No. 24-1942

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE SEVENTH CIRCUIT**

JOHN M. KLUGE,

*Plaintiff-Appellant,*

v.

BROWNSBURG COMMUNITY SCHOOL CORPORATION,

*Defendant-Appellee.*

On Appeal from the United States District Court
for the Southern District of Indiana, Indianapolis Division
Honorable Jane Magnus-Stinson
Case No. 1:19-cv-02462-JMS-DLP

# BRIEF OF THE SECULAR STUDENT ALLIANCE AS *AMICUS CURIAE* IN SUPPORT OF APPELLEE AND AFFIRMANCE

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**APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT**

Appellate Court No: 24-1942

Short Caption: Kluge v. Brownsburg Community School Corporation

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

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(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):

Secular Student Alliance

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Freedom From Religion Foundation, Inc.

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

None

ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

None

(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

None

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

None

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Attorney's Signature: /s/ Samuel T. Grover Date: August 15, 2024

Attorney's Printed Name: Samuel T. Grover

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☑ **No** ☐

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**APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT**

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(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

None

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Attorney's Signature: /s/ Samantha F. Lawrence Date: August 15, 2024

Attorney's Printed Name: Samantha F. Lawrence

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

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## INTEREST OF AMICUS[1]

The Secular Student Alliance ("SSA") is a 501(c)(3) nonprofit and network of over 200 groups on high school and college campuses dedicated to advancing nonreligious viewpoints in public discourse. The SSA empowers secular students to proudly express their identity, build welcoming communities, promote secular values, and set a course for lifelong activism. SSA and its chapters and affiliates value the efforts of high schools, colleges, and universities to ensure an inclusive and welcoming educational environment.

[1] All parties consented to the filing of this amicus brief. No party's counsel in this case authored this brief in whole or in part. No party or party's counsel contributed any money intended to fund preparing or submitting this brief. No person, other than amicus, its members, or its counsel contributed money that was intended to fund preparing or submitting this brief.

## ARGUMENT

Public schools are in the business of educating our nation's children, a service that is one of the bedrocks of our democratic society. As part of their educational mission, public schools like Brownsburg Community School Corporation have a duty and legitimate interest in ensuring students are educated in an inclusive, welcoming, safe environment that's conducive to learning. A teacher's actions and how those actions affect students bear directly upon the conduct of a school's business. To that end, a teacher's requested religious accommodation creates an undue hardship when it harms students and interferes with the educational environment, substantially burdening the school's ability to conduct its educational business. Thus, Brownsburg was well within its rights to deny John Kluge's provenly harmful "Last Names Only" accommodation.

### I. Post-*Groff*, the Court must analyze undue hardship in light of the unique aspects of the public school environment, including the school's educational mission.

Kluge's request to not use students' recorded and approved first names occurred within the context of our public education system, which has important responsibilities to students. In clarifying Title VII's "undue hardship" standard, the Supreme Court stated that "'undue hardship' is shown when a burden is substantial in the overall context of an employer's business." *Groff v. DeJoy*, 600 U.S. 447, 468 (2023) (internal citations

omitted). The Court emphasized that this is a "fact-specific inquiry." *Id*. In line with the Supreme Court's clarification in *Groff*, three unique aspects of the educational environment are particularly relevant to analyzing the undue hardship Kluge's Last Names Only accommodation caused Brownsburg. First, public school teachers have a position of authority over students, and they cannot be allowed to abuse that authority. Second, students are required to attend school. Third, public schools are in the "business" of educating students, and creating an inclusive environment is essential to succeeding in the conduct of that business.

### A. Teachers have a position of authority over students and cannot be allowed to abuse that authority.

This Court has long recognized the special position of authority that teachers hold in public schools. In this court's own words, "[T]eachers occupy a unique position for influencing secondary school students, thus creating a concomitant power in school authorities to choose the teachers and regulate their pedagogical methods." *Webster v. New Lenox Sch. Dist. No. 122*, 917 F.2d 1004, 1007 (7th Cir. 1990) (citing *Zykan v. Warsaw Cmty. Sch. Corp.*, 631 F.2d 1300, 1304 (7th Cir. 1980)). Students often emulate teachers, undoubtedly viewing them as role models. *Webster*, 917 F.2d at 1007 (citing *Edwards v. Aguillard*, 482 U.S. 578, 584 (1987) (footnote omitted)).

It would be irresponsible and unrealistic for Brownsburg to evaluate Kluge's, or any other teacher's, requested religious accommodation without considering the position of authority and influence that teachers hold over their students. Schools have a duty to ensure that teachers do not abuse this authority. While all teachers are entitled to their personal beliefs and viewpoints, they are not entitled to foist those beliefs onto students or act on their beliefs in all instances while acting in their official capacity as public school teachers. Teachers control grades, seating charts, placements on teams or position assignments (such as placement in an orchestra or band class), and they have disciplinary power. It's not a leap in logic to see that students aiming for good grades or other rewards seek to stay in their teachers' good graces, and that desire to please will translate into pressure to conform to a teacher's evident beliefs and viewpoints.

Additionally, students are not required to nor can they practically avoid being taught by teachers who abuse their authority and allow their personal religious views to negatively impact their classrooms. In this case, Kluge was first hired by Brownsburg in August 2014 to serve as its music and orchestra teacher at Brownsburg High School, and he stayed in that position until the end of the 2017-2018 school year. [RSA at 4.] Kluge "taught beginning, intermediate, and advanced orchestra, beginning music theory, and advanced placement music theory, and was the only teacher who taught any sections of

those classes during his time at BHS." [RSA at 4] (cleaned up). Students at Brownsburg High School who wished to participate in orchestra or take any of the music classes that Kluge was the sole instructor for had no choice but to submit to his instruction, including his later refusal to refer to primarily transgender students, as well as non-binary and other LGBTQIA+ students, by the first names listed in the PowerScore database. Kluge's role and authority as the instructor for orchestra and several advanced music classes meant students who wished to take those courses very likely felt pressured to conform to his viewpoints or, at the very least, stay in Kluge's good graces. Students in Kluge's classes reported feeling tension in the classroom and being aware that Kluge was only using last names in order to avoid saying transgender and non-binary students' first names. Appellee's Response Br. 13–17. It was clear to students that Kluge's Last Names Only accommodation stemmed specifically from personal animus toward students who he perceived as using a first name that he did not believe aligned with the sex the student was assigned at birth. *Id.* The fact that one transgender student eventually chose to stop taking orchestra classes altogether and transfer to a different high school in order to avoid Kluge's instruction, *Id.* at 15, is a testament to the imbalance of power that a teacher holds and the serious harmful consequences that arise when a teacher abuses that power.

**B. Students are required to attend school.**

Students are required by law to attend school. Indiana, like all other states, has a compulsory education law. Ind. Code § 20-33-2-4. This Court has placed significant weight upon compulsory attendance when considering whether teachers may teach in a manner that contravenes school policy, interfering with the school's business and legitimate educational goals. "The State exerts great authority and coercive power through mandatory attendance requirements . . . ." *Webster*, 917 F.2d at 1007 (citing *Edwards v. Aguillard*, 482 U.S. 578, 584 (1987) (footnote omitted)).

As this court stated more than a decade ago: "[P]upils are a captive audience. Education is compulsory, and children must attend public schools unless their parents are willing to incur the cost of private education or the considerable time commitment of home schooling. Children who attend school because they must ought not be subject to teachers' idiosyncratic perspectives." *Mayer v. Monroe Cnty. Cmty. Sch. Corp.*, 474 F.3d 477, 479 (7th Cir. 2007). In *Mayer*, the plaintiff teacher filed a free speech claim after the public school district did not rehire her due to remarks she made about the Iraq war in class. *Id.* at 479. Ruling in favor of the school district, the Court found, "The Constitution does not entitle teachers to present personal views to captive audiences against the instructions of elected officials." *Id* at 480.

Brownsburg, like all other public school districts, must be mindful of the unequal footing created by compulsory education. For that reason, a teacher's requested religious accommodation must be balanced against this unique aspect of the educational environment. Any teacher accommodation that affects teacher-student relations will become part of an educational system where there is an imbalance of power that favors the teachers. Here, Kluge's desire to avoid speaking transgender and non-binary students' listed first names subjected students to his personal views in contravention of the school's official policy stating that teachers must use the students' names listed in the PowerScore database regardless of whether that first name does or does not align with the students' sex assigned at birth. Appellee's Response Br. 7–8, 15–17. High school students may be young, but they are not naive. As mentioned above, his students quickly picked up on the fact that Kluge's motivation for referring to students by their last names only was his personal issues with transgender and non-binary students. Appellee's Response Br. 15–17. Title VII does not require Brownsburg to subject students to a teacher's "idiosyncratic perspectives" any more than the First Amendment does.

### C. Public schools are in the business of educating students, and creating an inclusive environment for students is essential.

Public schools are in the business of educating our nation's students, performing a public service that's essential to a functioning democratic society. Creating an inclusive, welcoming environment for students is an essential part of succeeding in the education business. Unlike a typical business which focuses on the monetary bottom line, a public school's business mission isn't to turn a profit or increase shareholder value. Instead, its business mission is to educate students, and student wellbeing cannot be divorced from that business. Likewise, the critical role that teachers play in helping — or hindering — a school's educational mission cannot be analyzed in a vacuum separate from students' experiences and needs.

Title VII requires "undue hardship on the *conduct* of the employer's business." 42 U.S.C. § 2000e(j) (emphasis added); *accord*, *Groff v. DeJoy*, 600 U.S. 447, 470 (2023). "What matters more than a favored synonym for 'undue hardship' (which is the actual text) is that courts must apply the test in a manner that takes into account all relevant factors in the case at hand, including the particular accommodations at issue and their practical impact in light of the nature, 'size and operating cost of [an] employer.'" *Groff*, at 470–71 (quoting Br. for United States 40).

In the public school context, the "conduct" of a school's business includes the school's need to foster an inclusive, welcoming environment for all students. Teachers interact with students every day. Much of a school's educational environment is created by and dependent upon teachers, the same way much of a for-profit business's environment, and success, is dependent upon the conduct of employees who regularly fulfill critical duties and interact with customers.

Here, Brownsburg "states that the nature of its business is educating all students, which it achieves by fostering a learning environment of respect and affirmation." [RSA 31] (cleaned up). Brownsburg legitimately determined that "fostering a learning environment of respect and affirmation" is critical to succeeding at its educational mission. For that reason, Brownsburg withdrew Kluge's requested Last Names Only accommodation only after finding that the accommodation was "detrimental" to the learning environment for not only transgender and non-binary students, but all his students. [RSA 2]. The Last Names Only accommodation placed an undue hardship on Brownsburg by substantially burdening the conduct of its business by undermining and negatively impacting the inclusive environment that Brownsburg sought to foster, jeopardizing its ability to succeed in its educational mission.

## II. Title VII does not require a public school to provide a teacher with a religious accommodation that harms students and thus interferes with a school's legitimate educational mission.

Title VII does not require a public school to provide a teacher with a religious accommodation that harms students and thus substantially burdens and interferes with the conduct of a school's legitimate educational mission. As discussed above, public schools are in the "business" of educating students. Title VII does not mandate that a public school sacrifice any aspect of its educational mission in order to accommodate a teacher's religious beliefs. Further, common sense does not suggest that Title VII's religious discrimination provision is meant to force a public school to permit a teacher to emotionally and psychologically harm students — who are children — in the name of accommodating that teacher's religious beliefs. That result would be perverse and antithetical to the spirit of inclusivity and pluralism that underpins Title VII.

### A. A religious accommodation that harms students is not a reasonable accommodation, and providing a harmful accommodation places an undue hardship on the school

A religious accommodation that harms students is not a reasonable accommodation, and providing a harmful accommodation places an undue hardship on a school by substantially burdening the school's ability to conduct its educational mission. As the Supreme Court explained in *Groff*, since 1968 the EEOC's Title VII guidance has "obligated employers to make

r*easonable accommodations* to the religious needs of employees' whenever that would not work an 'undue hardship on the conduct of the employer's business.'" 600 U.S., at 457 (citing 29 C.F.R. § 1605.1 (1968)) (emphasis added). Later, Congress clarified Title VII's language, "[t]racking the EEOC's regulatory language." *Groff*, at 458 (citing 42 U.S.C. § 2000e(j) (1970 ed., Supp. II)). "[C]ourts should resolve whether a hardship would be substantial in the context of an employer's business in the common-sense manner that it would use in applying any such test." *Groff*, at 471.

Based on the plain language of Title VII and *Groff*, a teacher's religious accommodation is per se unreasonable if it provenly harms students. Further, even if the Last Names Only accommodation was technically reasonable, it still worked an undue hardship on Brownsburg by substantially burdening the conduct of its educational mission because it harmed students and disrupted the learning environment.

Brownsburg has proffered substantial evidence showing that Kluge's Last Names Only accommodation actually emotionally and psychologically harmed students. Appellant's Reply Br. 13–17; [RSA 45]. Under the weight of the evidence, the District Court concluded that the Last Names Only accommodation "actually resulted in substantial student harm," which "sharply contradict[ed] the school's legally entitled mission to foster a supportive environment for all." [RSA 45].

Brownsburg's evidence reflects what researchers in the area of adolescent health have already confirmed: using transgender youths' chosen names and pronouns lessens symptoms of depression and lowers suicidal ideations and behaviors. Stephen T. Russell, Ph.D., Amanda M. Pollitt, Ph.D., Gu Li, Ph.D., Arnold H. Grossman, Ph.D., *Chosen Name Use Is Linked to Reduced Depressive Symptoms, Suicidal Ideation, and Suicidal Behavior Among Transgender Youth*, 63 J. Adolesc. Health, 503, 503–05 (2018). "For transgender youth who choose a name different than that given at birth, use of their chosen name in multiple contexts appears to affirm their gender identity and lower mental health risks known to be high in this group." *Id.* "The available evidence shows that inclusive policies and supportive school personnel have an important role in reducing institutional gender-related discrimination and improving transgender students' perceived school climate." Amanda M. Pollitt, Salvatore Ioverno, Stephen T. Russell, Gu Li, & Arnold H. Grossman, *Predictors and Mental Health Benefits of Chosen Name Use among Transgender Youth*, Youth & Soc.(June 16, 2019), doi: 10.1177/0044118X19855898, HHS public manuscript available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7678041/pdf/nihms-1044373.pdf. Similarly, educators themselves recognize that when transgender students' "correct names and pronouns are used, statistics show that suicide rates drop, while trust and feelings of belonging increase."

Brenda Álvarez, *Why Pronouns Matter*, Nat'l Educ. Ass'n, NEA Today (Oct. 5, 2022), https://bit.ly/3SsMjuL.

Parents entrust their children to the public school system for hundreds of hours each year. Public schools have an indisputable duty to consider the safety and wellbeing of all students, regardless of sexual orientation or gender identity. The Last Names Only accommodation permitted Kluge to refuse to refer to transgender and non-binary students by their chosen names, a practice that is shown to increase the risks of depressive symptoms and suicidal ideation in transgender and non-binary youths. A religious accommodation substantially burdens the conduct of a school's educational mission when that accommodation runs a proven risk of seriously psychologically and emotionally harming students to such a grave extent. Title VII does not, and cannot, require a public school to permit a teacher to emotionally and psychologically harm children entrusted to the state's education system in the name of that teacher's personal religious beliefs.

### B. It is not discriminatory for a public school to place student needs over an employee's harmful requested religious accommodation.

Inclusivity is not synonymous with hostility toward religion, and it is not discriminatory for a public school to place student wellbeing over a teacher's harmful requested religious accommodation. America is a diverse society, and our pluralism is the root of our nation's strength. One of the

great features of our public school system is that students from different backgrounds, religions, and numerous other characteristics, attend the same schools. In a pluralistic society where all students are welcomed, inclusivity is essential to creating an educational environment where children can flourish. An inclusive and welcoming educational environment does not equal hostility toward religion. In fact, inclusivity does the opposite. Inclusive educational environments foster tolerance and acceptance, not hostility or discrimination.

Inclusivity, however, is not a one-way street where teachers can demand their personal beliefs be accommodated while trampling upon the beliefs and identities of the students they've chosen to educate and intellectually nurture. Title VII's text and the Supreme Court's decision in *Groff* do not support such a narrow, cramped reading. Moreover, Kluge himself acknowledges the two-way nature that tolerance and inclusivity require. *See* Appellant's Opening Br. 36. It follows that every denial of a requested religious accommodation does not amount to discrimination. If it did, Title VII's text would not say that an employer must "reasonably accommodate" an employee's religious belief or practice unless it poses an "undue hardship on the conduct" of the employer's business. 42 U.S.C. § 2000e(j). If Congress had wanted to enact a regime in which all employees' religious beliefs must be accommodated at all times and at all costs, Congress

could have done so; but it did not. Some religious accommodations inevitably prove unreasonable and/or substantially burden an employer's ability to conduct its business, thus working an undue hardship on the employer. It's not religious discrimination for an employer to refuse or rescind such a religious accommodation.

Kluge frames the issue as one of religious hostility, claiming that he was "drum[med] out of Brownsburg based on his Christian beliefs" and compares this to "conspiracy theorists expel[ling] Sikhs who wear turbans or Muslims who pray five times a day." Appellant's Opening Br. 42. This framing is faulty for several reasons: first, Kluge voluntarily resigned from Brownsburg — he was not "drummed out." [RSA 17–18]; *accord* Appellant's Opening Br. 17. Second, the negative student, parent, and colleague reactions to the Last Names Only accommodation did not stem from hostility towards Kluge's religion or Christians, but from the harmful effect the accommodation had on students and the learning environment. In an Indiana community like Brownsburg it's more than likely that at least some of the students, parents, and colleagues who expressed concerns about Kluge's accommodation are Christians themselves. A Pew Research Center study suggests that about 72% of adult Hoosiers are Christians. *Religious Landscape Study: Indiana*, Pew Research Center, https://pewrsr.ch/4fjEAJ0 (last visited Aug. 13, 2024).

Third, comparing this situation to conspiracy theorists discriminating against a Sikh wearing a turban or a Muslim praying is inapt. The key difference is that a Sikh's turban and a Muslim's personal private prayers do not necessarily involve others at all, while Kluge's refusal to refer to transgender students by their first names directly impacts his students and the learning environment. A Sikh's turban does not harm or burden anyone; another person choosing to wear traditional religious headwear does not meaningfully affect anyone but themselves. Nor would allowing a Sikh teacher to wear a turban negatively affect students, substantially burden the conduct of a public school's business or the vast majority of employers' businesses generally. Likewise, a Muslim teacher engaging in a truly private prayer does not per se harm students, and a Muslim's personal prayers would not necessarily substantially burden a public school's or any other employer's ability to conduct its business so long as students are not negatively impacted. Conversely, Kluge's requested accommodation is exclusively for when he is directly interacting with students (calling them by name). Students cannot help but be affected by his conduct.

In this instance, Brownsburg's decision to no longer permit Kluge's Last Names Only accommodation was not an act of religious discrimination. The Last Names Only accommodation interfered with Brownsburg's ability to foster an inclusive educational environment, and forced students' wellbeing

to bend beneath the thumb of their teacher's personal religious beliefs. Title VII, along with principles of religious tolerance and inclusivity, do not demand that our public schools sacrifice children's psychological and emotional health in order to accommodate a teacher's religion.

Title VII was enacted to be a shield against discrimination, not a sword for employees to use to harm others in the name of their religion. Post *Groff*, Title VII does not, nor has it ever, required a public school to approve a teacher's requested religious accommodation that harms students and thus negatively impacts a school's ability to create and maintain a welcoming, inclusive learning environment. An accommodation that harms minors entrusted to the government's care and disrupts the educational environment poses an undue hardship on a public school, substantially burdening the conduct of a school's educational mission.

## CONCLUSION

For the foregoing reasons, the judgment of the district court should be affirmed.

Dated: August 15, 2024

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

1. This document complies with the type-volume limitation of Circuit Rule 29 because this document contains 3,593 words, excluding the parts exempted by Fed.R. App. P. 32(f).

2. This document complies with the typeface requirements of Circuit Rule 32(b) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word in Century Schoolbook 13-point font.

Dated: August 15, 2024

/s/ Samuel T. Grover
Samuel T. Grover

*Counsel for Amicus Curiae*
*Secular Student Alliance*

## CERTIFICATE OF FILING AND SERVICE

I hereby certify that on August 15, 2024, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: August 15, 2024

/s/ Samuel T. Grover
Samuel T. Grover

*Counsel for Amicus Curiae*
*Secular Student Alliance*