

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

EDWARD W. REYNOLDS, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 1:18-cv-00069-PLM-PJG
)	
GREG TALBERG, et al.,)	Hon. Paul L. Maloney
)	
Defendants,)	ORAL ARGUMENT
)	REQUESTED
STAND WITH TRANS, a Michigan)	
Corporation, and WILLIAMSTON HIGH)	
SCHOOL GAY-STRAIGHT ALLIANCE,)	
an unincorporated association,)	
)	
Proposed Defendant-Intervenors.)	

**BRIEF IN SUPPORT OF PROPOSED INTERVENORS STAND WITH TRANS AND
WILLIAMSTON HIGH SCHOOL GAY-STRAIGHT ALLIANCE’S MOTION
TO INTERVENE AS DEFENDANTS PURSUANT TO FED. R. CIV. P. 24(B)**

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**CONCISE STATEMENT OF REASONS
SUPPORTING MOVANTS' POSITION**

Movants Stand with Trans and the Williamston High School Gay-Straight Alliance are non-profit organizations focused on advocating for and empowering LGBT youth. The anti-discrimination and anti-bullying policies enacted by the Defendants provide critical protections to Movants' members – protections that Plaintiffs seek to strip away. Movants meet the standard for permissive intervention because their motion is timely, their defenses of Defendants' policies share common issues of fact and law with the main action, and their intervention at this early stage of the case will cause no prejudice or delay. In addition, the existing Defendants concur with the relief requested by Movants.

I. INTRODUCTION

The plaintiffs in this case have sued the Williamston Community School District (the “District”) and various school board members, alleging that the District’s 2017 policies, which were implemented to better protect lesbian, gay, bisexual and transgender (“LGBT”) students in Williamston Community Schools from bullying, harassment and discrimination, as well as practices of the District consistent with those policies, violate their rights under the United States Constitution and other federal and state laws. In practical effect, the relief sought by the Plaintiffs would strip LGBT students of the protections of the District policies and practices, putting them at risk of serious harm, and would prohibit transgender students from using school facilities and programs consistent with their gender identity in violation of the Constitution, Title IX, and Michigan state law.

Proposed Intervenors Stand with Trans and the Williamston High School Gay-Straight Alliance (the “GSA” and, together with Stand with Trans, “Movants”) are organizations that advocate for and empower LGBT youth. Movants request leave to intervene pursuant to Fed. R. Civ. P. 24(b)(1) to ensure that the interests of LGBT students in the District are protected. The policies and practices at issue in this lawsuit directly and personally affect Movants’ members; if Movants’ motion is granted, Movants will defend the legality of the District’s policies, which are critical to the establishment of a safe and supportive school environment for LGBT youth, as well as the District’s actions in compliance with those policies. Permissive intervention is appropriate because Movants’ defense presents questions of law and fact in common with the main action, as it relates directly to the legality of the District’s policies that Plaintiffs challenge. Furthermore, the motion is timely, and will not unduly delay or prejudice the adjudication of the rights of the original parties.

II. FACTUAL BACKGROUND

In October and November, 2017, the Williamston Community School District added several categories of protection to its existing non-discrimination policies to which Plaintiffs object. These include: “sexual orientation” to Policy 4900, Fair Employment Clause (Compl. Exhibit A); and “sexual orientation, gender identity, gender expression” to Policy 7500, Guidance Program (Compl. Exhibit B), Policy 8010, Equal Education Opportunity (Compl. Exhibit C), Policy 8040, School Admissions (Compl. Exhibit E), Policy 8260-R, Bullying (Compl. Exhibit F), and Policy 8720, Student Organizations (Compl. Exhibit G).

On November 6, 2017, the District adopted Policy 8011 on Gender Identity, which provides that “Williamston Community Schools fosters an educational environment for all students that is safe, welcoming, and free from stigma and discrimination, regardless of sex, sexual orientation, gender identity, or gender expression.” (Compl. Exhibit D). The policy provides that the District shall “accept the gender identity” that each student asserts, once the student or their guardian notifies the school, and that the District will “customize support” to allow equal access to educational programs and opportunities. *Id.*

Based on the allegations in the Complaint, Plaintiff A.B. is a student in the Williamston Community School District, and Plaintiffs Monica Shafer and Christopher Johncheck are parents of students in the District. Compl. ¶¶ 10-12. Plaintiffs Edward and Erin Reynolds are parents of children who are no longer enrolled in the District. Compl. ¶ 9. They object to various policies passed by the school board in October and November 2017 that protect LGBT students as well as District practices in accord with these policies.

On January 19, 2018, Plaintiffs brought this action against the District and members of the school board challenging the District’s non-discrimination policies as violations of the Constitution, federal, and state law. Plaintiffs ask the Court to enjoin the District from enforcing

its non-discrimination policies and to declare that the policies and District compliance with those policies infringe on Plaintiffs' constitutional rights.

Movant Stand with Trans is a non-profit organization in Michigan whose mission is to support and empower transgender youth. *See Ex. A*, Keith Declaration, ¶¶ 3, 8. Stand with Trans works with students and families throughout Michigan to ensure transgender students have safe, non-discriminatory environments in which to go to school. *Id.*, ¶¶ 9-13. Nicole Ellefson, the Facilitator of the Lansing Stand with Trans support group, advocated for the specific policies in Williamston challenged by Plaintiffs in this case. *Ex. B*, Ellefson Declaration, ¶¶ 2, 7.

Movant GSA is a student-run organization that was founded in 2014 by students at Williamston High School. *Ex. C*, L.B. Declaration, ¶ 3.¹ Many of the Williamston High School students who are members of the GSA identify as LGBT. *Id.*, ¶ 6. The GSA's mission is to build a safe and supportive environment for LGBT students at Williamston High School. *Id.*, ¶ 4. In furtherance of that mission, the GSA has advocated for anti-discrimination protections for LGBT students. *Id.*, ¶ 13.

The members of Stand with Trans and the GSA have directly experienced the need for policies like the ones implemented in Williamston. As L.B., the president of the GSA and a current student at Williamston High School, attests: "At all schools, including Williamston High School, there is a high risk that LGBT students will be subject to stigma because of who they are. Many of us in the GSA have experienced harassment, bullying, slurs, and taunting by our peers." *Id.*, ¶ 10.

¹In accordance with Fed. R. Civ. P. 5.2(a)(3), this brief uses the declarant's initials, and a redacted version of L.B.'s declaration is being filed with the court. The original declaration is on file with GSA's counsel.

III. ARGUMENT

“For permissive intervention under Rule 24(b), ‘the court may permit anyone to intervene who’ files a ‘timely motion’ and ‘has a claim or defense that shares with the main action a common question of law or fact,’ provided ‘the court . . . consider[s] whether the intervention will unduly delay or prejudice the adjudication of the original parties’ rights.’” *Ohio State Conference of the NAACP v. Husted*, 588 F. App’x 488, 490 (6th Cir. 2014) (quoting Fed. R. Civ. P. 24(b)). This Court has explained that “Rule 24(b) is to be construed liberally, with doubt resolved in favor of permitting intervention.” *Hertel v. Mortg. Elec. Registration Sys., Inc.*, No. 1:12-CV-174, 2012 U.S. Dist. LEXIS 178582, at *11, 2012 WL 6596142, at *4 (W.D. Mich. Dec. 18, 2012) (citing *United States v. Marsten Apartments, Inc.*, 175 F.R.D. 265, 267 (E.D. Mich. 1997)).

As discussed below, Movants clearly meet the standard for permissive intervention.

A. **Movants’ Defenses Share Common Questions of Law and Fact with the Main Action.**

Where parties have a substantial interest in litigation, it follows that the “defenses they aim to present will share common questions of fact and law with the main action.” *Hertel*, 2012 U.S. Dist. LEXIS 178582, at *11, 2012 WL 6596142, at *4. In this case, there can be no question that Movants have a substantial interest in the litigation. Plaintiffs are seeking to invalidate policies that were formulated to protect the students that Movants represent and serve from bullying, harassment and discrimination and enjoin District practices in compliance with those policies. Movants will defend the District’s policies and practices, necessarily presenting common questions of fact and law with the main action.

Moreover, the devastating personal impact that the outcome of this lawsuit could have on Movants’ members militates in favor of intervention. This Court recognized this consideration in

Usery v. Brandel, 87 F.R.D. 670 (W.D. Mich. 1980), a lawsuit brought by the Secretary of Labor against the owner of several farms challenging a “sharecropper” arrangement between the defendant and a number of migrant workers. Nine of those workers, who described themselves as “independent contractors” to the defendant, sought to intervene as defendants. In granting their motion, the court found that even though the intervenors’ issues were essentially coterminous with those of the existing defendant, their presence in the case would not be redundant:

[T]hey will bring to the proceedings a point of view which will enrich the record in a matter which may well establish precedent and influence public policy. Their status as parties will render their appearance as witnesses and deponents more likely. The very fact that they do not raise other issues and questions will serve to minimize possible protraction of the trial. . . . Above all, the applicants have a tremendous stake in the outcome of a suit which could reshape the terms and conditions of their work lives. It is only fair that they be allowed a voice in a proceeding which holds such power over them. Under all the circumstances, therefore, the Court concludes that the applicants’ participation as parties-defendant is proper and desirable, and so grants their motion for permissive intervention under Rule 24(b).

Usery, 87 F.R.D. at 678.

Here, Movants and their members have a tremendous stake in the outcome of a suit that could reshape the terms and conditions of their school lives. Movants represent and advocate for some of the most vulnerable and at-risk students in the District, whose interests, rights and safety are effectively under attack in Plaintiffs’ lawsuit. It is only fair that they be allowed a voice in a proceeding that holds such power over those students.

B. Movants’ Motion is Timely, and Intervention Would Not Prejudice or Delay the Rights of Existing Parties.

The Sixth Circuit has articulated several factors that are to be considered in determining timeliness: “(1) the point to which the suit has progressed; (2) the purpose for which intervention is sought; (3) the length of time preceding the application during which the proposed intervenor knew or reasonably should have known of his interest in the case; (4) the prejudice to the original parties due to the proposed intervenor’s failure after he knew or reasonably should

have known of his interest in the case to apply promptly for intervention and (5) the existence of unusual or mitigating circumstances militating against or in favor of intervention.” *In re Telectronics Pacing Sys.*, 221 F.3d 870, 882 (6th Cir. 2000).

Intervention may be sought “at any point along the procedural continuum.” *Usery*, 87 F.R.D. at 675. When intervention is requested at the earlier stages of litigation, when “less preparatory work has been done and the configuration of issues and parties is likely still in flux,” intervention may be granted “without much risk of prejudice or disruption.” *Id.* Even as a case moves toward trial, “intervention should not be denied if another party could be readily assimilated into the case.” *Id.* Here, Movants did not delay seeking intervention, but rather retained counsel and filed the instant motion within weeks after learning of their interest in the case. They seek to intervene to protect the rights and interests of their members, and not for any improper purpose. Further, the case is in its earliest stages. Defendants’ first operative responsive pleading – their amended motion to dismiss – was filed just less than two weeks ago. Plaintiffs have not yet responded, nor has the Court set a hearing date. In addition, in accordance with Fed. R. Civ. P. 24(c), Movants are simultaneously filing their own proposed motion to dismiss with this motion. Thus, Movants can readily be assimilated into the case without causing disruption or delay, or prejudicing the rights of existing parties.

Movants have an interest in defending the policies and practices of the District challenged by Plaintiffs. Movants are organizations dedicated to the safety and equality of LGBT youth, including LGBT students in the District. Movants’ members who are LGBT students or the families of LGBT students have a personal stake in the need for policies like those implemented by the District. These individuals have the most to lose, and are best poised to articulate why the relief Plaintiffs seek would violate their legal rights. Movants seek to

intervene to ensure that voices of LGBT students in the District and their families may be fully heard and that their interests may be fully protected.

IV. CONCLUSION

For the foregoing reasons, Movants respectfully request that this Court grant them leave to intervene pursuant to Fed. R. Civ. P. 24(b)(1).

Date: March 12, 2018

Respectfully submitted,

* *Applications for admission forthcoming*

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EXHIBIT A

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

EDWARD W. REYNOLDS, et al.,

Plaintiffs,

v.

GREG TALBERG, et al.,

Defendants,

Case No. 1:18-cv-00069-PLM-PJG

Hon. Paul L. Maloney

STAND WITH TRANS, a Michigan Corporation,
and WILLIAMSTON HIGH SCHOOL GAY STRAIGHT
ALLIANCE, an unincorporated association,

Proposed Defendant-Intervenors.

**DECLARATION OF ROZ KEITH IN SUPPORT OF
STAND WITH TRANS' MOTION TO INTERVENE**

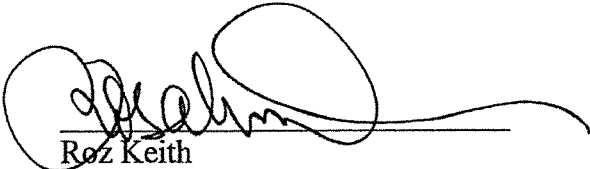
I, Roz Keith, declare as follows:

1. I am a resident of Michigan and the mother of a transgender son. I am the Board President and Founder of Stand with Trans.
2. I submit this declaration in support of the Stand with Trans' motion to intervene, in order to explain Stand with Trans' interest in this litigation.
3. Stand with Trans is a non-profit 501(c)3 organization whose mission is to provide the tools needed by transgender youth so they will be empowered, supported, and validated as they transition to their authentic life.
4. I founded Stand with Trans in 2015 after my son came out as transgender. I wanted to ensure that he and other transgender youth had a supportive organization to help them be accepted for who they are. I wanted to ensure that their parents and their families also had support.

5. Although we are based in the metropolitan Detroit area, Stand with Trans currently has 14 support groups throughout Michigan for both transgender youth and their families.
6. Stand with Trans serves parents, transgender youth and their family members in the Williamston community.
7. Our support group in the Lansing area, serves Williamston parents -who have transgender youth. -Nicole Ellefson, our facilitator for the Lansing parent group, is a resident of Williamston, and the mother of transgender son who attended Williamston High School. Nicole also has a daughter who currently attends the high school.
8. In addition to our support groups, Stand with Trans hosts an annual Empowerment Workshop for both parents and youth, as well as a variety of educational events, including topics on understanding the gender expansive child and what it means to be transgender. We also host two social events each year for families.
9. Although Stand with Trans is not a political organization, we have spoken out against conversion therapy, citing the harms and dangers to LGBT youth, and have supported the Michigan State Board of Education's suggested guidance on how to be supportive of transgender students in school.
10. Stand with Trans believes that is important for public schools to have policies that are supportive of all students, including transgender students. We support Williamston's inclusive non-discrimination policy, which recognizes that all students, including transgender students, should be treated with dignity and fairness. Stand with Trans believes that transgender youth should have a safe and affirming learning environment, where they can be themselves.

11. As the mother of a transgender son, I've seen firsthand how a child's self-esteem, confidence and mental health can be adversely affected when they are not in a safe and supportive school environment, and how they can thrive at school when they feel safe and empowered.
12. Stand with Trans believes that how transgender students are treated by both student and staff also impacts their siblings attending school. Policies that treat transgender students with dignity and fairness, provide a safe and affirming learning environment for their sibling as well.
13. Stand with Trans believes that it is important that school districts like Williamston have the ability to create safe and supportive learning environments so that transgender students can be themselves at school. It is critical to the health and well-being of transgender students to be protected from discrimination, harassment, and bullying because of who they are.
14. I make this declaration from my own knowledge of the facts and circumstances set forth above. If necessary, I could and would testify to those facts and circumstances.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.


Roz Keith
Board President, Stand with Trans

3-7-18
DATED

EXHIBIT B

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

EDWARD W. REYNOLDS, et al.,

Plaintiffs,

v.

GREG TALBERG, et al.,

Defendants,

Case No. 1:18-cv-00069-PLM-PJG

Hon. Paul L. Maloney

STAND WITH TRANS, a Michigan Corporation,
and WILLIAMSTON HIGH SCHOOL GAY STRAIGHT
ALLIANCE, an unincorporated association,

Proposed Defendant-Intervenors.

**DECLARATION OF NICOLE ELLEFSON IN SUPPORT OF
STAND WITH TRANS' MOTION TO INTERVENE**

I, Nicole Ellefson, declare as follows:

1. I am a resident of Williamston, Michigan and the mother of a transgender son who attended Williamston High School from 2015 to 2017. My daughter is currently a student at Williamston High School.
2. I am the facilitator for the Stand with Trans Lansing Parent Support Group, which serves the greater Lansing area, including Williamston.
3. I submit this declaration in support of Stand with Trans' motion to intervene, in order to explain their interest in this litigation.
4. I first became involved with Stand with Trans in the Fall of 2016 when I participated in a Transgender Advocacy Training program sponsored by the ACLU of Michigan and met Roz Keith, who is the President of Stand with Trans.

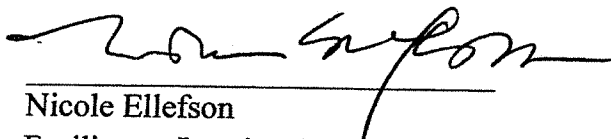
5. I have served as the facilitator for the Lansing Parent Support group since December 2017. I lead a discussion group of parents with transgender children, where we offer each other emotional support and resources.
6. I became involved and active with Stand with Trans because I strongly believe in their mission of providing tools to transgender youth so they will be empowered and supported and validated as they transition to their authentic life. Stand with Trans has been an invaluable source of support for my family.
7. As a parent and resident in the Williamston School District I spoke at several Williamston School Board meetings in favor of policies to protect LGBT students from harassment and discrimination. I also organized a group of Williamston residents and allies in support of the proposed district policy. We attended several school board meetings where the proposed policy was debated during the public comment period of the meetings.
8. While my son was a student at Williamston High School, he experienced bullying and harassment by his peers, including verbal taunts and threats of physical harm because of his gender identity and expression. This negatively impacted his ability to feel safe at school and to be able to be himself.
9. LGBT students face increased chances of discrimination, which lead to poor education outcomes. Students facing victimization at school are more likely to miss school, have lower GPAs, be disciplined at school, and have increased rates of depression.¹

¹ GLSEN, The 2015 National School Climate Survey: The Experiences of Gay, Lesbian, Bisexual, Transgender, and Queer Youth in Our Nation's Schools at xviii (2016), https://www.glsen.org/sites/default/files/2015%20National%20GLSEN%202015%20National%20School%20Climate%20Survey%20%28NSCS%29%20-%20Full%20Report_0.pdf.

10. Supportive policies like Williamston's are critical for letting students and their parents know that the school will take acts of discrimination and harassment seriously.

11. I make this declaration from my own knowledge of the facts and circumstances set forth above. If necessary, I could and would testify to these facts and circumstances.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.



Nicole Ellefson

Facilitator, Lansing Stand with Trans Parent Support Group

March 1, 2018
DATED

EXHIBIT C

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

EDWARD W. REYNOLDS, et al.,

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GREG TALBERG, et al.,

Defendants,

Case No. 1:18-cv-00069-PLM-PJG

Hon. Paul L. Maloney

STAND WITH TRANS, a Michigan Corporation,
and WILLIAMSTON HIGH SCHOOL GAY STRAIGHT
ALLIANCE, an unincorporated association,

Proposed Defendant-Intervenors.

**DECLARATION OF [REDACTED] IN SUPPORT OF
WILLIAMSTON GSA'S MOTION TO INTERVENE**

I, [REDACTED], declare as follows:

1. I am a 17-year-old resident of Williamston, Michigan, and a senior at Williamston High School. I am the President of the Williamston GSA.
2. I submit this declaration in support of the Williamston GSA's motion to intervene, in order to explain the GSA's interest in this litigation.
3. The Williamston GSA is a student-run organization that was founded in 2014 by students at Williamston High School.
4. The GSA's mission is to build a safe and supportive environment for LGBT students at Williamston High School.
5. I was elected President of the GSA in the fall of 2016, and again in 2017. In this role, I run our weekly meetings, manage our relationship with the school administration, and serve as a contact for any GSA member who needs help or advice.

6. The GSA currently has 15 members. 9-10 students are typically in attendance at our weekly meetings. Many of our members identify as LGBT.
7. The GSA holds weekly meetings organized around different LGBT discussion topics. We have discussed topics related to transgender identities and myths about sexuality. We have provided education on LGBT history, including a recent meeting where we learned about the Stonewall riots.
8. The GSA also attends social events together in the greater Lansing area, such as Pride Prom and a Halloween party for LGBT students.
9. Our goal is to create a safe and fun environment where LGBT students can be themselves free from judgment or discrimination.
10. At all schools, including Williamston High School, there is a high risk that LGBT students will be subject to stigma because of who they are. Many of us in the GSA have experienced harassment, bullying, slurs, and taunting by our peers.
11. Two members of the GSA spoke at the Williamston School Board meeting in favor of policies to protect LGBT students from harassment and discrimination. Several members attended the Board meeting in support of these policies.
12. Inclusive policies on their own will not immediately change the climate for LGBT students at Williamston High School, but supportive policies are critical in letting students know that the school has committed to taking acts of discrimination and harassment seriously.
13. Many LGBT students are fearful of coming out when they know they will face bullying and harassment at school. The GSA advocated for anti-discrimination protections for


LGBT students so that current and future students at Williamston High School feel supported and welcomed at school, if and when they choose to come out.

14. The GSA is invested in creating a safer and more supportive environment for LGBT students at Williamston High School, including current members who have experienced bullying first-hand.

15. It is also part of our mission to create a better environment for students who come after us, including making Williamston High School a safer place for transgender students to be themselves at school. Allowing transgender students to use restrooms and locker rooms consistent with their gender identity like all other students is critical to this mission.

16. I make this declaration from my own knowledge of the facts and circumstances set forth above. If necessary, I could and would testify to these facts and circumstances.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.


President, Williamston High School GSA

03/07/18
DATED