

No. 20-3289

---

---

In the  
**United States Court of Appeals**  
for the **Sixth Circuit**

---

NICHOLAS K. MERIWETHER,

*Plaintiff-Appellant,*

v.

FRANCESCA HARTOP, Trustee of Shawnee State University; JEFFREY A. BAUER, in his official capacity; ROBERTA MILLIKEN, in her official capacity; JENNIFER PAULEY, in her official capacity; TENA PIERCE, in her official capacity; DOUGLAS SHOEMAKER; MALONDA JOHNSON, in her official capacity; JOSEPH WATSON, Trustee of Shawnee State University; SCOTT WILLIAMS, Trustee of Shawnee State University; DAVID FURBEE, Trustee of Shawnee State University; SONDR A HASH, Trustee of Shawnee State University; ROBERT HOWARTH, Trustee of Shawnee State University; GEORGE WHITE, Trustee of Shawnee State University; WALLACE EDWARDS, Trustee of Shawnee State University,

*Defendants-Appellees,*

JANE DOE; SEXUALITY AND GENDER ACCEPTANCE,

*Intervenor-Defendants-Appellees.*

---

Appeal from the United States District Court  
for the Southern District of Ohio at Cincinnati, No. 1:18-cv-00753.  
The Honorable **Susan J. Dlott**, Judge Presiding.

---

---

---

**MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF OF  
FOUNDATION FOR INDIVIDUAL RIGHTS IN EDUCATION IN SUPPORT  
OF NEITHER AFFIRMANCE NOR REVERSAL**

---

---

WILL CREELEY  
MARIEKE TUTHILL BECK-COON  
GREG HAROLD GREUBEL  
FOUNDATION FOR INDIVIDUAL RIGHTS  
IN EDUCATION (FIRE)  
510 Walnut St., Suite 1250  
Philadelphia, PA 19106  
(215) 717-3473

DEBORAH A. AUSBURN  
TAYLOR ENGLISH DUMA LLP  
1600 Parkwood Circle, Suite 200  
Atlanta, GA 30339  
(770) 434-6868

*Counsel for Amicus Curiae Foundation for Individual Rights in Education*

---



UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

# Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit

Case Number: 20-3289

Case Name: Meriwether v. Hartop et al.

Name of counsel: Debbie A. Ausburn

Pursuant to 6th Cir. R. 26.1, Foundation for Individual Rights in Education  
*Name of Party*

makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

No.

## CERTIFICATE OF SERVICE

I certify that on Debbie A. Ausburn the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/ Debbie A. Ausburn

\_\_\_\_\_  
\_\_\_\_\_

This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

## **I. Nature of Motion and Movant’s Interest**

### **A. Nature of Motion**

Pursuant to Federal Rule of Appellate Procedure 29(a)(3), the *Amicus Curie* Foundation for Individual Rights in Education (“FIRE”) respectfully moves for an order granting leave to file the accompanying brief (attached hereto as Exhibit 1) as *amicus curiae* in support of neither party.<sup>1</sup>

### **B. Statement of Movants’ Interest**

FIRE is a nonpartisan, nonprofit organization dedicated to promoting and protecting civil liberties at our nation’s institutions of higher education. Since 1999, FIRE has worked to protect student First Amendment rights at campuses nationwide. FIRE believes that to best prepare students for success in our democracy, the law must remain unequivocally on the side of robust free speech rights on campus.

FIRE coordinates and engages in targeted litigation to ensure that student First Amendment rights are vindicated when violated at public institutions. The students FIRE defends rely on access to federal courts to secure meaningful and lasting legal remedies to the irreparable harm of censorship. This case significantly concerns

---

<sup>1</sup> Plaintiff-Appellant consented to the filing of this brief. *Amici* sought Defendants-Appellees’ leave to consent by electronic mail on May 26, 2020. On May 27, 2020, counsel for Defendants-Appellees informed FIRE that Defendants-Appellees would not consent in advance to its filing.

FIRE because it implicates the academic freedom rights of public university faculty nationwide.

## II. Legal Standard

A motion for leave to file an *amicus* brief must state “(A) the movant’s interest; and (B) the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.” Fed. R. App. P. 29(a)(3). ““An *amicus curiae* brief which brings relevant matter to the attention of the Court that has not already been brought to its attention by the parties is of considerable help to the Court.”” Fed. R. App. Proc. 29, 1998 advisory comm. note (quoting S. Ct. R. 37.1). An *amicus* brief can assist the court by elaborating on issues raised by the parties. *See Garner v. Cuyahoga Cty. Juvenile Court*, 554 F.3d 624, 636 (6th Cir. 2009); *see also Shoemaker v. City of Howell*, 795 F.3d 553, 562 (6th Cir. 2015) (“The traditional function of an *amicus curiae* is to assist in cases of general public interest by supplementing the efforts of private counsel and by drawing the court’s attention to law that might otherwise escape consideration[.]”) (quoting 3-28 Moore’s Manual—Federal Practice and Procedure § 28.84 (2014)). As then-Judge Alito wrote, “[O]ur court would be well advised to grant motions for leave to file amicus briefs unless it is obvious that the proposed briefs do not meet Rule 29’s criteria as broadly interpreted.” *Neonatology Assocs., P.A. v. Comm’r*, 293 F.3d 128, 133 (3d Cir. 2002).

### **III. Argument**

FIRE brings a new and valuable perspective to this case informed by our extensive experience defending the expressive and academic freedom rights of university faculty members for more than 20 years. FIRE is uniquely equipped to provide the Court with useful analysis of the current state of the law governing public university faculty expression. Specifically, FIRE's *amicus* brief proposes frameworks for this Circuit to apply in First Amendment cases concerning speech by public university professors.

### **IV. Conclusion**

For the foregoing reasons, we respectfully requests that the Court grant this motion and permit FIRE leave to appear as *amicus curiae* and file the accompanying brief in support of neither party.

Respectfully Submitted,

Dated: June 3, 2020

/s/ Deborah A. Ausburn

Deborah A. Ausburn  
TAYLOR ENGLISH DUMA LLP  
1600 Parkwood Circle, Suite 200  
Atlanta, GA 303394  
(770) 434-6868

Greg Harold Greubel  
William Creeley  
Marieke Tuthill Beck-Coon  
FOUNDATION FOR INDIVIDUAL  
RIGHTS IN EDUCATION (FIRE)  
510 Walnut Street, Suite 1250  
Philadelphia, PA 19106  
(215) 717-3473

*Counsel for Amicus Curiae*

## CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limitations of Federal Rule of Appellate Procedure 27(d)(2)(A). This motion contains 563 words, excluding the parts of the motion exempted by Federal Rule of Appellate Procedure 32(f).

This motion complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6). This motion has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in fourteen (14) point Times New Roman font.

Dated: June 3, 2020

/s/ Deborah A. Ausburn  
Deborah A. Ausburn  
TAYLOR ENGLISH DUMA LLP  
1600 Parkwood Circle, Suite 200  
Atlanta, GA 303394  
(770) 434-6868

*Counsel for Amicus Curiae*

### CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 3, 2020, an electronic copy of the Motion for Leave to File *Amicus Curiae* Brief of Foundation for Individual Rights in Education in Support of Neither Affirmance Nor Reversal was filed with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the CM/ECF system. The undersigned also certifies all parties in this case are represented by counsel who are registered CM/ECF users and that service of the Motion will be accomplished by the CM/ECF system.

Dated: June 3, 2020

/s/ Deborah A. Ausburn  
Deborah A. Ausburn  
TAYLOR ENGLISH DUMA LLP  
1600 Parkwood Circle, Suite 200  
Atlanta, GA 303394  
(770) 434-6868

*Counsel for Amicus Curiae*