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November 22, 2021

Mr. David J. Smith, Clerk of Court
U.S. Court of Appeals for the 11th Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

Re: *Darcy Corbitt, et al. v. Taylor, et. al.*, No. 21-10486

Dear Mr. Smith:

On August 30, 2021, the State Defendants filed their reply brief in this case. One of Plaintiffs' equal-protection theories rests on the assumption that the State discriminates against transgender individuals when it aligns sex designations on its driver's licenses with those from birth certificates. Resp. Br. 17-18. But Plaintiffs provide no evidence to suggest the State's Policy resulted from discriminatory intent. A key issue the case presents is thus whether Plaintiffs can support a gender-discrimination claim under the Equal Protection Clause absent any showing of intentional or purposeful discrimination.

Last month, the Eleventh Circuit decided *Jones v. Latimer*, 15 F.4th 1062 (11th Cir. 2021). There, the Court held that appellants' failure to prove discriminatory intent doomed their equal-protection claim. *Id.* at 1065. The decision was clear: "A plaintiff bringing a gender discrimination claim under the Equal Protection Clause *may prevail only upon proof of intentional or purposeful discrimination.*" *Id.* (emphasis added). The Court explicitly rejected appellants' contention that disproportionate impact alone could suffice, explaining that while "discriminatory intent *and* disproportionate impact, *together*" may violate the Equal Protection Clause, such a claim cannot succeed "absent a showing of discriminatory intent." *Id.* at 1067 (emphasis added); *see also id.* at 1065 n.2 (reasoning that disparate impact alone is insufficient to support equal-protection claim).

The State Defendants' Opening Brief articulated this principle, arguing that Plaintiffs' transgender-based equal-protection claim could not succeed without

proof of discriminatory intent. Opening Br. at 13, 15-16, 25-27. Yet Plaintiffs did not even attempt to meet this requirement. Nor could they have, given that the testimony Plaintiffs elicited below showed that the State enacted its Policy as an accommodation, *see id.* at 26, Reply Br. 9-10—the very opposite of the discrimination on which Plaintiffs’ claim relies.

Just as in *Jones*, “[t]he equal protection gender discrimination claim [Plaintiffs] advanced can be sustained only upon a showing of discriminatory intent.” 15 F. 4th at 1067. So also as in *Jones*, “[b]ecause [Plaintiffs] did not attempt to make this showing, their Equal Protection Clause claim fails.” *Id.*

Respectfully submitted,

s/ Edmund G. LaCour Jr.
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CERTIFICATE OF COMPLIANCE

1. I certify that this document complies with the type-volume limitations set forth in Fed. R. App. P. 28(j) and 11th Cir. R. 28, I.O.P. 6. The document contains 336 words, including all headings, footnotes, and quotations, and excluding the parts of the brief exempted under Fed. R. App. P. 32(a)(7)(B)(iii).

2. In addition, 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 it has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in 14-point Times New Roman font.

/s/ Edmund G. LaCour Jr.

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Counsel for Appellants

CERTIFICATE OF INTERESTED PERSONS

In accordance with 11th Cir. R. 26.1-1(a)(3) and 26.1-2(b), undersigned counsel certifies that the persons and entities listed in the amended certificate of interested persons contained in Appellants' Reply Brief are all persons or entities known to undersigned counsel to have an interest in the outcome of this appeal.

/s/ Edmund G. LaCour Jr.
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Counsel for Appellants

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed on November 22, 2021 using the CM/ECF Document Filing System, which will send notification of such filing to all noticed parties.

/s/ Edmund G. LaCour Jr.

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