

NO. 23-1078

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

B.P.J., by her next friend and mother: HEATHER JACKSON,
Plaintiffs-Appellants,

v.

**WEST VIRGINIA STATE BOARD OF EDUCATION; HARRISON
COUNTY BOARD OF EDUCATION; WEST VIRGINIA SECONDARY
SCHOOL ACTIVITIES COMMISSION; W. CLAYTON BURCH, in his
official capacity as State Superintendent; and DORA STUTLER, in her official
capacity as Harrison County Superintendent,**
Defendants-Appellees,

and

THE STATE OF WEST VIRGINIA and LAINEY ARMISTEAD,
Intervenors-Appellees.

On Appeal from the United States District Court
for the Southern District of West Virginia, Charleston Division

Case No. 2:21-cv-00316

Hon. Joseph R. Goodwin, District Court Judge

**MOTION OF *AMICI CURIAE* AMERICAN ACADEMY OF PEDIATRICS,
AMERICAN MEDICAL ASSOCIATION, AND FOUR ADDITIONAL
HEALTH CARE ORGANIZATIONS FOR LEAVE TO FILE BRIEF IN
SUPPORT OF PLAINTIFFS-APPELLANTS AND REVERSAL**

Matthew D. Cipolla
JENNER & BLOCK LLP
1155 Avenue of the Americas
New York, NY 10036
(212) 891-1600

Illyana A. Green
JENNER & BLOCK LLP
1099 New York Ave. NW, Suite 900
Washington, DC 20001
(202) 639-6000

Howard S. Suskin
Counsel of Record
David M. Kroeger
JENNER & BLOCK LLP
353 N. Clark St.
Chicago, IL 60654
(312) 222-9350

Counsel for Amici Curiae

Chasel Lee
JENNER & BLOCK LLP
455 Market St., Suite 2100
San Francisco, CA 94105
(628) 267-6800

Pursuant to Federal Rule of Appellate Procedure 29(a), the American Academy of Pediatrics, the American Medical Association, and Four Additional Health Care Organizations move for leave to file an *amici curiae* brief in support of Plaintiffs-Appellants and reversal. The proposed brief accompanies this Motion.

INTEREST AND IDENTITY OF *AMICI CURIAE*

Amici curiae are six leading medical, mental health, and other health care organizations. Collectively, *amici* represent hundreds of thousands of physicians and mental-health professionals, including specialists in family medicine, internal medicine, pediatrics, women's health, endocrinology, and transgender health.

The American Academy of Pediatrics (“AAP”) represents 67,000 primary care pediatricians, pediatric medical subspecialists, and surgical specialists who are committed to the attainment of optimal physical, mental, and social health and well-being for all infants, children, adolescents, and young adults. In its dedication to the health of all children, the AAP strives to improve health care access and eliminate disparities for children and teenagers who identify as lesbian, gay, bisexual, transgender, or for those questioning their sexual or gender identity.

The American Medical Association (“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 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. AMA members practice in every medical specialty and in every state.

The American Medical Women's Association ("AMWA") is an organization of women physicians, medical students, and other persons dedicated to serving as the unique voice for women's health and the advancement of women in medicine. AMWA's mission is to advance women in medicine, advocate for equity, and ensure excellence in health care. AMWA's vision is a healthier world where women physicians achieve equity in the medical profession and realize their full potential.

The Endocrine Society is the oldest and largest global professional membership organization representing the field of endocrinology. The Endocrine Society's more than 18,000 members care for patients and are dedicated to advancing hormone research and excellence in the clinical practice of endocrinology, which focuses on hormone conditions such as diabetes, obesity, osteoporosis, infertility, rare cancers, thyroid conditions, and the care of gender dysphoria/incongruence and transgender medicine. The Endocrine Society has published evidence-based clinical practice guidelines on gender dysphoria/incongruence, which are recognized around the world.

GLMA: Health Professionals Advancing LGBTQ+ Equality is a national organization committed to ensuring health equity for lesbian, gay, bisexual, transgender, queer (“LGBTQ+”) and equality for LGBTQ+ health professionals in their work and learning environments. To achieve this mission, GLMA utilizes the scientific expertise of its diverse multidisciplinary membership to inform and drive advocacy, education, and research.

The World Professional Association for Transgender Health (“WPATH”) is a non-profit international, multidisciplinary, medical professional and educational organization with over 4,100 members engaged in clinical and academic research to develop evidence-based medicine and promote high quality care for transgender and gender-diverse (“TGD”) individuals in the United States and internationally. One of the main functions of WPATH is to promote the highest standards of healthcare for TGD people through its Standards of Care. The Standards of Care was initially developed in 1979, and the latest version, Version 8, was published in September 2022 and is publicly available at www.wpath.org. Version 8 is based on the best available science and expert professional consensus in transgender health.

All *amici* share a commitment to improving the physical and mental health of everyone—regardless of gender identity—and to informing and educating lawmakers, the judiciary, and the public regarding the public-health consequences of laws and policies. *Amici* submit this proposed brief to inform the Court of the

medical consensus regarding what it means to be transgender; the protocols for the treatment of gender dysphoria, which include living in accordance with one's gender identity in all aspects of life.

DESIRABILITY OF AN *AMICUS* BRIEF

Amici feel a responsibility to inform this Court about the nearly-universally agreed upon best practices when treating transgender individuals for gender dysphoria and providing gender-affirming care. *Amici*, as leading healthcare providers, are in a unique position to inform the Court about the proper treatments for people experiencing gender dysphoria, and the negative health outcomes when gender dysphoria is left untreated. *Amici* believe that the information contained in their proposed brief will assist the Court in its deliberations in the present appeal by presenting a complete and accurate description of the medical conditions and treatments at issue in this appeal.

Proposed *Amici Curiae* therefore respectfully request that the Court grant them permission to file an *amicus curiae* brief in support of Plaintiffs-Appellants and reversal. Counsel for *Amici Curiae* reached out to the parties to seek consent to file this brief. Counsel for Plaintiffs consented to the filing of the *amicus* brief, as did Counsel for the Intervenors, the State of West Virginia and Lainey Armistead, and Counsel for Defendants-Appellees the West Virginia State Board of Education and W. Clayton Burch, and Harrison County Board of Education and Superintendent

Stutler. Counsel for Defendant-Appellee the West Virginia Secondary School Activities Commission took no position on the filing of the brief. Although *amici* do not wish to waste the Court's and parties' resources litigating this issue, Federal Rule of Appellate Procedure 29(a)(2) suggests a motion is necessary in this instance.

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

WHEREFORE, for the foregoing reasons and those included in the brief of *amici curiae*, the American Academy of Pediatrics, the American Medical Association, and Four Additional Health Care Organizations respectfully request leave to file the proposed brief.

Dated: April 3, 2023

Respectfully submitted,

Matthew D. Cipolla
JENNER & BLOCK LLP
1155 Avenue of the Americas
New York, NY 10036
(212) 891-1600

Illyana A. Green
JENNER & BLOCK LLP
1099 New York Avenue NW,
Suite 900
Washington, DC 20001
(202) 639-6000

/s/ Howard Suskin
Howard S. Suskin
Counsel of Record
David M. Kroeger
JENNER & BLOCK LLP
353 N. Clark Street
Chicago, IL 60654
(312) 222-9350

Chasel Lee
JENNER & BLOCK LLP
455 Market Street, Suite 2100
San Francisco, CA 94105
(628) 267-6800

Counsel for Amici Curiae

CERTIFICATE OF WORD COUNT

This motion complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2) because it contains 984 words, excluding those parts of the brief exempted by Federal Rule of Appellate Procedure 27(a)(2)(B).

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 Office Word 365 in Times New Roman using 14-point font for the main text.

Dated: April 3, 2023

/s/ Howard S. Suskin
Howard S. Suskin

Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing Motion to be electronically filed with the Clerk of Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system on April 3, 2023. I further certify that all participants in this case are registered CM/ECF users, and that service will be accomplished by the CM/ECF system.

Date: April 3, 2023

/s/ Howard S. Suskin

Howard S. Suskin

Counsel for Amici Curiae