

No. 18-35708  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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PARENTS FOR PRIVACY; KRIS GOLLY and JON GOLLY, individually  
and as guardians ad litem for A.G.; NICOLE LILLY; MELISSA GREGORY,  
individually and as guardian ad litem for T.F.; and PARENTS RIGHTS IN  
EDUCATION, an Oregon nonprofit corporation,  
Plaintiffs-Appellants,

v.

DALLAS SCHOOL DISTRICT NO. 2; OREGON DEPARTMENT OF  
EDUCATION; GOVERNOR KATE BROWN, in her official capacity as  
SUPERINTENDENT OF PUBLIC INSTRUCTION; UNITED STATES  
DEPARTMENT OF EDUCATION; BETSY DEVOS, in her official capacity  
as United States Secretary of Education as successor to JOHN B. KING, JR.;  
UNITED STATES DEPARTMENT OF JUSTICE; JEFF SESSIONS, in his  
official capacity as United States Attorney General,  
as successor to LORETTA F. LYNCH,  
Defendants-Appellees,

BASIC RIGHTS OREGON,  
Intervenor-Defendant-Appellee.

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On Appeal from the United States District Court for the District of Oregon  
Portland Division, No. 3:17-cv-01813-HZ  
Honorable Marco A. Hernandez

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**SUPPLEMENTAL EXCERPTS OF RECORD OF  
INTERVENOR-DEFENDANT-APPELLEE  
BASIC RIGHTS OREGON**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

PARENTS FOR PRIVACY; KRIS GOLLY )  
and JON GOLLY, individually [and )  
as guardians ad litem for A.G.]; )  
LINDSAY GOLLY; NICOLE LILLIE; )  
MELISSA GREGORY, individually )  
and as guardian ad litem for )  
T.F.; and PARENTS RIGHTS IN )  
EDUCATION, an Oregon nonprofit )  
corporation, )

Plaintiffs, )

vs. )

DALLAS SCHOOL DISTRICT NO. 2; )  
OREGON DEPARTMENT OF EDUCATION; )  
GOVERNOR KATE BROWN, in her )  
official capacity as the )  
Superintendent of Public )  
Instruction; and UNITED STATES )  
DEPARTMENT OF EDUCATION; BETSY )  
DEVOS, in her official capacity )  
as United States Secretary of )  
Education as successor to JOHN )  
B. KING, JR.; JEFF SESSIONS, in )  
his official capacity as United )  
States Attorney General, as )  
successor to LORETTA F. LYNCH, )

Defendants. )

and )

BASIC RIGHTS OREGON, )

Defendant-Intervenor. )  
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No. 3:17-cv-01813-HZ

May 23, 2018

Portland, Oregon

**MOTION HEARING**

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE MARCO A. HERNANDEZ

UNITED STATES DISTRICT COURT JUDGE

APPEARANCES

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ALSO PRESENT:

Dustin Buehler, deputy general counsel  
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COURT REPORTER:

Nancy M. Walker, CSR, RMR, CRR  
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1 some -- at least one school board meeting, where people in the  
2 community expressed their displeasure with it. And so we can  
3 assume that the school board in some fashion has ratified  
4 that, which means that perhaps it extends beyond Student A,  
5 but that's not really clear at this point.

6 So if it's limited to Student A, then it's not  
7 something that's generally applicable. And to the extent that  
8 the plaintiffs have argued -- the Gollys in particular have  
9 argued that this infringes their free exercise of religion, it  
10 cannot be justified on a rational basis standard.

11 And I would also point out that there are a number of  
12 allegations in the Complaint which address why it is the  
13 School District's statement that there's nothing to indicate  
14 that this has impacted the free exercise of their religion for  
15 the Golly family, when it points out that it's contrary to the  
16 teaching of their kids at home -- and to the extent that  
17 something happens at school which works at cross-purposes with  
18 that, the Gollys have every right to say that that's  
19 interfering with their free exercise of religion.

20 THE COURT: Have any of the Gollys actually  
21 encountered the situation that you're most concerned about,  
22 and that is a transgender student in either a bathroom or a  
23 shower or anything like that?

24 MR. GREY: Not to this point, Your Honor.

25 THE COURT: Have any of the plaintiffs encountered

1 that?

2 MR. GREY: Not to my knowledge.

3 THE COURT: Does that matter?

4 MR. GREY: Well, again, what we're saying is that  
5 even the District's own policies say that we need to be  
6 mindful of the reasonable fears and the psychological  
7 well-being of students. And if the Student Safety Plan is  
8 intended to extend beyond Student A, then arguably that is  
9 policy which means that anybody that comes on the school  
10 campus would be able to avail themselves of whichever  
11 facilities they choose to, which means the members of the  
12 community who come for an event --

13 THE COURT: The harm that you're describing isn't  
14 harm that has been realized as a result of somebody  
15 encountering somebody. The harm that you're describing is the  
16 risk that that might happen.

17 MR. GREY: Correct, which we have alleged. And I  
18 believe the allegations are sufficient to --

19 THE COURT: So your response to my question is: It  
20 doesn't matter that an encounter has not ever occurred between  
21 any of the plaintiffs and a transgender student in the  
22 facilities that you're most concerned about, which are showers  
23 and bathrooms.

24 MR. GREY: I would say that that's -- that's correct.  
25 And I believe it's going too far to say that there has to have

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I certify, by signing below, that the foregoing is a correct transcript of the record of proceedings in the above-titled cause. A transcript without an original signature, conformed signature or digitally signed signature is not certified.

*/s/ Nancy M. Walker*

*9-26-18*

\_\_\_\_\_  
NANCY M. WALKER, CSR, RMR, CRR  
Official Court Reporter  
Oregon CSR No. 90-0091

\_\_\_\_\_  
DATE

## **CERTIFICATE OF SERVICE**

Case No. 18-35708

I hereby certify that on March 4, 2019, I caused the foregoing Supplemental Excerpts of Record to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

s/ Peter D. Hawkes

Peter D. Hawkes

Of Attorneys for Intervenor-Defendant-  
Appellee Basic Rights Oregon