

No. 19-1952

IN THE
United States Court of Appeals
FOR THE FOURTH CIRCUIT

GAVIN GRIMM,

Plaintiff-Appellee,

v.

GLOUCESTER COUNTY SCHOOL BOARD,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA, NEWPORT NEWS DIVISION

**BRIEF OF AMICI CURIAE PFLAG, INC., TRANS YOUTH EQUALITY FOUNDATION,
GENDER SPECTRUM, GENDER DIVERSITY, CAMPAIGN FOR SOUTHERN EQUALITY,
HE SHE ZE AND WE, SIDE BY SIDE, AND GENDER BENDERS
IN SUPPORT OF PLAINTIFF-APPELLEE AND AFFIRMANCE OF THE DISTRICT
COURT'S DECISION GRANTING APPELLEE'S MOTION FOR SUMMARY JUDGMENT**

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 19-1952 Caption: Gavin Grimm v. Gloucester County School Board

Pursuant to FRAP 26.1 and Local Rule 26.1,

PFLAG, Inc.
(name of party/amicus)

who is amicus, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? YES NO

2. Does party/amicus have any parent corporations? YES NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? YES NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(a)(2)(B))? YES NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) YES NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? YES NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: /s/ Maureen P. Alger

Date: 11/25/2019

Counsel for: PFLAG, Inc.

CERTIFICATE OF SERVICE

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No. 19-1952 Caption: Gavin Grimm v. Gloucester County School Board

Pursuant to FRAP 26.1 and Local Rule 26.1,

Trans Youth Equality Foundation
(name of party/amicus)

who is amicus, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? YES NO

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Date: 11/25/2019

Counsel for: Trans Youth Equality Foundation

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No. 19-1952 Caption: Gavin Grimm v. Gloucester County School Board

Pursuant to FRAP 26.1 and Local Rule 26.1,

Gender Spectrum Charitable Fund
(name of party/amicus)

who is _____ amicus _____, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? YES NO

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Date: 11/25/2019

Counsel for: Gender Spectrum Charitable Fund

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No. 19-1952 Caption: Gavin Grimm v. Gloucester County School Board

Pursuant to FRAP 26.1 and Local Rule 26.1,

Gender Diversity
(name of party/amicus)

who is _____ amicus _____, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? YES NO

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Signature: /s/ Maureen P. Alger

Date: 11/25/2019

Counsel for: Gender Diversity

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Signature: /s/ Maureen P. Alger

Date: 11/25/2019

Counsel for: Campaign For Southern Equality

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Date: 11/25/2019

Counsel for: He She Ze and We

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Signature: /s/ Maureen P. Alger

Date: 11/25/2019

Counsel for: Side by Side

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Signature: /s/ Maureen P. Alger

Date: 11/25/2019

Counsel for: Gender Benders

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INTRODUCTION

Like all parents, Kimberly Shappley wants what is best for her daughter. Since age two, Kimberley's daughter K expressed that she was a girl, but Kimberly initially refused to accept that K was transgender. At four, K was so depressed she seemed to be giving up on life, and Kimberly realized the damage she and others were causing by not accepting K as her true self. After consulting with professionals, Kimberly decided to let K live as a girl. Since then, K has blossomed. Despite this, K's experience at school has been challenging. Most significantly, the school refused to allow K to use the girls' restroom, which isolated K from her peers. Worried about the damaging effects this policy was having on her daughter, Kimberley moved her family so K could attend a school that treated K as female in all respects, including using the girls' restroom.

In North Carolina, Anna and Robert Allen¹ and their transgender daughter D have struggled with frequently shifting rules about where D can use the restroom at school. D had been using the girls' restroom for two years without incident, but when HB2² passed two years ago, she was suddenly excluded. Like K, D was relegated to using a separate, single-user restroom. D was devastated, not understanding why she

¹ "Anna Allen" and "Robert Allen" are pseudonyms, which are being used because of the potential harm of disclosing that their daughter is transgender.

² N.C. Gen. Stat. Ann. § 143-760, *repealed in part*, 2017 N.C. Laws S.L. 2017-4 (H.B. 142).

had to be separated from her friends. Although D later returned to using the girls' restroom, the uncertainty about how she will be treated in the future remains a constant worry.

The challenges faced by K and D are, unfortunately, not isolated or rare. Every day, thousands of transgender youth across America face discrimination, hostility, and even violence. Some of their parents have chosen to share their very personal stories here to help the Court understand the children affected by the policies at issue and the harsh realities they confront daily.

INTEREST OF AMICI CURIAE³

Amici are eight organizations that combat injustice against transgender students and work with families to advocate for open, supportive schools where transgender youth can lead authentic lives without facing discrimination.

PFLAG, Inc. is the nation's largest LGBTQ family and ally nonprofit organization, with more than 200,000 members and supporters and 400 affiliates. PFLAG's members are parents, children, grandparents, siblings, other family members, allies, and friends of lesbian, gay, bisexual, transgender, and queer (LGBTQ) individuals. PFLAG is committed to advancing equality and full societal

³ Counsel for amici obtained consent from counsel of all parties prior to filing this brief. No party's counsel authored this brief in whole or in part or contributed money that was intended to fund preparing or submitting this brief, and no one other than amici, their members, or their counsel contributed money intended to fund preparing or submitting this brief.

affirmation of LGBTQ people through its mission of support, education, and advocacy.

Trans Youth Equality Foundation, founded by the mother of a transgender child, is a national non-profit organization that provides education, advocacy, and support for transgender youth and their families. TYEF's mission is to share information about the unique needs of this community, partnering with families, educators, and service providers to help foster a healthy, caring, and safe environment for all transgender children.

Gender Spectrum is a non-profit organization whose mission is to create a gender-inclusive world for all children. Gender Spectrum provides an array of services to help youth, families, schools, and organizations understand and address gender identity and expression, including running conferences and trainings for schools and youth-serving professionals, and coordinating online national support groups for transgender youth and their families.

Gender Diversity, an organization led by trans people and parents of trans children, is dedicated to increasing awareness and understanding of the wide range of gender variations in children, adolescents, and adults. Gender Diversity works with schools to create gender-inclusive learning environments, identify measures to decrease bullying, and provide assistance for gender-transitioning students. Through trainings, group meetings, individual consultations, and conferences, Gender

Diversity provides support to families raising transgender and gender-diverse children and teens.

Campaign for Southern Equality promotes LGBTQ equality across the South. Launched in 2011, CSE has worked with thousands of LGBTQ Southerners, including transgender youth and their families, to advance pro-LGBTQ policies at local, state, and federal levels. CSE provides a variety of services, including funding and training to help local student organizers advocate for equality in their schools and hometowns.

He She Ze and We is an organization based in Virginia that provides a support network for families of transgender youth, in order to educate and empower families to navigate the complex journey of gender identity. HSZW collaborates with other organizations to advocate for the well-being of transgender individuals in their schools and in their greater communities.

Side by Side is the largest and oldest organization in Virginia serving lesbian, gay, bisexual, transgender, queer, and questioning youth. Founded in 1991 as ROSMY (Richmond Organization for Sexual Minority Youth), Side by Side provides support groups for students in Richmond, Charlottesville, and Petersburg, and trainings for schools throughout Virginia. Side by Side is dedicated to creating supportive communities where Virginia's LGBTQ+ youth can define themselves, belong, and flourish.

Gender Benders is a grassroots organization serving hundreds of transgender individuals and their families across the southeastern United States. Gender Benders helps transgender people of all ages connect with one another, build networks, and access resources that will help them live full and healthy lives. Through various advocacy efforts, Gender Benders also works to educate communities and create safer, more inclusive spaces throughout the South where transgender individuals can thrive.

Given their missions, *amici* have a strong interest in ensuring the right of transgender children to be treated equally in all respects at school, including use of restrooms. These organizations, and the parents of transgender children with whom they work, are uniquely positioned to address how restrictions on restroom use can have profound, deleterious effects on transgender children, leading to social stigma, discrimination, bullying, and depression. They can also speak to the positive effects of supportive schools that allow transgender children to be their true selves.

SUMMARY OF ARGUMENT

Amici respectfully request that this Court affirm the district court's decision, which granted Appellee's motion for summary judgment and held that the School Board's policy prohibiting a transgender student from using facilities that match his gender identity and refusal to update Appellee's school transcript to conform to the "male" designation on his birth certificate violated the Fourteenth Amendment and

Title IX. *Amici* offer the unique perspective of parents of transgender children who can explain the negative impact of discriminatory policies on transgender children in school. Through personal stories, *amici* seek to provide a broader view of transgender youth, and help the Court understand the critical importance of letting transgender children be themselves in all aspects of their lives, including at school. These stories illustrate how preventing transgender students from using the same restrooms as other students, consistent with their gender identity, denies them the opportunity to participate as full and equal members of the school community.

ARGUMENT

I. Treating Transgender Students in a Manner Inconsistent with Their Gender Identity Constitutes Discrimination and Causes Serious Harm.

Gender identity is a person's inner sense of belonging to a particular gender. It is an innate, core component of human identity, with a strong biological basis.⁴ Children typically become aware of, and often articulate, their gender identity between ages two and four.⁵

⁴ Blaise Vanderhorst, *Whither Lies the Self: Intersex & Transgender Individuals & a Proposal for Brain-Based Legal Sex*, 9 HARVARD L. & POL'Y REV. 241, 259-60 (2015) (reviewing scientific research); Milton Diamond, *Transsexuality among Twins: Identity Concordance, Transition, Rearing, and Orientation*, 14 INT'L J. OF TRANSGENDERISM 24 (2013).

⁵ Am. Psychiatric Ass'n, *Diagnostic & Statistical Manual of Mental Disorders* ("APA Manual") 451 (5th ed. 2013).

Separating children from their peers based on an innate characteristic “generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.” *Brown v. Bd. of Educ.*, 347 U.S. 483, 494 (1954). “The impact is greater when it has the sanction of the law; for the policy . . . is usually interpreted as denoting the inferiority of the [separated] group. A sense of inferiority affects the motivation of a child to learn.” *Id.* (internal quotation and citations omitted). Not surprisingly, when transgender students are treated differently or segregated from their same-gender peers, the impact can be devastating. *See, e.g., Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 529 (3d Cir. 2018), *cert. denied*, 139 S. Ct. 2636 (2019) (“When transgender students face discrimination in schools, the risk to their wellbeing cannot be overstated—indeed, it can be life threatening.”); *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1045 (7th Cir. 2017), *cert. dismissed*, 138 S. Ct. 1260 (2018) (school district stigmatized student “when it dismissed him to a separate bathroom” because he was transgender); *G.G. v. Gloucester Cty. Sch. Bd.*, 822 F.3d 709, 728 (4th Cir. 2016) (Davis, J., concurring), *vacated on other grounds*, 137 S. Ct. 1239 (2017) (forcing student to use separate restroom “accentuat[es] his ‘otherness,’ undermin[es] his identity formation, and imped[es] his medically necessary social transition process. The shame of being singled out and stigmatized . . . every time he needs to use the restroom is a devastating blow . . . and places him at extreme risk

for immediate and long-term psychological harm.”) (internal quotation and citation omitted).

Medical research confirms what these courts have found. According to established medical consensus, the only effective treatment for gender dysphoria⁶ is to enable a transgender person to live fully in accordance with the person’s gender identity. Social transition, the only treatment available to children with gender dysphoria prior to puberty, may include adopting a new haircut, new clothes, a new name, and different pronouns, and interacting with peers and one’s environment in a manner that better matches the child’s gender identity. A critical part of any such transition is allowing the child to use the same restrooms as other students, consistent with their gender identity. As illustrated by the family stories below, social transition significantly eases the symptoms of gender dysphoria, prevents severe harm, and allows transgender children to thrive.⁷ Isolating transgender children from the restrooms used by other students, consistent with their gender identity, constitutes discrimination and causes harm.⁸ The harm is long lasting and can have a profound

⁶ Gender dysphoria is the scientific term for a “marked incongruence” between one’s gender identity and assigned sex and is accompanied by clinically significant distress unless treated. *APA Manual*, 451.

⁷ World Prof’l Ass’n for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, & Gender-Nonconforming People* (2012), <https://goo.gl/WiHTmz>; Bethany Gibson & Anita J. Catlin, *Care of the Child with the Desire to Change Gender – Part 1*, 36 *PEDIATRIC NURSING* 53, 55 (2010).

⁸ LGBTQ youth who experience victimization because of their gender expression are twice as likely to not pursue a secondary education. GLSEN, *The 2017 National*

negative impact on a child's life.⁹ Subjecting transgender youth to this harm serves no legitimate governmental interest and cannot survive any level of Equal Protection review. *See Bd. of Educ. of the Highland Local Sch. Dist. v. U.S. Dep't of Educ.*, 208 F. Supp. 3d 850, 877-78 (S.D. Ohio 2016), *stay pending appeal denied*, *Dodds v. U.S. Dep't of Educ.*, 845 F.3d 217, 221-22 (6th Cir. 2016).

II. The Experiences of Parents Raising Transgender Children Demonstrate that Transgender Students Face Severe Harm When Their Gender Identity Is Not Affirmed.

Parents raising transgender children witness firsthand the harm caused by discriminatory school policies that isolate transgender youth and exclude them from the same facilities used by other students. Many parents of transgender students have watched their children experience severe distress when their schools implement policies that target them for different treatment. By contrast, when schools support transgender students and allow them to participate equally in the school community,

School Climate Survey: The experiences of lesbian, gay, bisexual, transgender, and queer youth in our nation's schools, <https://www.glsen.org/school-climate-survey>; Kosciw, J. G., Greytak, E. A., Zongrone, A. D., Clark, C. M., & Truong, N. L. (2018).

⁹ Nearly two percent of high school students identify as transgender. In 2017, thirty-five percent of those transgender students had attempted suicide in the previous year. Ctr. for Disease Control & Prevention, *Transgender Identity & Experiences of Violence Victimization, Substance Use, Suicide Risk, & Sexual Risk Behaviors Among High School Students — 19 States and Large Urban School Districts*, https://www.cdc.gov/mmwr/volumes/68/wr/mm6803a3.htm?s_cid=mm6803a3_w; Johns M.M., Lowry R., Andrzejewski J., et al. (2017) (“Ctr. for Disease Control & Prevention”).

parents see their children grow and thrive. The stories of the families below demonstrate why schools must not be allowed to discriminate against transgender students.

Kimberly Shappley

Kimberly Shappley lives in Austin, Texas. She recently moved from a small town outside of Houston, which she describes as “ultra-conservative.” Kimberly was born in Alabama and raised in Mississippi as an evangelical Christian. She is an ordained minister and serves as a Faith Outreach Coordinator at Equality Texas. Kimberly has seven children ranging in age from seven to thirty-two. Her eight-year-old daughter, K, is transgender.



Kimberly and K

From the age of two, K showed signs that she identified as a girl. She turned her t-shirts into skirts and once tried to wear clothing from a neighbor's girl doll—even though it was far too small for her.

At first, Kimberly tried to force K to act more “like a boy” and punished her, at times even spanking her, when K acted “like a girl.” Kimberly recalls insisting to K, “No, you are not a girl. You are a boy.” Kimberly demanded that K admit she was a boy, but K would cry, “Mommy, you know I’m a girl!” Looking back, Kimberly recognizes that K “always knew who she was.” She regrets forcing K to live as a boy, but, at the time, did not know what else to do, especially given family and community pressure to “do something” about K’s “girly” behavior.

When K was four, Kimberly began to see things differently. She noticed a dramatic, positive change when she allowed K to have “girl things.” For example, at K’s fourth birthday party, K’s uncle gave her a wizard’s robe, which she believed was a dress. K cried with joy, hugging the robe. Another day, Kimberly found K crying when she picked her up from daycare. K had not been invited to her friend’s princess birthday party because her friend’s dad said, “it was for girls, and K was a freak.” Kimberly knew then she “had to do something different.” She began researching gender identity and gender dysphoria in children.

Around this time, Kimberly remembers hearing K praying and asking “the Lord to take [K] home to be with Jesus and never come back.” She recognized that K was depressed and “starting to just give up”:

She wasn't a happy kid anymore. She was an angry, sad kid, crying for, trying to die, really. And talking about stuff around death . . . about animals that die and people that die, and it just became really weird . . . [unlike] conversations I'd had with my other kids . . . and this was not normal.

Kimberly conferred with K's pediatrician and other medical professionals. Based on their advice, she reluctantly began allowing K to wear girls' undergarments. The day K came home to find girls' undergarments in her drawer, “she fell to the floor” and started crying out of happiness. One day, however, K's daycare teacher discovered that she was wearing girls' undergarments and forced her to change. When Kimberly picked her up, K's teacher threw the girls' undergarments at Kimberly and told her “this will never happen again here.” Kimberly never took K back to that daycare.

Kimberly then decided to let K socially transition. As a self-described conservative Christian, Kimberly did not come to the decision easily. She felt conflicted about “what the Lord want[ed] from” her. Over time, though, she realized that her problem was not with God, but with what other people might think of her. Kimberly now believes she is “a better Christian because of K.” She explains:

Honestly, being the mom of a transgender kid has made me kinder, more compassionate, empathetic, loving, less judgmental. . . . I am a better human being for being K's mom. . . . I think that I am stronger in my faith because of K, and . . . I portray more of what He wants us to be. I still go to church . . . but I am a totally different person, and I think that the greatest gift that I've ever been given is just being K's mom.

It was only after K transitioned that Kimberly truly understood how unhappy K had been. Kimberly explains, "It wasn't that my child was now happy, it's that my kid was now joyful. . . . She was validated, and [there] was a huge difference in everything about her."

When K entered kindergarten, the school district refused to allow her to use the girls' restroom. She could use the gender-neutral restroom when she was in her classroom, but was otherwise required to use the nurse's restroom. Kimberly contested the policy and tried to educate school officials, but the situation deteriorated. Starting in first grade, K no longer had the option of using a gender-neutral restroom inside the classroom. Additionally, the school revised its policy so that K was not even allowed to use the nurse's restroom. Instead, her only option was to use the staff restroom. Because of the stigma and isolation K felt being separated from her peers when using the staff restroom, K tried to avoid using the restroom altogether.

The exclusion had devastating and traumatic consequences on her well-being. When K tried to use the girls' restroom on occasion in first grade, she was physically

removed by school staff, which was humiliating and painful. She also became the target of bullying. Due to the lasting effects of exclusion from the restroom, K is now under the care of a urologist and a counselor.

Kimberly felt helpless and frustrated and, in the spring of 2018, made the difficult choice to move her family to Austin so K could attend school where she could use the girls' restroom. K is much more comfortable with the arrangement at her new school and is excelling. She has even started speaking at school district events, and is becoming an outspoken activist and advocate. K and Kimberly were recently featured in an Emmy Award-winning mini-documentary, "Trans in America: Texas Strong," and K gave the acceptance speech alongside the director.¹⁰

Amy and Jonathan Adams

Amy and Jonathan Adams live in a rural community in Stafford County, Virginia with their three children, ages ten to seventeen. Jonathan is a project manager for a commercial construction firm, and Amy works part-time as a photographer and real estate agent. Their fifteen-year-old daughter, M, is transgender.

¹⁰ Sources: Dec. 13, 2016, Jan. 11, 2018, and Nov. 11, 2019 Telephone interviews with and Oct. 31, 2018 Email from Kimberly Shappley.



Amy and M

From a very young age, M showed signs that she identified as a girl. At four, M would wear Amy's high heels. By six, she became increasingly interested in Amy's clothes and makeup, and asked to try on her mother's wedding dress. The dress "looked like a comforter on her tiny body," but M beamed when she put it on, looking happier than Amy had ever seen her. At eight, M's grandmother bought M an Easter dress that looked like "the top of a birthday cake." M wanted to wear it everywhere.

Both Amy and Jonathan wanted to support M but, at the time, struggled to understand how to do so. Neither was familiar with the term "transgender," and both feared that letting M dress as she wanted would lead to rejection and pain. Unsure what to do, Amy remembers just "muddling through it." They let M dress

and express herself as she wished at home, but told her “we’re not ready for that; the world isn’t ready for that” when M wanted to wear a dress or wig to the grocery store.

At nine, M enjoyed watching makeup tutorials on YouTube. One night Amy noticed that the person in one of the videos looked like a boy. Curious, Amy started paying more attention to the videos M chose, and realized that many of the people in them were either transgender or gender nonconforming. Prompted by this realization, Amy started learning as much as she could about gender nonconforming children and soon found statistics about the alarmingly high suicide rates for transgender kids who are not supported at home or at school.

This new information transformed Amy: “It opened up a new world for me; I realized there isn’t one way to be a boy or a girl, and while we were never *not* supportive of M, we hadn’t been as supportive as we needed to be.” Around this time, M told her mother: “I don’t think I just want to wear dresses sometimes; I want to wear dresses all the time. I don’t want to be a girl sometimes, I want to be a girl *all* the time. I’m transgender.”

Prior to her transition, M had had a very hard time at school. By second grade, M faced near constant bullying. She had often played with the girls but, as she moved from preschool into elementary school, this became more complicated: “she was too masculine for the girls, but too feminine for the boys.”

The boys' restroom in particular, began to feel like an unsafe space for M. One day before the end of third grade, M had gone to school wearing a little mascara and lip gloss. A teacher noticed and told her to go to the boys' restroom to wash it off. When she did, the boys in the bathroom made fun of her and called her nasty names. "M didn't know where she fit; she knew where she *wanted* to fit, but she just couldn't." She became extremely quiet and withdrawn.

With her parents support, M started fourth grade as a girl. She went to her fourth-grade orientation in the prettiest dress she had, with painted nails, and a little pair of wedges that made her feel beautiful. One boy commented, in a matter-of-fact tone: "You're wearing girl clothes now." M nodded, and that was it. The bullying stopped. For years, M had not known where she fit and the kids around her had not known what to make of her. "When M came to school as a girl, they understood." This triggered a change for Jonathan, too: "Any reservations he had were gone. He saw M change emotionally. She had a light in her eyes that hadn't been there before."

Although her peers accepted M, not all of their parents did. M started fourth grade using a male staff restroom but, after getting all the necessary approvals, transitioned to using the girls' restroom. She used the girls' restroom for several weeks without incident until a small group of parents complained, and the school changed course, forcing M to use the boys' restroom again. M was devastated.

She did not go to school for several days. Amy met with the principal and insisted that M would not go back to using the boys' restroom. For the rest of elementary school, M used a single-stall staff restroom instead.

M continued to use a single-stall restroom in middle school. The restroom was much further away than the girls' restroom—a full five-minute walk from her classrooms—and using it meant losing instructional time. M really wanted to do well in school and became stressed every time she had to use the restroom and miss out on instruction. Her anxiety was amplified by her embarrassment at being singled out from her peers, who started asking: “Why are you using *that* bathroom?” M had gotten a brief taste of what it felt like to be treated like all the other girls, but now that the school was treating her differently, she felt like she wasn't “girl enough.”

M endured a particularly egregious incident at the beginning of eighth grade that made national headlines. M was in her physical education class when her school initiated a lock down drill and instructed students to barricade themselves in the boys' and girls' locker rooms. Up until this point, M had not been allowed to use the girls' locker room, and had always changed in the single-stall restroom. When the drill started, M's teachers did not know what to do. Initially, they told her to stay on the bleachers while all the other students retreated to the locker rooms. Then, they had her sit *outside* of the locker room. Finally, they decided she

should go in, but instructed her to sit immediately behind the door, rather than in the locker room itself, down a long hallway—where all her peers were. This played out in front of all of M’s classmates. M was mortified and had a panic attack.

There was a huge swell of support for M stemming from the media attention after this incident. The superintendent personally apologized to her. And, at a packed school board meeting a few weeks later, parents M had never met stood up for her and spoke about how wrong the school’s actions had been. Amy had never let M join her at a school board meeting before, but brought her this time: “I wanted her to see that there are great people who don’t even know her who care about her and support her.” The district updated its anti-discrimination policy shortly thereafter and, for the rest of eighth grade, M was allowed to use both the girls’ restroom and locker room, without incident. Her confidence soared.

Amy and Jonathan are extremely proud of M: “She had to grow up a little fast, but her experiences made her a really strong kid. She’s working really hard in school, and her teachers consider her a leader. M has become exactly who she was supposed to be.”¹¹

Wayne and Kelly Maines

Wayne and Kelly Maines recently moved to Austin, Texas. Wayne is Vice

¹¹ Source: Oct. 28, 2019 Telephone Interview with Amy Adams.

President of Safety and Operations at Austin Community College, and Kelly works for a Texas state representative. Wayne and Kelly have twenty-two-year-old identical twins, Jonas and Nicole. Nicole is transgender.



From left to right: Wayne, Nicole, Kelly, and Jonas

Wayne explains that Nicole always knew she was a girl. He recalls that when Nicole and her brother would play together, Nicole always played the “girl” while her brother played the “boy.” Nicole also consistently preferred “girl” things. By the time Nicole was four, Wayne recalls, “she was persistently telling us, ‘I hate my penis. When does my penis go away?’” As a self-described “conservative guy,” at the time Wayne had “no idea how to respond.”

Before she transitioned, Nicole was “a very angry, very depressed” child.

When Nicole was four, her parents bought her action figures for Christmas. Wayne recalls that he had “never seen a kid so despondent.” Kelly got upset and told him, “We’re not doing this anymore.” She took Nicole to the store and bought her the “girl toys” she wanted.

While Kelly was supportive of Nicole from early on, Wayne struggled to come to terms with the disappointment he felt at not having the life he envisioned with twin boys. Wayne recalls, “When I had my boys . . . I had these dreams of what my life with my children was going to be . . . And, man, was I wrong!” He struggled to understand why Nicole felt the way she did and hoped it was something she would outgrow. It was not until later, when he and Kelly consulted with medical professionals, that he learned “that it wasn’t anything we did.” Wayne regrets not supporting Nicole from a young age. He now knows that gender identity is “who they are. It’s in their brain, in their soul, and I fought it every step of the way.”

A pivotal moment for Wayne occurred when Nicole was around nine. By that time, Nicole had already gradually transitioned at school, but Wayne still had not completely accepted that he had a daughter and son rather than twin sons. Wayne recalls taking both children to the store and grabbing Jonas’s hand. Jonas pulled away. But Nicole grabbed her father’s hand, and they swung their arms “all the way into the store.” Wayne recalls: “It hit me like a ton of bricks. I [have] a beautiful daughter . . . she’s going to hold my hand until I die.”

Around twelve years ago, the family was unintentionally thrust into the public eye because of a long-fought battle with Nicole's school. Shortly after moving to Orono, Maine, when Nicole was in first grade, she began to gradually transition to living publicly as a girl. Initially, the school was supportive. Nicole grew her hair long and wore barrettes and girls' clothes. In fifth grade, Nicole legally changed her name. Wayne recalls, "For the first time in this kid's life, she was beaming, successful, not angry."

Not long after, however, a classmate's grandfather targeted Nicole and the school for allowing her to use the girls' restroom. The school told Nicole she could no longer use the girls' restroom and assigned Nicole a "bodyguard"—not to protect her, but to prevent her from using the girls' restroom. Wayne believes that Nicole's teachers "wanted to do the right thing" but "were afraid of losing their jobs."

Wayne and Kelly could not allow their daughter to live this way and decided to move Kelly and the twins to Portland, Maine. Wayne had to stay behind because of his job, and he commuted to see his family on weekends and holidays for five years. During this difficult time, Wayne and Kelly sued the Orono School District. After years of litigation, the Maine Supreme Court found that the school district violated the Maine Human Rights Act by prohibiting Nicole from using the girls' restroom.¹²

¹² See *Doe v. Reg'l Sch. Unit 26*, 86 A.3d 600, 603-04 (Me. 2014).

Nicole, who is pursuing a career as an actress, was cast last year as Supergirl's best friend on the CW network, playing the first transgender superhero on television. Nicole offers script advice to help the show handle sensitive gender identity conversations and engages in other advocacy work on issues affecting the trans community. Wayne and Kelly are also enthusiastic advocates for transgender children and their parents, and Wayne regularly counsels parents on how to start conversations with their schools. Wayne explains that kids like Nicole are “not hurting anybody” by using the restroom aligned with their gender identity and that “they want to grow and be successful and productive Americans, and it’s that simple. It’s not just about the [restrooms]. Every child has the right to the same educational experience.” Wayne describes his daughter as “probably one of the strongest people I’ve ever met who is also still one of the most vulnerable, and has had to deal with so much that it has just made me a better person, a better father, and a better husband to be around her . . . a better American.”¹³

Anna and Robert Allen¹⁴

Anna and Robert Allen live in North Carolina with their two biracial children, an eleven-year-old daughter and an eight-year-old son. Robert was career military but is now retired. Anna is a stay-at-home mom, who regularly volunteers at her

¹³ Sources: Feb. 14, 2017 and Nov. 8, 2019 Telephone Interviews with and Jan. 5, 2018 and Nov. 4, 2018 Emails from Wayne Maines.

¹⁴ As noted above, “Anna Allen” and “Robert Allen” are pseudonyms.

daughter's school. Their daughter, D, is transgender.

From the time she started preschool when she was two, D played primarily with girls. When she started dressing in a tutu from the dress-up box, "at first, everyone thought that was so funny and cute how a little boy would always dress up like a little ballerina. But it went on and on for months," says Anna. Anna recalls that D grew increasingly agitated about getting to preschool on time. "It took me literally months to figure out why she was so stressed out about being late. It was because she knew if she didn't get there when they opened, she wouldn't get to wear one of the princess dresses because all the other girls would have already taken those dresses."

Robert was taken aback by D's interest in girls' clothes and toys: "I just thought it was a phase, but it just kept going." He believed that once D was in kindergarten and there was no longer a dress-up box, the issue would go away. But getting D dressed for kindergarten was "a nightmare." At home, D insisted on wearing skirts and dresses, but she was not allowed to wear them outside the house. "We really, literally thought we were doing the best thing by steering her away, trying to lead her just to be a boy."

Anna began searching for information about boys who only played with girls and wore girls' clothes. "Everything I would put into Google about how she was acting, that's what would come up: transgender, transgender, transgender."

Anna and Robert found a therapist to work with D. After meeting with D for a few months, the therapist suggested that they let D go out in public dressed as a girl to see if she would lose interest or want to continue. They decided to give it a try, and Anna says she had never seen D happier than on that first outing dressed as a girl: “She was just skipping.”

The information they discovered on the rates of transgender children harming themselves terrified Anna and Robert. Robert remembers that they asked themselves: “Are we trying to satisfy ourselves, or are we trying to help our child?”

Anna recalls:

One of the things that I told my husband, I said, ‘what if we are in a car accident tomorrow and she dies, what is the one thing I’m going to regret? . . . I would regret, and I don’t think I could live with it, if in her short life . . . I never let her be who she was because I was so embarrassed and I was so scared of what other people were going to say about our family.’

The Allens’ parents were supportive of D from the start. Robert’s father, a Baptist minister, said, “You know, this is your child, what are you going to do? Are you not going to love your kids?” The Allens’ friends’ reaction was “a mixed bag.” Robert acknowledges that they lost some friends, but explains, “I’ll lose a friend all day long, but I’m not going to lose my child.”

Before the start of D’s first-grade year, the Allens met with school staff to discuss D’s transition. The principal was “100% on board” and told them: “This is confidential. This is medical information and nobody has any business knowing it.

And we're just going to treat this little girl for the girl she is." The Allens were relieved that the school would allow D to use the girls' restroom. They credit the principal with setting the tone, making it clear that D was a girl and would be treated like any other girl at the school.

D moved to a different public elementary school in second grade. Her previous principal helped the Allens explain to the new school that D used the girls' restroom with no problems and that there would not be a problem unless the school created one. The new school continued to allow D to use the girls' restroom.

In March of D's second-grade year, the North Carolina legislature passed HB2, which mandated that, in government buildings, individuals could only use restrooms corresponding to the sex on their birth certificates.¹⁵ On D's first day back at school after spring break, the principal called Anna and told her that D could no longer use the girls' restroom. The Allens had a meeting with D and her teacher to break the news. D cried. She said, "But why? But why? I just want to use the bathroom with my friends."

In spite of that new rule, D's teacher allowed her to use the girls' restroom if no other girls were in it. To avoid the humiliation of having to use the single-user restroom, D tried not to use the restroom during recess or at other times when others

¹⁵ N.C. Gen. Stat. Ann. § 143-760, *repealed in part*, 2017 N.C. Laws S.L. 2017-4 (H.B. 142); *see Carcaño v. McCrory*, 203 F. Supp. 3d 615, 626 (M.D.N.C. 2016).

were using it. Instead, she would ask for a hall pass during class, so she could go to the restroom by herself. After this Court issued its April 2016 decision in this case, Anna asked the principal to allow D to use the girls' restroom with the others again. The school agreed, and D continued to use the girls' restroom for the rest of elementary school. D started middle school this fall and has used the girls' restroom without incident. Even when times were difficult, D never wavered in her identity and now, with the support of her school and family, D has become a model student who is "thriving in every way."

The Allens emphasize that they have asked for anonymity here only because they live in a very conservative area and fear for D's safety and well-being. When the local television station profiled another local transgender girl, many viewers posted hateful comments on the story. Anna and Robert want both to protect D as much as they can and also let her grow up expressing her true identity: "[We] cannot let [our] kid go through living her life feeling ashamed of herself or feeling that something is wrong with her when there's nothing wrong with her. She is just a kid."¹⁶

¹⁶ Sources: Feb. 7, 2017 Telephone Interview with "Robert Allen" and "Anna Allen"; Nov. 11, 2019 Telephone Interview with "Anna Allen."

CONCLUSION

On behalf of parents of transgender children who want their children to be supported and treated equally, *amici* urge this Court to affirm the district court's decision granting Appellee's motion for summary judgment.

Respectfully submitted this the 25th day of November, 2019.

/s/ Maureen P. Alger

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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Campaign for Southern Equality, He She Ze and We, Side by Side, and Gender Benders as the

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