

No. 20-3289

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

NICHOLAS K. MERIWETHER,
Plaintiff-Appellant,
v.

FRANCESCA HARTOP, ET AL.,
Defendants-Appellees,

JANE DOE AND SEXUALITY AND GENDER ACCEPTANCE,
Intervenors-Appellees.

On Appeal from the United States District Court for the Southern
District of Ohio, Western Division
Case No. 1:18-cv-753—Hon. Susan J. Dlott

**MOTION OF *AMICI CURIAE* NATIONAL MEDICAL AND MENTAL
HEALTH ORGANIZATIONS TO FILE BRIEF IN SUPPORT OF
DEFENDANTS-APPELLEES' AND INTERVENORS-APPELLEES'
PETITION FOR REHEARING OR REHEARING EN BANC**

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The National Association of Social Workers (“NASW”), the American Academy of Pediatrics (“AAP”), and the American Medical Association (“AMA”), (collectively, “*amici*”) respectfully move for leave to file an *amicus curiae* brief in support of Defendants-Appellees’ and Intervenors-Appellees’ Petition for Rehearing or Rehearing *En Banc* (filed concurrently herewith – proposed *amicus curiae* brief). The parties have informed *amici* that they do not object to this motion.

As a group of well-respected national medical and mental health organizations, *amici* seek to offer insight based on empirical research regarding the exceptional challenges faced by transgender students, and the importance of nondiscrimination policies that require such students to be addressed by names and pronouns that affirm their gender identity.

INTERESTS OF AMICI CURIAE

Amici—the NASW, AAP, and AMA—are a group of well-respected national medical and mental health organizations that all seek to promote the safe and healthy development of lesbian, gay, bisexual, and transgender¹ (“LGBT”) people in schools and communities.

¹ “Transgender” is an umbrella term used to describe many identities in which the person’s “gender identity, gender expression, or behavior does not conform to that typically associated with the sex to which they were assigned at birth.” American Psychological Association, *Sexual Orientation and Gender Identity*, at <https://www.apa.org/topics/sexual-orientation>. Sex assigned at birth refers to one’s biological status as either male or female, and is associated primarily with physical attributes such as chromosomes, hormone prevalence, and external and internal anatomy. *Id.* Although the term “transgender” can be further subcategorized and

1. National Association of Social Workers. NASW develops policy statements on issues of importance to the social work profession, promulgates professional policies, conducts research, publishes professional studies and books, provides continuing education, and promotes and administers the NASW Code of Ethics. Consistent with NASW policy statements, NASW, including its Ohio Chapter, supports full human rights and the end to all public and private discrimination on the basis of gender identity and gender expression, whether actual or perceived, and regardless of assigned sex at birth. The NASW National Committee on LGBT Issues develops, reviews, and monitors NASW programs that significantly affect LGBT individuals. The NASW Code of Ethics for professional social workers requires that all people—including those who are transgender—be afforded the same respect and rights regardless of gender identification. NASW supports safe and secure educational environments at all levels of education, in which children, youth, and adults may obtain an education free from discrimination, harassment, violence, and abuse. NASW asserts that discrimination and prejudice directed against any individual on the basis of gender identity or gender expression

also may not encompass all people who are gender non-conforming, for simplicity, this motion and the proposed *amicus* brief filed herewith use the term “transgender” to refer to all people who experience a discordance between their gender identity and their sex assigned at birth.

can be damaging to the social, emotional, psychological, physical, and economic well-being of the affected individual, as well as to society as a whole.²

2. The American Academy of Pediatrics. Founded in 1930, AAP is a national, not-for-profit professional organization dedicated to furthering the interests of child and adolescent health. Since AAP's inception, its membership has grown to 67,000 primary care pediatricians, pediatric medical subspecialists, and pediatric surgical specialists who are committed to the attainment of optimal physical, mental, and social health and well-being for infants, children, adolescents, and young adults. Over the past 91 years, AAP has become a powerful voice for child and adolescent health through education, research, advocacy, and the provision of expert advice. Research has shown that adolescents identifying as lesbian, gay, bisexual or transgender ("LGBT") face significantly higher rates of depression, anxiety, self-harm, and suicide. Such challenges are often more intense for youth who do not conform to social expectations regarding gender. AAP thus strives to support laws and policies that foster an inclusive environment for LGBT youth.

3. American Medical Association. The AMA is the largest professional association of physicians, residents, and medical students in the United States. Additionally, through state and specialty medical societies and other physician

² NASW, *Policy Statement: Transgender and Gender Nonconforming People*, in *Social Work Speaks*, 323, 327 (11th ed. 2018).

groups seated in its House of Delegates, substantially all physicians, residents, and medical students in the United States are represented in the AMA’s policy-making process. The AMA was founded in 1847 to promote the art and science of medicine and the betterment of public health, and these remain its core purposes. The AMA is committed to partnering with public and private organizations dedicated to public health and public policy to improve health among LGBT youth and reduce LGBT youth suicide. AMA members practice in every medical specialty and in every state, including Ohio.

**NASW, AAP, AND AMA FULFILL THE CLASSIC
ROLE OF *AMICI CURIAE***

By submitting an *amicus* brief in this matter, *amici* seek to assist this Court on an important issue to many transgender youth—namely, access to a healthy and inclusive educational environment—by providing an empirically grounded view of the exceptional challenges faced by transgender students, and the importance of nondiscrimination policies that require such students to be addressed by names and pronouns that affirm their gender identity. *Amici* thus fulfill the quintessential role for *amici curiae*, and courts routinely authorize the filing of *amicus* briefs in such circumstances. *See, e.g., Shoemaker v. City of Howell*, 795 F.3d 553, 562 (6th Cir. 2015) (describing the “traditional function of an *amicus curiae*” as “assist[ing] in cases of general public interest by supplementing the efforts of private counsel and

by drawing the court’s attention to [matters] that might otherwise escape consideration”).

Here, the panel’s decision arises out of Plaintiff-Appellant Nicholas Meriwether’s refusal to refer to a transgender student by using honorifics and pronouns that affirm the transgender student’s gender identity. The panel concluded that Professor Meriwether’s proposed “compromise”—permitting him to refer to the transgender student by last name only—was a “win-win” for both professor and student. *Amici*’s proposed brief details the significant harms that Professor Meriwether’s “compromise” could inflict on the health and wellbeing of transgender youth. As *amici* explain, research has shown that failing to affirm the gender identity of transgender students, including by using affirming names and pronouns, adversely affects their physical and mental health. Inclusive policies at educational institutions that respect names and pronouns that affirm a student’s gender identity have been demonstrated to prevent these harms, including by reducing levels of depression, thoughts of suicide, and attempted suicide among transgender youth. Further, neither the panel’s decision nor the parties’ briefing to date addresses the impact of Professor Meriwether’s proposed “compromise” on the physical and mental health of transgender students, even though it is an important issue for the Court to consider when resolving this dispute. This Court’s consideration of *amici*’s proposed brief is therefore warranted.

Courts regularly permit *amici* to file *amicus curiae* briefs to offer their unique expertise and insight on issues of mental health and welfare, including with respect to transgender youth. *See, e.g., Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 594 n.1 (4th Cir. 2020) (crediting “leading medical, public health, and mental health organization[]” *amici*, including AMA and AAP, with helping the court to “develop[] a fact-based understanding of what it means to be transgender, along with the implications of gendered-bathroom usage for transgender students”); *Adams by Kasper v. Sch. Bd. of St. Johns Cnty.*, 318 F. Supp. 3d 1293, 1299 n.14 (M.D. Fla. 2018) (granting AMA and AAP leave to file an amicus brief in support of a transgender male student in a lawsuit challenging a school board's policy of prohibiting the student from using the boys’ bathroom at school); *see also Bostic v. Schaefer*, 760 F.3d 352, 383–84 (4th Cir. 2014) (describing an *amicus* brief filed by AAP and NASW on the issue of childrearing by same sex couples as “extremely persuasive”).

CONCLUSION

For the foregoing reasons, *amici* respectfully request that this Court grant their motion for leave to file their proposed *amicus curiae* brief (filed concurrently herewith) in support of Defendants-Appellees’ and Intervenor-Appellees’ Motion for Rehearing or Rehearing *En Banc*.

Dated: May 14, 2021

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it is prepared using Microsoft Word using Times New Roman 14-point font. This document also complies with the type-volume limit established in Fed. R. App. P. 29(b)(4) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f) and 6 Cir. R. 32(b)(1), it is prepared in a proportionally spaced font and contains 1,345 words.

Dated: May 14, 2021

/s/Henry Liu

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 14, 2021, an electronic copy of the Motion Of *Amici Curiae* National Medical And Mental Health Organizations To File Brief In Support Of Defendants-Appellees' And Intervenors-Appellees' Petition For Rehearing Or Rehearing En Banc 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 Brief will be accomplished by the CM/ECF system.

Dated: May 14, 2021

/s/Henry Liu