IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

REBECCA ROE, by and through her parents and next friends, Rachel and Ryan Roe, *et al.*, *Plaintiffs-Appellants*, v. DEBBIE CRITCHFIELD, in her official capacity as Idaho State Superintendent of Public Instruction, *et al.*, *Defendants-Appellees*.	No. 23-2807

PLAINTIFFS-APPELLANTS' REPLY IN SUPPORT OF MOTION FOR EXTENSION TO FILE OPENING BRIEF

Plaintiffs have sought an exceedingly modest 21-day extension for their opening brief in light of the significant time that motions in this case at both the appellate and district court levels has consumed over the last three weeks. That slim margin of modification to the briefing schedule will not make any practical difference to Defendants, and their contention to the contrary is not credible.

Plaintiffs have satisfied the two key requirements for an extension—diligence and substantial need—based on the work required for motion practice relating to an injunction pending appeal. Cir. Rule 31-2.2(b). That motion practice required quick action because it was needed to *preserve* the status quo, whereas Defendants wish to *change* the status quo. The law challenged here seeks to eject transgender students like Plaintiffs from school facilities matching their gender

identity on a statewide basis. If it took effect, Plaintiffs would have suffered specific, concrete, and immediate harm. In contrast, Defendants have not shown any "comparable harm" from maintaining the status quo—particularly for the 21-day margin at issue here. *Hecox v. Little*, 79 F.4th 1009, 1036 (9th Cir. 2023) ("A preliminary injunction does not appear to inflict any comparable harm to the [government], as the injunction expressly maintained the status quo.").

Defendants' generic claim that any injunction against any policy constitutes irreparable harm fails to address the specifics of this case. The absence of a statewide ban against transgender students' use of facilities matching their gender identity has *always* been the status quo in Idaho. In fact, Idaho schools, like those that Plaintiffs attend, have had policies expressly permitting transgender students to use such facilities for at least *seven years*. The injunction now in place merely preserves that status quo but does not require any Idaho school to adopt any new policy. Furthermore, although the law was signed on March 23, 2023, it did not take effect by its terms until July 1, 2023; thus, Idaho itself had no qualm with a months-long delay before the law took effect. The district court then granted a TRO in August to prevent the law from being enforced at the start of the 2023-24 school year and ultimately enjoined the law for nearly three months. Even after it denied a preliminary injunction, that court stated that its TRO would not expire for another 21 days. Plaintiffs' requested extension is also consistent with this Court's

order granting an injunction pending appeal, which observed that the standard for such an injunction is similar to the standard for preliminary injunctions. Dkt. 11.

The merits briefing is plainly a more substantial and complex endeavor than prior briefing in motion practice in this case, and Plaintiffs have sought the shortest possible extension that is reasonable under the circumstances. Plaintiffs' motion for a 21-day extension should be granted.

DATED: November 2, 2023

Respectfully submitted,

/s/ Peter C. Renn
Peter C. Renn
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.
800 S. Figueroa St., Ste. 1260
Los Angeles, CA 90017
Telephone: (213) 382-7600
prenn@lambdalegal.org

Counsel for Plaintiffs-Appellants

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Reply complies with the type-volume limitation of Fed. R. App. P. 27 because it contains 465 words. This Reply complies with the typeface and the type style requirements of Fed. R. App. P. 27 because this brief has been prepared in a proportionally spaced typeface using Word 14-point Times New Roman typeface.

/s/ Peter C. Renn
Peter C. Renn

Counsel for Plaintiffs-Appellants

CERTIFICATE OF SERVICE

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 ACMS system on November 2, 2023, and that service will be accomplished by the appellate ACMS system on all registered participants.

/s/ Peter C. Renn
Peter C. Renn

Counsel for Plaintiffs-Appellants