Case No. 18-35708

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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; WILLIAM P. BARR, in his official capacity as United States Attorney General, as successor to JEFFERSON B. SESSIONS III,

Defendants-Appellees.

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

REPLY BRIEF OF APPELLANTS

Herbert G. Grey, OSB #810250
4800 SW Griffith Drive, Suite 320
Beaverton, OR 97005-8716
Telephone: 503-641-4908

J. Ryan Adams, OSB # 150778
Email: ryan@ruralbusinessattorneys.com
181 N. Grant Street, Suite 212
Canby, OR 97013
Telephone: 503-266-5590

Of Attorneys for Plaintiffs-Appellants

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INTRODUCTION

Despite the best efforts found in Appellees' response, and their *Amici*'s, arduous support to the contrary, the underlying premise in this matter is relatively simple: whether the extension of the recognized fundamental right to privacy should continue to those who are often the most vulnerable in our society, and whether it is the job of a district court to unilaterally alter the plain text of a long recognized statutory system. Although this case may be controversial within the purview of today's society, there are genuine questions of law which remain unanswered.

Dallas School District ("Appellee" or "District") adopted a new policy (the "Student Safety Plan") beginning in the 2016-17 school year that separates privacy facilities like locker rooms and restrooms based on students' *subjective perception* of their own gender rather than on the *objective basis* of their sex. In so doing, the school transformed those facilities designed to protect persons based on anatomical differences between the two sexes into places of vulnerability where students see, and are seen, in various phases of undress by persons of the opposite sex.

While Appellees, and their *Amici*, scoff at the notion that members of the opposite biological sex may react with fear, embarrassment, or general trepidation by being forced to undress in front of one another, the underlying fact remains that

schools have separate facilities for boys and girls to protect *each* student's right to privacy regardless of an individual's perception of what they believe their gender to be. No response has been proffered as to why a transgender student's subjective feelings should be prioritized over a non-transgender student.

Despite Appellees' characterizations of Appellants' arguments as "idiosyncratic" (DSD, pp. 21-22) and "novel" (BRO, p.6), Appellants' arguments are not revolutionary; leading advocates on privacy issues have long acknowledged and recognized this right. "Separate places to disrobe, sleep, perform personal bodily functions are permitted, in some situations required, by regard for individual privacy. Individual privacy, a right of constitutional dimension, is appropriately harmonized with the equality principle." Ruth Bader Ginsburg, *The Fear of the Equal Rights Amendment*, The Washington Post, (April 7, 1975). The right to bodily privacy from persons of the opposite sex has been recognized not only under the Fourth Amendment but also the Fourteenth Amendment. *See Doe v. Luzerne County*, 660 F.3d 169, 175-76 n.5 (3d Cir. 2011) (recognizing a Fourteenth Amendment fundamental right to bodily privacy from persons of the opposite sex viewing ones partially clothed body).

Appellees and their *Amici* seek to deconstruct the meaning of "sex" so that it is no longer grounded in human reproductive nature and the biological differences between male and female, but instead is based on nothing more than one's

perception of their gender identity. Regardless of their attempt to manipulate language, one's understanding of bodily privacy has always involved a particular sensitivity to the anatomical differences between the sexes. This expectation of bodily privacy is deeply rooted in American tradition, and the governmental violation of such privacy disregards one's modesty, dignity, and sexual privacy in a way that is inconsistent with ordered liberty.

I. THE LOWER COURT COMMITTED REVERSIBLE ERROR BY FAILING TO ALLOW APPELLANTS LEAVE TO REPLEAD.

Dismissal of a complaint without leave to amend is improper unless it is clear, upon *de novo* review, that the complaint could not be saved by *any* amendment. *Thinket Ink Information Res., Inc. v. Sun Microsystems, Inc.*, 368 F.3d 1053, 1061 (9th Cir. 2004); *Eminence Capital v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) (finding abuse of discretion where district court dismissed complaint with prejudice); *Lee v. City of Los Angeles*, 250 F.3d 668, 692 (9th Cir. 2001) (finding district court abused discretion in dismissing claim without leave to amend); *Polich v. Burlington N., Inc.*, 942 F.2d 1467, 1472 (9th Cir 1991). Under *Polich,* the district court erred in dismissing Appellants' complaint without leave to replead, and its judgment should be reversed.

This error is compounded when considering that, at the motion to dismiss stage of litigation, the complainants' allegations are presumed true. *Daniels–Hall v.*

Nat'l Educ. Ass'n, 629 F.3d 992, 998 (9th Cir. 2010). This is simply because the purpose of a hearing on a motion to dismiss is for the district court to examine the sufficiency of the pleadings. All allegations of material fact are taken as true and construed in the light most favorable to the non-moving party. *Sanders v. Kennedy*, 794 F.2d 478, 481 (9th Cir.1986); *North Star Int'l v. Arizona Corp. Comm'n*, 720 F.2d 578, 580 (9th Cir.1983).

It is axiomatic that "[t]he motion to dismiss for failure to state a claim is viewed with disfavor and is rarely granted." *Gilligan v. Jamco Development*, 108 F.3d 246, 249 (9th Cir. 1999).

"[F]or a complaint to survive a motion to dismiss, the non-conclusory factual content, and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the plaintiff to relief." *Moss v. United States Secret Serv.,* 572 F.3d 962, 969 (9th Cir. 2009).

"A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "[O]nce a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 563 (2007). While it is true, however, that the court need "not assume

the truth of legal conclusions merely because they are cast in the form of factual allegations." *Id*, and "a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions," *Twombly* at 555, Appellants clearly satisfied these requirements.

Appellants' complaint alleges: (1) that federal defendants unilaterally redefined "sex" to include "gender identity" for purposes of Title IX (Complaint, ¶¶ 1, 49-73); (2) that plaintiffs are directly impacted by the new "federal rule" *and* adoption of the Student Safety Plan (Complaint, ¶¶ 11, 27, 49-73); (3) that the federal defendants have exercised their authority to adopt the new legislative rule and to initiate enforcement actions against various school districts and the State of North Carolina (Complaint, ¶¶ 27-30, 32-34, 61-74); and (4) that in so doing, federal defendants have created a hostile environment and violated plaintiffs' privacy rights, parental rights, and religious rights under the Religious Freedom and Restoration Act and the First Amendment (Complaint, ¶¶ 37-38, 43-49). Plaintiffs further allege that the Dallas School District adopted the Student Safety Plan in response to action by the federal defendants and others (Complaint, ¶¶ 40, 75, 126).

Appellees may disagree with Appellants' allegations, but they are sufficient to satisfy pleading standards and withstand a motion to dismiss. Moreover, it is unclear how or when Appellants could have had or requested opportunity to replead as Appellees argue (BRO, p.6).

A. Appellants Satisfied the Three-Prong Approach for Article III Standing.

To have Article III standing, a plaintiff must show that (1) it suffered an "injury in fact," (2) arising out of the defendant's conduct, and (3) "it must be 'likely,' as opposed to 'speculative,' that the injury will be redressed by a favorable decision." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992).

As to the first prong, federal Appellees do not challenge Appellants' allegations of injury, indeed, the district court acknowledged as much in their opinion, but instead federal Appellees deflect all responsibility for any injuries to the Dallas School District. *See*, Motion, pp. 7, 8 ("Any injuries that plaintiffs may be suffering could be caused only by the Dallas School District and its Student Safety Plan"). They simply disclaim as implausible that adoption of the Student Safety Plan was caused by federal action with nothing other than self-serving argument. They misrepresent the allegations of the complaint against federal Appellees as based only on the Student Safety Plan (Motion, p. 8) and reject out of hand, and without authority, allegations that their redefinition of "sex" to include "gender identity" was the "root cause" for adoption of the Student Safety Plan. *Id*. In reality, such allegations expressly implicate both federal action and the Student Safety Plan. Complaint, ¶¶ 1, 11 32-34, 39-40.

Causation, the second-prong, requires showing that an injury is "fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court." *Bennett v. Spear*, 520 U.S. 154, 167 (1997). An indirect injury, however, "does not in itself preclude standing." *Warth v. Seldin*, 422 U.S. 490, 504 (1975), because "[c]ausation may be found even if there are multiple links in the chain connecting the defendant's unlawful conduct to the plaintiff's injury, and there's no requirement that the defendant's conduct comprise the last link in the chain." *Mendia v. Garcia*, 768 F.3d 1009, 1012 (9th Cir. 2014) (reversing a trial court's dismissal based on lack of standing) (citing *Bennett*, 520 U.S. at 167). As this Court has previously noted, "what matters is not the 'length of the chain of causation,' but rather the 'plausibility of the links that comprise the chain[.]'" *Nat'l Audubon Soc'y, Inc. v. Davis*, 307 F.3d 835, 849 (9th Cir. 2002) (upholding associational standing for group plaintiffs, even where there was a chain of events by multiple parties leading to the alleged injury) (quoting *Autolog Corp. v. Regan*, 731 F.2d 25, 31 (D.C. Cir. 1984)). Appellants here have stated their valid claim against Appellees and have offered a plausible connection between the actions taken by Appellees and the injury suffered to Appellants. Accordingly, the second-prong is satisfied.

The third-prong, redressability, is also satisfied. In this instance, a plaintiff must show that its requested relief will redress its alleged injury. *Steel Co. v. Citizens*

for a Better Env't, 523 U.S. 83, 103 (1998). The concept of redressability "has been ingrained in our jurisprudence from the beginning," the point of which is to determine "whether a plaintiff 'personally would benefit in a tangible way from the court's intervention.'" *Steel Co.*, 523 U.S. at 103 n.5, (quoting *Warth v. Seldin*, 422 U.S. 490, 508 (1975)). It is immaterial whether federal withdrawal of guidance documents would motivate Dallas School District to withdraw the Student Safety Plan. *See* Motion, pp. 10-11. Discovery will determine all the input of the various defendants (and perhaps others) in the development and adoption of the Student Safety Plan.

It is sufficient that Appellants alleged the impact of federal guidance and enforcement, and that the relief they seek is partially declaratory and injunctive, including the court requiring the federal defendants to remove guidance documents (some supposedly withdrawn, yet still posted publicly) from their websites and restraining them from unilaterally redefining "sex" to include "gender identity." Complaint, ¶¶ 1, 27-30, 32-34, 39-40. Ex. K to Complaint, pp. 3-4. Complaint, Prayer for Relief, p. 63 ¶¶ B, C.

B. Notwithstanding Satisfying Standing, Denial of a Motion to Amend Was Improper.

Leave to amend should be granted if underlying facts provide proper grounds for relief, or if the complaint can be saved by amendment. *Breier v. Northern*

California Bowling Proprietors' Ass'n, 316 F.2d 787, 789–90 (9th Cir.1963); *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 701 (9th Cir 1988). This standing is construed generously. *Balisteri*, at 701; *Scott v. Eversole Mortuary*, 522 F.2d 1110, 1116 (9th Cir.1975). For example, in *Scott*, this Court reversed the district court's denial of leave to amend because the Court could "conceive of facts" that would render the claim viable and could "discern from the record no reason why leave to amend should be denied." *Scott*, 522 F.2d at 1116.

Similarly, in *Balisteri*, this Court affirmed the standard recognized in *Breier* which noted that "leave to amend should be granted if it appears at all possible that the plaintiff can correct the defect." *Breier*, at 790.

Such a standard is easily met here. The Court could conceive of facts which would constitute a legitimate cause of action, because the Complaint alleges facts which, if true, would be a proper subject to relief. *Balisteri*, at 701.

II. APPELLEES HAVE VIOLATED APPELLANTS' FUNDAMENTAL RIGHT TO DIRECT THE CARE, EDUCATION, AND UPBRINGING OF THEIR CHILDREN.

The district court set aside ninety-six years of federal jurisprudence when it dismissed Appellants' claims alleging a violation of the fundamental right to direct the care, education, and upbringing of their children. Ironically, the district court itself noted, and then ignored, that federal courts have long recognized this Fourteenth Amendment right. *See, e.g.*, *Meyer v. Nebraska*, 262 U.S. 390 (1923);

Pierce v. Society of Sisters, 268 U.S. 510 (1925); *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943); *Troxel v. Granville*, 530 U.S. 57 (2000).

This Court has acknowledged that the "Supreme Court has held that the right of parents to make decisions concerning the care, custody, and control of their children is a fundamental liberty interest protected by the Due Process Clause." *Fields v. Palmdale Sch. Dist.*, 427 F.3d 1197, 1204 (9th Cir. 2005) (citing *Troxel v. Granville*, 530 U.S. 57). In *Fields*, this Court too noted and ignored such a liberty interest, then extended it beyond a curriculum context where it has a contrary impact. *Id*.

The liberty interest at issue here, the interest of parents in the care, education, and control of their children, is, as the *Troxel* court noted, "perhaps the oldest of the fundamental liberty interests" still recognized. *Troxel*, 530 U.S. at 65-66. This liberty interest protects the rights of parents to "establish a home and bring up children" and "to control the education of their own." *Id.*; *see also*, *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) (the liberty of parents and guardians includes the right "to direct the upbringing and education of children under their control…It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for

obligations the state can neither supply nor hinder.") (citing *Pierce v. Society of Sisters*, 268 U.S. 510).

The historical underpinnings of this right, articulated in *Pierce* and its progeny, compels the conclusion that the imposition here violates constitutionally protected liberty interests.

A. This Right Extends to Many Areas of Family Life.

The Fourteenth Amendment liberty interest grants parents the right to decide what type of school their child will attend, to decide whether their child may learn a foreign language, to decide that religious beliefs compel exemption from compulsory school education, and to decide whether to allow visitation with other family members. *Troxel,* 530 U.S. 57 (2000).

In *Wisconsin v. Yoder*, 406 U.S. 205 (1972), the Supreme Court explained that religion is also an aspect of the fundamental right elucidated in *Pierce*. The *Yoder* court characterized the right as "the traditional interest of parents with respect to the religious upbringing of their children," *Yoder*, 406 U.S., at 214, and explained that "the values of parental direction of the religious upbringing and education of their children in their early and formative years have a high place in our society." *Id.* at 213.

Beyond these constitutional rights, parents also have statutory rights over their children's education. For illustrative example, in 2002, the United States Congress enacted a federal law that no student can be required to take a survey concerning sexual behavior or attitudes unless the school provides parents with the survey before administering the survey to students and receives consent to administer the survey. 20 U.S.C. § 1232h. In addition, many states, including Oregon, have in place laws regulating public school education that require schools to allow parents to opt their children out of certain situations concerning sexual right and sex education. *See* ORS 336.465. These federal and state laws are further evidence of the fact that the parental right to control their children's exposure to sexual education is deeply rooted in our nation's concept of ordered liberty.

In sum, the right of parents to direct the religious upbringing of their children, including religious matters, is an established right. Sincerely-held religious beliefs direct a family's mode of life, and, unsurprisingly, direct decisions on life-defining topics such as sexual activity and education. The proposition that parents have a right to direct the introduction and flow of sexual information to their children follows from these principles.

B. <u>The Fundamental Right of Parents to Direct the Upbringing of Their Children Extends Beyond the Schoolhouse Door.</u>

Under the district court's decision, parents' fundamental rights are eliminated for the period of time that the child is attending public school. ER 59-60. To the contrary, students in our educational system do not leave their constitutionally protected freedoms at the schoolhouse door. *Tinker*, 393 U.S. 503, 506. Nor do parents lose their right to parent simply because their child attends public school. Indeed, the Supreme Court has recognized that "[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools." *Shelton v. Tucker*, 364 U.S. 479, 487 (1960). School districts educate the young to be productive citizens. To ensure that important principles of our government are not discounted as mere platitudes, courts must give scrupulous protection to their rights at an early stage. *Tinker*, 393 U.S. at 507. From this, it is clear that the school officials had a duty to respect the constitutional rights of Appellants, and the actions of Appellees were dismissive of those rights.

III. APPELLEES AND THEIR *AMICI* SEEK TO REDEFINE THE WORDS "SEX" AND "GENDER IDENTITY" TO BECOME SYNONOMOUS, THEREBY USURPING AUTHORITY FROM TITLE IX.

Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. ("Title IX") is a federal statute which prohibits discrimination in education programs and activities on the basis of sex. Title IX's prohibition against discrimination expressly states: "No person in the United States shall, on the basis of sex, be

excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a). Neither the statutory language of Title IX nor its implementing regulations (*see* 34 C.F.R. Part 106) mention gender identity, gender expression, and/or gender transition.

To the contrary, the Title IX regulations recognize and protect the interest of sexual privacy by, for example, explicitly stating that a "recipient may provide separate toilet, locker room, and shower facilities *on the basis of sex*" (34 C.F.R. § 106.33) (emphasis added) and that nothing contained in the regulations "shall prevent a recipient from considering an employee's sex in relation to employment in a locker room or toilet facility used only by members of one sex." 34 C.F.R. § 106.61.

Still further, the legislative history of Title IX contains nothing that even remotely suggests the intent of Congress in passing Title IX was to apply to anything other than one's *biological sex*; that is, the sex which the individual was born to. To the contrary, the legislative history makes it abundantly clear that the intent of Congress in enacting Title IX was to prevent discrimination on account of one's biological sex. *See, e.g.*, 117 Cong. Rec. 30,155 - 30,158 (August 5, 1971); 117

Cong. Rec. 39,248 - 39,261 (November 4, 1971). Simply put, laws using the word "sex" refer to a biological reality conceptualized and identified based on an organism's organization with respect to sexual reproduction.

A. The Lower Court Failed to Realize that Title IX is Implicated in this Matter.

The District's policy fails to conform with Title IX, which was created to prevent discrimination on the basis of "sex." Title IX's language uses the phrases "one sex," "the other sex," and "both sexes." The regulations likewise require that facilities "of one sex" shall be comparable to those for "the other sex." *See* 34 C.F.R. §§106.32-106.33. This language explicitly emphasizes the binary view of sex, not the non-binary "gender identity."

Any reading to the contrary simply runs contra to well-established statutory construction principles; it is a fundamental canon of statutory construction that words of a statute must be read in their context and with view to their place in the overall statutory scheme. *National Association of Home Builders v. Defenders of Wildlife*, 551 U.S. 644 (2007); *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000); *Davis v. Michigan Dept. of Treasury*, 489 U.S. 803, 809 (1989)

Further, the normal rule of statutory construction is that identical words used in different parts of the same act are intended to have the same meaning. *See, e.g.*,

Healthkeepers, Inc. v. Richmond Ambulance Auth., 642 F.3d 466, 472 (4th Cir.2011) ("Canons of construction…require that, to the extent possible, identical terms or phrases used in different parts of the same statute be interpreted as having the same meaning"). This presumption of consistency ensures that the statutory scheme is coherent and dependable. *See, Barnhart v. Sigmon Coal Co., Inc.*, 534 U.S. 438 (2002); *Ali v. Federal Bureau of Prisons*, 552 U.S. 214 (2008). Departure from recognized statutory principles, especially in a situation such as this, leads not to clarity and certainty, but rather to incoherence and confusion. *See, e.g.*, *Lynch v. Alworth–Stephens Co.*, 267 U.S. 364, 370 (1925) ("[T]he plain, obvious, and rational meaning of a statute is always to be preferred to any curious, narrow, hidden sense that nothing but the exigency of a hard case and the ingenuity and study of an acute and powerful intellect would discover."); *King v. Burwell*, 135 S.Ct. 2480, 2497 (2015) (Scalia, J., dissenting) ("I wholeheartedly agree with the Court that sound interpretation requires paying attention to the whole law, not homing in on isolated words or even isolated sections. Context always matters. Let us not forget, however, why context matters: It is a tool for understanding the terms of the law, not an excuse for rewriting them"). Indeed, it is the role of the Congress, not the judiciary, to rewrite statutes.

B. The Lower Court Failed to Recognize that "Gender" and "Sex" Are Two Separate Words.

The history of the words "gender," "gender identity," and "transgender" shows that they are not the same as "sex." Each of these words was coined precisely in contradistinction to "sex". *See* Ryan T. Anderson, PhD, and Melody Wood, *Gender Identity Policies in Schools: What Congress, the Courts, and the Trump Administration Should Do*, (March 23, 2017), at 11–12.

Recent federal actions show that "sex" does not mean "gender identity." Presumably, Congress, and the Executive Branch, know how to make policy on the basis of "gender identity" and when they want to do so. Any effort to understand, rather than to rewrite, a law must accept and apply the presumption that lawmakers use words in "their natural and ordinary signification." *Pensacola Telegraph Co. v. Western Union Telegraph Co.*, 96 U.S. 1, 12 (1878). More bluntly, Congress says what it says, when it says it. *See, e.g.*, *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241–242 (1989); *United States v. Goldenberg*, 168 U.S. 95, 102–103 (1897); *Oneale v. Thornton*, 6 Cranch 53, 68, (1810). When the words of a statute are unambiguous, then this first canon is also the last: "judicial inquiry is complete." *Rubin v. United States*, 449 U.S. 424, 430 (1981); *Connecticut National Bank v. Germain*, 503 U.S. 249, 254 (1992).

The words in Title IX are unambiguous; the words "gender identity" are found nowhere in the statute. But notwithstanding this clear language, Congress has *specifically* chosen to use the words "gender identity" alongside the word "sex" in other statutes. For example, Congress has specifically included "gender identity"—as distinct from "sex" and listed it alongside "sex"—in two bills: The Violence Against Women Reauthorization Act of 2013 and The Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act of 2009. *See*, 42 U.S.C. §§ 14011 – 14016; 18 U.S.C. § 249.

The distinct inclusion of both gender identity and sex protections shows that gender identity was never intended to fall within the definition of sex as it pertains to Title IX. If Congress had intended to include gender identity protections within the scope of Title IX, it could have specified its inclusion, but it did no such thing. By overlooking this clear distinction, the lower court erred by not only misconstruing, and mis-defining, federal law, but by also inconsistently applying Title IX privacy protections.

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CONCLUSION

For the aforementioned reasons, Appellants ask this Court to reverse the District Court's determination.

Respectfully submitted this 25th day of March, 2019.

s/ J. Ryan Adams
181 N. Grant Street, Suite 212
Canby, OR 97013
Telephone: 503-266-5590
Email: ryan@ruralbusinessattorneys.com

s/ Herbert G. Grey
Herbert G. Grey, OSB No. 810250
4800 SW Griffith Drive, Suite 320
Beaverton, OR 97005-8716
Telephone: 503-641-4908
Email: herb@greylaw.org

Of Attorneys for Appellants

CERTIFICATE OF COMPLIANCE

Ninth Circuit Case No. 18-35708

I am the attorney for the Appellants.

I hereby certify that this brief contains **4061** words, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

I certify that this brief complies with the word limit of Cir. R. 32-1.

Dated: March 25, 2019

s/ J. Ryan Adams

CERTIFICATE OF SERVICE

Ninth Circuit Case No. 18-35708

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on March 25, 2019.

I certify that all participants in the case are registered CM/ECF users, and that service will be accomplished by the appellate CM/ECF system.

s/ J. Ryan Adams