

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

JACOB DOE

Plaintiff,

v.

No. 1:23-cv-00041

**THE UNIVERSITY OF NORTH
CAROLINA SYSTEM, et al.**

Defendants.

**ACLU OF NORTH CAROLINA LEGAL FOUNDATION’S AND
FREEDOM OF THE PRESS FOUNDATION’S MEMORANDUM
OF LAW IN SUPPORT OF MOTION FOR LEAVE TO SUBMIT
AMICI CURIAE BRIEF**

Proposed *amici curiae* American Civil Liberties Union of North Carolina Legal Foundation (ACLU-NCLF) and Freedom of the Press Foundation (FPF) move this Court for leave to submit an amicus brief opposing Plaintiff’s Motion for a Temporary Restraining Order and Preliminary Injunction (ECF 45) (hereinafter “TRO/PI Motion”). If granted, Plaintiff’s Motion would purport to restrain and prohibit third parties, including countless University of North Carolina (UNC) students, UNC employees, and members of the media, from disclosing or

publishing “any information concerning Plaintiff, the disciplinary proceedings [concerning allegations of sexual assault against Plaintiff], or the outcomes of such proceedings.” ECF 49 at 1-2.

Amici are two non-profit organizations with significant involvement and expertise in litigating First Amendment issues. ACLU-NCLF is a non-profit organization dedicated to advancing the civil rights of all North Carolinians. (ECF 16-2 ¶ 2). ACLU-NCLF regularly engages in advocacy and litigation relating to governmental transparency, and to protect the First Amendment rights of North Carolinians. *Id.* ¶¶ 2-3. FPF is a non-profit organization dedicated to protecting and empowering public-interest journalism. (ECF 16-3 ¶ 2). FPF regularly writes about and participates in legal proceedings to oppose legislation and judicial orders that violate the First Amendment and undermine press freedoms, including gag orders, court sealings and prior restraints. *Id.* ¶¶ 3-5. Additionally, both *Amici* have previously raised constitutional questions related to the sealing of records in this case and an earlier, identical TRO/PI sought by Plaintiff (*see* ECF 16, 17).

This Court has the discretion to accept amicus briefs that may assist its decision-making. “Courts should be receptive to potential

amici who have a special interest in the case and who can provide timely and useful legal theories.” *Reynolds v. United States Gov’t*, No. 7:22-CV-00178-FL, 2023 WL 5826901, at *5 (E.D.N.C. July 21, 2023), *report and recommendation adopted*, No. 7:22-CV-178-FL, 2023 WL 5350566 (E.D.N.C. Aug. 21, 2023) (internal quotations omitted). See also *Democracy N. Carolina v. N. Carolina State Bd. of Elections*, No. 1:20CV457, 2020 WL 6589358, at *1 (M.D.N.C. July 8, 2020) (accepting amicus brief where amicus “demonstrated a special interest in the outcome of the suit . . . [and] that the matters discussed in the brief are relevant to the case's disposition, and that the motion is timely”).

As noted above, *Amici* have special interests in the defense of First Amendment rights, particularly as applicable to the press and others who wish to discuss and publish on matters of public concern. *Amici’s* brief focuses on the First Amendment rights of the media, as well as UNC students and employees and other third parties that would be impacted by Plaintiff’s proposed injunctive relief. In their brief, *Amici* argue that the requested relief is an unconstitutional prior restraint that would violate and chill the First Amendment rights of these third parties. They also argue that the relief requested is beyond the scope permitted by

Federal Rule of Civil Procedure 65(d) because Plaintiff is attempting to limit the speech of broad categories of undifferentiated individuals, none of whom have been identified as acting in concert with Defendants. Accordingly, *amici* contend that the proposed injunctive relief would be contrary to the public interest.

Amici's focus on the constitutional rights of third parties distinguishes their arguments from those made by Defendants in response to Plaintiff's Motion. *Amici* timely submit this brief prior to tomorrow's hearing on Plaintiff's TRO/PI Motion, and their perspective may be helpful to the Court in determining the proper scope of any preliminary injunctive relief.

For the reasons stated above, this Court should grant *Amici's* Motion for Leave and consider their brief in reviewing Plaintiff's TRO/PI motion.

Respectfully submitted this 9th day of October, 2023 by:

**ACLU OF NORTH
CAROLINA LEGAL
FOUNDATION**

/s/ Kristi L. Graunke*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was on this day filed in in the Western District of North Carolina using the Clerk's CM/ECF system, which will send notification of this filing to counsel for the parties.

Signed this 9th day of October, 2023

/s/ Kristi Graunke