No. 22-5317
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JANE DOE, A MINOR STUDENT,
BY AND THROUGH HER PARENTS, K.M. AND A.M.,

PLAINTIFFS-APPELLANTS.

VS.

KNOX COUNTY BOARD OF EDUCATION,

DEFENDANT-APPELLEE.

On Appeal from the United States District Court for the
Eastern District of Tennessee
No. 3:22-cv-63
Hon. District Judge Crytzer

APPELLANT'S UNOPPOSED MOTION FOR ENLARGMENT ON MOTION FOR INJUNCTIVE RELIEF AND/OR ACCELERATED HEARING

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COMES THE PLAINTIFF-APPELLANT, JANE DOE, *et. al.,* filing this Unopposed Motion for Enlargement on Motion for Injunctive Relief and/or Accelerated Hearing. She shows:

1. This case is believed to be a case of first-impression involving a medical condition known as Misophonia. As Plaintiffs' medical experts from the Baylor College of Medicine and the Duke University Center for Misophonia have explained in their declarations, human-produced sounds of eating and chewing trigger the brain's sympathetic nervous system and cause the person with Misophonia a very severe reaction. The person with Misophonia will either choose to "fight" (aggression) or "flight" (escape) when confronted with these sounds.

2. Jane Doe, a fourteen-year old student with a disability due to Misphonia needs an accommodation to prohibit students in her academic classrooms from eating or chewing gum so that she may remain in the classroom to access her instruction just like her non-disabled peers.

3. When Jane Doe's school refused to permit this reasonable accommodation, Jane Doe exercised her rights under Section 504 and the ADA to seek relief from the court. Along with her Verified Complaint, she filed a Motion for Temporary Restraining Order and Preliminary Injunction in an effort to secure her requested reasonable accommodation during the pendency of litigation.

(Verified Complaint & Motion for Temporary and Preliminary Injunction, D.E. 1, 2, PageID#1-38).

4. Regrettably, after denying an evidentiary hearing, and engaging months of briefing an IDEA-exhaustion issue raised *sua sponte* by the District Court, the District Court equated Jane Doe's need for a 504/ADA accommodation with "special education" under the IDEA. The District Court then dismissed the case for lack of exhaustion (Order Granting Motion to Dismiss, D.E. 32, PageID# 363-373) and later also denied Plaintiff's motion for a preliminary injunction pending appeal to this Court. (D.E. 50, PageID# 491-497).

5. Jane Doe's appeal to this Court has been set for briefing, with Plaintiffs/ Appellants' brief due June 15, 2022, Defendant/Appellee's Response due July 15, 2022, and Plaintiffs' Reply due 21 days thereafter. (Briefing Letter, D.E. 12). Because this issue and requested accommodation will undoubtedly roll into another school year (beginning mid-August 2022) during the appeal, Jane Doe seeks to file her Motion for Injunctive Relief and/or Accelerated Hearing in this Court. If granted, it will provide her the requested accommodation—no eating and gum chewing in her classrooms—so that she may remain in her classroom.

6. Given the subject matter, Plaintiffs' Motion for Injunctive Relief and/or Accelerated Hearing requires an accurate examination of *Fry v. Napoleon* in the context of a 504-only eligible student, plus application of the traditional factors for

injunctive relief. Further, Plaintiffs have not identified a published Sixth Circuit case involving a 504-only eligible student (one who is not eligible under the IDEA, has no IEP, and does not even seek special education). Because the District Court made multiple incorrect findings about why exhaustion was necessary under IDEA, and why theoretically Plaintiff *could* be eligible, it is necessary to provide a detailed analysis of *Fry* to illustrate where the District Court went astray.

7. In order to competently address *Fry*, explain this first-of-its-kind medical condition, and illustrate why exhaustion is not required, Plaintiffs require more than the 5,200 word limit imposed by Federal Rules of Appellate Procedure 27(d)(2). Accordingly, Plaintiffs respectfully request an enlargement of the word count for their Motion for Injunctive Relief and/or Accelerated Hearing under FRAP 27(d)(2) to no more than 9,500 words in order to illustrate both the novel condition, the confusing application of *Fry* by the District Court, and how it is *properly* applied.

8. Moreover, counsel for Plaintiffs have consulted with counsel for Defendant who has no opposition to Plaintiffs' requested enlargement.

9. For the foregoing reasons, Plaintiffs respectfully request an enlargement of the word count for their Motion for Injunctive Relief and/or Accelerated Hearing under FRAP 27(d)(2) to no more than 9,500 words.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF-APPELLANT

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), the undersigned hereby certifies that this motion complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B)(i). As provided in Federal Rule of Appellate Procedure 27(d)(2), this motion contains 642 words. This motion has been prepared in proportionally spaced typeface using Microsoft Word for Office 365 in 14-point Times New Roman font.

CERTIFICATE OF SERVICE

I certify that the foregoing Motion has been filed via the Sixth Circuit Court's electronic filing procedures, including to defense counsel, Amanda Morse, on this 8th day of June, 2022.

/s Jessica F. Salonus