No. 21-231

In the Supreme Court of the United States

JULIE ELLEN WARTLUFT, f/k/a Julie Ellen Bartels and FREDERICK L. BARTELS, JR., as Administrators of the Estate of Abrielle Kira Bartels, Deceased,

Petitioners,

v.

THE MILTON HERSHEY SCHOOL and HERSHEY TRUST COMPANY, as Trustee of the Milton Hershey School Trust,

Respondents.

OBJECTION TO MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

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OBJECTION TO MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

Respondents, the Milton Hershey School ("MHS" or the "School") and The Hershey Trust Company ("HTC") (together "Respondents"), through undersigned counsel, hereby file this Objection to the Motion for Leave to File an *Amicus Curiae* Brief filed by Protect the Hersheys' Children, Inc. ("PHC"). Respondents respectfully request that the Court deny the Motion for the following reasons.

First, amicus briefs that merely restate arguments contained in the parties' briefs serve only to "burden the Court" and are "not favored." Sup. Ct. R. 37. This is precisely what PHC does in its proposed Amicus Brief. An amicus curiae brief should only be filed where it brings "to the attention of the Court relevant matter not already brought to its attention by the parties." *Id.*

PHC's proposed Amicus Brief merely re-states the same purported "facts"[1] already contained and argued in Petitioners' Petition for a Writ of Certiorari, *i.e.*, that students have performed chores at MHS since the early 1900s and that the word "chores" appears in the enrollment agreement. (*Compare* Proposed Br., at 2-6 *with* Pet., at 8, 20-22). Accordingly, PHC's proposed Amicus Brief brings no relevant matter to the Court's attention not already addressed by the parties. Sup. Ct. R. 37.

Second, the purported "facts" that PHC seeks to bring to this Court's attention are wholly irrelevant to the issue at hand, which is why they appear nowhere in the record. MHS students were indentured to the School in the early 1900s, and yes, times have obviously changed. Today, of course, there is no such indenturing. In

[1] PHC's assertions of "facts" contain no citation to the record below, and in several instances contain assertions that appear nowhere of record in this case.

fact, the enrollment agreement that Petitioners signed relating to Abbie assured them that "[y]ou may withdraw your child from the School at any time." *Wartluft v. Milton Hershey Sch.*, No. 20-1753 (3d Cir.)., Doc. 21, at A.444. The fact that children enrolled at the School worked on farms in the early 1900s has absolutely no bearing on whether performance of chores today, more than a century later, as part of a residential home-life curriculum offered by the School, constitutes bargained-for consideration in exchange for student housing. No such consideration exists, and neither Petitioners nor PHC support this baseless claim with any actual record proof.

PHC, identically to Petitioners, misstates the enrollment agreement signed by Petitioners, misrepresenting that the document reflects an "agreement" to the performance of chores as a "condition of enrollment," and further that the document "manifests" a bargain for chores in exchange for enrollment. (Proposed Br., at 5).[2] It does not. Of course, neither Petitioners nor PHC actually provide this Court the actual text of the document they repeatedly misrepresent, so Respondents are compelled to so inform the Court.

The enrollment agreement signed by Petitioners contains the word "chores" ***one*** time, embedded in a single sentence enumerating rules governing student conduct. Tellingly, and consistent with the lower courts' rulings, the single section of the document in which the word appears is entitled "*Conduct and Discipline*," and provides as follows:

> You agree that your child must obey all School rules and policies while enrolled at the School. These rules address

[2] Again, this identical argument is already asserted by Petitioners. *See* (Pet., *passim*). As such, PHC merely restates arguments already contained in the parties' briefs. Sup. Ct. R. 37.

> behavior, program requirements, visiting privileges, vacations, studies, chores, substance abuse, and all other matters relating to your child's conduct at the School. Your child must obey School staff and respect other students. You understand that failure to follow these rules and policies will result in discipline for your child and could lead, in the sole discretion of the School, to your child's dismissal.

Wartluft v. Milton Hershey Sch., No. 20-1753 (3d Cir.)., Doc. 21, at A.444.

Thus, when judged against the actual text of the enrollment agreement, Petitioners and PHC posit the same absurd argument, *i.e.* that while enrolled in the School that they attend *entirely free*, a student's mere compliance with School conduct rules – including not taking drugs, doing your homework, respecting others, and simply behaving – constitutes the type of "consideration" required to render them "renters" of their *entirely free* student housing under the Fair Housing Act.

As to the repeated misstatement that the consequence for failing to do chores results in a loss of enrollment, this too is a misrepresentation of the actual text of the document and the practice of the School. The enrollment agreement plainly provides that failure to follow these rules of conduct – chores, studies, substance abuse, and behavior alike – will result in discipline of the student. While the potential for dismissal in the sole discretion of the School is reserved by MHS, this applies equally to any rule of conduct, and is not limited merely to chores. The record is devoid of any evidence that a student has ever been dismissed from the School merely for a failure to perform chores, as any true "condition of enrollment" would require.

As the Third Circuit correctly concluded, compliance with expectations for student conduct, including chores, that are part of the School's home-life curriculum

does not constitute bargained-for consideration in exchange for free student housing. Rather, the undisputed record evidence, including the enrollment agreement itself, demonstrates that chores, the same as "studies," are part of the education provided by MHS. The only difference is life skills are learned in the home-life curriculum, while academic skills are learned in the scholastic curriculum. At MHS, there is no difference between learning arithmetic and learning life skills; each provides the student something important that they can use in their life after MHS.

Accordingly, the Third Circuit aptly described chores performed by students as "more like homework: a core part of [the student's] educational experience to prepare [them] for life after school." *Wartluft v. Milton Hershey Sch. & Sch. Tr.*, 844 F. App'x 499, 503 (3d Cir. 2021). The text of the enrollment agreement supports this conclusion and contradicts any contrary reading posited by Petitioners and PHC.

PHC's submission cites to no case law, statutes, rules, or regulations to assist this Court's review. It does not cite to any evidence of record. It contains no *legal* analysis whatsoever. It merely argues the same purported "facts" set forth in the pending Petition; provides PHC's personal views on student conduct rules at MHS; and provides rank speculation as to what the founder of MHS would have thought about the decision of the Third Circuit. Accordingly, PHC's proposed Amicus Brief brings no "relevant matter" to the Court's attention, and includes no argument not already addressed in the parties' briefs. *See* Sup. Ct. R. 37.

Third, PHC's alleged understanding of the issue involved in this case is in no way "unique." In fact, PHC has belatedly advised this Court that its President "has

provided legal services…to the Petitioners in this matter…" (PHC Errata to Mtn. for Leave to File Amicus Br., at ¶ 5); that he has "assist[ed] Petitioners' counsel of record when requested…" (*Id.*);[3] and that he has "contributed to the preparation of [the proposed amicus] brief." (*Id.* ¶ 9). As such, the proposed amicus submission is nothing more than an attempt at a second "bite of the apple" by an attorney also claiming to represent Petitioners, and raising the same arguments already contained in the pending Petition. Moreover, PHC's claim to have some "unique" perspective on the issues decided by the Third Circuit rings hollow in light of the fact that PHC offered no amicus submission to that court before the denial of Petitioners' appeal.

CONCLUSION

In consideration of the foregoing, Respondents respectfully request that this Court deny the Motion for Leave to File an *Amicus Curiae* Brief.

Respectfully submitted,

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[3] PHC is registered with the Pennsylvania Department of State at the same address of the Dilworth Paxson LLP law firm in Philadelphia, the same law firm of Petitioners' counsel of record and signatory to the pending Petition. *See* (https://www.corporations.pa.gov/search/corpsearch).