

No. 23-2807
**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.

On Appeal from the United States District Court for the District of Idaho
No. 1:23-cv-00315-DCN

**BRIEF OF *AMICI CURIAE* PFLAG, INC., PFLAG COEUR
D'ALENE/KOOTENAI COUNTY (IDAHO CHAPTER), PFLAG
MOSCOW (IDAHO CHAPTER), TRANS YOUTH EQUALITY
FOUNDATION, AND GENDER DIVERSITY IN SUPPORT OF
APPELLANTS AND SEEKING REVERSAL OF THE DISTRICT
COURT'S DECISION DENYING APPELLANT'S MOTION FOR
PRELIMINARY INJUNCTION**

SHAWN MEERKAMPER
TRANSGENDER LAW CENTER
P.O. Box 70976
Oakland, California 94612
(510) 587-9696
shawn@transgenderlawcenter.org

MAUREEN P. ALGER
COOLEY LLP
3175 Hanover Street
Palo Alto, California 94304
(650) 843-5000
malger@cooley.com

SHANNON MINTER
NATIONAL CENTER FOR LESBIAN
RIGHTS
870 Market Street, Suite 370
San Francisco, California 94102
(415) 365-1362
SMinter@nclrights.org

AUDREY J. MOTT-SMITH
EMILY J. BORN
COOLEY LLP
3 Embarcadero Center, 20th Floor
San Francisco, California 94111
(415) 693-2000
amottsmith@cooley.com
eborn@cooley.com

Counsel for Amici Curiae

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, *amici curiae* PFLAG, Inc., PFLAG Coeur D’Alene/Kootenai County (Idaho Chapter), PFLAG Moscow (Idaho Chapter), Trans Youth Equality Foundation, and Gender Diversity, by and through undersigned counsel, state that they are nonprofit organizations and associations of nonprofit organizations and therefore are not publicly held corporations that issue stock, nor do they have parent corporations.

Dated: November 29, 2023

/s/ Maureen P. Alger

MAUREEN P. ALGER (Cal. Bar No. 208522)
COOLEY LLP
3175 Hanover Street
Palo Alto, California 94304
Phone: (650) 843-5000
malger@cooley.com

Counsel for Amici Curiae

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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 years old, K was so depressed that she seemed to be giving up on life already, and Kimberly realized the damage she and others were causing K by not accepting K as her true self. After consulting with professionals, Kimberly decided to support K in expressing her true self and living as a girl. Since then, K has blossomed. But her experience at school has been challenging. Most significantly, K’s school did not allow her to use the girls’ restroom. This policy singled K out and kept her isolated and separated from her peers every time she needed to use the restroom. Kimberley was worried about the significant damaging effects this policy was having on her daughter. Ultimately, Kimberly made the very difficult decision to move her family so K could attend a school that allowed her to use the girls’ restroom.

Sara and John Allen’s¹ son, D, began living as a boy in second grade; he quickly shifted from seeming despondent to being engaged, enthusiastic, and smiling. However, he was soon prohibited from using either the boys’ or girls’

¹ “Sara Allen” and “John Allen” are pseudonyms, which are being used because of the potential harm that may arise from sharing publicly that their son is transgender.

restrooms and was forced to use limited gender-neutral restrooms instead. As a result, D felt isolated from his classmates, developed health problems, and became anxious and unhappy. Only after Sara and John initiated litigation against the school board was D allowed to use the boys' facilities, and his academic performance and general well-being temporarily improved. But, after years of being singled-out and stigmatized at school, D still suffers from low self-confidence and self-esteem and now, as a young adult, he continues to struggle.

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 while their parents worry about their safety. Some of those families 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 face daily.

INTEREST OF AMICI CURIAE²

Amici are national and local 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.

² The parties have consented to the filing of this amicus brief, and *amici* file this brief pursuant to that authority. *See* Fed. R. App. P. 29(a)(2). No party's counsel authored this brief in whole or in part, no party or party's counsel contributed money intended to fund preparation or submission of this brief, and no person other than

PFLAG, Inc. (“PFLAG”) is a national organization of LGBTQ+ people, parents, families, and allies who work together to create an equitable and inclusive world. PFLAG has over 325,000 members and supporters and more than 350 chapters from coast to coast who are leading with love to support families, educate allies, and advocate for just, equitable, and inclusive legislation and policies. Since the organization’s founding in 1973, PFLAG has worked every day to ensure LGBTQ+ people everywhere are safe, celebrated, empowered, and loved. **PFLAG Coeur D’Alene/Kootenai County** and **PFLAG Moscow** are two local Idaho chapters of PFLAG. PFLAG chapters share the same organizational mission to create a caring, just, and affirming world for LGBTQ+ people and those who love them.

Trans Youth Equality Foundation (“TYEF”) is a national non-profit organization that provides education, advocacy, and support for transgender children and their families, including by working with transgender children to provide them with safe, enriching spaces that allow them to develop affirming and enriching peer relationships. TYEF’s mission is to share information about the unique needs of this community, partnering with families and educators to help foster a healthy, caring, and safe environment for all transgender children.

amici and their counsel contributed money intended to fund preparation or submission of this brief. *See* Fed. R. App. P. 29(a)(4)(E).

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.

SUMMARY OF ARGUMENT

Amici request that this Court reverse the district court’s decision, which denied Appellant’s motion for a preliminary injunction to enjoin Idaho Senate Bill 1100 (“S.B. 1100”) from taking effect. S.B. 1100 would exclude Petitioner Rebecca Roe and all other transgender students in Idaho from school restrooms and facilities that match their gender identities. *Amici* offer the unique perspective of parents of transgender children who can explain the negative impacts of preventing transgender children from using the same facilities used by other students—and the positive impacts when supportive school policies allow transgender children to be themselves. Through the personal stories of these families, amici seek to provide a broader view of transgender youth and help the Court understand the critical importance of letting transgender children live authentically in all aspects of their

lives, including at school. These stories illustrate how preventing transgender students from using the same restrooms and school facilities 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 CAUSES SERIOUS HARM.

Gender identity reflects 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.³ Children typically become aware of, and often articulate, their gender identity between ages two and four.⁴

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

³ See Blaise Vanderhorst, *Whither Lies the Self: Intersex and Transgender Individuals and a Proposal for Brain-Based Legal Sex*, 9 Harv. 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). It is important to note that being transgender itself is not, as the American Psychiatric Association explains, a “mental disorder.” Am. Psych. Ass’n, *Gender Dysphoria Diagnosis*, <https://www.psychiatry.org/psychiatrists/diversity/education/transgender-and-gender-nonconforming-patients/gender-dysphoria-diagnosis>.

⁴ Am. Psychiatric Ass’n, *Diagnostic & Statistical Manual of Mental Disorders* 455 (5th ed. 2013).

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.* (citation and quotation marks 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) (“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) (school district stigmatized student “when it dismissed him to a separate bathroom” because he was transgender); *G.G. v. Gloucester Cnty. Sch. Bd.*, 822 F.3d 709, 728 (4th Cir. 2016) (Davis, J., concurring) (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”), *vacated on other grounds*, 137 S. Ct. 1239 (2017); *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586 (4th Cir. 2020) (“The stigma of being forced to use a separate restroom . . . ‘invites more scrutiny and attention’ from other students, ‘very publicly

branding all transgender students with a scarlet T””) (citations omitted), *rehearing en banc denied*, 976 F.3d 399 (2020).

Medical research confirms what these courts have acknowledged. According to established medical consensus, the only effective treatment for gender dysphoria, which can develop when a person experiences a mismatch between their experienced gender and assigned gender,⁵ 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, school-supported social transition significantly eases the symptoms of gender dysphoria, prevents severe harm, and allows transgender children to thrive.⁶ Indeed, gender-affirming school policies

⁵ 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. Am. Psychiatric Ass’n, *Diagnostic & Statistical Manual of Mental Disorders* 452 (5th ed. 2013).

⁶ World Prof’l Ass’n for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People* (2012), https://www.wpath.org/media/cms/Documents/SOC%20v7/SOC%20V7_English.p

dramatically improve transgender students' quality of life, not just during childhood and adolescence, but into adulthood as well. Transgender youth who have been in affirming school environments that support their gender identities have developmentally normal levels of depression and only minimal elevations in anxiety.⁷ And transgender youth who find mentors in teachers, staff members, and school administrators are “three times as likely to graduate from high school . . . and ha[ve] positive[] . . . engagement and connectedness to their school[s].”⁸

Conversely, isolating transgender children and excluding them from the restrooms used by other students, consistent with their gender identity, causes severe

df; Bethany Gibson & Anita J. Catlin, *Care of the Child with the Desire to Change Gender – Part 1*, 36 *Pediatric Nursing* 53, 55 (2010).

⁷ See Kristina R. Olson, et al., *Mental Health of Transgender Children Who Are Supported in Their Identities*, 137(3) *Pediatrics* 1 (Mar. 2016).

⁸ Enoch Leung, et al., *Social support in schools and related outcomes for LGBTQ youth: a scoping review*, 1 *Discover Educ.* 1, 11 (2022) (citations omitted).

harm.⁹ The harm is long lasting¹⁰ and can have a profound negative impact on a child's life.¹¹ 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 (S.D. Ohio 2016), *stay pending appeal denied*, *Dodds v. U.S. Dep't of Educ.*, 845 F.3d 217 (6th Cir. 2016).

⁹ Transgender and gender-questioning youth are more than twice as likely than their cisgender peers to miss school because they feel uncomfortable or unsafe. Kasey B. Jackman, et al., *Suicidality among Gender Minority Youth: Analysis of 2017 Youth Risk Behavior Survey Data*, 25(2) Archives of Suicide Research 208, 211 (2021); Joseph G. Kosciw, et al., GLSEN, *The 2021 National School Climate Survey: The experiences of LGBTQ+ youth in our nation's schools* (2022) ("Kosciw") at 12, <https://www.glsen.org/sites/default/files/2022-10/NSCS-2021-Full-Report.pdf> (nearly a third of LGBTQ students reported missing at least one day of school in the past month because they felt uncomfortable or unsafe).

¹⁰ LGBTQ youth who experience victimization because of their gender expression are twice as likely *not* to pursue a post-secondary education. Kosciw at xviii-xix, 36.

¹¹ Nearly two percent of high school students identify as transgender. In 2017, thirty-five percent of those transgender students had attempted suicide in the past year. Michelle M. Johns, et al., *Transgender Identity and Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High School Students — 19 States and Large Urban School Districts*, 2017, CDC Morbidity & Mortality Weekly Report, 68:67-71 (Jan. 25, 2019), https://www.cdc.gov/mmwr/volumes/68/wr/mm6803a3.htm?s_cid=mm6803a3_w. Over sixty percent of transgender and nonbinary youth surveyed in a major 2020 study reported engaging in self-harm, with a similar number saying they had experienced symptoms of major depressive disorder in the preceding *two weeks*. *See* The Trevor Project, *National Survey on LGBTQ Youth Mental Health*, 3 (2020).

II. The Experiences of Parents Raising Transgender Children Demonstrate that Transgender Students Face Severe Harm When They Are Isolated from and Treated Differently than Other Students.

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 watch their children experience significant distress when their schools implement policies that isolate and target them for different treatment. By contrast, when schools support transgender students and allow them to participate equally in the school community, parents see their children grow and thrive. The stories of the families below reflect this reality and demonstrate why schools must not be forced to discriminate against transgender students.

A. Kimberly Shappley – Niantic, Connecticut

Kimberly Shappley lives in Niantic, Connecticut, where she recently relocated. She moved from Austin, Texas, where she lived for several years after leaving 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 a registered nurse. Kimberly has seven children ranging in age from eleven to thirty-six. Her twelve-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, 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 came to believe 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 about the harm caused by singling out K for different treatment, but the situation only 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. 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. K stopped using the restroom during school hours, waiting until she could go home, causing long-term consequences for her bladder function. Six years later, K's bladder is still not functioning normally, and she has had to spend years under the care of an urologist.

Because of the school's treatment of K, in the spring of 2018, Kimberly made the difficult choice to uproot her family and move to Austin so K could attend school where she could use the girls' restroom. "[I]t takes every bit of my income to keep

[K] in a place with affirming schools where she is safe.” After starting at a supportive school, K thrived, and became an outspoken activist and advocate. In 2019, K and Kimberly were featured in an Emmy Award-winning mini-documentary, “Trans in America: Texas Strong,” and K gave the acceptance speech alongside the film’s director. In 2021, K testified at hearings in the Texas Senate about the potential harms of anti-trans legislation under consideration.

This year, however, given the passage of legislation in the state barring trans youth from accessing transition-related care, Kimberly felt that she and her family were no longer safe in Texas, even in Austin. She sold everything the family owned that would not fit in their car and relocated to Connecticut. The transition has been hard: Kimberly is a self-described “Southern girl” who feels like a “fish out of water” in Connecticut and believes she will “never be able to retire or recover financially . . . from all the times [the family] has had to move to keep [K] safe.” But she explained, “at least we don’t have laws directly targeting us here—we’re finally getting a chance to reset our fight or flight mode.” K is in a school that supports her and has a “good core group of five or six friends who are inseparable.” K’s friends “all know she’s transgender and bought K’s book,” “Joy, To the World,” which was published earlier this year.

Kimberly is extremely proud of K for both her personal strength and her advocacy: “She knows who she is and she’s a leader.” But what brings Kimberly

greatest joy is when K “gets to just be a normal kid.” K is “still doing speeches . . . but she also has sleepovers and spends the day taking her friends fishing,” without questions from her friends’ parents. “Now that [they]’re in a safer space,” the fact that K is transgender is “just not a big deal”: it is part of who K is without defining her and, for the first time, Kimberly is experiencing “a little bit of relief as a parent.”¹²

B. Sara and John Allen – Deltona, Florida¹³

Sara and John Allen live in Deltona, Florida with their four children, ages seventeen to twenty-nine. John is a sales and marketing representative for a power tool company, and Sara is a homemaker. Their twenty-one-year-old son, D, is transgender.

From a very young age, D seemed unhappy and distressed. In particular, getting dressed was very stressful. When D was three, he had a “complete meltdown” over wearing a “flower girl” dress for his parents’ wedding. He was miserable the entire day in the outfit and unable to enjoy the festivities. As he reached school age, getting dressed became a huge struggle, often taking over an

¹² Sources: December 13, 2016, January 11, 2018, November 11, 2019, November 11, 2021, and November 7, 2023 telephone interviews with and October 31, 2018 email from Kimberly Shappley.

¹³ As noted above, “Sara Allen” and “John Allen” are pseudonyms.

hour because he hated wearing “girls’ clothes.” He would kick and scream and tell his mother that he “would rather have cut his arms off” than wear girls’ clothes. D even said he “hated his life.” Sara recalls watching D in the car one day around this time and realizing that he was completely “checked out,” unable to enjoy being a child. She remembers worrying that D might even kill himself because he was so unhappy.

Starting in first grade, at D’s request, Sara and John allowed D to shop for “boys’ clothes” for school. D was so much happier once he was allowed to wear clothes he chose. He would get dressed for school quickly, without issues. Later that year, D insisted on cutting his hair short. When Sara and John explained that with his short hair and boys’ clothes, he might be perceived as a boy, D responded that he was “okay” with that. Indeed, when strangers would refer to him as a boy, D would beam.

In first grade, Sara and John thought D was going through a “phase or a tomboy thing.” Then Sara saw the “I am Jazz” interview with Barbara Walters, where Jazz Jennings talked about her transition. Sara looked at John and said, “They’re talking about our kid.” Sara sought out a therapist for D, who advised letting D socially transition over the summer and enter second grade as a boy. Shortly after he began seeing the therapist, D asked his mother, “Do you love me?” Sara responded, “Of course I love you, you’re my daughter, I am always going to love

you.” D responded, “I wish you would call me your son.” That was the moment Sara began to really understand D’s gender identity. John recalls that he was initially skeptical about D’s transition but came “fully on board” as soon as he learned how high the suicide rate is for transgender children who lack parental support.

Sara and John struggled with the reaction of their extended family and their community to D’s transition. Some of their family did not support their decision to raise D as a boy, and eventually they cut ties with certain family members who insisted on referring to D by female gender pronouns and by his birth name. The pastor at Sara and John’s church also disagreed with their decision to allow D to transition and forced them out of the church because he believed they were “living in sin.”

D officially transitioned at the start of second grade. D’s principal told Sara that, for the first two weeks, D proudly walked around campus proclaiming, “I’m a boy!” D “came out of his shell” after his transition and began smiling all the time. Most of the teachers and staff at D’s school were very supportive of D’s transition, and his classmates were also initially supportive as well.

D’s experience at school, however, soon became challenging, and he struggled with being singled out. He was not allowed to use the boys’ restroom and, instead, was required to use the restroom in the nurse’s clinic. It was inconvenient and isolating, and D became anxious and quiet. His mounting psychological distress

over his isolation resulted in a medical condition called trichotillomania, which caused him to pull out his eyelashes. He began therapy and started antidepressants.

Middle school was also difficult for D. He was not allowed to change for gym in the boys' locker room and was forced to use the coach's office instead. D was also required to use a restroom in the front office instead of either the boys' or the girls' restroom. When D was in seventh grade, the school installed a "porta potty" close to D's classes for his use. This made D feel even more isolated from his peers and disrespected by his school. In eighth grade, D's classes were too far from the porta potty to be practical, and he began restricting his water intake to avoid having to use the restroom altogether. He wound up with recurring kidney infections, which were particularly serious because D has only one functioning kidney. D also suffered from bullying during this period.

In high school, D was required to change in the media center for gym class. Unsurprisingly, this caused him to be frequently late for class. D was also only allowed to use the school's single-user restrooms. However, most of the single user restrooms were kept locked. D again limited his water intake to avoid using the restroom. These issues affected D's focus at school and his grades suffered. He almost failed his sophomore year and refused to discuss college or his future. D often came home from school agitated and upset and would lash out at his family or withdraw. Sara and John became seriously concerned about his well-being.

In January 2017, in the middle of D's sophomore year, Sara and John filed a lawsuit against the school district. As a result of a settlement in that suit, D was finally able to use the boys' facilities. D's confidence initially improved and, as John explains, it seemed the heavy weight on D's shoulders "had been lifted." D's grades went up and, where it had been a "constant battle" to get D to complete his homework, he started "taking initiative" and became "proactive." D was able to focus on his schoolwork and, for a time, was able to let go of "all those other things that were really a struggle." He enjoyed music, reading, and sports, and expressed an interest in thinking about college and planning for his future.

As the reality of starting somewhere new for college began to sink in, however, the cumulative experience of disparate treatment for years at school, which also exacerbated and encouraged bullying, weighed heavily on D. As Sara explains, despite the brief boost that came after settling the lawsuit, D still "struggles tremendously with confidence and self-esteem." D decided not to go to college because "he didn't want to be in a school environment. School wasn't a safe space," and "the thought of sitting in a classroom again triggered that turmoil for [D]." Sara shared that, when "[they] start talking about it, [D's] leg trembles." Sara and John are proud of what D has overcome to get to this point, but their "hearts break for him." D is currently working a part-time job and "just going day to day." Sara

treasures the moments when D smiles and laughs: “I wish I could make that his every day.”¹⁴

C. Lizette and Jose Trujillo – Tucson, Arizona

Lizette and Jose Trujillo live in Tucson, Arizona, where Lizette was born and raised. Lizette is a first generation American and the first in her family to go to college. Jose emigrated from Mexico when he was nine and became a United States citizen in 2018. Jose is an artist, and together, he and Lizette own a small business selling his art. Lizette and Jose have one child: sixteen-year-old D, who is transgender.



D

¹⁴ Sources: November 24, 2018, December 11, 2018, November 16, 2021, and November 9, 2023 telephone interviews with Sara Allen and John Allen.

Lizette and Jose strove to create a loving, nurturing home for D and struggled to understand why, when D was young, he seemed so sad. “[D] had all the foundational things he needed, and we didn’t understand why he was nervous, quiet.” For D’s third birthday, Lizette and Jose threw D a princess party; D recalls that that was “one of the worst days of his life.” A few years later, when D was six, he dressed up as Santa on Christmas so he could avoid wearing a dress.

Before he transitioned, D had an “all-boys” group of friends and remembers going into the bathroom with them, not understanding that he was any different: “I didn’t know I couldn’t just go into the same bathroom.” A teacher stopped him on his way out, and D got in trouble. At six, D asked to start dressing in more gender-neutral clothes. Lizette recalls that he explained it to her by saying he “wanted to be like Sporty Spice.” A couple years later, when D was 8, one of D’s friends asked in front of Lizette, referring to D: “can he and I go play?” The friend’s mother corrected her son, saying, “he is a she.” When they were driving home, Lizette asked D why the friend referred to D as a “he” and if it bothered D, and D said, “I know my outsides are different, but in my heart and my mind, I’m a boy.”

Lizette remembers being worried for D as she came to understand that he was transgender: “I had to learn how to navigate the stigmas of being first generation Mexican-American . . . and I was very aware that, through policy alone, D would have fewer rights than us.” But she talked to Jose and the two of them were clear

that they had to support D. So, that year, D started socially transitioning. He got a “cute little gentleman’s haircut” and started wearing “boys” clothes. There is a photo from right after D got his hair cut where he is “just smiling, so happy, and laughing away.” The next day, he was “so excited” to go to school. When a classmate told him he looked like a boy, D responded, “I am a boy.” The classmate said, “no, you’re not,” and D was crushed.

D started fourth grade as a boy. Fortunately, the school he attended already had non-discrimination policies in place and was supportive from the start: D could use the bathroom that aligned with his gender identity and had “amazing” teachers who worked hard to make sure he was not the “odd one out” and who “would gently but quickly correct kids if they used [D’s] ‘dead’ name.” Because there were policies in place, the school provided “top-down” support, and could respond quickly if anyone treated D inappropriately.

Despite the institutional support, however, D still faced some bullying and harassment. In a particularly severe incident, D was told by another student that he would be “the first to get raped in middle school.” The school stepped in right away, disciplining the student, and working with the middle school to create a “no contact contract” for when D would start the following year so D would have no interactions with the other student. The middle school gym teacher personally took D through the locker room before the start of school and told D he could pick whichever locker

he wanted to feel safe. He showed D where his office was in the locker room and assured D that he would always be monitoring. The message to D was clear: he would be safe in school without being precluded from any school spaces.

D explained that “because I’ve always had an affirming and supportive administration, it’s made it a lot easier—I’ve been able to talk to my teachers and counselors” and, if there’s ever a problem, “they’ve been able to shut it down.”

Lizette agrees:

D not having to use a bathroom or locker room that’s opposite of his gender and outward expression has really helped him feel safe and avoid gender dysphoria. Because he’s been so supported, he’s been able to focus on things that matter.

As a result, D is thriving. Now in high school, D has a group of close, supportive friends. He is confident and active in his school community: he is a member of the Jazz Combo, Spanish Club, and March for Our Lives. He is also an advocate for the transgender community. D has testified at the Arizona State Capitol several years in a row and, recently, he and three other transgender students organized “Trans Prom” on the National Mall in Washington DC. Over 200 people attended. They “created a celebration in response to hate” and D was honored by the Human Rights Campaign for his efforts.

Lizette is proud of her son: “raising a proud and confident child is all you ever want as a parent.” D explained that he learned from an early age “not to be ashamed

of who [he is].” He recently told Lizette: “I care less about what others think of me, and more about what I think of myself.” Growing up, Lizette’s father told her that “you can be whomever you choose in this country, that’s the beauty of it.” Lizette sees D embodying that dream. But she knows that he has been able to do that, in part, because he has been encouraged to be his authentic self not just at home, but at school, too. And she worries about what would happen to him if that were not the case. “We’re a family like any other who works really hard and deserves equality. I’m not going to be here forever, and I want [D] to be safe when I’m gone.”¹⁵

D. Wayne and Kelly Maines – Augusta, Maine

Wayne and Kelly Maines recently moved from Austin, Texas, where Wayne was the Vice President of Safety and Operations at Austin Community College and Kelly worked for a Texas state representative, back to Maine, where they raised their children. Wayne and Kelly have twenty-four-year-old identical twins, Jonas and Nicole. Nicole is transgender.

¹⁵ Source: November 7, 2023 telephone interview with Lizette Trujillo and D.



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 now 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.”

The family was unintentionally thrust into the public eye some years ago 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 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.¹⁶

Nicole is currently living in Los Angeles, pursuing a career as an actress. She was cast as Supergirl's best friend on the eponymously named CW show a few years ago, playing the first transgender superhero on television, and offered script advice to help the show handle sensitive gender identity conversations. This year, Nicole

¹⁶ See *Doe v. Reg'l Sch. Unit 26*, 86 A.3d 600, 603-04 (Me. 2014).

secured a recurring role on the Showtime series *Yellowjackets*, alongside Juliette Lewis and Christina Ricci. Nicole's graphic novel, "Bad Dream: A Dreamer Story" comes out next spring. Alongside her acting career, Nicole does advocacy work related to issues affecting the trans community.

Wayne and Kelly are also enthusiastic advocates for transgender children and their parents. Wayne regularly counsels parents on how to start conversations with their schools and was recently featured in a documentary titled, "The Dads," about fathers' experiences with masculinity and raising transgender children. The Dads premiered on Netflix this month, on November 17, 2023. 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."¹⁷

¹⁷ Sources: Feb. 14, 2017, Nov. 8, 2019, and November 14, 2023 telephone interviews with and Jan. 5, 2018 and Nov. 4, 2018 emails from Wayne Maines.

CONCLUSION

On behalf of parents of transgender children who want their children to be supported and treated equally, *amici* urge this Court to reverse the district court's decision.

Respectfully submitted on November 29, 2023.

/s/ Maureen P. Alger

MAUREEN P. ALGER
COOLEY LLP
3175 Hanover Street
Palo Alto, California 94304
Phone: (650) 843-5000
malger@cooley.com

AUDREY J. MOTT-SMITH
EMILY J. BORN
COOLEY LLP
3 Embarcadero Center, 20th Floor
San Francisco, California 94111
Phone: (415) 693-2000
amottsmith@cooley.com
eborn@cooley.com

SHANNON MINTER
NATIONAL CENTER FOR LESBIAN RIGHTS
870 Market Street, Suite 370
San Francisco, California 94102
Phone: (415) 365-1362
SMinter@nclrights.org

-and-

SHAWN MEERKAMPER
TRANSGENDER LAW CENTER
P.O. Box 70976
Oakland, CA 94612
Phone: (510) 587-9696
shawn@transgenderlawcenter.org

Attorneys for Amici Curia

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FOR THE NINTH CIRCUIT**

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I hereby certify pursuant to NINTH CIRCUIT RULE 25-5(f) that, on November 29, 2023, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

/s/ Maureen P. Alger

MAUREEN P. ALGER (Cal. Bar No. 208522)

COOLEY LLP

3175 Hanover Street

Palo Alto, California 94304

Phone: (650) 843-5000

malger@cooley.com

Counsel for Amici Curiae