

No. 14-2184

In the United States Court of Appeals for the First Circuit

ADA MERCEDES CONDE-VIDAL, *ET AL.*,
Plaintiffs-Appellants,

v.

DR. ANA RIUS-ARMENDARIZ, IN HER OFFICIAL CAPACITY AS SECRETARY OF THE
HEALTH DEPARTMENT OF THE COMMONWEALTH OF PUERTO RICO, *ET AL.*,
Defendants-Appellees.

ON APPEAL FROM THE U.S. DISTRICT COURT OF PUERTO
RICO, SAN JUAN DIVISION,
NO. 3:14-CV-01253-PG (HON. JUAN M. PEREZ-GIMENEZ)

**MOTION FOR LEAVE TO FILE BRIEF FOR
AMICUS CURIAE EAGLE FORUM EDUCATION & LEGAL
DEFENSE FUND IN SUPPORT OF AFFIRMANCE**

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INTRODUCTION

Pursuant to FED. R. APP. PROC. 27 and 29(a), the Eagle Forum Education & Legal Defense Fund (“Eagle Forum”) respectfully seeks this Court’s leave to file the accompanying *amicus curiae* brief. All of the defendants-appellees and all but two of the plaintiffs-appellants consented to the filing of the Eagle Forum *amicus* brief. Plaintiffs-appellees Ada Conde-Vidal and Ivonne Alvarez-Velez withheld their consent, but would not take a position on this resulting Eagle Forum motion. Because it supports the judgment reached by the District Court to uphold Puerto Rico’s marriage laws, and the prevailing defendants-appellees’ brief in this Court shifts their support to the plaintiffs-appellants’ merits position, Eagle Forum has captioned its brief as supporting affirmance.

I. INTEREST AND IDENTITY OF *AMICUS CURIAE*

Eagle Forum is a nonprofit corporation founded in 1981 and headquartered in Saint Louis, Missouri. Since its founding, Eagle Forum has consistently defended traditional American values, including traditional marriage, defined as the union of husband and wife. In furtherance of that interest, Eagle Forum has participated as *amicus curiae* in appellate proceedings on same-sex marriage in several federal circuits, two state Supreme Courts, and the U.S. Supreme Court. In doing so, Eagle Forum has developed expertise in the issues raised here that Eagle Forum respectfully submits will assist this Court’s resolution of the issues raised

here. For all the foregoing reasons, Eagle Forum has a direct and vital interest in the issues before this Court.

II. AUTHORITY TO FILE EAGLE FORUM'S BRIEF

Motions under Rule 29(b) must explain the movant's interest and "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(b). The Advisory Committee Note quotes Sup. Ct. R. 37.1 to emphasize the value of *amicus* briefs that bring a court's attention to relevant matter not raised by the parties:

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.

Advisory Committee Note to the 1998 amendments to Rule 29 (*quoting* Sup. Ct. R. 37.1). "Because the relevance of the matters asserted by an *amicus* is ordinarily the most compelling reason for granting leave to file, the Committee believes that it is helpful to explicitly require such a showing." *Id.*

As now-Justice Samuel Alito wrote while serving on the U.S. Court of Appeals for the Third Circuit, "I think that our 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. I believe that this is consistent with the predominant practice in the courts of appeals." *Neonatology Assocs., P.A. v. Comm'r*, 293 F.3d 128, 133 (3d Cir. 2002) (citing Michael E. Tigar

and Jane B. Tigar, *Federal Appeals – Jurisdiction and Practice* 181 (3d ed. 1999) and Robert L. Stern, *Appellate Practice in the United States* 306, 307-08 (2d ed. 1989)). Now-Justice Alito quoted the Tigar treatise favorably for the statement that “[e]ven when the other side refuses to consent to an *amicus* filing, most courts of appeals freely grant leave to file, provided the brief is timely and well-reasoned.” 293 F.3d at 133. The following section demonstrates how the Eagle Forum brief will aid this Court in resolving the issues presented to it here.

III. FILING EAGLE FORUM’S BRIEF WILL SERVE THE COURT’S RESOLUTION OF THE ISSUES RAISED IN THIS APPEAL

As indicated above, the prevailing governmental defendants-appellees’ brief in this Court shifts their merits support to the plaintiffs-appellants. Under that unusual circumstance, the first area in which the Eagle Forum brief would aid the Court is in its evaluation of the jurisdictional and prudential issues raised by what has become a “friendly lawsuit” between non-adverse parties. *See* Eagle Forum Br. at 28-30. Moreover, in addition to rebutting the parties’ views that the rights here are “fundamental” either under the Due Process Clause or the Equal Protection Clause, *id.* at 26-28 (due process), 7-9, 14-26 (equal protection), the Eagle Forum brief also evaluates the significant evidentiary failures in the plaintiffs-appellants’ case under the rational-basis test, *id.* at 9-14, which applies here under Circuit precedent. *Id.* at 7. Specifically, under the circumstances, the question is not whether one party or the other has proffered the most convincing evidence, but

whether the plaintiff has negate any and all *theoretical* connections between husband-wife marriage and favorable aggregate outcomes with respect to responsible procreation and childrearing. *Id.* at 12-13 (citing *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 463-64 (1981)).

CONCLUSION

WHEREFORE, for the foregoing reasons, movant Eagle Forum Education & Legal Defense Fund respectfully requests leave to file the accompanying *amicus curiae* brief.

Dated: March 27, 2015

Respectfully submitted,

/s/ Lawrence J. Joseph

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CERTIFICATE OF SERVICE

I hereby certify that, on March 27, 2015, I electronically filed the foregoing motion – in conjunction with the accompanying *amicus curiae* brief – with the United States Court of Appeals for the First Circuit using the CM/ECF system. I certify that all of the parties of record or their counsel are registered as ECF Filers and that they will be served by the CM/ECF system.

Dated: March 27, 2013

Respectfully submitted,

/s/ Lawrence J. Joseph

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