

No. 23-1078

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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B.P.J., by next friend and mother, HEATHER JACKSON,

*Plaintiff-Appellant / Cross-Appellee,*

v.

WEST VIRGINIA STATE BOARD OF EDUCATION; HARRISON  
COUNTY BOARD OF EDUCATION; W. CLAYTON BURCH, in his  
official capacity as State Superintendent; DORA STUTLER, in her  
official capacity as Harrison County Superintendent,

Defendants-Appellees,

and

WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION,

Defendant-Appellee / Cross-Appellant,

and

THE STATE OF WEST VIRGINIA, LAINEY ARMISTEAD,

Intervenors-Appellees.

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On Appeal From The United States District Court  
For The Southern District of West Virginia Case No. 2:21-cv-00316  
Honorable Joseph R. Goodwin

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**MOTION OF *AMICUS CURIAE*  
INDEPENDENT COUNCIL ON WOMEN'S SPORT  
FOR LEAVE TO FILE BRIEF IN SUPPORT OF APPELLEES**

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Counsel for *Amici Curiae*

*May 3, 2023*

Pursuant to Federal Rule of Appellate Procedure 29(a), the Independent Council on Women’s Sport (“ICONS”), by counsel, moves for leave to file an *amicus curiae* brief in support of Appellee. The proposed brief accompanies this Motion.

### **POSITION OF PARTIES ON THIS MOTION**

All parties except for the West Virginia Secondary School Activities Commission (WVSSAC) consent to the filing of an *amicus* brief in this matter by ICONS. The WVSSAC has advised that it takes no position on ICONS filing an *amicus* brief. Federal Rule of Appellate Procedure 29(a)(2) suggests a motion is necessary in this instance.

### **INTEREST AND IDENTITY OF *AMICI CURIAE*<sup>1</sup>**

Proposed *amicus curiae* ICONS is a U.S.-based network and advocacy group comprised of current and former collegiate and professional women athletes and their families and supporters working for an expanded and celebrated world of women’s sports. ICONS members and supporters who have joined and are identified in the ICONS brief are: Lauren Bondly, Janel Jorgenson, Jennifer Sey, and

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<sup>1</sup> Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), no party’s counsel authored the attached brief in whole or in part. No person other than *amici* and its counsel contributed money intended to fund the preparation or submission of this brief.

Marshi Smith. Reflecting their experience, *amici* have an interest in the preservation of the female sports category. *Amici* have lifelong experience with the influence and importance of Title IX, having experienced that statute's impact as female athletes, students, coaches and mentors for young women.

### **DESIRABILITY OF AN *AMICUS* BRIEF**

The attached brief outlines the impact and importance of Title IX and women's sport in the lives of four national champion female athletes who went on to become champions in business, overcoming great hardships due to the lessons they learned as young girls competing in sport. These life experiences allow *amici* to see sport issues simultaneously through the eyes of: young girls, national champions in sport, and champions in business. From their unique perspective *amici* explain why maintaining and protecting the female category of sport is essential and how that should be done to achieve maximum benefit to girls and young women.

Proposed *Amici Curiae* therefore respectfully request that the court grant them permission to file an *amicus curiae* brief in support of Appellees.

WHEREFORE, for the foregoing reasons and those included in the brief of *amici curiae*, the Independent Council on Women's Sport respectfully requests leave to file the attached *amicus* brief.

Respectfully Submitted,

KROGER GARDIS & REGAS, LLP

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 3, 2023, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the CM/ECF system. Participants in this case who are registered CM/ECF users will be served by the CM/ECF system.

/s/ William Bock, III \_\_\_\_\_

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## CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2) because it contains 402 words, excluding those parts of the motion exempted by Federal Rule of Appellate Procedure 32(f).

This motion complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5), (6) because it has been prepared in a proportionately spaced typeface using Microsoft Word in Century Schoolbook using 14-point font for the main text.

/s/ William Bock, III

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