

No. 22-1927

In the

**United States Court of Appeals
For the Fourth Circuit**

CHRISTOPHER FAIN; SHAUNTAE ANDERSON,
individually and on behalf of a class of persons,

Plaintiffs-Appellees,

v.

WILLIAM CROUCH, in his official capacity as Cabinet Secretary of the West Virginia Department of Health and Human Resources; CYNTHIA BEANE, in her official capacity as Commissioner for the West Virginia Bureau for Medical Services; WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES, Bureau for Medical Services,

Defendants-Appellants.

On Appeal from the United States District Court
for the Southern District of West Virginia
Hon. Robert C. Chambers, District Judge
Case No. 3:20-cv-00740

**FAIRNESS WEST VIRGINIA AND MOUNTAIN STATE
JUSTICE, INC.'S MOTION FOR LEAVE TO FILE BRIEF AS
AMICI CURIAE IN SUPPORT OF APPELLEES**

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December 7, 2022

CORPORATE DISCLOSURE STATEMENT

Amici curiae Fairness West Virginia and Mountain State Justice, Inc. certify that they are both non-profit organizations, with no parent companies and no publicly traded stock. Amici certify that they are unaware of any publicly held corporation or similarly situated legal entity that has a direct financial interest in the outcome of this litigation.

/s/ Jah Akande _____

Jah Akande

Counsel for Amici Curiae

MOTION

Under Federal Rule of Appellate Procedure 29, Fairness West Virginia and Mountain State Justice, Inc. respectfully move for leave to file a brief as amici curiae in support of Appellees Christopher Fain and Shaunte Anderson. The proposed brief is being filed concurrently with this motion. Appellees consent to the motion. Appellants' counsel represented that Appellants do not consent to the filing of this brief.

Fairness West Virginia ("Fairness") is a non-profit civil rights organization and the leading advocacy organization in West Virginia for lesbian, gay, bisexual and transgender West Virginians. Fairness is devoted to eliminating discrimination on the basis of sexual orientation and gender identity in all facets of public life, including employment, education, housing, and public accommodations. Fairness is also specifically committed to ending discrimination against transgender West Virginians and advocating for the provision of fair and equitable resources, including health care, to transgender individuals in the State.

Mountain State Justice, Inc. is a non-profit legal services firm dedicated to redressing entrenched and emerging systemic social, political, and economic imbalances of power for underserved West

Virginians through legal advocacy and community empowerment. Through class actions, individual cases, and policy advocacy, Mountain State Justice has assisted thousands of individuals fighting to protect their families, their homes, their health and safety, their right to education, and their livelihoods.

Under Rule 29, motions for leave to file amicus briefs must state “the movant’s interest” and “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). Amici are prominent West Virginia organizations dedicated to ensuring that all West Virginians, including LGBTQ West Virginians, receive the health care they need. Amici therefore have a strong interest in guaranteeing that transgender West Virginians enrolled in Medicaid—a doubly marginalized and vulnerable population—receive necessary care in accordance with the recommendations of their medical providers and the law. Amici have recently filed amicus briefs in other cases impacting LGBTQ and low-income West Virginians, including *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm’n*, 584 U.S. ___, 138 S. Ct. 1719 (2018) (Fairness), *In re Cleary Packaging, LLC*, 36 F.4th 509 (4th Cir. 2022) (Mountain State

Justice), and *State v. Beaver*, ___ S.E.2d ___, No. 22-616, 2022 WL 17038564 (W. Va. 2022) (Mountain State Justice).

Mindful of the role of amici curiae, amici's proposed brief does not duplicate the parties' arguments. Amici instead seek to explain how West Virginia's blanket exclusion for gender-affirming surgery, if reinstated, would impact the lives of West Virginians not party to this litigation. That perspective reflects amici's interests as organizations dedicated to the well-being of LGBTQ and low-income residents of the State, separate and apart from any discrete individuals.

For these reasons, Fairness West Virginia and Mountain State Justice, Inc. respectfully ask this Court to grant this motion and permit the filing of their amici brief submitted herewith.

Dated: December 7, 2022

Respectfully submitted,

/s/ Jah Akande

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CERTIFICATE OF COMPLIANCE

I hereby certify that this motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5), the type-style requirements of Fed. R. App. P. 32(a)(6), and the type-volume limitations of Fed. R. App. P. 27(d)(2)(A). The motion is proportionally spaced, has a typeface of 14-point Century Schoolbook font, and contains 473 words.

/s/ Jah Akande _____

Jah Akande

Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that on December 7, 2022, the foregoing was filed with the Clerk of the United States Court of Appeals for the Fourth Circuit using the CM/ECF system. The system will serve counsel of record.

/s/ Jah Akande

Jah Akande

Counsel for Amici Curiae