

**No. 18-1104**

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**UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

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**Mark Horton,**  
*Plaintiff- Appellant,*

v.

**Midwest Geriatric Management, LLC,**  
*Defendant-Appellee.*

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On Appeal from the United States District Court for the Eastern District of Missouri, Case No. 4:17-CV-232417 (Hamilton, J.)

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**MOTION OF ANTI-DEFAMATION LEAGUE, BEND THE ARC: A JEWISH PARTNERSHIP FOR JUSTICE, HINDU AMERICAN FOUNDATION, INTERFAITH ALLIANCE FOUNDATION, NATIONAL COUNCIL OF JEWISH WOMEN, CENTRAL CONFERENCE OF AMERICAN RABBIS, AND WOMEN OF REFORM JUDAISM TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF APPELLANT**

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Pursuant to Federal Rule of Appellate Procedure 29(a)(3), Anti-Defamation League, Bend the Arc: A Jewish Partnership for Justice, Hindu American Foundation, Interfaith Alliance Foundation, National Council of Jewish Women, the Central Conference of American Rabbis, and Women of Reform Judaism (collectively, “*Amici*”) seek leave to file an *amicus curiae* brief in the above-captioned matter in support of Plaintiff-Appellant Mark

Horton and urging reversal of the District Court’s judgment. In support of this motion, *Amici* state the following:

**IDENTITY AND INTEREST OF AMICI CURIAE**

1. *Amici* are seven religious and civil rights organizations. *Amici* represent diverse denominations and faith traditions but share a common commitment to ensuring that there are robust statutory provisions to protect religious freedom. Likewise, *Amici* remain vitally interested in ensuring that an employee with a legitimate workplace discrimination claim is afforded the protections long established under Title VII of the Civil Rights Act of 1964.

2. *Amicus Curiae* **Anti-Defamation League** (“ADL”) was organized in 1913 with a dual mission to stop the defamation of the Jewish people and to secure justice and fair treatment for all. Today, it is one of the world’s leading organizations fighting hatred, bigotry, discrimination, and anti-Semitism, and advocating civil rights for all. To this end, ADL is a steadfast supporter of anti-discrimination laws, as well as religious liberty.

3. *Amicus Curiae* **Bend the Arc: A Jewish Partnership for Justice** is a national organization inspired by Jewish values and the steadfast belief that Jewish Americans, regardless of religious or

institutional affiliations, are compelled to create justice and opportunity for Americans.

4. *Amicus Curiae* **Hindu American Foundation** (“HAF”) is a nonprofit advocacy organization for the Hindu American community. HAF educates the public about Hinduism, speaks out about issues affecting Hindus worldwide, and builds bridges with institutions and individuals whose work aligns with HAF's objectives. HAF’s three areas of focus are education, policy, and community. Through its advocacy efforts, HAF promotes dignity, mutual respect, and pluralism in order to ensure the well-being of Hindus and for all people and the planet to thrive. Since its inception, HAF has made church-state advocacy one of its main areas of focus. From issues of religious accommodation and religious discrimination to defending the fundamental constitutional rights of free exercise and the separation of church and state, HAF has educated Americans at large and the courts about the impact of such issues on Hindu Americans as well as various aspects of Hindu belief and practice in the context of religious liberty.

5. *Amicus Curiae* **Interfaith Alliance Foundation** is a 501(c)(3) nonprofit organization that celebrates religious freedom by championing individual rights, promoting policies to protect both religion

and democracy, and uniting diverse voices to challenge extremism. Founded in 1994, Interfaith Alliance Foundation's members belong to 75 different faith traditions as well as no faith tradition. Interfaith Alliance Foundation has a long history of working to ensure that religious freedom is a means of safeguarding the rights of all Americans and is not misused to favor the rights of some over others.

6. *Amicus Curiae* **National Council of Jewish Women** (“NCJW”) is a grassroots organization of 90,000 volunteers and advocates who turn progressive ideals into action. Inspired by Jewish values, NCJW strives for social justice by improving the quality of life for women, children, and families and by safeguarding individual rights and freedoms. NCJW's Resolutions state that NCJW resolves to work for “Laws and policies that provide equal rights for all regardless of race, gender, national origin, ethnicity, religion, age, disability, marital status, sexual orientation, gender identity and expression, economic status, immigration status, parenthood status, or medical condition.” Consistent with its Principles and Resolutions, NCJW seeks to file the proposed *amicus* brief.

7. *Amici Curiae* **Central Conference of American Rabbis** (“CCAR”), whose membership includes more than 2,000 Reform rabbis, and **Women of Reform Judaism** (“WRJ”) that represents more than

65,000 women in nearly 500 women's groups in North America and around the world, are committed to ensuring equality for all of God's children, regardless of sexual orientation. CCAR and WRJ oppose discrimination against all individuals, including gays and lesbians, for the stamp of the Divine is present in each and every human being.

### **DESIRABILITY OF AMICI'S BRIEF**

8. *Amici* have a special interest in fighting discrimination in the workplace towards persons based on religion, sex, and sexual orientation. Drawing from their experience and expertise, *Amici* frequently aid courts in understanding the historical, textual, and legal underpinnings of the robust protections of Title VII of the Civil Rights Act of 1964, 42 USC § 2000e, *et seq.* *Amici's* expertise and perspectives will aid the Court in addressing the important Title VII discrimination issues in this case.

### **RELEVANCE OF MATTERS ASSERTED TO THE DISPOSITION OF THIS APPEAL**

9. The District Court held that Plaintiff-Appellant Horton failed to state a claim for religious discrimination under Title VII because his claim "is merely a repackaged claim for sexual orientation discrimination," and as such, must be dismissed as not cognizable under Title VII." *Horton v.*

*Midwest Geriatric Management, LLC*, No. 4:17-CV-02324-JCH, 2017 WL 6536576, at \*5 (E.D. Mo. Dec. 21, 2017).

10. The District Court, however, erred by misconstruing the nature of Horton’s religious discrimination claim and by ignoring the prevailing case law from other circuits and districts. Horton claimed that the employer withdrew his employment offer because his *religious beliefs* about sexual orientation and marriage and relationships of same-sex couples did not conform with the employer’s *religious beliefs*.

11. The weight of authority among the circuits and districts that have considered religious nonconformance claims under Title VII follow *Shapolia v. Los Alamos National Laboratory*, 992 F. 2d 1033, 1038 (10th Cir. 1993), and only require the employee to allege that (1) he suffered an adverse employment action, (2) his job performance was satisfactory when the adverse employment action was taken, and (3) the adverse action was taken “because of a discriminatory motive based upon the employee’s failure to hold or follow his or her employer’s religious beliefs.” *Shapolia v. Los Alamos National Laboratory*, 992 F. 2d 1033, 1038 (10th Cir. 1993); *see also, e.g., Venters v. City of Delphi*, 123 F. 3d 956, 961-65, 972 (7th Cir. 1997). Horton’s complaint fully met the *Shapolia* standard and properly

stated a Title VII religious discrimination claim under a failure-to-conform theory.

12. The *Amici* urge this Court to adopt explicitly in the Eighth Circuit the *Shapolia* standard for stating a Title VII religious discrimination claim on a nonconformance theory.

13. Applying nonconformance theory to this case, *Amici* further assert that Horton's complaint is sufficient to withstand Midwest Geriatric Management's motion to dismiss and therefore urge reversal of the District Court's grant of that motion.

14. The *Amici's* brief will assist this Court in considering these important issues.

15. *Amici's* proposed *amicus curiae* brief is attached hereto as Exhibit 1.

WHEREFORE, pursuant to Federal Rule of Appellate Procedure 29(a)(3), and for the reasons stated above, the *Amici* request leave to file their proposed *amicus curiae* brief, which is attached to this motion as Exhibit 1.

DATED: March 14, 2018

Respectfully submitted,

**ANTI-DEFAMATION LEAGUE, BEND  
THE ARC: A JEWISH PARTNERSHIP  
FOR JUSTICE, HINDU AMERICAN  
FOUNDATION, INTERFAITH  
ALLIANCE FOUNDATION,  
NATIONAL COUNCIL OF JEWISH  
WOMEN, CENTRAL CONFERENCE  
OF AMERICAN RABBIS, and  
WOMEN OF REFORM JUDAISM**

**By: /s/ Michael I Rothstein**

One of their attorneys

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Conference of American Rabbis,  
and Women of Reform Judaism

**CERTIFICATION OF SERVICE**

I hereby certify that I electronically filed the foregoing **MOTION OF ANTI-DEFAMATION LEAGUE, BEND THE ARC: A JEWISH PARTNERSHIP FOR JUSTICE, HINDU AMERICAN FOUNDATION, INTERFAITH ALLIANCE FOUNDATION, NATIONAL COUNCIL OF JEWISH WOMEN, CENTRAL CONFERENCE OF AMERICAN RABBIS, AND WOMEN OF REFORM JUDAISM TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF APPELLANT** with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the appellate CM/ECF system on March 14, 2018.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

DATED: March 14, 2018

**By: /s/ Michael I Rothstein**

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