

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,

Plaintiff-Appellant,

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, DORA STUTLER in her official capacity as Harrison
County Superintendent, and THE STATE OF WEST VIRGINIA,

Defendants-Appellees,

and

LAINY ARMSTEAD,

Intervening Defendant-Appellee.

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

**MOTION OF *AMICI CURIAE* THOMAS MORE SOCIETY AND
NATIONAL ASSOCIATION OF EVANGELICALS FOR LEAVE TO FILE
BRIEF IN SUPPORT OF DEFENDANTS-APPELLEES AND
AFFIRMANCE**

Arthur A. Schulcz, Sr., Esq.
VA Bar No. 30174
Counsel of Record
Chaplains Counsel, PLLC
21043 Honeycreeper Place
Leesburg, VA 20175
Phone: (703) 645-4010
Fax: (703) 645-4011
Email: art@chaplainscounsel.com

Timothy Belz, Esq.
J. Matthew Belz, Esq.
CLAYTON PLAZA LAW GROUP, L.C.
112 South Hanley, Second Floor
St. Louis, Missouri 63105-3418
Phone: (314) 726-2800
Fax: (314) 863-3821
tbelz@olblaw.com
jmbelz@olblaw.com
Special Counsel for Thomas More Society

*Counsel for Amici Thomas More Society and
National Association of Evangelicals*

Pursuant to Federal Rule of Appellate Procedure 29(a), the Thomas More Society and the National Association of Evangelicals move for leave to file an *amici curiae* brief in support of Defendants-Appellees and affirmance. The proposed brief is attached to this Motion.

INTERESTS OF *AMICI CURIAE*

The Thomas More Society (“TMS”) is a national public interest law firm dedicated to restoring respect in the law for freedom of speech and religious liberty. A 501(c)(3) nonprofit incorporated in Illinois with offices in Chicago and Omaha, TMS pursues its purposes through civic education, litigation, and related activities. In this effort, TMS has represented many individuals and organizations in federal and state courts and filed numerous *amicus curiae* briefs with the aim of protecting the rights of individuals and organizations to communicate their political and social views, as well as to faithfully practice their religion, as guaranteed by the Constitution.

The National Association of Evangelicals (“NAE”) is a nonprofit association of evangelical Christian denominations, churches, charitable organizations, mission societies, and individuals that includes more than 50,000 local churches from 74 different denominations. NAE serves a constituency of over 20 million people. NAE believes that venerable civil rights statutes are the sole policy charge

of the United States Congress, and that such statutes should not be unilaterally extended in their scope by the judicial branch.

DESIRABILITY OF AN *AMICUS* BRIEF

Amici and their attorneys offer the Court their expertise in comparing Title VII law requiring sex-blind employment decisions and Title IX requirements that equality of opportunity be provided by requiring institutions to account for physiological differences between the sexes. The information contained in their proposed brief will assist the Court by recounting the legislative and judicial history of Title VII and Title IX.

The purpose of the attached brief is to summarize what *Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731 (2020) said about the limits of its own reach and what the majority of circuits that have weighed in have said: specifically, that *Bostock's* interpretation of Title VII is limited to the facts and statutory provisions at issue in that case and does not apply even to other portions of Title VII, much less to other statutes like Title IX.

This brief further argues that employment discrimination under Title VII presents issues quite different from the Title IX issues in the case at bar. Title IX embraces and accounts for sex distinctions in myriad situations, including school-based athletics, performing arts, and other instances in which acknowledged differences between males and females have been accounted for by Congress. It

does so to achieve not blind equality, but equal opportunities in light of the physiological differences between males and females.

Proposed *Amici Curiae* therefore respectfully request that the Court grant them permission to file an *amici curiae* brief in support of Defendants-Appellees and affirmance. Counsel for *Amici Curiae* contacted 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 may be necessary in this instance and so, even though counsel has been assured by the case manager that no motion is necessary, this motion is filed in the exercise of caution.

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 their 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 Thomas More Society and the National Association of Evangelicals respectfully request leave to file the attached brief.

May 2, 2023

Respectfully submitted,

/s/ Arthur A. Schulcz, Sr.

Arthur A. Schulcz, Sr., Esq.

VA Bar No. 30174

Counsel of Record

Chaplains Counsel, PLLC

21043 Honeycreeper Place

Leesburg, VA 20175

Phone: (703) 645-4010

Fax: (703) 645-4011

Email: art@chaplainscounsel.com

Timothy Belz, Esq.

J. Matthew Belz, Esq.

CLAYTON PLAZA LAW GROUP, L.C.

112 South Hanley, Second Floor

St. Louis, Missouri 63105-3418

Phone: (314) 726-2800

Fax: (314) 863-3821

tbelz@olblaw.com

jmbelz@olblaw.com

Special Counsel for Thomas More Society

Counsel for Amici Thomas More Society and National Association of Evangelicals

CERTIFICATE OF COMPLIANCE

The foregoing motion complies with the type-volume limitations in Fed. R. App. P. 29(a)(5) and 32(a)(7) because it contains 680 words, excluding those parts exempted by Fed. R. App. P. 32(f).

This motion 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 the motion was produced in a proportionally spaced typeface using Microsoft Word 2010 in Times New Roman 14-point font.

May 2, 2023

/s/ Arthur A. Schulcz, Sr.
Arthur A. Schulcz, Sr., Esq.
Counsel for Amici

CERTIFICATE OF SERVICE

I certify that on May 2, 2023, the foregoing was electronically filed with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system. All counsel of record are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

May 2, 2023

/s/ Arthur A. Schulcz, Sr.

Arthur A. Schulcz, Sr., Esq.

Counsel for Amici