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Via E-mail (Rosemary.DiSavino@njcivilrights.gov)

Rosemary DiSavino, Deputy Director
New Jersey Division on Civil Rights
Legal Unit
140 East Front Street
Trenton, NJ 08625

RE: Matthew J. Platkin, et al. v. Middletown Twp. Bd. of Educ., et al.
Docket No.: P2023-900005

Dear Director DiSavino:

This office represents Senator Michael L. Testa and Senator Douglas J. Steinhardt. Please accept this motion and letter brief in support of the Senators' Motion to Intervene as *Amicus Curiae* and to accept the Senators' *Amicus* Brief for filing.

Together, Senators Testa and Steinhardt faithfully represent a diverse demographic of more than 435,000 New Jerseyans from across the State – many of whom are blessed with having children of their own. See Certifications of

Senator Testa and Senator Steinhardt. A parent’s constitutional right to direct his or her children’s upbringing is among the most sacred fundamental rights, and it is a backbone of our modern society. The State’s Verified Complaint in this matter would impose unprecedented government control over the specific morals and values that parents have a God-given right to pass onto their children. A decision in this matter will impact not only the families of the Middletown Township Public School District, but also, it will affect all New Jersey families.

The interests of the many thousands of parents living in New Jersey’s 1st and 23rd Legislative Districts are not represented in this matter whatsoever, and it is therefore imperative that Senators Testa and Steinhardt be permitted to intervene as *amicus curiae* to make the voices of their constituents heard.

LEGAL ARGUMENT

Pursuant to N.J.A.C. 13:4-7.2, “any person interested in or associated with the matters alleged in a verified complaint [pending before the Division on Civil Rights] may file an original and two copies of a motion to intervene and shall serve an additional copy on each respondent and complainant by registered or certified mail, return receipt requested.”

New Jersey courts have established “a liberal standard for permitting *amicus* appearances.” In re State ex rel. Essex Cty. Prosecutor’s Off., 427 N.J. Super. 1, 5 (Law Div. 2012) (quoting Pfizer, Inc. v. Dir., Div. of Tax’n, 23 N.J.

Tax 421, 424 (Tax 2007)). Pursuant to Court Rule 1:13-9, a motion to intervene as *amicus curiae* shall be granted if the court is satisfied that “the motion is timely, the applicant’s participation will assist in the resolution of an issue of public importance, and no party to the litigation will be prejudiced thereby.” Contemporary courts have held that *amicus* need not be impartial, and that even when parties are very well represented, *amicus* “may provide important assistance to the court.” K.D. v. A.S., 462 N.J. Super. 619, 633 (App. Div. 2020) (quoting Neonatology Assocs., P.A. v. Comm’r, 293 F.3d 128, 132 (3d Cir. 2002)).

Indeed, there have been innumerable court matters where Members of the Legislature have been welcomed as *amicus curiae*, precisely because they may serve as the best advocates for their otherwise unrepresented constituency. See, e.g., Delaware Bay Waterman’s Ass’n of New Jersey v. New Jersey Dept. of Environmental Protection, 153 N.J. 345 (1998); Matter of Baby M, 109 N.J. 396 (1988); Clean Capital County Committee v. Driver, 228 N.J. Super. 506 (App. Div. 1988); New Jersey Dept. of Environmental Protection v. Exxon Mobil Corporation, 453 N.J. Super. 588 (Law Div. 2015).

In this matter, the State seeks to deprive parents of their constitutional autonomy under the guise of protecting transgendered children from hypothetical discrimination that they might suffer in their own homes. See

Verified Complaint. The Middletown Township Board of Education and the Middletown Township Public School District (“Respondents”) face charges of violating the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, *et seq.* (“LAD”), for enacting a policy to notify parents when their children request a public social transition accommodation.¹ The State contends that this policy constitutes unlawful “gender identity or expression” discrimination because it supposedly places children at serious risk of physical and emotional harm at the hands of their own parents.

Senators Testa and Steinhardt should be permitted to intervene as *amicus curiae* because this matter involves a monumental issue of public concern, the Senators’ participation will assist in the resolution of that issue, and no party to this matter will be prejudiced by their participation. At stake in this litigation are the collective rights of all New Jersey parents to direct their children’s upbringing, as well as to counsel their children on intimate personal matters. Make no mistake, the State is seeking to usurp the role of parents. The Senators will assist this tribunal by providing the perspective of hundreds of thousands of ordinary New Jerseyans, and by reminding the panel of this Nation’s long

¹ The term “public social transition accommodation” includes a public name/identity/pronoun change, bathroom/locker room accommodation, or club/sports accommodation, among other things, on the basis of a child’s gender identity. See Verified Complaint ¶ 26.

history of respecting the American family. No prejudice will result from the Senators' participation as *amicus* to any of the parties to this matter.

For these reasons, Senator Michael L. Testa and Senator Douglas J. Steinhardt should be granted leave to intervene as *amicus curiae* in this matter, and their *amicus* brief should be accepted for filing.

Respectfully submitted,

Michael B. Lavery

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cc: DAG James R. Michael (*James.Michael@law.njoag.gov*)
Bruce Padilla, Esq. (*bpadilla@cgajlaw.com*)