

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

FEDERAL TRADE COMMISSION, *et al.*,

Plaintiffs,

v.

WORLD PROFESSIONAL ASSOCIATION
FOR TRANSGENDER HEALTH, INC., a
Texas corporation, *et al.*,

Defendants.

Case No. 4:26-cv-00748-O

**MEMORANDUM OF PROPOSED AMICI
STATES MASSACHUSETTS ET AL.
IN OPPOSITION TO PLAINTIFFS’
MOTION TO STRIKE**

Before seeking this Court’s leave to file an amicus brief, counsel for Proposed Amici fulfilled their obligations under L.R. 7.1(a) by conferring in good faith with counsel for the FTC and the Plaintiff States. In arguing to the contrary, Plaintiffs mischaracterize the relevant conversations and misunderstand the local rules. The conference requirement in LR 7.1(a) is a tool that allows parties “to attempt to resolve any nondispositive dispute without court intervention”—not a “sword” that enables parties “to multiply the disputes to be presented to the Court.” *Brown v. Bridges*, No. 12-cv-4947-P, 2015 WL 11121361, at *2 (N.D. Tex. Jan. 30, 2015). Plaintiffs’ motion to strike is inconsistent with both the letter and spirit of that rule, and the Court should deny it.

BACKGROUND

As explained in the Certificate of Conference accompanying Proposed Amici’s motion for leave to file an amicus brief, counsel for Proposed Amici emailed counsel for the FTC on

August 3, 2026, to inquire about their position on the motion. PXA3.¹ Counsel for Proposed Amici explained that they intended to file the motion the next day (*i.e.*, seven days after the filing of Defendants’ motion to dismiss) to ensure timely consideration. *Id.* Counsel for the FTC responded by requesting a videoconference. PXA4.

Counsel for the Proposed Amici met virtually with counsel for the FTC on August 4. During the videoconference, counsel for the FTC indicated that their consent to the motion would depend on concessions from Defendant WPATH on various matters of dispute between Plaintiffs and WPATH—*i.e.*, matters in which Proposed Amici have no interest, and over which they have no authority.² More specifically, the FTC’s counsel first asked Proposed Amici to take a position on Plaintiffs’ motions for an extension of pages and deadlines for Plaintiffs’ responsive pleadings and further amendments to their complaint. When counsel for Proposed Amici explained that they had no position on those issues, counsel for the FTC requested that counsel for Proposed Amici obtain consent from WPATH on these matters in order to secure Plaintiffs’ consent to Proposed Amici’s motion. Counsel for Proposed Amici made clear that they did not have the authority to engage in this kind of mediation, and that, unless they heard otherwise, they would simply note the FTC’s opposition to their forthcoming motion. At no point during the videoconference did the FTC indicate any areas of dispute *with Proposed Amici* that further good-faith discussions might resolve.

¹ Proposed Amici contacted the FTC first because they understood that counsel for the FTC were acting as lead counsel for all Plaintiffs. Plaintiffs’ suggestion (Mem. 4 & n.3) that Proposed Amici were unaware of their L.R. 7.1(a) obligations is inaccurate. *See* PXA6 (counsel for Proposed Amici stating that they “planned to reach out [to] the state co-plaintiffs”).

² Counsel for Proposed Amici understood counsel for the FTC to be conditioning their consent on both Proposed Amici’s motion for leave to file and their motion for leave to proceed without local counsel. This brief only discusses the motion at issue in the Plaintiffs’ motion to strike: the motion for leave to file an amicus brief.

Nevertheless, the FTC's counsel requested a second meeting with counsel for Proposed Amici and all other parties. Proposed Amici indicated their openness to a further call on the understanding that the FTC would arrange one imminently, but at no point did Proposed Amici agree to delay their intended filing. To the contrary, Proposed Amici reiterated their intent to file their motion that day (August 4) or the next (August 5). Proposed Amici also emphasized that it was unclear how further discussions would narrow any dispute *between the Plaintiffs and Proposed Amici*, as Proposed Amici's motion concerned only their request to file an amicus brief.

On August 4 at 4:48 p.m. ET, when counsel for Proposed Amici had heard nothing further from counsel for the FTC, they notified counsel for the FTC that they would contact the Plaintiff States independently and thanked them for offering to set up a meeting. PXA7. Counsel for Proposed Amici then emailed counsel for the Plaintiff States, asking for their positions on the anticipated motion. PXA9, at 3. Counsel for Iowa responded on August 5 and referenced a meeting to be scheduled for August 7 (of which counsel for Proposed Amici had not been made aware). *Id.* at 2. Counsel for Proposed Amici stated that they would be happy to confer with anyone in his office before then and offered a phone number to call any time before 1 p.m. ET that day; otherwise, counsel for Proposed Amici would note the exchange and inability to reach agreement in the certificate. *Id.* Counsel for Texas initially expressed willingness to confer at any time, but once counsel for Iowa refused, Texas followed suit. *Id.* at 1. Counsel for Alaska and Nebraska did not respond. Proposed Amici filed their motion for leave to submit an amicus brief the afternoon of August 5, as they had indicated to the FTC and Plaintiffs States' counsel that they would. PXA7; PXA9.

On August 6, counsel for the FTC emailed all parties to request a call regarding a proposed motion to strike, as well as some of the page limit and deadline requests that the FTC's counsel had raised on the August 4 call. Ex. 1, at App. Page 4. In response, counsel for Proposed Amici stated that they opposed the motion to strike and took no position on any other matter, and offered their availability for another videoconference. Ex. 2, at App. Page 6. Counsel for WPATH responded with a series of questions about why the motion to strike was necessary, especially after the FTC's counsel made several requests of Proposed Amici that were "not appropriate;" they also noted that they had previously consented to provide Plaintiffs with additional pages to reply to the motion to dismiss and expressed willingness to provide an extension of time. Ex. 3, at App. Page 9. In lieu of any response, counsel for the FTC sent an invitation for a videoconference.

Representatives of all parties and Proposed Amici held a videoconference on August 7. Counsel for the FTC, Jonathan Cohen, led the call and spoke for all the Plaintiffs, as no other Plaintiffs' counsel spoke during the call. Counsel for Proposed Amici reiterated their opposition to Plaintiffs' motion to strike and that they take no position on any matter of dispute between the parties. Counsel for WPATH again stated that they already consented to some of Plaintiffs' requests and would consult with their client on the remaining requests. *See id.* There was no meaningful or substantive dispute between Plaintiffs and Proposed Amici during the call, nor were there any when the call ended.

ARGUMENT

Proposed Amici complied with each of L.R. 7.1(a)'s requirements fully and in good faith. And even if Plaintiffs could identify a deficiency in the conferral process, they have failed to

demonstrate any conceivable prejudice. For either of those independent reasons, the Court should deny the motion to strike.

I. Proposed Amici Fulfilled Their Obligations Under L.R. 7.1(a).

Proposed Amici gave Plaintiffs sufficient time to provide their positions and explained the failure to reach agreement in the Certificate of Conference accompanying the motion for leave to file an amicus brief. The Certificate of Conference explains that agreement could not be reached with counsel for the FTC because the FTC conditioned its consent on consent from WPATH to its requests for an extension of pages and deadlines for Plaintiffs' responsive pleadings and further amendments to their complaint. Notably, as the Certificate explains, WPATH was not on the videoconference with the FTC; as such, counsel for the FTC was asking counsel for Proposed Amici to act as an intermediary between opposing parties. The Certificate also explains that counsel for Proposed Amici reached out to the Plaintiff States and offered times for a call, and that an agreement could not be reached with the Plaintiff States because two states declined to respond and the other two declined to provide their positions. These exchanges fulfilled Proposed Amici's obligations under L.R. 7.1(a).

Plaintiffs' arguments to the contrary are unavailing. As to the Plaintiff States, the motion to strike cites precedent from outside this jurisdiction to argue (Mem. 6) that an exchange of emails was insufficient to satisfy L.R. 7.1(a). But decisions from this District show otherwise. *See Caldwell v. UPS Cartage Servs. Inc.*, No. 3:23-CV-01315-E, 2024 WL 3572287, at *5 (N.D. Tex. July 29, 2024) ("Of course, the conference requirement may be satisfied by a written communication as well." (quoting *Dondi Props. Corp. v. Com. Sav. & Loan Ass'n*, 121 F.R.D. 284, 290 (N.D. Tex. 1988))). As to the FTC, the brief in support of the motion to strike claims (Mem. 7) that Proposed Amici reneged on a supposed agreement to have a second conference call. That is incorrect. As described above, Proposed Amici did not agree to delay their filing

pending a second conference call. And, as the Certificate explains, they timely informed the FTC's counsel, after waiting for outreach, of their intent to email the State Plaintiffs independently.

In addition to complying with the letter of L.R. 7.1(a), Proposed Amici also complied with its spirit. The purpose of the rule is to minimize the burden of unnecessary disputes on the parties and the Court. Plaintiffs' approach to the rule—insisting on repeated face-to-face videoconferences to make demands of Proposed Amici for more time and pages for responsive pleadings, delaying sharing a position on a non-substantive motion to force moving parties to forestall filing until those demands are met, and then moving to strike when the moving party files as intended—does just the opposite. *See Brown*, 2015 WL 11121361, at *2 (“The conference requirement of Local Civil Rule 7.1 is not a sword to be used offensively, and it is not intended to multiply the disputes to be presented to the Court.” (citing an earlier Magistrate Judge's ruling)). Indeed, the motion for leave to file an amicus brief did not give rise to a substantive dispute or present any difficult issues that required multiple rounds of negotiation. The question put to Plaintiffs was simply whether they would consent to a motion seeking leave of the court; it did not require Plaintiffs to take a position on the substance of the proposed amicus brief. Yet the barrier to the FTC's consent (or their ability to provide a response of opposition or consent) was Proposed Amici's appropriate refusal to speak for WPATH defendants as to substantive issues that did not concern non-party Proposed Amici.³ Counsel for Plaintiff States, too, did not provide any reason to believe this motion presented issues beyond whether they consent to Proposed Amici asking the court for permission to file an amicus brief.

³ Indeed, in subsequent email communications, Proposed Amici learned that WPATH defendants had already consented to some of the conditions posed by the FTC. Ex. 3, at App. Page 9. This prior agreement by WPATH was never acknowledged or mentioned by FTC plaintiffs.

The motion to strike thus seeks to improperly wield L.R. 7.1 and is an imprudent use of judicial resources.

II. Plaintiffs Suffered No Conceivable Prejudice from Any Alleged Deficiencies in the Conferral Process.

Even if Plaintiffs could identify a defect in the conferral process, the Court should deny their motion to strike for an independent reason: Plaintiffs have suffered no conceivable prejudice. “The purpose of the conference requirement is to promote a frank exchange between counsel to resolve issues by agreement or to at least narrow and focus the matters in controversy before judicial resolution is sought.” *Dondi Props.*, 121 F.R.D. at 289. To date, Plaintiffs have identified no issue in dispute *between Plaintiffs and Proposed Amici* that could have been resolved by further discussion. Even Plaintiffs’ motion to strike fails to identify such an issue. Instead, Plaintiffs’ objections have always focused on matters in dispute *between Plaintiffs and WPATH*.

Even if those issues were relevant to *Proposed Amici’s* conferral obligations, those issues were resolved by the time Plaintiffs filed their motion to strike. Before Plaintiffs filed the instant motion, counsel for WPATH reminded Plaintiffs that they had already agreed to Plaintiffs’ request for more pages and would be “happy to confer with [their] client” to consider an extension request.⁴ Ex. 3, at App. Page 9. Thus, the alternate relief Plaintiffs solicit in their

⁴ The email from WPATH counsel also noted that Federal Rule of Appellate Procedure 29(a) permits states like Proposed Amici to submit amicus briefs without consent of the parties or leave of court, and it questioned both why this Court should be less welcoming of an amicus brief from sovereign states and why Plaintiffs—themselves government entities—would take that position. *See* FRAP 29(a) (states are afforded special dignity to “file an amicus brief without the consent of the parties or leave of court”); *see also* Supreme Court Rules 37.4. The Federal Rules of Appellate Procedure obviously do not apply directly here, which is why Proposed Amici moved this Court for leave to file and satisfied their conferral obligations under L.R. 7.1. But nothing in Plaintiffs’ motion to strike provides a reason why the principles that animate that rule do not at least undermine Plaintiffs’ (still unstated) objection to the filing of Proposed Amici’s brief.

motion to strike, which FTC counsel raised as a condition for consent to Proposed Amici's motion for leave to file during the August 4 call, was already provided, even before that relief was confirmed during the second call with all parties held on August 7. Courts have discretion to overlook defects in the conference process when, as here, subsequent events resolve any issues that a conference would have covered. *Cf. Dondi Props.*, 121 F.R.D. at 290. For that reason, too, the Court should deny the motion.

CONCLUSION

The Court should deny Plaintiffs' motion to strike.

Dated: August 14, 2026

Respectfully submitted,

ANDREA JOY CAMPBELL

Attorney General

Commonwealth of Massachusetts

/s/ Morgan Carmen*

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Assistant Attorney General

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**Pro hac vice application filed is pending*

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Lansing, Michigan 48909

CERTIFICATE OF SERVICE

I, Morgan Blair Carmen, hereby certify that on August 5, 2026, I electronically filed this motion with the Court using the CM/ECF system, which will automatically send copies to any attorney of record in the case.

Dated: August 14, 2026

/s/ Morgan Blair Carmen
MORGAN BLAIR CARMEN

CERTIFICATE OF COMPLIANCE

I, Morgan Blair Carmen, hereby certify that this brief complies with the form and length requirements of Local Rule 7.2 as it uses 12-point, double-spaced, Times New Roman font and does not exceed 25 pages in length.

Dated: August 14, 2026

/s/ Morgan Blair Carmen
MORGAN BLAIR CARMEN

APPENDIX

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

FEDERAL TRADE COMMISSION, *et al.*,

Plaintiffs,

v.

WORLD PROFESSIONAL ASSOCIATION
FOR TRANSGENDER HEALTH, INC., a
Texas corporation, *et al.*,

Defendants.

Case No. 4:26-cv-00748-O

**DECLARATION OF MORGAN BLAIR CARMEN IN OPPOSITION TO PLAINTIFFS'
MOTION TO STRIKE**

I, Morgan Blair Carmen, declare under 28 U.S.C. § 1746 that:

1. I have attached as Exhibit 1 a true and correct copy of an email sent by counsel for the FTC to counsel for Proposed Amici, WPATH, and co-plaintiffs on August 6, 2026, at 12:04 AM ET.
2. I have attached as Exhibit 2 a true and correct copy of counsel for Proposed Amici's email response to counsel for the FTC sent on August 6, 2026, at 9:46 AM ET.
3. I have attached as Exhibit 3 a true and correct copy of counsel for WPATH's email response to counsel for the FTC sent on August 6, 2026, at 9:55 AM ET.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Boston, MA, on August 14, 2026.

/s/ Morgan Blair Carmen
MORGAN BLAIR CARMEN

Exhibit 1

Carmen, Morgan (AGO)

From: Cohen, Jonathan <jcohen2@ftc.gov>
Sent: Thursday, August 6, 2026 12:04 AM
To: Carmen, Morgan (AGO); Dirks, Katherine (AGO); Slater, Allyson (AGO); Cambier, Adam (AGO); Stewart, Sarah Cummings; Caleb Hayes-Deats; Layne, Jeff; Schuyler Standley; Abbe David Lowell; Parker, Kristin B.
Cc: David Bizar; Dingman, Michael; Fern, Erik; Wessan, Eric; Blankinship, Steven; BenjaminSwanson-contact; Gartland, Charles J (LAW); Brent Webster; Ralph Molina; Trujillo, Lauren; Vaughan, Ross (Cooper); Goldis, Glenna; Clausen, Hans; Dingman, Michael; Vaughan, Ross (Cooper); Bugbee, Jonathan (Jay); Watchorn, Michelle CTR; Oehrlein, Sean; Weadock, Luke
Subject: Meet-and-Confer Request

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Counsel,

We ask to meet and confer with you regarding a motion (a) to strike the motion for leave to file an amicus, as a result of proposed amicus' failure to comply with meet-and-confer requirements, and (b) if the Court allows the proposed amicus filing, for additional time and pages necessary to respond to amicus as well as WPATH.

We are available on Friday at 2:00 PM, 3:30, or 5:00 Eastern.

Thanks,

Jonathan Cohen

Acting Deputy Director
Bureau of Consumer Protection | Federal Trade Commission
600 Pennsylvania Avenue, N.W., HQ-462 Washington, D.C. 20580
(202) 326-2551 | jcohen2@ftc.gov

Exhibit 2

Carmen, Morgan (AGO)

From: Carmen, Morgan (AGO)
Sent: Thursday, August 6, 2026 9:46 AM
To: 'Cohen, Jonathan'; Dirks, Katherine (AGO); Slater, Allyson (AGO); Cambier, Adam (AGO); Stewart, Sarah Cummings; Caleb Hayes-Deats; Layne, Jeff; Schuyler Standley; Abbe David Lowell; Parker, Kristin B.
Cc: David Bizar; Dingman, Michael; Fern, Erik; Wessan, Eric; Blankinship, Steven; BenjaminSwanson-contact; Gartland, Charles J (LAW); Brent Webster; Ralph Molina; Trujillo, Lauren; Vaughan, Ross (Cooper); Goldis, Glenna; Clausen, Hans; Dingman, Michael; Vaughan, Ross (Cooper); Bugbee, Jonathan (Jay); Watchorn, Michelle CTR; Oehrlein, Sean; Weadock, Luke
Subject: RE: Meet-and-Confer Request

Hi Jonathan,

We are available at 2:00pm and 3:30pm Eastern tomorrow. We oppose a motion to strike and do not take a position on (b) as amici.

Thanks,
Morgan

From: Cohen, Jonathan <jcohen2@ftc.gov>
Sent: Thursday, August 6, 2026 12:04 AM
To: Carmen, Morgan (AGO) <Morgan.Carmen@mass.gov>; Dirks, Katherine (AGO) <katherine.dirks@mass.gov>; Slater, Allyson (AGO) <Allyson.Slater@mass.gov>; Cambier, Adam (AGO) <Adam.Cambier@mass.gov>; Stewart, Sarah Cummings <sarah.stewart@reedsmith.com>; Caleb Hayes-Deats <CHayes-Deats@lowellandassociates.com>; Layne, Jeff <jlayne@reedsmith.com>; Schuyler Standley <sstandley@lowellandassociates.com>; Abbe David Lowell <adlowell@lowellandassociates.com>; Parker, Kristin B. <KParker@reedsmith.com>
Cc: David Bizar <David.Bizar@oag.texas.gov>; Dingman, Michael <mdingman@ftc.gov>; Fern, Erik <Erik.Fern@nebraska.gov>; Wessan, Eric <eric.wessan@ag.iowa.gov>; Blankinship, Steven <steven.blankinship@ag.iowa.gov>; BenjaminSwanson-contact <Benjamin.Swanson@nebraska.gov>; Gartland, Charles J (LAW) <charles.gartland@alaska.gov>; Brent Webster <Brent.Webster@oag.texas.gov>; Ralph Molina <Ralph.Molina@oag.texas.gov>; Trujillo, Lauren <ltrujillo@ftc.gov>; Vaughan, Ross (Cooper) <rvaughan@ftc.gov>; Goldis, Glenna <ggoldis@ftc.gov>; Clausen, Hans <hclausen@ftc.gov>; Dingman, Michael <mdingman@ftc.gov>; Vaughan, Ross (Cooper) <rvaughan@ftc.gov>; Bugbee, Jonathan (Jay) <jbugbee@ftc.gov>; Watchorn, Michelle CTR <mwatchorn@ftc.gov>; Oehrlein, Sean <soehrlein@ftc.gov>; Weadock, Luke <lweadock@ftc.gov>
Subject: Meet-and-Confer Request

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Counsel,

We ask to meet and confer with you regarding a motion (a) to strike the motion for leave to file an amicus, as a result of proposed amicus' failure to comply with meet-and-confer requirements,

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and (b) if the Court allows the proposed amicus filing, for additional time and pages necessary to respond to amicus as well as WPATH.

We are available on Friday at 2:00 PM, 3:30, or 5:00 Eastern.

Thanks,

Jonathan Cohen

Acting Deputy Director

Bureau of Consumer Protection | Federal Trade Commission

600 Pennsylvania Avenue, N.W., HQ-462 Washington, D.C. 20580

(202) 326-2551 | jcohen2@ftc.gov

Exhibit 3

Carmen, Morgan (AGO)

From: Caleb Hayes-Deats <CHayes-Deats@lowellandassociates.com>
Sent: Thursday, August 6, 2026 9:55 AM
To: Cohen, Jonathan; Carmen, Morgan (AGO); Dirks, Katherine (AGO); Slater, Allyson (AGO); Cambier, Adam (AGO); Stewart, Sarah Cummings; Layne, Jeff; Schuyler Standley; Abbe David Lowell; Parker, Kristin B.
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Subject: RE: Meet-and-Confer Request

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Jonathan,

I'm available at 3:30pm tomorrow, but I'm unclear on why there's any issue. Under FRAP 29(a)(2), a "state may file an amicus brief without the consent of the parties or leave of court." Is there a reason to believe district courts should be less receptive to amicus briefs from states? Even if there were an argument, why would it be in the interest of other states and the federal government to take that position?

Separately, if I understand the certificate of conference correctly, the amici states did confer, and Plaintiffs attempted to condition their consent on WPATH agreeing to an extension and extra pages for Plaintiffs. Putting aside that it's not appropriate to condition consent to amici's application on concessions from a party, WPATH has already offered to agree to extra pages for Plaintiffs' briefing and has worked cooperatively with Plaintiffs on extensions in the past. Tell us what Plaintiffs would like in terms of an extension, and we are happy to confer with our client and respond quickly.

Sincerely,
Caleb



Caleb Hayes-Deats | Partner

ats

Lowell & Associates, P

LLC

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202-508-445

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0005

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From: Cohen, Jonathan <jcohen2@ftc.gov>

Sent: Thursday, August 6, 2026 12:04 AM

To: Carmen, Morgan (AGO) <Morgan.Carmen@mass.gov>; Dirks, Katherine (AGO) <katherine.dirks@mass.gov>; Slater, Allyson (AGO) <Allyson.Slater@mass.gov>; Cambier, Adam (AGO) <Adam.Cambier@mass.gov>; Stewart, Sarah Cummings <sarah.stewart@reedsmith.com>; Caleb Hayes-Deats <CHayes-Deats@lowellandassociates.com>; Layne, Jeff <jlayne@reedsmith.com>; Schuyler Standley <sstandley@lowellandassociates.com>; Abbe David Lowell <adlowell@lowellandassociates.com>; Parker, Kristin B. <KParker@reedsmith.com>

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Subject: Meet-and-Confer Request

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Thanks,

Jonathan Cohen

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