

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

A WOMAN'S CONCERN, INC. D/B/A
YOUR OPTIONS MEDICAL CENTERS,

Plaintiff,

v.

MAURA HEALEY, GOVERNOR OF
MASSACHUSETTS, sued in her individual
and personal capacities; ROBERT
GOLDSTEN, COMMISSIONER OF THE
MASSACHUSETTS DEPARTMENT OF
PUBLIC HEALTH, sued in his individual and
official capacities; REPRODUCTIVE
EQUITY NOW FOUNDATION, INC.;
REBECCA HART HOLDER, EXECUTIVE
DIRECTOR OF THE REPRODUCTIVE
EQUITY NOW FOUNDATION, INC.,

Defendants.

Civil Action No. 1:24-12131-LTS

**MOTION OF THE AMERICAN CIVIL LIBERTIES UNION OF MASSACHUSETTS
FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE***

Proposed *amicus curiae*, the American Civil Liberties Union of Massachusetts (“ACLUM”), respectfully requests leave of this Court to file the attached brief *amicus curiae*. As grounds for its motion, ACLUM states as follows:

1. Federal district courts “have inherent authority and discretion to appoint amici.” *Boston Gas Co. v. Century Indem. Co.*, No. 02-12062-RWZ, 2006 WL 1738312, at *1 n.1 (D. Mass. June 21, 2006); *see also Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 807 F.3d 472, 477-78 (1st Cir. 2015); *Massachusetts Food Ass’n v. Massachusetts Alcoholic Beverages Control Comm’n*, 197 F.3d 560, 568 (1st Cir. 1999).

2. “The role of an *amicus curiae* . . . is to assist the court in cases of general public interest by making suggestions to the court, by providing supplementary assistance to existing counsel, and by insuring a complete and plenary presentation of difficult issues so that the court may reach a proper decision.” *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 308 F.R.D. 39, 52 (D. Mass. 2015) (citations omitted), *aff’d*, 807 F.3d 472 (1st Cir. 2015); *see also Massachusetts Food Ass’n*, 197 F.3d at 567 (“[A] court is usually delighted to hear additional arguments from able amici that will help the court toward right answers . . .”).

3. This Court has previously permitted participation by amici. *See, e.g., United States v. Joseph*, No. 1:19-cr-10141-LTS, ECF No. 78 (D. Mass. Sept. 16, 2019) (granting leave to file amicus briefs).

4. Participation of an *amicus curiae* is appropriate at the district court level even where “the case is already well represented” if “the amicus has a special interest that justifies [its] having a say.” *Strasser v. Doorley*, 432 F.2d 567, 569 (1st Cir. 1970).

5. Under this standard, on numerous occasions ACLUM has been granted leave to file an *amicus curiae* brief in the United States District Court for the District of Massachusetts. *See, e.g., Kennedy v. Commonwealth of Massachusetts*, 4:22-cv-11152-MRG, ECF No. 57 (D. Mass. Nov. 4, 2022) (granting ACLUM’s request for leave to file amicus brief); *Massachusetts v. Dep’t of Health & Human Servs.*, 1:17-cv-11930-NMG, ECF No. 39 (D. Mass. Dec. 12, 2017) (granting request of ACLUM and others for leave to file amicus brief); *United States v. Joyce*, 1:17-cr-10378-NMG, ECF No. 78 (D. Mass Apr. 18, 2018) (granting request of ACLUM and others for leave to file amicus brief).

6. Here, ACLUM is well placed to further assist the Court’s analysis of the pending motions. ACLUM is a statewide nonprofit membership organization dedicated to the principles

of liberty and equality embodied in the constitutions and laws of the Commonwealth and the United States. This includes both the right to reproductive freedom and the right to free speech.

7. ACLUM and the American Civil Liberties Union Foundation of Massachusetts have a long history of vigorously defending both of these rights through *amicus curiae* briefs and direct representation before this court. *See, e.g., Massachusetts v. Dep't of Health & Human Servs.*, 1:17-cv-11930, ECF No. 43 (Dec. 12, 2017) (*amicus* brief); *ACLUM v. Leavitt*, 1:09-cv-10038 (direct representation); *Molloy v. City of Holyoke*, 3:18-cv-30182 (direct representation); *Thayer v. City of Worcester*, 4:13-cv-40057 (direct representation).

8. As an organization whose mission encompasses both free speech rights and reproductive rights, ACLUM is uniquely positioned to assist the Court in analyzing and balancing these important constitutional rights.

9. Although the Local Rules do not provide any guidance regarding the length of an acceptable *amicus curiae* brief, ACLUM has used both the Federal Rules of Appellate Procedure (Fed. R. App. P. 29(a)(5) and 32(a)(7)(B)) and Local Rule 7.1(b)(4)—which limit *amicus* to fewer than twenty pages and fewer than 6,500 words—as a guide. Specifically, ACLUM has limited its memorandum to 8 pages and 1,808 words.

10. Defendants all asset to this motion. Plaintiff opposes this motion.

11. Plaintiff's reply brief is not due until January 10, 2025. As a result, no party will be prejudiced if this motion is granted, and there will be no delay in the proceedings.

12. No party's counsel authored the attached memorandum in whole or in part. No party or party's counsel, and no person other than ACLUM, its members, or its counsel, contributed money intended to fund preparing or submitting the attached memorandum.

WHEREFORE, ACLUM respectfully requests that this Court grant leave to file the attached memorandum.

Date: January 7, 2025

Respectfully submitted,

/s/ Jessie J. Rossman

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CERTIFICATE OF SERVICE

I hereby certify that on January 7, 2025 a true copy of the above document was filed via the Court's CM/ECF system and that a copy will be sent via the CM/ECF system electronically to all counsel of record. In addition, a copy was sent via electronic mail to all counsel of record.

January 7, 2025

/s/ Jessie J. Rossman
Jessie J. Rossman

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(A)(2)

I hereby certify that counsel for ACLUM have conferred with counsel for all parties in this matter and have attempted in good faith to resolve or narrow these issues. Defendants assent to this motion; Plaintiff opposes this motion.

January 7, 2025

/s/ Jessie J. Rossman
Jessie J. Rossman