essential health care services and treatments," but admit that they simply have an academic interest in "health law, public health, health policy and research, and national health reform." *Id.* These generalized, academic interests in policy reform are not sufficient to warrant participation in a federal court trial as amici curiae.

***Second***, Plaintiffs are more than adequately represented by counsel. "It is 'particularly questionable' to allow an amicus brief when the existing parties are 'already well represented.'" *McCollum*, 2010 WL 11570635, at *2 (quoting *Strasser v. Doorley*, 432 F.2d 567, 569 (1st Cir. 1970)). Proposed amici claim to present the "unique perspectives of Florida's Medicaid beneficiaries," even though none of the more than 100 signatories

to the Motion for Leave claims to be a Florida Medicaid beneficiary. ECF No. 112 at 39–52. But "Florida's Medicaid beneficiaries" are already represented in this putative class action by competent counsel. Plaintiffs are represented by nine lawyers and two law firms—the Florida Health Justice Project and the National Health Law Program. ECF No. 85 at 23. In support of class certification, Plaintiffs represented that their law firms "have significant experience litigating Medicaid and due process claims in federal court" and "prosecuting class actions," and have worked "steadily and competently to investigate and prosecute this case." *Id.* at 23–24. Defendants in turn did not contest the competency of Plaintiffs' counsel in responding to Plaintiffs' Amended Motion for Class Certification. ECF No. 93. The opinions of academics and advocates are not necessary to represent the Plaintiffs' interests, or the interests of Medicaid beneficiaries in Florida.

***Third***, the information that proposed amici seek to inject into the record is not useful to this Court. This Court does not need to understand the demographics or "vulnerabilities" of Medicaid populations, or understand academia's opinion on the quality of Florida's healthcare system, to determine the two claims before this Court: whether DCF's termination notices satisfy due process and federal Medicaid Act regulations. The Proposed Amicus Brief is therefore not helpful, and this Court should decline to consider it. *See Save the Manatee Club*, 2023 WL 19918052, at *1 (denying motion for leave to file amicus curiae brief when "the proffered information" was "not relevant" to the Court's review of Defendant's action, and it was "unclear how [movant's interests were] not already competently represented by Plaintiffs"); *Conservancy of Sw. Fla. v. U.S. Fish & Wildlife Serv.*, No. 2:10-cv-00106–FtM–SPC, 2010 WL 3603276, at *2

(M.D. Fla. 2010) (Chappell, Mag.) (denying motion for leave to file amicus brief that contained "[m]ovant's opinions" on whether agency had taken the "correct" action to best protect the Florida Panther); *United States v. Santiago-Ruiz*, No. 17-cr-60022, 2017 WL 11454398, at *2 (S.D. Fla. Dec. 4, 2017) ("[T]he Court does not find the participation of Amici Curiae would be desirable or beneficial to these proceedings. . . . There is nothing in the Applications to indicate that the Amici Curiae offers 'timely or useful information' relevant to the instant case.").

In addition to presenting troves of irrelevant facts and data, the Proposed Amicus Brief incants the phrase "brutal need" eleven times in discussing the Medicaid population and cheering for Plaintiffs' success at trial. ECF No. 112-1. Proposed amici present this talking point as if the phrase "brutal need" were a relevant legal standard articulated in *Goldberg v. Kelly*, 397 U.S. 254 (2010). Of course, it is not. The *Goldberg* majority used that term once, when quoting the circuit court's description of the appellant's own circumstances. *Id.* at 261. It is unrelated to the legal standard the Supreme Court applied in resolving the due-process claim in *Goldberg* and of course is not a factor that this Court will apply when evaluating the due process and Medicaid regulation claims before it.

Proposed amici's eleventh-hour attempt to tip the scales at trial is untethered from any discrete legal issue this Court needs to resolve, despite ample opportunity for amici to file a focused legal memorandum during the last eight months of pretrial briefing. *See News & Sun-Sentinel Co. v. Cox*, 700 F. Supp. 30, 31–32 (S.D. Fla. 1988) ("At this late date, the Herald's attempt to befriend the Court must fail. The Herald did not participate

in any of the pre-trial proceedings before this Court despite the availability of a number of opportunities. Further, acceptance of an amicus curiae should be allowed only sparingly, unless the amicus has a special interest, or unless the Court feels that existing counsel need assistance." (internal marks omitted)). While courts sometimes grant leave for amici to file a legal memorandum related to a particular motion filed by a party, *e.g.*, *Brenner v. Scott*, 298 F.R.D. 689, 691–92 (N.D. Fla. 2014) (granting leave for amicus curiae to file a memorandum regarding a motion filed by the parties); *Resort Timeshare Resales, Inc. v. Stuart*, 764 F. Supp. 1495, 1501 (S.D. Fla. 1991) (granting leave for the limited purpose of filing a memorandum in response to a summary-judgment motion when movant did not oppose amicus curiae's participation), that is not what proposed amici seek to do here. Instead, the Proposed Amicus Brief is a freewheeling policy paper aimed at Florida's Medicaid system and pays only lip service to the due-process framework this Court will apply at trial.

In sum, the Proposed Amicus Brief is nothing more than a prejudicial, irrelevant pile-on designed to poison the well. It will not assist this Court's resolution of Plaintiffs' two claims. Consideration of the Proposed Amicus Brief would achieve an inequitable end-run around the Federal Rules of Evidence and the Federal Rules of Civil Procedure.

***Fourth***, proposed amici are not impartial but expressly and admittedly partial to Plaintiffs' preferred outcome in this case. The Motion for Leave and Proposed Amicus Brief are filed "in support of Plaintiffs' position at trial." ECF No. 112 at 1, 112-1 at 1. And to be sure, this partiality is not an incidental result of proposed amici's dispassionate analysis of the law. The sole purpose of the Proposed Amicus Brief is to advocate a

policy outcome—which it does by relying wholesale on facts and arguments outside the record, and outside of the scope of the upcoming trial. But "policy arguments . . . are not the currency of a trial court," and "contributions" by an amicus that "come largely at the policy level" are not appropriate or useful. *Sciotto v. Marple Newton Sch. Dist.*, 70 F. Supp. 2d 553, 556 (E.D. Pa. 1999).

The purpose of amicus curiae participation at the district court level is to "alert the court to the *legal contentions of concerned bystanders*"—not to flood the Court with a partisan data dump or expert opinion. *Resort Timeshare Resales, Inc.*, 764 F. Supp. at 1501 (emphasis supplied); *accord Sciotto*, 70 F. Supp. 2d at 555–56 ("[T]he petitioner cannot be said to be impartial in the matter before the Court. Petitioner . . . makes no attempt to present itself as a neutral party," and is "better characterized as 'amicus reus,' or friend of the defendant, than amicus curiae."). Here, the Proposed Amicus Brief does not come close to offering this Court a level-headed analysis of the legal issues, and the fourth and final factor of the analysis thus weighs against participation by the proposed amici.

## CONCLUSION

For these reasons, Defendants respectfully request the Court to deny the Motion for Leave (ECF No. 112).

Respectfully submitted,

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