

No. 16-1989

In the
United States Court of Appeals
for the
Fourth Circuit

JOAQUÍN CARCAÑO, et al.,

Plaintiffs - Appellants

– v. –

PATRICK MCCRORY, in his official capacity
as Governor of North Carolina

Defendant - Appellee,

and

PHIL BERGER, in his official capacity as President *pro tempore* of
the North Carolina Senate, and **TIM MOORE**, in his official capacity
as Speaker of the North Carolina House of Representatives

Intervenors/Defendants-Appellees.

*ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
No. 1:16-cv-00236-TDS-JEP*

**CONSENT MOTION FOR LEAVE TO FILE
AMICI CURIAE BRIEF OF SCHOOL ADMINISTRATORS FROM
CALIFORNIA, COLORADO, DISTRICT OF COLUMBIA, FLORIDA,
ILLINOIS, KENTUCKY, MAINE, MARYLAND, MASSACHUSETTS,
MICHIGAN, MINNESOTA, NEVADA, NEW HAMPSHIRE, NEW JERSEY,
NEW YORK, NORTH CAROLINA, OREGON, RHODE ISLAND, TEXAS,
VERMONT, WASHINGTON, AND WISCONSIN
IN SUPPORT OF PLAINTIFFS-APPELLANTS**

Pursuant to Federal Rule of Appellate Procedure 29(a), the school district and twenty-nine (29) individual superintendents, principals, school board members, general counsel, social workers, and other officials from schools and school districts across the country listed below respectfully move the Court for leave to file the accompanying Proposed *Amici Curiae* Brief of School Administrators From California, Colorado, District of Columbia, Florida, Illinois, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Hampshire, New Jersey, New York, North Carolina, Oregon, Rhode Island, Texas, Vermont, Washington, and Wisconsin in Support of Plaintiff-Appellant. Proposed amici curiae submit this brief to offer their considered perspective as educators and administrators with years of collective experience with school policies that respect all students' gender identity, including those who are transgender.

Counsel for all parties to this case have consented to the filing of any *amicus curiae* brief relating to this case that otherwise complies with the Federal Rules of Appellate Procedure and the rules of this Court. Dkt. 43.

STATEMENT OF IDENTITY AND INTEREST

Proposed *amici curiae* are a school district and superintendents, principals, school board members, general counsel, social workers, and other officials from schools and school districts across the country that have adopted, or are in the process of adopting, formal inclusive policies for their transgender students. They

represent a broad cross-section of schools and districts across the country, and are collectively responsible for the education, safety, and wellbeing of more than 1.4 million students annually. Proposed *amici curiae* offer valuable perspectives on a number of the issues in this case, based on their broad collective experience with adopting, implementing, and enforcing such policies.

Proposed *amicus* **Judy Chiasson, Ph.D.**, is the Program Coordinator for the Office of Human Relations, Diversity and Equity in the Los Angeles Unified School District (“LAUSD”) in Los Angeles, California. LAUSD is the second-largest school district in the country, with more than 732,000 students in more than 1,200 schools, spanning 745 square miles. Dr. Chiasson helped author LAUSD’s guidance documents on transgender students, and has overseen the implementation of LAUSD’s policy since it was adopted a decade ago. Dr. Chiasson has given legislative testimony based on LAUSD’s approximately ten years of experience with its policies¹, and has consulted with other school administrators across the country on transgender and other diversity issues.

Proposed *amicus* **David Vannasdall, Ed.D.**, has worked in the education field for twenty-two years, and been Superintendent for Arcadia Unified School District (“Arcadia”) in Arcadia, California since July 2014, having previously

¹ Dr. Chiasson’s 2013 testimony to the California Senate Education Committee (“2013 Chiasson Testimony”) is available at: *LAUSD’s Judy Chiasson’s Testimony on AB 1266*, YouTube (June 12, 2013), <https://www.youtube.com/watch?v=Xmq9dIQdsNE>.

served as Arcadia’s Deputy Superintendent for two years and principal of Arcadia High School for eight years. He developed Arcadia’s policy for supporting transgender students. Dr. Vannasdall has consulted with school officials nationally on transgender issues, and has presented on Arcadia’s policy to other superintendents. Arcadia has approximately 10,000 students, and has three years of experience with inclusive policies for transgender students.

Proposed *amicus* **Eldridge Greer, Ph.D.**, is the Associate Chief of Student Equity and Opportunity for Denver Public Schools (“DPS”) in Denver, Colorado. DPS comprises 199 schools and educates over 90,000 students. Dr. Greer has been an educator for over 25 years, and has been with DPS since 2007. DPS’s formal transgender policy was already in place when Dr. Eldridge came to DPS; he has since been responsible for developing practice guides for teachers and principals for applying the policy.

Proposed *amicus* **Diana Bruce** is the Director of Health and Wellness for the District of Columbia Public Schools (“DCPS”), a district that educates approximately 46,500 students across 111 schools. DCPS has provided transgender students access to facilities in accordance with their gender identity since 2006, and Ms. Bruce led the effort surrounding the school district’s adoption of a policy providing in-depth guidance in June 2015. Ms. Bruce consults with

administrators across the country about DC’s nearly decade-long experience with inclusive policies for transgender students.

Proposed *amicus* **Denise Palazzo** is the statewide Safe Schools Director for Equality Florida and in her role consults with the 67 school districts across Florida about LGBTQ needs, challenges, best practices and resiliency. She offers district leadership professional and technical assistance such as professional development trainings, crisis consultation, GSA support and structural implementation design and direction. Ms. Palazzo is a past Instructional Facilitator and Diversity and LGBTQ² Coordinator for Broward County Public Schools (“BCPS”) in Broward County, Florida, where she had previously taught for fourteen years. BCPS is the sixth-largest public school system in the United States and the second-largest in the state of Florida, with more than 265,000 students. Ms. Palazzo spearheaded BCPS’s recent effort to adopt a formal policy allowing transgender students access to programs and facilities in accordance with their gender identity, which has now been finalized. The new policy enhances the recommendations and guidance that BCPS adopted in 2012. Ms. Palazzo also advises officials throughout the country about inclusive policies for transgender students, and continues to consult with BCPS and other school districts throughout Florida and the nation.

² The acronym “LGBTQ” stands for lesbian, gay, bisexual, transgender, and questioning.

Proposed *amicus* **Jeremy Majeski** is a former principal of Komensky Elementary School (“Komensky”) in Berwyn, Illinois. He has been an educator for thirteen years and was Komensky’s principal for four years. Mr. Majeski directed the development and implementation of an inclusive policy at Komensky after a transgender student requested support, and then helped to direct implementation of the policy throughout Berwyn South School District 100 (“Berwyn”), which educates approximately 4,000 students. Berwyn was recently honored by the Illinois Safe Schools Alliance as the Ally of the Year for 2015.

Proposed *amicus* **Thomas Aberli, Ed.D.**, is the Principal of J.M. Atherton High School (“Atherton”), which educates approximately 1,300 students in Louisville, Kentucky. Atherton has had a formal policy of respecting students’ gender identity since June 2014. Dr. Aberli oversaw the adoption of this anti-discrimination policy through a thoughtful process that engaged the public, a twelve-member decision-making council, and the superintendent. Dr. Aberli also recently testified about Atherton’s policy before the Kentucky Senate Education Committee.³

³ A video excerpt from Dr. Aberli’s testimony (Aberli Testimony) is available at: KET – Kentucky Educational Television, *Principal Thomas Aberli on Transgender Student Policy Legislative Update KET*, YouTube (Feb. 19, 2015) <https://www.youtube.com/watch?v=QodplMWsEvQ> (last accessed October 25, 2016).

Proposed *amicus* **Howard Colter** is the Interim Superintendent of the Cape Elizabeth School Department, in Cape Elizabeth, Maine, and the former Superintendent of Mount Desert Island Regional School System (“MDIRSS”).

Matthew Haney is Principal of Mount Desert Island High School in Bar Harbor, Maine. MDIRSS serves eleven schools and over 1,500 students, including approximately 571 students at Mount Desert Island High School. In 2015, the policy committee of the MDIRSS board forwarded to its individual schools recommended guidelines that aim to foster a learning environment that is safe and free from discrimination, harassment, and bullying and to assist in the educational and social integration of transgender students in its schools. Mr. Colter has worked in education for forty-four years and obtained a Master’s Degree in Education and School Administration Credentials. He has been a superintendent for thirty-three years in school systems in California, Massachusetts, New Hampshire, and Maine, with sixteen years at MDIRSS before becoming the Interim Superintendent at Cape Elizabeth in 2016. He has also served as a principal at the elementary, middle, and high school levels, although mostly in high schools. Mr. Haney, now completing his sixteenth year in education, began as a collegiate coach and athletic director. Since then, he has served for eight years as an assistant principal and for three years as a principal at Mount Desert High School. Before becoming

principal, Mr. Haney was dean of curriculum at Mount Desert Island High. Mr. Haney holds a Master's Degree in Educational Leadership.

Proposed *amicus* **Ken Kunin** is the Superintendent of South Portland Public Schools ("South Portland") in South Portland, Maine, a district that includes eight schools and educates over 3,000 students. Mr. Kunin began as Superintendent in August 2015, and previously served as principal of one of the most diverse high schools north of Boston for five years, and as middle and high school principal of an international school in Rome, Italy, for four years. Mr. Kunin holds a Master's degree in Special Education and a Certificate of Advanced Studies in Educational Leadership.

Proposed *amicus* **Robert A. Motley** is Principal of Glenwood Middle School, which educates 550 students from grades six through eight in Glenwood, Maryland. Mr. Motley has eleven years of experience as a middle school principal, and twenty years of experience as an educator and school administrator. In 2006, Mr. Motley was recognized as the Maryland State Assistant Principal of the Year by the Maryland Association of Secondary School Principals ("MASSP"). Mr. Motley was recently appointed to a four-year term on the Board of Directors of the National Association of Secondary School Principals ("NASSP"). NASSP is the leading organization of and national voice for middle level and high school principals, assistant principals, and all school leaders from across the United States

and 35 countries. As a member of the NASSP Board of Directors, Mr. Motley will participate in shaping the organization's federal education policy agenda that advocates for the needs of secondary schools and their students.

Proposed *amicus* **Roger Bourgeois** is the Superintendent-Director of Greater Lowell Technical Regional School District, a single-school district that educates approximately 2,200 students in Massachusetts. Mr. Bourgeois has eight years of experience as a superintendent with schools that allow students to access facilities and programs in accordance with their gender identity. Mr. Bourgeois serves by appointment of the governor on the Massachusetts Commission on LGBTQ Youth, for which he currently serves on the Safe Schools Committee. He also participates in school trainings through the Massachusetts Department of Education's Safe Schools Program, and has testified at state legislative hearings involving transgender youth issues.

Proposed *amicus* **Blake Prewitt, Ed.S.** is the Superintendent of Ferndale Public Schools in Ferndale, Michigan. Mr. Prewitt has been in the education field for over twenty years, and has served as a principal, assistant principal, and curriculum director before becoming superintendent in July 2014. Ferndale Public Schools educates over 3,000 students each year and operates an early childcare center, two elementary schools, an intermediate school, a middle school, two high schools, one alternative education program, and one adult education school. In

April 2016, the Ferndale Schools Board of Education unanimously agreed to support the proposed state guidelines for LGBT youth that would allow transgender and gender non-conforming students to use the facilities in accordance with their gender identity, citing their Strategic Plan grounded in the values of trust, respect, and inclusion.

Proposed *amicus* **Michael Thomas** is the Chief of Schools of Minneapolis Public Schools (“MPS”), a district that educates over 35,000 students across 75 schools. Mr. Thomas previously served for six years as an elementary and junior high school principal in the Osseo School District and six years coordinating that district's equity and integration efforts. Before being recruited to Osseo School District, Mr. Thomas worked in St. Paul Public Schools as a social worker and director of student and family support. MPS has over five years of experience with inclusive policies for transgender students. Policy 6135, adopted in January 2014, provides transgender students the option to self-select into the group of their gender identity or expression the student consistently use at school, including for locker and dressing room use.

Proposed *amicus* **Mary Doran** is the former chair of the Saint Paul Public Schools (“SPPS”) Board of Education; her term-limited term ended December 31, 2015. She served on the Board of Education for four years, including the last two years as chair, during which she led the effort to craft, pass, and implement the

SPPS Gender Inclusion Policy, which passed with unanimous support from Board of Education members in March 2015 and was implemented at the start of the 2015-16 academic year. SPPS is one of Minnesota’s largest school districts, with more than 39,000 students, over fifty-eight schools, and more than 5,300 full-time staff members, including over 3,100 teachers.

Proposed *amicus* **Washoe County School District** (“WCSD”) is a public school district providing public education to students in Washoe County, Nevada, including the cities of Reno and Sparks, and the unincorporated communities of Verdi, Incline Village, and Gerlach. WCSD is the second-largest school district in Nevada with approximately 63,000 students enrolled in ninety-three schools. In February 2015, WCSD adopted Administrative Regulation 5161, which provides that transgender students shall have access to restrooms, locker rooms, and other use facilities that correspond to the gender identity expressed by the student and asserted at school.

Proposed *amicus* **James Morse, Sr., Ed.D.**, is the Superintendent of Schools for the Oyster River Cooperative School District, serving approximately 2,100 students across four schools in Durham, Lee, and Madbury, New Hampshire. Before serving as Superintendent for Oyster River, Dr. Morse served as the superintendent for the Portland School District—Maine’s largest school district. Dr. Morse has worked in public education for forty years, including thirty

years as a superintendent, three years as an assistant superintendent, and seven years as a principal. In September 2015, Dr. Morse implemented the state’s first public school policy that defines the terms “gender identity,” “gender expression,” “transgender,” and “cisgender” and provides for a written plan related to privacy and gender identity disclosure. The policy also provides transgender students access to bathrooms and locker rooms in accordance with their gender identity, and provides alternative, private facilities for all students should they choose to use them.

Proposed *amicus* **Thomas Smith, Ed.D.**, is the Superintendent of Schools at Hopewell Valley Regional School District, a comprehensive regional public school district serving approximately 4,000 students in preschool through twelfth grade from three communities in Mercer County, New Jersey. Dr. Smith has worked in the education field for over twenty years and has been Superintendent at Hopewell for over six years. Hopewell has provided transgender students access to facilities in accordance with their gender identity since at least 2009, and Dr. Smith has consulted with administrators throughout the state about Hopewell’s experience with inclusive policies for transgender students.

Proposed *amicus* **John O’Reilly** is the Principal of the Academy of Arts and Letters, Public School/Middle School 492 (“A&L”) in Brooklyn, New York. A&L educates students from kindergarten through the eighth grade, and adopted an

inclusive policy for transgender students four years ago. After Mr. O'Reilly implemented A&L's policy, the New York City ("NYC") Department of Education issued similar guidelines requiring equal opportunity and access for transgender students. A&L is part of the NYC Department of Education, which is the largest school district in the nation, serving 1.1 million students in over 1,800 schools.

Proposed *amicus* **Heidi Carter** is the former chair of the Durham Public Schools Board of Education in Durham, North Carolina. She served as chair for the past four years, and on the board for a total of twelve years until the end of her term in June 2016. Durham Public Schools is one of the ten-largest school districts in North Carolina, comprising over forty schools and educating approximately 33,500 students from pre-kindergarten through high school. It is one of the top-thirty school districts in the nation for employing National Board Certified Teachers, and two of its schools were included on *US News & World Report's* "Best High Schools" list in 2015. The Durham Public Schools Board of Education approved a resolution opposing H.B. 2, and in April 2016 revised its non-discrimination policy to prohibit discrimination based on gender identity.

Proposed *amicus* **Rudy Rudolph**, is a longtime administrator for the Portland Public Schools ("PPS"), Portland, Oregon, the largest school district in the state with approximately 49,000 students, 90 schools, and 50 special-needs

sites maintained within the district. Ms. Rudolph is currently a Project Manager for the Equity Department for PPS. She has spearheaded a group of administrators and allies in the district to facilitate the full inclusion of LGBTQ students, and continues to work closely with schools throughout PPS in supporting the inclusion and success of all students, including transgender students. Ms. Rudolph is also involved in the ongoing development, implementation, and improvement of support for transgender students, staff, and families.

Proposed *amicus* **Peyton Chapman** has been the principal of the 1,700-student Lincoln High School in Portland, Oregon for ten years. She has also been a vice principal at another high school, and taught grades 6-12 for eight years, in both high- and low-poverty schools. Ms. Chapman holds a Master's Degree in Teaching and a *Juris Doctor* degree. She has worked closely with School Psychologist Jim Hanson to expand Lincoln's community-based "Health Action Network" stakeholder group, implement gender equity professional development for staff, coaches and parents, and to empower student voices through diversity clubs such as Lincoln's Queer Straight Alliance. Ms. Chapman has been interviewed by the Associated Press and a local NBC television affiliate regarding her experience with policies that support transgender students.

Proposed *amicus* **Rachel Santa, Ed.D.**, is the Director of Special Education for the Cumberland, Rhode Island School District, which serves approximately

4,500 students. Dr. Santa has worked in special education since 1990 and has over twelve years of experience in school administration and providing services for students in the public school setting. The Rhode Island Interscholastic League policies provide transgender students access to bathrooms and locker rooms and participation in team sports in accordance with their gender identity. Dr. Santa was an integral part of Cumberland School District's unanimous passage of an official district-wide policy this year that gives all students an opportunity to use alternative facilities should they feel uncomfortable using a gender-designated facility for any reason. Dr. Santa works in collaboration with school committees in developing policies, processes and procedures that support the equitable education of all students.

Proposed *amicus* **Lindsey Pollock, Ed.D.**, is the Principal of a Montessori magnet school in Houston, Texas that serves approximately 760 students from pre-kindergarten through eighth grade. She has served as principal of her school since July 2008. In 2014, Dr. Pollock provided an interview to the cable news outlet CNN regarding her school's policy supporting transgender students. *6 Ways to Embrace Gender Differences at School* (Oct. 3, 2014), available at <http://www.cnn.com/2014/10/03/living/children-gender-inclusive-schools/> (last accessed October 25, 2016).

Proposed *amicus* **Brian Schaffer** is the Principal of Lamoille Union High School in Hyde Park, Vermont. Mr. Schaffer has sixteen years of experience as an educator and school administrator, including nine years as Principal. He was selected as the 2016 Vermont Principal of the Year by the National Association of Secondary School Principals, and as the 2015 Outstanding Educator of the Year by Outright Vermont.

Proposed *amicus* **Lisa Love** is the Manager of Health Education for Seattle Public Schools (“SPS”), a school district which educates approximately 53,000 students in 97 schools. Ms. Love’s position with SPS includes providing technical assistance to families and staff seeking support for LGBT students, training staff on LGBT issues, and developing district policies and procedures. Ms. Love has been in the field of education for almost 20 years, and directed the efforts that led to SPS’s adoption in 2012 of a formal superintendent procedure that respects students’ gender identity.

Proposed *amicus* **Dylan Pauly** is General Counsel for Madison Metropolitan School District (“MMSD”) in Madison, Wisconsin, the second largest school district in the state with more than 27,000 students. Ms. Pauly drafted MMSD’s policy for transgender students, and has presented the policy to the Wisconsin Association of School Boards and the National School Boards Association. Ms. Pauly also supervises the district’s Title IX investigator. Proposed *amicus* **Sherie**

Hohs is a Social Worker with MMSD with twelve years of experience in the district. Her work focuses on supporting the needs of LGBTQ students, providing professional development trainings to staff, and working with parents and community partners. Ms. Pauly and Ms. Hohs both consult with administrators across the state and from other parts of the country about inclusive policies for transgender students.

Proposed *amicus* **Bryan Davis, Ph.D.**, is Superintendent of Shorewood School District, which serves approximately 2,000 students in Shorewood, Wisconsin. Dr. Davis has eighteen years of experience in the education field, including six years as a superintendent and eight years as a principal. Proposed *amicus* **Paru Shah, Ph.D.**, is President of Shorewood's Board of Education. Dr. Shah has been a school board member since January 2014 and an associate professor at the University of Wisconsin-Milwaukee since September 2011. In February 2014, the Shorewood School Board approved Policy 411- Equal Educational Opportunities as well as Guideline 411- Nondiscrimination Related to Students Who Are Transgender and Students Nonconforming to Gender Role Stereotypes. In May 2016, the U.S. Department of Education cited the Shorewood School District in a report highlighting school districts across the nation that are at the forefront of emerging policies and practices for supporting transgender students.

REASONS FOR GRANTING PROPOSED *AMICI CURIAE* PARTICIPATION

Rule 29 of the Federal Rules of Appellate Procedure provides that a party seeking leave to file an *amicus curiae* brief must state its “interest,” and “the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.” Fed. R. App. P. 29(b). Leave to file *amicus curiae* briefs may be freely granted. *See Neonatology Assocs., P.A. v. Comm’r*, 293 F.3d 128, 133 (3d Cir. 2002) (Alito, J.) (“[O]ur court would be well advised to grant motions for leave to file amicus briefs unless it is obvious that the proposed briefs do not meet Rule 29’s criteria as broadly interpreted. I believe that this is consistent with the predominant practice in the courts of appeals.”); *see also Stuart v. Huff*, 706 F.3d 345, 355 (4th Cir. 2013) (“*amici* often make useful contributions to litigation”).

As described in the Statement of Interest above, proposed *amici curiae* represent a diverse array of school officials from across the United States, with years of collective experience in developing, implementing, and enforcing policies that ensure access to school facilities consistent with all students’ gender identity, including transgender students. They are collectively responsible for the education, safety, and wellbeing of **1.4 million students** each year. Proposed *amici curiae* are particularly well-situated to respond to some of the hypothetical concerns raised by Defendant-Appellee Patrick McCrory and

Intervenors/Defendants-Appellees Phil Berger and Tim Moore (collectively, “Appellees”) in response to Plaintiffs-Appellants’ claims, because they have addressed the same hypothetical concerns in their own schools and districts.

Specifically, as educators and administrators who have been at the forefront of responding to issues similar to those raised in the instant case, proposed *amici curiae* are well-situated to provide the Court with experience-based information about some of the unfounded fears and concerns that arise when schools integrate transgender students into gender-specific restrooms and locker rooms, including the fear that some individuals might use an inclusive policy to gain access to the facilities of another gender for an improper purpose. Proposed *amici curiae* have found such fears and concerns to be wholly unfounded in practice.

Recognizing the value of educators’ real-world experiences, this Court has granted leave to file *amici curiae* briefs. *See, e.g., Belk v. Charlotte-Mecklenburg Bd. of Educ.*, 269 F.3d 305 (4th Cir. 2001) (*amici curiae* participation by the National School Boards Association and North Carolina School Boards Association); *Penn Advertising v. Mayor of Baltimore*, 101 F.3d 332 (4th Cir. 1996) (*amici curiae* participation by the Maryland Congress of Parents and Teachers). Indeed, in October 2015, the Court granted leave to file a previous version of the proposed *amici curiae* brief in *G.G. v. Gloucester County School Board*, Case No. 15-2056. The Court should do the same here.

CONCLUSION

For all of the reasons above, proposed *amici curiae* respectfully seek this Court's permission to file the accompanying Proposed *Amici Curiae* Brief of School Administrators From California, Colorado, District of Columbia, Florida, Illinois, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Hampshire, New Jersey, New York, North Carolina, Oregon, Rhode Island, Texas, Vermont, Washington, and Wisconsin California, District of Columbia, Florida, Illinois, Kentucky, Massachusetts, Minnesota, New York, Oregon, Washington, and Wisconsin in Support of Plaintiffs-Appellants.

Dated: October 25, 2016

Respectfully submitted,
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CERTIFICATE OF COMPLIANCE

1. This brief complies with the page limitation of Fed. R. App. P. 27(d)(2) because it is fewer than 20 pages.

2. This brief 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 this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Times New Roman style, with 14-point font.

DATED: October 25, 2016

/s/ Cynthia Cook Robertson
Cynthia Cook Robertson

CERTIFICATE OF SERVICE

I hereby certify that on October 25, 2016, I effected service upon counsel for all parties by electronically filing the foregoing with the Clerk of the Court using the CM/ECF system.

/s/ Cynthia Cook Robertson

Cynthia Cook Robertson
Counsel for Proposed Amici Curiae