

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

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

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit

Case Number: 20-3289

Case Name: Meriwether v. Hartop et al.

Name of counsel: Henry Liu

Pursuant to 6th Cir. R. 26.1, American Academy of Pediatrics

Name of Party

makes the following disclosure:

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No

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit

Case Number: 20-3289

Case Name: Meriwether v. Hartop et al.

Name of counsel: Henry Liu

Pursuant to 6th Cir. R. 26.1, American Medical Association

Name of Party

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Pursuant to 6th Cir. R. 26.1, National Association of Social Workers

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STATEMENT OF INTEREST OF *AMICI CURIAE*¹

Amici curiae seek leave from this Court to file an amicus brief on behalf of the National Association of Social Workers (“NASW”), the American Academy of Pediatrics (“AAP”), and the American Medical Association (“AMA”).

1. National Association of Social Workers. Founded in 1955, NASW is a nonprofit organization and the largest association of professional social workers in the United States with 110,000 members. 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 expression, actual or perceived, and regardless of assigned sex at birth. NASW asserts that discrimination and prejudice directed against any individual on the basis of gender identity or expression 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. AAP’s 67,000 members are primary care pediatricians,

¹ Pursuant to FRAP 29(a)(4)(E), *amici* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *amici* or their counsel made any monetary contributions intended to fund the preparation or submission of this brief.

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

pediatric medical subspecialists, and pediatric surgical specialists who are committed to attaining optimal physical, mental, and social health and well-being for children and adolescents. 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 nation’s largest professional association of physicians, residents, and medical students. 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’s core purposes are to promote the art and science of medicine and the betterment of public health. The AMA is committed to partnering with others to improve health among LGBT youth and reduce LGBT youth suicide. AMA members practice in every state, including Ohio.

SUMMARY OF ARGUMENT

This case presents issues of significance for *amici curiae* regarding the healthy development of transgender students. As part of their missions, *amici* are committed to ensuring that transgender students have access to a healthy educational environment that promotes their academic success and fosters their mental and physical wellbeing. Drawing on their experience and expertise in their respective fields, *amici* seek to provide this Court with 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.

A growing body of scientific research has confirmed that transgender students face severe discrimination that has serious consequences for their health and educational outcomes. One survey found that 35 percent of transgender university students experienced harassment and bullying, and 15 percent of transgender students prematurely left school because of harassment.³ Transgender individuals who face discrimination in school are far more likely to experience serious

³ See Jamie M. Grant et al., *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, The Nat'l Gay and Lesbian Task Force and the Nat'l Ctr. for Transgender Equal., at 33, 39. (2011) (hereinafter “Injustice”).

psychological distress, substance abuse, financial instability, homelessness, incarceration, and suicide.⁴ Multiple studies have found that more than half of transgender people who were harassed or bullied while in school have attempted suicide.⁵ Those staggering rates reflect a public health crisis to which many universities are now devoting urgent attention.

Fortunately, research shows that educational environments that support transgender students' needs can dramatically reduce these risks. As confirmed by a landmark 2018 study, transgender youth who use gender affirming names and pronouns experience positive mental health outcomes, including a 29 percent decrease in reported thoughts of suicide and a 56 percent decrease in suicide attempts.⁶ Thus, institutions such as Shawnee State University should be supported, not penalized, for adopting policies that require professors to foster an inclusive environment for transgender students, including ensuring that students are called by names and pronouns that affirm their gender identities.

⁴ See Injustice, *supra*, at 33; *Promoting Transgender and Gender Minority Health through Inclusive Policies and Practices*, American Public Health Association, at 2 (2016) (hereinafter "APHA").

⁵ See Injustice, *supra*, at 33; Jody L. Herman et al., *Suicide Attempts among Transgender and Gender Non-Conforming Adults*, Williams Institute, at 2 (Jan. 2014).

⁶ See Stephen T. Russell et al., *Chosen Name Use Is Linked to Reduced Depressive Symptoms, Suicidal Ideation, and Suicidal Behavior among Transgender Youth*, 63 J. Adolescent Health 503, 505 (2018).

Contrary to this empirical evidence, the panel concluded that Professor Meriwether’s proposed “compromise”—permitting him to address the transgender student by last name only—was a “win-win” for the professor and student. *March 26, 2021 Opinion* at 21. It is doubtful the student would agree, and, in all events, the empirical research shows this “compromise” could wreak devastating harm on transgender students. Because the panel’s conclusion contradicts empirical research demonstrating the value of the university’s policy and others like it, *amici* support Defendants-Appellees’ and Intervenors-Appellees’ petition for rehearing or rehearing *en banc*.

ARGUMENT

I. Transgender Students Face Severe Discrimination and Serious Long-Term Mental Health Risks.

Because transgender people face rampant discrimination and harassment, medical and mental health professionals widely recognize that policies affirming each person’s gender identity can greatly improve health and educational outcomes.⁷

⁷ See APHA, *supra*, at 4.

A. More than a Million Americans, Including Over 200,000 Young Adults, Identify as Transgender.

Gender identity is a person’s “deep internal sense of being female, male, a combination of both, somewhere in between, or neither.”⁸ Transgender people have a gender identity that is not fully aligned with their sex assigned at birth.⁹ In the United States, approximately 1.5 million individuals identify as transgender.¹⁰ Of these, 205,000 are age 18 to 24.¹¹

The scientific community’s understanding of transgender people and gender identity has become more robust over the past two decades.¹² The scientific consensus is that being transgender “implies no impairment in judgment, stability, reliability, or general social or vocational capabilities.”¹³ Rather, medical and

⁸ Jason Rafferty, Am. Acad. of Pediatrics, *Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents*, 142(4) Pediatrics 1, 2 tbl.1, (2018), <https://pediatrics.aappublications.org/content/142/4/e20182162> (hereinafter “AAP Policy”).

⁹ See Am. Psychological Ass’n, *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People*, 70 Am. Psychologist 832, 832 (2015) (hereinafter “APA Guidelines”).

¹⁰ See Jody L. Herman et al., *Ages of Individuals Who Identify as Transgender in the United States*, Williams Institute, at 2-3 (Jan. 2017), <https://williamsinstitute.law.ucla.edu/publications/age-trans-individuals-us/>.

¹¹ See *id.*

¹² See APA Guidelines, *supra*, at 835.

¹³ Am. Psychiatric Ass’n, *Position Statement on Discrimination Against Transgender and Gender Diverse Individuals*, at 1 (2012).

mental health professionals recognize that affirming gender identity can significantly improve the well-being of transgender people.¹⁴ By contrast, transgender people who encounter unsupportive social environments are more likely to experience health challenges such as depression, anxiety, stress and suicidality.¹⁵

B. Transgender Students Face Severe Discrimination, Which Threatens Their Education and Physical and Mental Well-Being.

Transgender students frequently experience discrimination, harassment, and marginalization.¹⁶ A national survey found that 35 percent of transgender undergraduate or post-graduate students experienced harassment and bullying by other students, teachers, and staff.¹⁷ A qualitative case study on transgender college students' experiences found that students associated the classroom setting with feelings such as "isolation, frustration, and discomfort."¹⁸

Discrimination against transgender students has serious consequences for their ability to succeed in a university environment. Studies show that transgender

¹⁴ See APA Guidelines, *supra*, at 846.

¹⁵ See Injustice, *supra*, at 2.

¹⁶ See Kristie L. Seelman, *Transgender Adults' Access to College Bathrooms and Housing and the Relationship to Suicidality*, J. Homosexuality 1378, Abstract (Feb. 2016).

¹⁷ See Injustice, *supra*, at 39.

¹⁸ Jonathan T. Pryor, *Out in the Classroom: Transgender Student Experiences at a Large Public University*, 56 J. Coll. Student Dev. 440 (2015).

students are more likely to withdraw from classroom participation or drop courses where they feel unwelcome.¹⁹ Some students may even abandon their education altogether: one study found that 15 percent of transgender participants prematurely left educational settings because of harassment.²⁰ Moreover, multiple surveys found that those who faced discrimination while in school were far more likely to experience serious psychological distress, substance abuse, or homelessness later in life.²¹

Suicide rates among transgender individuals, and especially youth, are a public health crisis. According to one study, 41 percent of transgender respondents reported attempting suicide, compared with 1.6 percent of the general population.²² A separate study found that the prevalence of suicide attempts among transgender individuals was the highest for those aged 18 to 24.²³ Indeed, *more than half* of transgender people who were harassed or bullied while in school have attempted

¹⁹ *See id.*

²⁰ *See Injustice, supra*, at 33.

²¹ *See id.*; Sandy E. James et al., *The Report of the 2015 U.S. Transgender Survey*, Nat'l Ctr. for Transgender Equal., at 132, (2016), <http://www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf>.

²² *See Injustice, supra*, at 2.

²³ *See Herman, Suicide Attempts, supra*, at 3.

suicide.²⁴ Most strikingly, suicide attempts among this group rose dramatically when teachers were the reported perpetrators: of transgender individuals who were harassed or bullied by teachers in either K-12 schools or higher educational settings, 59% reported having attempted suicide.²⁵

II. Educational Institutions Should Adopt Policies on Names and Pronouns that Affirm Students' Gender Identities.

Given transgender students' significant challenges, educational institutions such as Shawnee State University rightly prioritize nondiscrimination policies that require the use of names and pronouns that affirm a student's gender identity. Numerous studies have found that the simple act of referring to transgender students respectfully with names and pronouns that affirm their gender identities can significantly improve mental health outcomes and may reduce the risk of suicide.

A. Using Names and Pronouns That Affirm Gender Identities Improves Physical and Mental Health Outcomes.

A growing body of scientific research has found that policies ensuring that students are addressed by names and pronouns that affirm their gender identity correlates closely with far lower rates of discrimination, psychological distress, and attempted suicide. For example, a landmark 2018 study focused on transgender

²⁴ See *id.*; Injustice, *supra*, at 33.

²⁵ See Injustice, *supra*, at 45.

youth aged 15-21 found that those who were able to use names and pronouns that affirmed their gender identities in an educational setting, or in one of three other contexts, experienced a 29 percent decrease in reported thoughts of suicide and a 56 percent decrease in suicide attempts.²⁶ On the basis of those findings, the authors recommended that educational institutions respect the names and pronouns of students that affirm their gender identities.²⁷ Medical professionals have highlighted the value of the 2018 study, noting that it underscores the importance of using gender-affirming names and pronouns to transgender students' mental health.²⁸

Other research studies have likewise found that affirming policies correlate with far lower rates of psychological distress and attempted suicide.²⁹ For example, in a case study of transgender students at a large Midwestern university, a transgender student who was referred to by his name and pronouns that affirmed his gender identity noted that his teachers' recognition of him as male discouraged other students from bullying him.³⁰ A separate study found that lower levels of stigma

²⁶ See Russell, *supra*, at 505.

²⁷ See *id.*

²⁸ See Stanley R. Vance, *The Importance of Getting the Name Right for Transgender and Other Gender Expansive Youth*, 63 J. Adolescent Health 379, 2 (2018).

²⁹ See APHA, *supra*, at 4.

³⁰ See Pryor, *supra*, at 448.

toward sexual minorities was significantly associated with fewer lifetime suicide attempts by transgender individuals.³¹ These studies underscore the importance of educational institutions implementing policies that require employees to support transgender students through the use of gender-affirming names and pronouns.

B. A Professional Consensus Requires Educators to Use Names and Pronouns That Affirm Gender Identities.

Along with the scientific data, there is growing professional consensus that educational institutions should adopt policies that require transgender students to be referred to by gender-affirming names and pronouns. For example, the National Education Association (“NEA”) has stated that “[i]nstitutions should accept a student’s assertion of the student’s gender identity,” and that students “should be addressed by their preferred names and pronouns.”³² These simple actions “can have a profound effect on the student’s experience.”³³

Other national organizations have expressed similar views. The Council on Social Work Education has encouraged the implementation of “policies and

³¹ See Perez-Brumer et al., *Individual- and Structural-Level Risk Factors for Suicide Attempts among Transgender Adults*, 41(3) Behav. Med. 164, Abstract (2015).

³² NEA, *Legal Guidance on Transgender Students’ Rights*, at 6 (June 2016).

³³ NEA, *Schools in Transition: A Guide for Supporting Transgender Youth in K-12 Schools*, at 22 (2015).

practices that are associated with the use of preferred names and pronouns.”³⁴

Guidelines promulgated by the American Psychological Association state that refusing to use the names and pronouns that affirm a transgender person’s gender identity, or otherwise failing to support their gender identity, should be viewed as discrimination.³⁵

Amici are among the chorus of educational, medical, and mental health professionals who stress the importance of using names and pronouns that affirm gender identity. The AMA has recognized that it is “critically important” that transgender individuals are able to socially transition, including by adopting a name and pronouns that affirm their gender identity.³⁶ Similarly, NASW has concluded that referring to transgender clients by “a name and pronoun that most reflects their sense of self can be enormously empowering.”³⁷ NASW thus supports policies that

³⁴ Ashley Austin et al., *Guidelines for Transgender and Gender Nonconforming (TGNC) Affirmative Education: Enhancing the Climate for TGNC Students, Staff and Faculty in Social Work Education*, Council on Soc. Work Educ. 4 (2016).

³⁵ See APA Guidelines, *supra*, at 838.

³⁶ American Medical Association, *Advocating for the LGBTQ community*, at 2, <https://www.ama-assn.org/delivering-care/population-care/advocating-lgbtq-community>.

³⁷ *Transgender Emergence: Understanding Diverse Gender Identities and Expressions*, presented by the NASW Massachusetts Chapter, Nat’l Ass’n of Soc. Workers, at 12 (Feb. 2006).

require the “use of respectful address” including “asserted name” and “pronouns.”³⁸ Finally, AAP has concluded that “[g]ender affirmation among adolescents,” including the use of appropriate “name and gender marker[s],” leads to better mental and physical health outcomes and improved academic success.³⁹

For all these reasons, the expert consensus support Shawnee State University’s requirement that Professor Meriwether use a name and pronoun that affirm a transgender student’s gender identity. The panel was incorrect to conclude that Professor Meriwether’s refusal to comply with this requirement—and alternative proposal of using a last name only for a transgender student—was a “win-win” for the professor and student. *March 26, 2021 Opinion* at 21. The empirical data demonstrates that singling out a transgender student in this manner is likely to significantly imperil the student’s health and educational outcomes. Thus, *amici* agree with Defendants-Appellees and Intervenor-Appellees that the panel’s opinion warrants rehearing.

CONCLUSION

Accordingly, *amici* support Defendants-Appellees’ and Intervenor-Appellees’ petition.

³⁸ NASW Policy, *supra*, at 327.

³⁹ AAP Policy, *supra*.

Dated: May 14, 2021

Respectfully submitted,

/s/ Henry Liu
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Dated: May 14, 2021

/s/ Henry Liu

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The undersigned hereby certifies that on May 14, 2021, an electronic copy of the [Proposed] Amicus Brief of Amici 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

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