

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

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NICHOLAS K. MERIWETHER,	:	
	:	
Plaintiff,	:	
	:	Case No. 1:18-cv-753
vs.	:	
	:	Judge Susan J. Dlott
THE TRUSTEES OF SHAWNEE STATE	:	Magistrate Judge Karen L. Litkovitz
UNIVERSITY, ET AL.	:	
	:	
Defendants.	:	
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**JANE DOE AND SEXUALITY AND GENDER ACCEPTANCE’S  
MOTION TO INTERVENE AS DEFENDANTS**

Jane Doe and Sexuality and Gender Acceptance (SAGA) seek to intervene in this case to safeguard the right of all students at Shawnee State University, including those who are transgender, to equal and respectful treatment by faculty. Simultaneously with this motion, Jane Doe also moves to proceed pseudonymously.

1. Jane Doe is the transgender student at the center of this lawsuit. Ms. Doe’s complaint about Professor Meriwether’s differential treatment of her because she is transgender precipitated the investigation and disciplinary action Meriwether alleges violates his legal rights.

2. SAGA is a student-led organization at Shawnee State University founded in 2009. The organization is dedicated to promoting diversity and understanding by giving a voice to the LGBTQ students at Shawnee. SAGA furthers its mission by hosting educational programming and activities on campus, and advocating that Shawnee adopt and enforce policies that create a safe and welcoming learning environment for all students, including LGBTQ students.

3. Ms. Doe and SAGA seek to intervene to help protect the policies and practices that ensure transgender students at Shawnee have equal access to the educational opportunities at

Shawnee and highlight the harms caused by Professor Meriwether's conduct through the stories of transgender students, including Ms. Doe and other transgender members of SAGA.

4. Ms. Doe and SAGA seek to intervene as of right under Federal Rule of Civil Procedure 24(a) or, alternatively, permissive intervention under Federal Rule of Civil Procedure 24(b).

5. Ms. Doe and SAGA satisfies all requirements for intervention of right under Rule 24(a): The motion to intervene is timely, Ms. Doe and SAGA have substantial legal interests in this case, denial of this motion to intervene would impair Ms. Doe's legal interests as well as those of SAGA's transgender members, and although Ms. Doe and SAGA share the same goal—dismissal of Meriwether's claims—with the existing Defendants, Shawnee will not make the same arguments as Ms. Doe and SAGA in defending against those claims.

6. Permissive intervention under Rule 24(b) would also be appropriate because Ms. Doe and SAGA seek to advance defenses that share common questions of law and fact with the main action. Here, Ms. Doe and SAGA intend to argue that, as a matter of law, Shawnee's policies and conduct are consistent with the First Amendment and state law. Similarly, if this case proceeds to discovery, Ms. Doe and SAGA intend to demonstrate the significant harm Professor Meriwether has caused Ms. Doe and other transgender students on campus.

7. Ms. Doe and SAGA submit a conditional answer, attached as Exhibit 1, in order to comply with Rule 24(c), but intend to separately seek to dismiss Meriwether's complaint, pursuant to Rule 12(b)(6), as each of his claims fail to state a cause of action as a matter of law.

8. Ms. Doe and SAGA have conferred with the parties to determine their positions with respect to this motion to intervene. Plaintiff opposes this motion and Defendants take no position.

For the foregoing reasons, as well as those expressed in the accompanying memorandum of law, Jane Doe and SAGA respectfully urges this Court to GRANT this motion and permit them to intervene in this case.

Dated: December 24, 2018

Respectfully submitted,

/s/ Jennifer L. Branch

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GENDER ACCEPTANCE*

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	:	
Defendants.	:	
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**MEMORANDUM OF LAW IN SUPPORT OF JANE DOE AND SEXUALITY AND GENDER ACCEPTANCE’S MOTION TO INTERVENE AS DEFENDANTS**

Jane Doe and Sexuality and Gender Acceptance (SAGA) seek to intervene in this case to safeguard the right of all students at Shawnee State University, including those who are transgender, to equal and respectful treatment by faculty. Ms. Doe is at the center of this case. Professor Meriwether’s suit alleges that Shawnee State University (“Shawnee”) improperly required him to use female pronouns in addressing a transgender female student; Ms. Doe is that student. SAGA is a student organization at Shawnee that advocates for LGBT students. Its members include Ms. Doe and other transgender students. Thus, this case will determine how Ms. Doe and other similarly situated SAGA members will be treated by their university. Ms. Doe and SAGA seek to intervene on Shawnee’s side; they do not intend to pursue affirmative claims in this case. This Court should permit Ms. Doe and SAGA to intervene as of right because their significant legal interests will not be adequately represented by the current parties, or alternatively, grant permissive intervention because the defenses Ms. Doe and SAGA intend to raise share common questions of law and fact with the underlying case.

## FACTUAL BACKGROUND

Jane Doe is a young transgender woman and has been living as female in all aspects of her life for over five years. (Doe Decl. ¶¶ 6, 8-10.) Over that time, she has legally changed her name and corrected her identity documents to accurately reflect her female identity. (Doe Decl. ¶ 9.)

Ms. Doe enrolled at Shawnee beginning in the Spring 2017 semester, four years after her gender transition. (Doe Decl. ¶ 10.) She is listed as female in her student records and treated as a female student by Shawnee in all respects. (Doe Decl. ¶ 10.) During the Spring 2018 semester, Ms. Doe enrolled in Professor Meriwether's Political Philosophy course because the course fulfilled a general education requirement and she was interested in the subject. (Doe Decl. ¶ 12.) Prior to this class, Ms. Doe had never met or interacted with Professor Meriwether. (Doe Decl. ¶ 12.)

On the first day of class, January 9, 2018, Ms. Doe raised her hand to participate in the class discussion and Professor Meriwether incorrectly referred to Ms. Doe as "sir." (Doe Decl. ¶ 14.) Not wanting to call too much attention to herself, Ms. Doe decided not to correct Professor Meriwether at that time. (Doe Decl. ¶ 13.) After class, Ms. Doe approached Professor Meriwether and informed him that she is a woman and asked that he use female honorifics. Professor Meriwether refused. (Doe Decl. ¶ 14.) Ms. Doe showed Professor Meriwether her driver's license, which states that Ms. Doe is a female and confirms that Ms. Doe is legally recognized as female by the State of Ohio. (Doe Decl. ¶ 14.) But Professor Meriwether continued to insist on using male honorifics. (Doe Decl. ¶ 14.)

Ms. Doe's interaction with Professor Meriwether led to a cascade of negative consequences for Ms. Doe, both in and outside of Professor Meriwether's class. She dreaded participating in Professor Meriwether's class because of his refusal to use the correct gender

honorifics for her, but felt compelled to continue participating because Professor Meriwether grades students on class participation. (Doe Decl. ¶ 18.) She also was concerned that her classmates would notice and take cues from the differential treatment she received from Professor Meriwether. (Doe Decl. ¶ 19.) Indeed, on several occasions, her classmates copied Professor Meriwether's incorrect use of honorifics and pronouns for Ms. Doe, mistakenly using male honorifics and pronouns. (Doe Decl. ¶ 19.)

Being singled out and treated disrespectfully also caused Ms. Doe significant psychological strain and distress, including an increase in both the severity and duration of her gender dysphoria. (Doe Decl. ¶ 20.) She had regular crying spells outside of class and was in a constant state of emotional exhaustion. (Doe Decl. ¶ 20.) That exhaustion in turn caused her to withdraw from friends and social activities that she previously enjoyed. (Doe Decl. ¶ 20.)

A few weeks after her initial interaction with Professor Meriwether, Ms. Doe reported Professor Meriwether's discriminatory mistreatment to Douglas Shoemaker, the Deputy Title IX Coordinator at Shawnee. (Doe Decl. ¶ 16.) Shortly thereafter, Ms. Doe was informed that Shawnee was investigating her complaint, and she provided a statement as part of the investigation. (Doe Decl. ¶ 16.)

Ms. Doe is a member of SAGA, a student-led organization at Shawnee that advocates for and engages in public education efforts on issues affecting LGBT people. (Doe Decl. ¶ 17; Keniston Decl. ¶¶ 3, 8-10.) SAGA regularly meets with administrators at Shawnee to discuss the needs and concerns of its members, which include Ms. Doe and other transgender students, particularly when specific issues or incidents arise. (Keniston Decl. ¶¶ 9, 12.) SAGA also advocates for Shawnee to adopt and implement policies that promote the health and well-being of its LGBT members and all LGBT students at the university, including fostering a safe and

welcoming learning environment. (Keniston Decl. ¶ 9.) SAGA complements that advocacy with public education and social events on campus to inform the community about issues affecting LGBT people, including the importance of referring to transgender people by their correct name and pronouns as well as the harms caused by not doing so. (Keniston Decl. ¶¶ 6-8.) After Ms. Doe shared her experience with some of her peers at SAGA, SAGA met with Christina Jones, Coordinator of the Women's & Gender Equity Center at Shawnee, and Tiffany Hartman, the Director of Student Life, to express the concerns of their members that transgender students were being mistreated by Professor Meriwether and to ensure that Shawnee understood this was an important issue for transgender students and should be taken seriously. (Keniston Decl. ¶¶ 10-12.)

Professor Meriwether's actions have limited the courses that Ms. Doe and SAGA's other transgender members are willing to take. (Keniston Decl. ¶ 13.) Ms. Doe would have taken other classes with Professor Meriwether because she is interested in the courses he teaches, but now will only consider doing so if Professor Meriwether refers to her by the correct honorifics. (Doe Decl. ¶ 22.) Likewise, other transgender members of SAGA will be deterred from taking Professor Meriwether's courses if he mistreats transgender students as he mistreated Ms. Doe. (Keniston Decl. ¶ 13.) Some of SAGA's transgender members, however, may not be able to avoid registering for a class with Professor Meriwether because he regularly teaches "Ethics in Public/Private Life," one of only three classes that fulfills Shawnee's graduation requirement in the category of Ethical Insight & Reasoning. (Keniston Decl. ¶ 14.)

Shawnee concluded its investigation of Professor Meriwether's mistreatment of Ms. Doe in May 2018. (Compl. ¶ 214 & Ex. 13.) Based on the findings of that investigation, Shawnee decided to issue a written warning to Professor Meriwether for his conduct. (Compl. ¶ 235 &

Ex. 20.) On November 5, 2018, Professor Meriwether sued Shawnee seeking a judicial declaration that Shawnee cannot discipline him for discriminating against transgender students.

In response, a small group of faculty have expressed support for Professor Meriwether. (Doe Decl. ¶ 23.) Ms. Doe and the other transgender members of SAGA are increasingly concerned that other professors may start mistreating transgender students or otherwise create a hostile environment for transgender students in their classes. (Doe Decl. ¶ 23; Keniston Decl. ¶ 15.) In fact, Ms. Doe already dropped a course for next semester, deciding instead to take that class when it is taught by a professor that has not publicly supported Professor Meriwether's unwillingness to comply with Shawnee's policy. (Doe Decl. ¶ 23.)

### **ARGUMENT**

Federal Rule of Civil Procedure 24 establishes two avenues for a party to intervene in pending litigation: intervention of right or permissive intervention. Fed. R. Civ. P. 24(a)-(b). "Rule 24 should be broadly construed in favor of potential intervenors." *Stupak-Thrall v. Glickman*, 226 F.3d 467, 472 (6th Cir. 2000) (internal quotation marks omitted).

In this case, Ms. Doe and SAGA seek to intervene on the side of Shawnee. They do not seek to pursue any affirmative claims for relief. Ms. Doe and SAGA readily satisfy the requirements for both intervention of right and permissive intervention.

#### **A. Ms. Doe and SAGA are entitled to intervene as defendants as of right.**

To intervene as of right, a proposed intervenor must establish "(1) timeliness of the application to intervene, (2) the applicant's substantial legal interest in the case, (3) impairment of the applicant's ability to protect that interest in the absence of intervention, and (4) inadequate representation of that interest by parties already before the court." *Mich. State AFL-CIO v. Miller*, 103 F.3d 1240, 1245 (6th Cir. 1997). Ms. Doe and SAGA meet those requirements.

First, this motion is timely. Whether a motion to intervene is timely is evaluated in light of five factors: “1) the point to which the suit has progressed; 2) the purpose for which intervention is sought; 3) the length of time preceding the application during which proposed intervenors knew or should have known of their interest in the case; 4) the prejudice to the original parties due to the proposed intervenors’ failure to promptly intervene after they knew or reasonably should have known of their interest in the case; and 5) the existence of unusual circumstances militating against or in favor of intervention.” *Blount-Hill v. Zelman*, 636 F.3d 278, 284 (6th Cir. 2011) (quoting *Jansen v. City of Cincinnati*, 904 F.2d 336, 340 (6th Cir. 1990) (quotation marks omitted)). Here, Ms. Doe and SAGA diligently filed their intervention motion only six weeks after the complaint was filed, and before Shawnee’s deadline for answering or moving to dismiss. Given that discovery has not yet begun, there is no possibility of prejudice. Thus, the motion is plainly timely. Indeed, courts within this Circuit routinely grant intervention to parties who sought to intervene at later points in the litigation.<sup>1</sup>

Second, both Ms. Doe and SAGA have a “substantial legal interest” in this case. Both the Sixth Circuit and a court in this District have found the requisite substantial legal interest under Rule 24 on closely similar facts to this case. In *Grutter v. Bollinger*, 188 F.3d 394 (6th Cir. 1999), white students sued the University of Michigan and its law school, alleging their race-conscious admissions policies violated the Equal Protection Clause. *Id.* at 396-97. Students who were potential beneficiaries of the race-conscious admissions policies, as well as pro-affirmative action organizations, moved to intervene. *Id.* at 397. The court held that the proposed intervenors had a right to intervene under Rule 24(a). It explained that “in this circuit

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<sup>1</sup> See, e.g. *Morelli v. Morelli*, No. 2:00-CV-988, 2001 WL 99859, at \*2 (S.D. Ohio Feb. 1, 2001) (two months); *Ind. Ins. Co. v. Midwest Maint.*, No. C-3-99-351, 2000 WL 987829, at \*2 (S.D. Ohio Jan. 7, 2000) (three months); *Hubbard v. Elec. Arts, Inc.*, No. 2:09-CV-233, 2011 WL 3469118 (E.D. Tenn. Aug. 5, 2011) (“several” months).

we subscribe to a rather expansive notion of the interest sufficient to invoke intervention as of right.” *Id.* at 398 (internal quotation marks omitted). It further held that “Rule 24(a)(2)” does not “require[] a specific legal or equitable interest.” *Id.* (quotation marks omitted). It concluded that the proposed intervenors’ “specific interest in the subject matter of this case, namely their interest in gaining admission to the University,” was a “substantial legal interest” for purposes of Rule 24. *Id.*

Likewise, in *Board of Education of the Highland Local School District v. United States Department of Education* (“*Highland*”), No. 2:16-CV-524, 2016 WL 4269080 (S.D. Ohio Aug. 15, 2016), a school refused to allow a transgender girl to use the same restrooms used by other female students. The Department of Education concluded that the school violated Title IX, precipitating the school’s lawsuit against the Department. *Id.* at \*2. The court granted the student’s motion to intervene, finding that the student’s “interest in being treated in a non-discriminatory manner by her school . . . easily satisfied” the requirement of showing a substantial interest. *Id.* at \*3.

Ms. Doe is similarly situated to the intervenors in *Grutter* and *Highland*. Precisely like the intervenors in *Grutter*, Ms. Doe is the beneficiary of a university policy that the plaintiff challenges in a lawsuit against the university, and seeks to intervene, on the side of the university, in order to defend the constitutionality of its policy. Indeed, Ms. Doe’s interest is more concrete than the interest of the proposed intervenors in *Grutter*—unlike those intervenors, who merely hypothetically stood to benefit from the university’s affirmative action policy, Ms. Doe is the very individual whose interests are put at stake by Professor Meriwether’s complaint. Likewise, Ms. Doe is similarly situated to the intervenor in *Highland*: she is a transgender student who asserts an interest in being treated in a non-discriminatory manner.

SAGA, too, has a substantial interest in this lawsuit. SAGA is not required to establish its Article III standing in order to intervene, given that it does not seek any relief beyond what Shawnee seeks: dismissal of this suit. *Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1651 (2017) (“[A]n intervenor of right must have Article III standing in order to pursue relief that is different from that which is sought by a party with standing.”); *Grutter*, 188 F.3d at 398 (“[A]n intervenor need not have the same standing necessary to initiate a lawsuit.”). Nevertheless, SAGA does have standing. “An association has standing to bring suit on behalf of its members when its members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization’s purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC) Inc.*, 528 U.S. 167, 181 (2000). Ms. Doe and other transgender students who are being constructively excluded from Professor Meriwether’s classes have standing in their own right; the interests at stake are directly germane to SAGA’s purpose of supporting transgender students on campus; and the relief requested—dismissal of Professor Meriwether’s suit—does not require the participation of an individual student.

Because SAGA’s interests mirror Ms. Doe’s interests, SAGA has the requisite “substantial interest” in this case as well. In *Grutter*, the court held that not only students, but also a nonprofit organization devoted to preserving opportunities for minority students, had a right to intervene. 188 F.3d at 397. As the Sixth Circuit subsequently explained, the organization had argued, as its basis for intervention, “that its members would be directly affected by the outcome of the litigation.” *Coal. to Defend Affirmative Action v. Granholm*, 501 F.3d 775, 783 (6th Cir. 2007) (citing *Grutter*, 188 F.3d at 397). Thus, the organization, “by virtue of its minority members, enunciated a specific interest in the subject matter of the case.”

*Id.* (internal quotation marks and alterations omitted). SAGA is similarly situated to the organization that intervened in *Grutter*—by virtue of its transgender members, SAGA has a specific interest in this case.

Third, denying Ms. Doe and SAGA’s request to intervene would impair their respective interests. “To satisfy this element of the intervention test, a would-be intervenor must show only that impairment of its substantial legal interest is possible if intervention is denied. This burden is minimal.” *Grutter*, 188 F.3d at 399. For instance, in *Grutter*, the court held that the reduction of “access to the University” for minority students was “more than sufficient to meet the minimal requirements of the impairment element.” *Id.* at 400 (quotation marks omitted). Likewise, in *Highland*, the court held that the possibility that a ruling in the district’s favor would prevent the transgender student from asserting her own constitutional and statutory rights was sufficient to establish impairment. 2016 WL 4269080, at \*3. Here, as in *Grutter*, Ms. Doe and other SAGA members face the prospect of a court order invalidating a university policy that protects their rights, leading to mistreatment by Professor Meriwether and potentially other professors. Further, as in *Highland*, a victory for Professor Meriwether would inhibit Ms. Doe and other SAGA members from pursuing their own claims in a future case that Professor Meriwether’s conduct violates Title IX, the Equal Protection Clause, or applicable disability discrimination laws. Thus, Ms. Doe and SAGA satisfy the impairment requirement.

Fourth, Shawnee will not adequately represent Ms. Doe’s and SAGA’s interests in this case. To establish a right to intervene, “the proposed intervenors are not required to show that representation will in fact be inadequate.” *Grutter*, 188 F.3d at 400 (internal quotation marks omitted). “Indeed, [i]t may be enough to show that the existing party who purports to seek the same outcome will not make all of the prospective intervenor’s arguments.” *Id.* (internal

quotation marks omitted). “[T]he proposed intervenors’ burden in showing inadequacy is minimal,” and “[t]he proposed intervenors need show only that there is a *potential* for inadequate representation.” *Id.* (emphasis added). For instance, in *Grutter*, the court held that the defendants’ prediction that “the University is unlikely to present evidence of past discrimination by the University itself or of the disparate impact of some current admissions criteria” was sufficient to show inadequacy. *Id.* at 401.

Here, there is at least a potential for inadequate representation. Shawnee is Professor Meriwether’s employer and, as a result, has significantly different interests and motivations in this case than Ms. Doe and SAGA. Seeking to limit its legal liability, Shawnee will defend its authority to enforce antidiscrimination policies, like the one at issue in this case. But that same interest—limiting its legal liability—also gives Shawnee an incentive to disclaim any legal obligation to maintain and implement antidiscrimination policies that protect transgender students. Concretely, Ms. Doe and SAGA intend to argue that disparate treatment of students solely because they are transgender is barred by Title IX, the Equal Protection Clause, and disability discrimination laws. This is relevant to whether Shawnee has articulated a legitimate basis for its policy for purposes of First Amendment balancing; it may also establish that Professor Meriwether may not pursue his state-law claims to the extent they conflict with federal law. Shawnee, however, may be reluctant to advance these arguments, given that it would be the *defendant* in any Title IX, Equal Protection Clause, or disability discrimination claim concerning treatment of transgender students.

At a minimum, the parties’ arguments are likely to have a different focus, given that Shawnee is a public entity and the proposed intervenors are not. Both the Sixth Circuit and courts in this District have consistently held that the possibility that a private intervenor may

make different arguments from a governmental litigant was sufficient to establish inadequate representation. *Mich. State AFL-CIO*, 103 F.3d at 1247 (“One would expect that the Chamber, as a target of the statutes’ regulations, would harbor an approach and reasoning for upholding the statutes that will differ markedly from those of the state, which is cast by the statutes in the role of regulator.”); *Allied Constr. Indus. v. City of Cincinnati*, No. 1:14-CV-450, 2014 WL 11429028, at \*5 (S.D. Ohio Nov. 24, 2014) (“[I]t is not difficult to imagine that the private interests of Local 265 and its members may diverge with the public interests of the City”); *Orrand v. Hunt Constr. Grp., Inc.*, No. 2:13-CV-481, 2014 WL 3895555, at \*5 (S.D. Ohio Aug. 8, 2014) (because non-governmental intervenor had “private economic concerns which are not shared by the NLRB,” and “the NLRB represents and enforces the public interest,” “the NLRB’s perspective differs from that of the parties to this action”). Here, Shawnee will emphasize a public university’s right to control the conduct of its employees. Ms. Doe and SAGA intend to make that argument as well, but they would also emphasize the specific harms of Professor Meriwether’s conduct to transgender students—a perspective they are ideally situated to offer. The prospect that they will make different arguments from Shawnee is sufficient to establish inadequate representation.

Finally, the Court should permit both Ms. Doe and SAGA to intervene, because SAGA has a continuing interest in defending the rights of transgender students on campus even after Ms. Doe graduates. Although Ms. Doe and SAGA believe this case presents pure issues of law that should be resolved at the motion to dismiss stage, there is at least the possibility that the case will not have concluded by Ms. Doe’s expected graduation in May 2021. At that point, however, Professor Meriwether or the University may argue that the case has become moot with respect to Ms. Doe. Permitting SAGA to intervene will ensure that transgender students at Shawnee have a

voice in this case until its conclusion. *See Franklin Cent. Gay/Straight All. v. Franklin Tp. Cmty. Sch. Corp.*, IP01–1518 C–M/S, 2002 WL 31921332, at \*2 (S.D. Ind. Dec. 26, 2002) (presence of Gay/Straight Alliance as organizational plaintiff prevented lawsuit from being mooted by student’s graduation); *cf. Pasadena City Bd. of Educ. v. Spangler*, 427 U.S. 424, 430-31 (1976) (intervention by United States prevented lawsuit filed by students from being mooted by their graduation); *Cook v. Colgate Univ.*, 992 F.2d 17, 20 (2d Cir. 1993) (“We have suggested that a student’s claim may not be rendered moot by graduation if he or she sued in a ‘representational capacity’ as the leader of a student organization”).

**B. Ms. Doe and SAGA also meet the standard for permissive intervention.**

Pursuant to Federal Rule of Civil Procedure 24, the Court “may permit anyone to intervene” who has a claim or defense that shares a common question of law or fact with the main action. Fed. R. Civ. P. 24(b)(1)(B). Permissive intervention lies in the sound discretion of the trial court, and courts in this district have exercised their discretion liberally to grant permissive intervention.<sup>2</sup> In *Highland*, for instance, the court held in the alternative that the transgender student met the standard for permissive intervention, finding that her claims raised common questions of law and fact and her intervention would promote judicial economy. 2016 WL 4269080, at \*4; *see also* Order, *Doe v. Boyertown Area Sch. Dist.*, Case No. 17-cv-1249, (E.D. Pa. May 24, 2017), ECF No. 29 (granting intervention to youth organization advocating for transgender youth in schools); *Students & Parents for Privacy v. U.S. Dep’t of Educ.*, No. 16 C

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<sup>2</sup> *See, e.g., Brewer v. Republic Steel Corp.*, 513 F.2d 1222, 1224-25 (6th Cir. 1975); *see also Wellington Res. Grp., LLC v. Beck Energy Corp.*, No. 2:212-cv-00104, 2012 WL 2995181 (S.D. Ohio July 23, 2012); *Berk v. Moore*, No. 2:10–CV–1082, 2011 WL 1792534 (S.D. Ohio May 9, 2011); *Shreve v. Franklin Cnty.*, No. 2:10-cv-644, 2010 WL 5173162 (S.D. Ohio Dec. 14, 2010); *Cooley v. Taft*, No. 2:04-cv-1156, 2007 WL 582490 (S.D. Ohio Feb. 20, 2007).

4945, 2016 WL 3269001 (N.D. Ill. June 15, 2016) (granting transgender students' motion to intervene).

Ms. Doe and SAGA have defenses that share common questions of law and fact with the main action. Ms. Doe and SAGA intend to argue that the First Amendment and state law permit Shawnee's policy as a matter of law. If this case proceeds to discovery, they intend to argue, as a factual matter, that Professor Meriwether's conduct is deeply harmful to transgender students on campus. These arguments will address the core questions of law and fact in this case.

Ms. Doe's and SAGA's participation would also promote efficiency and judicial economy. Ms. Doe and SAGA strongly believe that this case should be resolved on the pleadings without discovery. However, if this case proceeds to discovery, there is a strong probability that either party will subpoena Ms. Doe, given that she is at the center of this case. Permitting her to intervene will not delay the case, given that she will likely be required to participate even without intervention. Rather, it will allow her to advocate for her own interests instead of being a bystander.

**C. The Court Should Permit Ms. Doe and SAGA to Move to Dismiss.**

Federal Rule of Civil Procedure 24(c) states that a motion to intervene must "be accompanied by a pleading that sets out the claim or defense for which intervention is sought." To comply with this rule, Ms. Doe and SAGA have filed a proposed Answer as an exhibit.

However, Ms. Doe and SAGA intend to file a motion to dismiss. If the Court grants their motion to intervene, the Court should afford Ms. Doe and SAGA the opportunity to file a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) before filing their Answer on the docket.

CONCLUSION

For the foregoing reasons, Jane Doe and SAGA respectfully request that this Court GRANT this Motion to Intervene.

Dated: December 24, 2018

Respectfully submitted,

/s/ Jennifer Branch

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*Attorneys for JANE DOE and SEXUALITY AND  
GENDER ACCEPTANCE*

**CERTIFICATE OF SERVICE**

I hereby certify that on December 24, 2018, a copy of the foregoing pleading, including Jane Doe and SAGA's Brief and Declarations in Support of the Motion to Intervene and the Conditional Answer, was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Jennifer L. Branch  
Attorney for Defendant-Intervenors

# Exhibit 1

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

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NICHOLAS K. MERIWETHER,	:	
	:	
Plaintiff,	:	
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vs.	:	Case No. 1:18-cv-753
	:	
THE TRUSTEES OF SHAWNEE STATE	:	Judge Susan J. Dlott
UNIVERSITY, ET AL.	:	Magistrate Judge Karen L. Litkovitz
	:	
Defendants	:	
	:	
and	:	
	:	
JANE DOE and SEXUALITY AND	:	
GENDER ACCEPTANCE,	:	
	:	
Defendant-Intervenors.	:	
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**[CONDITIONAL] ANSWER**

Defendant-Intervenors Jane Doe and Sexuality and Gender Acceptance (“SAGA”) (collectively, “Intervenors”), as required by Federal Rule of Civil Procedure 24(c) and in order to satisfy their obligations thereunder, and without prejudice to their ability to assert any motion under Federal Rule of Civil Procedure 12(b) before filing an Answer, by and through their undersigned counsel, hereby respond to the Verified Complaint (“Complaint”) of Plaintiff Nicholas K. Meriwether (“Plaintiff”). Intervenors deny each and every allegation, averment, statement, and/or assertion of the Complaint not specifically admitted herein.

**INTRODUCTION**

1. Intervenors deny, or lack knowledge or information sufficient to form a belief about the truth of, the allegations of Paragraphs 1-5 of the Complaint.

**JURISDICTION AND VENUE**

2. Intervenor's admit the jurisdictional and venue allegations of Paragraphs 6-10 of the Complaint.

**PLAINTIFF**

3. With respect to Paragraph 11 of the Complaint, Intervenor's admit that Plaintiff is a professor at Shawnee State University ("Shawnee"). Intervenor's lack knowledge or information sufficient to form a belief about Plaintiff's state of residence.

**DEFENDANTS**

4. Intervenor's lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraphs 12-52 of the Complaint.

**FACTUAL ALLEGATIONS**

5. Intervenor's lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraphs 53-123, 126-132, 138-144, 146-151, 153-156, 159-167, 173-184, 186-187, 189-190, 192, 194-260, and 263-272 of the Complaint.

6. Intervenor's deny the allegations of Paragraphs 185, 188, 191, 193, 261-262, and 273-348 of the Complaint.

**FACTUAL ALLEGATIONS SPECIFICALLY RELATED TO INTERVENORS**

7. Intervenor's admit the allegations of Paragraph 124 of the Complaint.

8. Intervenor's deny the allegations of Paragraph 125 of the Complaint.

9. With respect to the allegations of Paragraph 133 of the Complaint, Intervenor's admit that Ms. Doe conversed with Plaintiff after the class, and otherwise deny the allegations of this Paragraph, including the allegation that Ms. Doe disclosed her transgender status to Plaintiff and Plaintiff's use of the inaccurate pronouns "he" and "him" to refer to Ms. Doe in this Paragraph.

10. With respect to the allegations of Paragraph 134 of the Complaint, Intervenor admits that Plaintiff refused to refer to Ms. Doe using female pronouns and honorifics, and otherwise deny the allegations of this Paragraph.

11. Intervenor denies the allegations of Paragraph 135 of the Complaint.

12. Intervenor denies the allegations of Paragraph 136 of the Complaint.

13. Intervenor denies the allegations of Paragraph 137 of the Complaint.

14. With respect to the allegations of Paragraph 145 of the Complaint, Intervenor admits that Ms. Doe met with Defendant Shoemaker, and otherwise lack knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph.

15. With respect to the allegations of Paragraph 152 of the Complaint, Intervenor admits that Ms. Doe attended Plaintiff's class subsequent to January 9, 2018, and continued to participate in class. Intervenor denies the allegations in this paragraph to the extent they assert that Ms. Doe's participation was "without incident."

16. Intervenor denies the allegations of Paragraph 157 of the Complaint.

17. Intervenor admits that a conversation occurred between Ms. Doe and Defendant Pierce in which Ms. Doe raised the possibility of contacting an attorney, and otherwise deny the allegations of Paragraph 158 of the Complaint, including Plaintiff's use of the inaccurate pronouns "he" and "him" to refer to Ms. Doe in this Paragraph.

18. Intervenor admits the allegations of Paragraph 168 of the Complaint.

19. With respect to the allegations in Paragraph 169 of the complaint, Intervenor admits that Plaintiff continued to call on Ms. Doe. Intervenor denies that Ms. Doe was allowed "to participate in class discussions on the same basis as any other student."

20. Intervenors deny the allegations of Paragraph 170 of the Complaint, including Plaintiff's use of the inaccurate pronouns "he" and "him" to refer to Ms. Doe in this Paragraph.

21. With respect to the allegations of Paragraph 171 of the complaint, Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations of this Paragraph, except that Intervenors deny that Plaintiff's use of the pronouns "he" and "him" accurately refers to Ms. Doe in this Paragraph.

22. Intervenors deny the allegations of Paragraph 172 of the Complaint.

### **ADDITIONAL ALLEGATIONS**

23. Ms. Doe is the student described throughout Plaintiff's Complaint.

24. Ms. Doe is a transgender woman. She has obtained a legal name change and is identified as female on her Ohio driver's license. At Shawnee, she is listed as female in her student records and is treated as a female student in all respects.

25. The Complaint inaccurately refers to Ms. Doe as "he" and "him" throughout its allegations.

26. Ms. Doe enrolled in Plaintiff's class in the spring 2018 semester because of her interest in the subject matter and to fulfill a graduation requirement.

27. Plaintiff refused to refer to Ms. Doe using female honorifics after Ms. Doe informed him that she was female on January 9, 2018, and referred to Ms. Doe using just her surname, singling her out from her peers for whom Plaintiff used the appropriate honorifics and pronouns. Further, on more than one occasion, Plaintiff used male honorifics and pronouns during class to refer to Ms. Doe.

28. Ms. Doe experienced significant distress and emotional exhaustion by Plaintiff's conduct.

29. SAGA is a student-led organization at Shawnee founded in 2009.

30. SAGA has thirty members, including nine transgender members. Jane Doe is one of SAGA's transgender members.

31. SAGA is dedicated to promoting diversity and understanding by giving a voice to the LGBTQ students at Shawnee. SAGA hosts a variety of educational programs and social activities on campus to further the organization's mission and foster a safe and welcoming learning environment for all students, including LGBTQ students.

32. SAGA also meets with administrators at Shawnee to discuss issues on campus that affect LGBTQ students, and advocates for Shawnee to adopt policies that protect LGBTQ students from discrimination and promote a safe and welcoming learning environment on campus.

33. In January 2018, Ms. Doe informed SAGA of her interactions with Plaintiff and his refusal to treat her like all other female students in his class.

34. After hearing about Ms. Doe's experience in Plaintiff's class, SAGA members met with Shawnee staff to express concern that transgender students were being mistreated by Plaintiff.

35. SAGA's transgender members are unwilling to take classes with Plaintiff because they do not want to be singled out or mistreated. That has limited the number of classes available to transgender students.

#### **DEMAND FOR JURY TRIAL**

36. To the extent that Plaintiff's jury trial demand requires an answer, Intervenors admit that Plaintiff demands a trial by jury, but deny that there are any issues triable by jury.

#### **DEFENSES AND AFFIRMATIVE DEFENSES**

As and for its defenses and affirmative defenses, Intervenors allege:

1. Plaintiff has failed to state a claim upon which relief can be granted.
2. Intervenors reserve the right to supplement or amend this Answer, including through the addition of further affirmative defenses, based upon the course of discovery and proceedings in this Action.

**PRAYER FOR RELIEF**

WHEREFORE, having fully answered the Complaint, Intervenors respectfully request that the Court:

- A. Enter an order dismissing the Complaint and each and every claim and count thereof with prejudice;
- B. Enter judgment in favor of Defendants and Defendant-Intervenors on Plaintiff's Complaint and each and every claim thereof; and
- C. Grant Defendant-Intervenors such other and further relief as the Court deems just and proper, including but not limited to attorney's fees and costs.

Dated: December 24, 2018

Respectfully submitted,

/s/ Jennifer L. Branch

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*Attorneys for JANE DOE and SEXUALITY AND  
GENDER ACCEPTANCE*

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

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NICHOLAS K. MERIWETHER,	:	
	:	
Plaintiff,	:	
	:	Case No. 1:18-cv-753
vs.	:	
	:	Judge Susan J. Dlott
THE TRUSTEES OF SHAWNEE STATE	:	Magistrate Judge Karen L. Litkovitz
UNIVERSITY, ET AL.	:	
	:	
Defendants.	:	
-----	x	

**DECLARATION OF JANE DOE IN SUPPORT OF  
MOTION TO INTERVENE AS DEFENDANTS**

I, Jane Doe, under penalty of perjury, hereby state as follows:

1. I am a transgender woman and the student referred to in Professor Meriwether’s complaint against Shawnee State University. I have personal knowledge of the matters stated in this declaration, and, if called as a witness, could and would competently testify to these facts.

2. I told my mother that I am transgender when I was sixteen years old. Although my parents are now supportive of me, they initially struggled to accept who I am and would not consent to the care that I needed to treat my gender dysphoria. As a result, I had to delay my transition to living as female.

3. Due to the lack of support I received at home at that time, I continued to struggle emotionally and academically. I nearly failed my classes that year and was on track to drop out of high school.

4. Seeing that I needed help, my parents started to become more supportive and offered to consider consenting to the medical treatment I needed to address my gender dysphoria. That prospect got me through the remainder of high school and I graduated in 2011.

5. I wanted to go to college but did not want to have the same problems I had in high school, so I decided to hold off on college. My plan was to transition, begin living as female in all aspects of my life, and enter college as my true self. Waiting would give me the fresh start I was looking for; everyone would know me as Jane.

6. I faced many barriers to accessing the care that I needed to address my gender dysphoria. Those barriers continued to delay my transition even though I was already eighteen.

7. Then, in 2012, I moved to Portsmouth, Ohio and decided to enroll at Shawnee State University, even though I had not yet transitioned as I initially planned. I lasted for one semester. My gender dysphoria significantly interfered with my ability to focus and learn, just as it had done in high school. As a result, my grades did not reflect my academic ability and I realized that in order to achieve to my potential I could no longer delay my transition. Recognizing the importance of my academic performance in college for my future career path, I decided to leave Shawnee to work fulltime and start my transition.

8. Over the next four years, I was able to access the care I needed and transitioned to living as female in every aspect of my life. As part of my transition, I obtained a legal name change and corrected the gender marker on my Ohio driver's license. Once I started my transition, and as I completed each step, my mental health, confidence, and general well-being improved significantly. And, by the end of 2016, I finally felt ready to return to Shawnee.

9. I enrolled at Shawnee for the spring 2017 semester as Jane and as a female student. At Shawnee, I am listed as female in my student records and I am treated as a female student in all

respects. Since returning to Shawnee, my grades have increased dramatically and finally reflect my academic ability. I also started feeling more connected to the school and community than I did when I first enrolled in 2013. I have a network of friends, participate in student groups, and attend events around campus.

10. I anticipate graduating from Shawnee in May 2021.

11. I decided to take Professor Meriwether's Political Philosophy class during the spring 2018 semester because I am interested in the subject and it fulfilled a graduation requirement. Before enrolling in the course, I had never met or interacted with Professor Meriwether. The excitement I had for the class when I registered did not last past the first day.

12. On January 9, 2018, I had my first Political Philosophy class. At one point during the discussion I raised my hand to participate and Professor Meriwether acknowledged me by stating "yes, sir." I chose not to attempt to correct him as part of that exchange because I did not want to call attention to myself and hoped that my peers just thought it was an inadvertent slip. To avoid any further confusion or distress, I did not say anything else for the remainder of that class period.

13. I approached Professor Meriwether after class ended to let him know that I am female so that he would use female honorifics and pronouns when referring to me during future classes. Before I even spoke, he remarked that he already knew what I wanted to speak with him about. When I asked that he use female honorifics and pronouns when referring to me, he refused and insisted that he would continue to treat me differently than the other female students in the class, even after I showed him my Ohio driver's license listing my sex as female.

14. Professor Meriwether's assertion in his complaint that I "became belligerent," "circl[ed] around" him, or "[got] in his face in a threatening fashion," is false. I was not

“belligerent” and did not invade his personal space or threaten him in any way whatsoever. Professor Meriwether’s ostensible fear, stated in the complaint, that I would “behave belligerently or even violently” is completely unfounded. Nothing I said or did remotely threatened any kind of violence.

15. I was upset and horrified by Professor Meriwether’s response to my request. A few weeks later, I spoke with Douglas Shoemaker, Shawnee’s Deputy Title IX Coordinator, to file a complaint regarding Professor Meriwether’s discriminatory treatment of me. In response, Shawnee opened an investigation into my complaint. I provided a statement detailing my interactions with Professor Meriwether as part of that investigation.

16. I am a member of Sexuality and Gender Awareness (SAGA) at Shawnee. I also shared my experience with Professor Meriwether with some of my peers on SAGA.

17. For the rest of the semester, attending the Political Philosophy classes was emotionally taxing and I often debated whether to attend at all. I continued to participate, but primarily because I felt like I had to; in-class participation counted for a portion of our final grade. Every time I raised my hand, I dreaded what Professor Meriwether would say to call on me. Over the course of the semester, Professor Meriwether most often referred to me just by my last name, but still regularly reverted to male honorifics and pronouns.

18. Not only did I worry about what Professor Meriwether would say to or about me in class, but I also worried about whether my peers would notice that he was treating me differently and how they would respond. On numerous occasions, my peers copied Professor Meriwether and referred to me using male honorifics and pronouns.

19. The psychological strain of being in Professor Meriwether’s class affected me outside of class too. I became increasingly anxious that my peers and others at Shawnee would

begin mistreating and disrespecting me because I am transgender. That anxiety caused me significant distress. I would regularly have crying spells and was emotionally exhausted all the time. Further, Professor Meriwether's actions exacerbated my gender dysphoria, which became severe and debilitating in a way that I had not experienced since before my transition. Completing my schoolwork sapped most of the energy I had. Over the course of the semester, I withdrew from friends and stopped participating in student groups and only attended one event on campus.

20. But knowing that Shawnee was taking this incident seriously and treating the incident as discrimination, helped keep me from giving up because it signaled to me that I was valued and welcome at Shawnee. Had Shawnee not taken those measures, I would not have continued to feel as safe at school as I did, and Professor Meriwether's conduct would have had an even more profound impact on my educational experience.

21. Before taking Professor Meriwether's Political Philosophy class, I was contemplating taking a few of his classes. But because of my experience with Professor Meriwether, I will not take any of his classes unless he agrees to treat me like all other female students. If he did that, it would open additional class options for me because Professor Meriwether teaches several other courses that interest me.

22. Since Professor Meriwether filed this lawsuit, a small number of professors have expressed support for Professor Meriwether. That has further limited the courses that I can take because I don't want to take a class where I am going to be singled out and treated disrespectfully and differently than other students for being transgender. In fact, I decided to drop a class that I was supposed to take this coming semester because of the professor's support for Professor Meriwether.

23. I cannot risk having to go through another semester like the one I had in spring 2018, especially if Shawnee is prevented from enforcing its anti-discrimination policies to ensure that I am treated like all other female students and have equal access to all the educational opportunities Shawnee has to offer. Keeping Shawnee's anti-discrimination policy is critical to my success at Shawnee and wherever my goals lead me next.

This declaration was executed on this 21 day of December, 2018, in Scioto County, Ohio.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

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Jane Doe

23. I cannot risk having to go through another semester like the one I had in spring 2018, especially if Shawnee is prevented from enforcing its anti-discrimination policies to ensure that I am treated like all other female students and have equal access to all the educational opportunities Shawnee has to offer. Keeping Shawnee's anti-discrimination policy is critical to my success at Shawnee and wherever my goals lead me next.

This declaration was executed on this \_\_\_\_ day of December, 2018, in Scioto County, Ohio.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Jane Doe 21 December 2018  
Jane Doe

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

-----	x
NICHOLAS K. MERIWETHER,	:
	:
Plaintiff,	:
	:
vs.	:
	:
THE TRUSTEES OF SHAWNEE STATE	:
UNIVERSITY, ET AL.	:
	:
Defendants.	:
-----	x

**DECLARATION OF JAE EZRA KENISTON IN SUPPORT OF  
MOTION TO INTERVENE AS DEFENDANTS**

I, Jae Ezra Keniston, under penalty of perjury, hereby state as follows:

1. I am Vice President of Sexuality and Gender Acceptance (SAGA). I have personal knowledge of the matters stated in this declaration, and, if called as a witness, could and would competently testify to these facts.
2. I submit this declaration in support of SAGA's motion to intervene, in order to explain SAGA's interest in this litigation.
3. SAGA is a student-led organization at Shawnee State University founded in 2009. The organization was initially named the Gay Straight Student Alliance, but we changed the name last year to better reflect the inclusive mission of the organization.
4. SAGA has thirty members, including nine transgender members. Jane Doe is one of SAGA's transgender members.
5. In order to be a member of SAGA, a person must be a student at Shawnee, attend three events hosted by SAGA and six of SAGA's weekly meetings. In addition to those

participation requirements, members must show respect for all members within the LGBTQ community, an interest in learning about issues affecting the LGBTQ community, and demonstrate a commitment to creating a safe space at Shawnee.

6. SAGA is dedicated to promoting diversity and understanding by giving a voice to the LGBTQ students at Shawnee.

7. SAGA hosts a variety of educational programs and social activities on campus to further the organization's mission and foster a safe and welcoming learning environment for all students, including LGBTQ students.

8. The educational activities that SAGA engaged in over the past year included: hosting a Transgender Questions & Answers event; tabling in the student center with information and resources about sexual orientation and gender identity on National Coming Out Day; hosting an annual suicide prevention week; and organizing a candle-light vigil on Transgender Day of Remembrance.

9. SAGA also meets with administrators at Shawnee to discuss issues on campus that affect LGBTQ students, and advocates for Shawnee to adopt policies that protect LGBTQ students from discrimination and promote a safe and welcoming learning environment on campus.

10. In January 2018, Jane Doe informed SAGA of her interactions with Professor Meriwether and his refusal to treat her like all other female students in his class.

11. This was not the first time that one of SAGA's transgender members was mistreated by Professor Meriwether. A transgender male student who was a member of SAGA took a class with Professor Meriwether in the fall 2017 semester, but decided to drop the class when Professor Meriwether insisted on referring to him with female pronouns and honorifics.

12. After hearing about Jane's experience in Professor Meriwether's class, SAGA members met with Christina Jones, Coordinator of the Women's & Gender Equity Center at Shawnee, and Tiffany Hartman, the Director of Student Life, to express our concern that transgender students were being mistreated by Professor Meriwether and to ensure that Shawnee understood this was an important issue for transgender students and should be taken seriously. Ms. Jones and Ms. Hartman responded with support for the transgender students at Shawnee and advice on how to help SAGA's transgender members and how to continue fostering a positive learning environment for transgender students given Professor Meriwether's challenge to Shawnee's anti-discrimination policy.

13. Even though Shawnee properly responded to Professor Meriwether's mistreatment of Jane Doe, SAGA's transgender members are still unwilling to take any classes with Professor Meriwether because they don't want to be singled out or mistreated. That has limited the number of classes available to transgender students.

14. Given Shawnee's graduation requirements, some of SAGA's transgender members will not be able to avoid having a class with Professor Meriwether. Professor Meriwether teaches "Ethics in Public/Private Life," which is one of three courses that satisfies Shawnee's graduation requirement in the category of Ethical Insight & Reasoning. Professor Meriwether teaches other courses that many students also use to satisfy Shawnee's graduation requirements, such as Political Philosophy, the course that Jane Doe took.

15. SAGA's transgender members have become even more concerned since Professor Meriwether filed his lawsuit against Shawnee. In response to the lawsuit, some of Shawnee's professors have publicly expressed support for Professor Meriwether's refusal to comply with Shawnee's anti-discrimination policy. Like Jane, other transgender members of SAGA do not

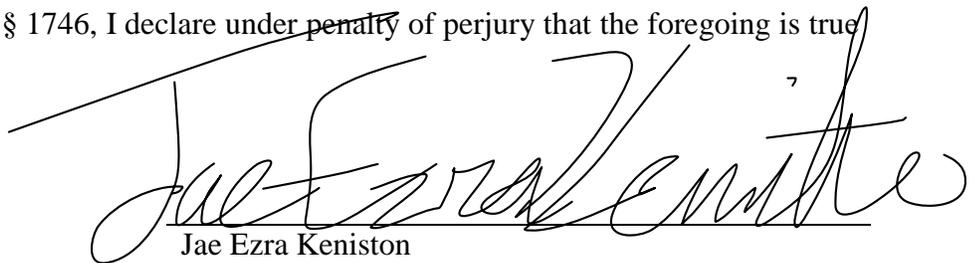
want to take classes with those professors out of a fear that they will be singled out or otherwise mistreated by the professor.

16. SAGA has heard this concern from nine transgender members as well as transgender students who are not officially members of SAGA.

17. SAGA seeks to intervene in this litigation because the outcome will have significant implications for transgender students at Shawnee, many of whom are members of SAGA. Ensuring that Shawnee has the authority to effectively enforce its anti-discrimination policies is a critical component of SAGA's mission of ensuring LGBTQ students at Shawnee feel welcome on campus and have equal access to all that Shawnee has to offer, including Professor Meriwether's classes, just like every other student. This goal is also essential to social, emotional, and academic wellbeing of SAGA's transgender members.

This declaration was executed on this 20 day of December, 2018, in Ashland County, Ohio.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

  
Jae Ezra Keniston