

No. 23-16031

In the United States Court of Appeals for the Ninth Circuit

AURORA REGINO,  
*Plaintiff - Appellant,*

v.

KELLY STALEY, Superintendent,  
*Defendant – Appellee,*

And

CAITLIN DALBY; REBECCA KONKIN; TOM LANDO; EILEEN ROBINSON;  
MATT TENNIS,  
*Defendants.*

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On Appeal from the United States District Court  
for the Eastern District of California, Sacramento Division  
Case No. 2:23-cv-00032-JAM-DMC, Hon. John A. Mendez

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**MOTION FOR LEAVE TO FILE BRIEF OF LAMBDA LEGAL DEFENSE  
AND EDUCATION FUND, INC.; GLBTQ LEGAL ADVOCATES &  
DEFENDERS; THE TREVOR PROJECT, INC.; PFLAG, INC.; EQUALITY  
CALIFORNIA, INC.; COURAGE CALIFORNIA; RAINBOW PRIDE YOUTH  
ALLIANCE; SACRAMENTO LGBT COMMUNITY CENTER; AND LEGAL  
SERVICES OF NORTHERN CALIFORNIA AS *AMICI CURIAE* IN  
SUPPORT OF AFFIRMANCE**

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Pursuant to Federal Rule of Appellate Procedure 29 and Circuit Rule 29-3, Lambda Legal Defense and Education Fund, Inc.; GLBTQ Legal Advocates & Defenders; The Trevor Project, Inc.; PFLAG, Inc.; Equality California, Inc.; Courage California; Rainbow Pride Youth Alliance; Sacramento LGBT Community Center; and Legal Services of Northern California respectfully move this Court for leave to file the attached brief as *amici curiae* in support of Defendants-Appellees and affirmance.<sup>1</sup> The proposed brief will provide the Court important context and insight into on-the-ground realities facing transgender and gender diverse (“TGD”) young people and the critical importance of Chico Unified School District’s Regulation AR 5145.3 (the “Regulation”) at issue in this litigation in ensuring their health, well-being, and equal educational opportunity. Accordingly, as explained in more detail below, the Court should grant prospective *amici*’s motion and grant leave to file the proposed brief.

#### **I. INTEREST & EXPERTISE OF AMICI CURIAE**

Prospective *amici* are nine non-profit legal, policy, service, and grassroots organizations that serve and advocate for TGD people—and especially for young

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<sup>1</sup> No person other than prospective *amici* and their counsel authored the proposed brief in whole or in part or contributed money to fund the preparation and/or submission of the proposed brief. Counsel for prospective *amici* endeavored to obtain the consent of all parties to the filing of their brief before moving the Court for permission to file the proposed brief. Plaintiff-Appellant has consented to the filing of this brief, and Defendant-Appellee has not responded as of the time of filing.

people. Collectively, prospective *amici* are active in providing educational and social services and support (including suicide prevention), community resources, and legal and policy advocacy to and on behalf of the lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) community, including TGD young people and their families throughout California, this Circuit, and the nation. As part of their missions, prospective *amici* are committed to ensuring that TGD young people have access to full educational, social, economic, and other opportunities, and that their mental and physical well-being are protected. As a result, *amici* have a substantial interest in this litigation and significant expertise in the issues it raises.

## II. ARGUMENT

One of the “classic roles” of *amici curiae* before this Court is “assisting in a case of general public interest, supplementing the efforts of counsel, and drawing the court’s attention to law that escaped consideration.” *Miller-Wohl Co. v. Comm’r of Lab. & Indus.*, 694 F.2d 203, 204 (9th Cir. 1982). *Amicus* briefs may be “helpful to [the Court’s] understanding of the implications of [a] case from various points of view.” *Fed. Trade Comm’n v. AT&T Mobility LLC*, 883 F.3d 848, 852 n.3 (9th Cir. 2018).

The proposed brief here easily meets that standard.

Drawing on their rich expertise and years of first-hand experience, prospective *amici* offer this Court insight into the challenges facing TGD youth and the

important role that schools and educators play in meeting those challenges. As the attached brief explains in detail, extensive evidence shows that TGD youth face vastly increased and, at times, deadly risks to their health, safety, and financial security. They often encounter deeply rooted social stigma and hostility, and experience disturbingly high rates of violence, harassment, and other forms of cruelty and discrimination. As a result, these vulnerable youth face mental health issues, worse educational outcomes, and myriad other hardships with much greater frequency than their non-TGD peers.

Yet research also confirms that supportive school environments can dramatically reduce these risks and hardships and help mitigate their effects. Policies like the Regulation ensure that school personnel can be key allies for TGD students, working alongside them to build acceptance in their classrooms, their homes, and their communities. More specifically, policies that ensure that TGD young people retain agency and support in the intensely personal decision of when and to whom to disclose a gender-diverse identity are vital to prevent delay or derailment of TGD students' acceptance by peers and family members. By providing this Court a perspective on the real-world issues the Regulation seeks to address, prospective *amici* provide important context that will prove to “assist[] in [this] case of general public interest,” *Miller-Wohl Co.*, 694 F.2d at 204, aiding the Court’s “understanding of the implications of this case from various points of view.” *AT&T Mobility*, 883

F.3d at 852 n.3.

### III. CONCLUSION

For the foregoing reasons, prospective *amici* respectfully request that the Court grant leave to file the accompanying *amici curiae* brief in support of Defendants-Appellees and affirmance.

Dated: January 9, 2024

Respectfully submitted,

/s/ Jeffrey M. Gutkin

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## CERTIFICATE OF COMPLIANCE

I, Jeffrey M. Gutkin, hereby certify that:

1. This motion complies with the type-page limitations of Fed. R. App. P. 27(d)(2) and Circuit Rule 27-1(1)(d) because it does not exceed 20 pages.
2. This motion 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 in Times New Roman, size 14.

*/s/ Jeffrey M. Gutkin*

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v.

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## **CORPORATE DISCLOSURE STATEMENT**

*Amici curiae* Lambda Legal Defense and Education Fund, Inc.; GLBTQ Legal Advocates & Defenders; The Trevor Project, Inc.; PFLAG, Inc.; Equality California, Inc.; Courage California; Rainbow Pride Youth Alliance; Sacramento LGBT Community Center; and Legal Services of Northern California have no parent corporations and do not issue stock.

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## INTRODUCTION & INTEREST OF AMICI<sup>1</sup>

*Amici curiae*—nine organizations comprising parents, educators, youth, advocates, allies, and healthcare providers—represent, support, and provide health services to gender-diverse people throughout California, this Court’s jurisdiction, and the nation.<sup>2</sup> As part of their missions, *amici* are committed to ensuring that transgender and gender-diverse<sup>3</sup> (“TGD”) children and young people have access to full educational, social, economic, and other opportunities and that their mental and physical well-being is protected. *Amici* accordingly have a profound interest in this action. Schools across the country, including those in the Chico Unified School District at the core of this litigation, play a crucial role in TGD young people’s lives. Drawing on their experience and expertise in this field, *amici* seek to provide this Court with a broad and empirically grounded view of the landscape of TGD youths’ lives, the challenges many of them face, and the critical importance of policies that

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<sup>1</sup> No counsel for a party authored this brief in whole or in part and no person other than amici or their counsel made a monetary contribution to the preparation or submission of this brief. *See* Fed. R. App. P. 29(a)(4)(E).

<sup>2</sup> *Amici curiae* are Lambda Legal Defense and Education Fund, Inc.; GLBTQ Legal Advocates & Defenders; The Trevor Project, Inc.; PFLAG, Inc.; Equality California, Inc.; Courage California; Rainbow Pride Youth Alliance; Sacramento LGBT Community Center; and Legal Services of Northern California.

<sup>3</sup> In this brief, *amici* use the umbrella term “TGD” to describe a broadly inclusive range of gender identities including those outside the male/female binary as assigned at birth. At times, *amici* also use the term “LGBTQ,” a more expansive term referring to lesbian, gay, bisexual, transgender, queer, and other non-heterosexual or gender-diverse persons.

protect TGD students' ability to be themselves and live authentically at school and in all aspects of their lives.

Over the past several decades, significant academic and medical research has confirmed what *amici*, educational policymakers, and many TGD people have long known: as compared to the general population, TGD people and youth face vastly increased and, at times, deadly risks to their health, safety, and financial security. TGD people encounter deeply rooted social stigmas and hostility that often lead to disturbingly high rates of violence, harassment, and other forms of cruelty and discrimination, as well as significant mental health challenges.

Fortunately, research confirms that school environments that support the educational and social needs of TGD students can dramatically reduce these risks and hardships and help mitigate the effects of such abuse. This is especially important because of the long-term effects those experiences can have during crucial developmental stages of a young TGD person's life. TGD students can thrive when schools create nurturing spaces where trusted teachers and mentors can help them safely learn, play, forge bonds, explore, and grow. Thanks to policies like the one Appellants challenge here, school personnel can be key allies for TGD students, working alongside them to build acceptance in their classrooms, their homes, and their communities. Supportive policies like these are especially important because the decision to disclose a gender-diverse identity—and to whom—is intensely

personal. Ensuring that TGD young people retain agency and support in that decision is vital; a contrary rule threatens to delay or derail their acceptance by peers and family members and risks exposing them to rejection, abuse, trauma, and other adverse outcomes.

The Chico Unified School District’s Regulation AR 5145.3 at issue here (the “Regulation”) is designed to achieve those important objectives. It promotes the healthy development and success of TGD students by ensuring that school personnel respect their gender identities<sup>4</sup> and their determinations around whether and when to share their identities with their families; strengthening peer, adult, and family support networks; and taking other steps necessary to ensure that they stay safe and thrive both in school and at home. With these facts in mind, *amici* offer additional context regarding TGD young people’s lives and respectfully urge this Court to affirm the District Court’s order granting Defendant-Appellee’s motion to dismiss,

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<sup>4</sup> Gender identity is a person’s “deep internal sense of being female, male, a combination of both, somewhere in between, or neither[.]” Jason Rafferty, *Am. Acad. of Pediatrics, Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents*, 142(4) *Pediatrics* 2 tbl.1 (Oct. 2018). For TGD people, their gender identities are different from the sex they were assigned at birth. *Id.* Scientific evidence suggests that both gender identity and sex depend on a complex combination of biological and environmental factors. *See, e.g.,* Madeleine Foreman et al., *Genetic Link Between Gender Dysphoria and Sex Hormone Signaling*, 104 *J. Clin. Endocrinol. Metab.* 390, 394 (Feb. 2019) (discussing sexual differentiation of the brain during fetal development, including with regard to people who experience gender dysphoria); Georgios Karamanis et al., *Gender Dysphoria in Twins: a Register-Based Population Study*, 12 *Sci. Rep.* 13439 (2022) (suggesting that environmental factors *in utero* may contribute to gender identity).

ensuring that these important guidelines continue to provide vital support and safety for TGD students.

### ARGUMENT

**I. SUPPORTIVE ENVIRONMENTS ARE CRITICALLY IMPORTANT FOR THE DEVELOPMENT OF ALL YOUNG PEOPLE, ESPECIALLY TGD YOUNG PEOPLE, AND SCHOOL EMPLOYEES ARE CRITICAL IN FOSTERING THAT ENVIRONMENT.**

School and home environments that affirm and support young people’s identities—regarding their gender and otherwise—improve their academic and health outcomes. School climates that foster a sense of belonging and respect, characterized by strong relationships among staff, students, and families, are associated with better test scores, graduation rates, student engagement, mental and physical health, and brain development. U.S. Dep’t of Educ., *Guiding Principles for Creating Safe, Inclusive, Supportive, and Fair School Climates*, 7–8 (Mar. 2023), <https://www2.ed.gov/policy/gen/guid/school-discipline/guiding-principles.pdf> (hereinafter “*Guiding Principles*”) (last accessed Jan. 8, 2024); U.S. Dep’t of Educ., *Supporting LGBTQI+ Youth and Families in School*, 1 (Jun. 2023), <https://www2.ed.gov/about/offices/list/ocr/docs/ed-supporting-lgbtqi-youth-202306.pdf> (last accessed Jan. 8, 2024); Linda Darling-Hammond & Jennifer DePaoli, *Why School Climate Matters and What Can Be Done to Improve It*, 20 *The J. of the Nat’l Ass’n of State Boards of Educ.*, 7 (May 2020), <https://www.nasbe.org/why-school-climate-matters-and-what-can-be-done-to->

[improve-it/](#) (last accessed Jan. 8, 2024). Family relationships characterized by appreciation, affection, and acceptance likewise correlate with greater self-esteem, health, and life satisfaction in young people. Caitlin Ryan, *Supportive Families, Healthy Children: Helping Families with Lesbian, Gay, Bisexual & Transgender Children*, 8–12 (2009), [https://familyproject.sfsu.edu/sites/default/files/documents/FAP\\_English%20Booklet\\_pst.pdf](https://familyproject.sfsu.edu/sites/default/files/documents/FAP_English%20Booklet_pst.pdf) (last accessed Jan. 8, 2024); Camille Brown et al., *Family Relationships and the Health and Well-Being of Transgender and Gender-Diverse Youth: A Critical Review*, 7 *LGBT Health* 407, 408 (Dec. 2020).

Supportive school environments are vital to all young people and especially TGD young people who are beginning to recognize and express their gender identity. Schools offer children the opportunity to learn important social skills and to cultivate responsibility, accountability, and independence. See Joseph A. Durlak et al., *The Impact of Enhancing Students' Social and Emotional Learning: A Meta-Analysis of School-Based Universal Interventions*, 82 *Child Dev.* 405, 417–19 (2011). Students also discover, develop, and pursue their passions—intellectual, social, athletic, artistic, and otherwise—in school. See Pa. State Univ., *Improving Social Emotional Skills in Childhood Enhances Long-Term Well-Being and Economic Outcomes*, 5–7 (2017). Those benefits are amplified or diminished depending on the level of inclusiveness of the school environment. See, e.g., Didier Jourdan et al., *Supporting*

*Every School to Become a Foundation for Healthy Lives*, 5 *Lancet Child & Adolescent Health* 295, 295 (2021); Ctrs. for Disease Control & Prevention, *LGBTQ-Supportive School Policies and Practices*, 1 (2022), <https://www.cdc.gov/healthyyouth/safe-supportive-environments/pdf/LGBTQ-School-Policies-Practices.pdf> (last accessed Jan. 8, 2024) (stating that “LGBTQ-supportive school policies and practices also benefit heterosexual students,” while “[p]olicies and practices that negatively affect the health of LGBTQ students also harm heterosexual students”). Indeed, research has “suggested that schools may . . . be a fundamental location for intervention geared towards assisting sexual minority youth . . . as one of the few institutions that almost all LGBTQ students must attend.” Rebekah J. Byrd and Danica Hays, *School Counselor Competency and Lesbian, Gay, Bisexual, Transgender, and Questioning (LGBTQ) Youth*, 10 *J. of Sch. Counseling* 1, 3-4 (2012) (hereinafter “Byrd”).

Simply put, schools have a compelling and independent interest in learning environments that ensure every student’s well-being and full development, especially because students spend a substantial portion of their waking hours at school and in school-sponsored activities outside regular class hours. *See, e.g.*, Cal. Educ. Code. § 46200 et seq. (requiring at least 180 school days and an average of at least 6 instructional hours per day for high schoolers); Ctrs. for Disease Control & Prevention, *School Connectedness: Strategies for Increasing Protective Factors*

*Among Youth*, 7 (2009) (discussing the importance of “[a] positive school environment . . . characterized by caring and supportive interpersonal relationships; opportunities to participate in school activities and decision-making; and shared positive norms, goals, and values”).

## **II. SUPPORTIVE SCHOOL ENVIRONMENTS HELP MITIGATE INCREASED RISKS THAT TGD YOUNG PEOPLE FACE.**

Many TGD people start recognizing that their gender identities differ from the sex they were assigned at birth at an early age, when school environments like those discussed above play a vital role in any child’s life and development. *See* Am. Psychiatric Ass’n, *Gender Dysphoria, Diagnostic & Statistical Manual*, ch. 17 (5th ed. 2013). A study of nearly 400 transgender minors revealed that they were “more likely to experience victimization, bullying, and to report a more negative school climate.” Roberto L. Abreau, et al., *LGBTQ Student Experiences in Schools from 2009-2019: A Systematic Review of Study Characteristics and Recommendations for Prevention and Intervention in School Psychology Journals*, 59 *Psychol. Schs.* 115, 116 (2022) (citation omitted). Accordingly, schools—in tandem with parents, guidance counselors, family members, peers, healthcare providers, and community organizations—play a key role in supporting TGD students who face outsized risks of bullying, isolation, discrimination, and pernicious self-doubt. The statistics regarding the challenges facing LGBTQ students, and TGD students specifically, paint a clear picture for policymakers and administrators regarding the importance

of gender-affirming school policies.

**A. Gender-affirming school policies help TGD students secure physical and psychological safety.**

Supportive school policies, practices, and guidelines dramatically improve TGD students' quality of life, not just during childhood and adolescence but long into adulthood. TGD youth who are supported in their gender identity have developmentally normal levels of depression and only minimal elevations in anxiety, suggesting that supportive environments play an indispensable role in promoting mental health among the TGD community. See Kristina R. Olson, et al., *Mental Health of Transgender Children Who Are Supported in Their Identities*, 137(3) *Pediatrics* 1 (Mar. 2016).

This support can take many forms. By training faculty, providing students with information and support in expressing their gender identity at school, and developing curricula that promote inclusivity regardless of sexual orientation and gender identity, schools can curb harassment and bullying and cultivate “[g]reater feelings of safety” among LGBTQ students. Molly O’Shaughnessy et al., *Safe Place to Learn: Consequences of Harassment Based on Actual or Perceived Sexual Orientation and Gender Non-Conformity and Steps for Making Schools Safer*, Cal. Safe Schs. Coal. 17 (Jan. 2004). TGD youth who found mentors in teachers, staff members, and school administrators were “three times as likely to graduate from high school, had increased intentions to seek help for suicidal thoughts, and had

positive[] . . . engagement and connectedness to their school[s.]” Enoch Leung et al., *Social Support in Schools and Related Outcomes for LGBTQ Youth: a Scoping Review*, 1 Discover Educ. 1, 11 (2022) (hereinafter “*Systematic Study*”) (citations omitted).

School counselors specifically play an important role in creating a positive school environment, as they “have an opportunity to facilitate growth, awareness, knowledge and understanding so that both sexual minority and heterosexual individuals can learn and develop.” Byrd at 4 (citation omitted). The California Standards for the School Counseling Profession recognize this critical role, charging school counselors with “ensur[ing] that students from historically marginalized backgrounds, including those...[who are] LGBTQI+, are not subjected to discrimination based on their identity factors.” California Association of School Counselors, *The California Standards for the School Counseling Profession* at Indicator 6A-5 (2023), <https://www.schoolcounselor-ca.org/files/CASC%20Standards%202023%20FINAL%20-%20Digital%20Copy.pdf> (last accessed Jan. 8, 2024). Indeed, studies have shown that “school counselors are crucial in modeling inclusivity of [TGD] students for other school staff.” Abreau at 118 (citation omitted).

Anti-bullying and other inclusive policies are another form of critical support for TGD students, producing a more positive climate; decreased truancy; lower

levels of victimization, bullying, and harassment; and increased safety. Tecelli Domínguez-Martínez & Rebeca Robles, *Preventing Transphobic Bullying and Promoting Inclusive Educational Environments: Literature Review and Implementing Recommendations*, 50 *Archives of Med. Res.* 543, 551–52 (2019); see also Russell B. Toomey et al., *Gender-Nonconforming Lesbian, Gay, Bisexual, and Transgender Youth: School Victimization and Young Adult Psychosocial Adjustment*, 46 *Developmental Psych.* 1580, 1586 (2010) (“Enactment of school policies that specifically prohibit victimization due to LGBT status, gender nonconformity, and other types of bias-related harassment can help reduce negative psychosocial outcomes in LGBT and gender-nonconforming young people.”). Even policies that simply ensure students are referred to by their correct name and pronouns correlate with far lower rates of discrimination, psychological distress, and suicide attempts. Joseph G. Kosciw et al., GLSEN, *The 2021 National School Climate Survey: The Experiences of LGBTQ+ Youth in Our Nation’s Schools* 74 (2022), <https://www.glsen.org/sites/default/files/2022-10/NSCS-2021-Full-Report.pdf> (last accessed Jan. 8, 2024) (hereinafter “*National School Climate Survey*”); The Trevor Project, *2023 U.S. National Survey on the Mental Health of LGBTQ Young People*, 4 (2023), [https://www.thetrevorproject.org/survey-2023/assets/static/05\\_TREVOR05\\_2023survey.pdf](https://www.thetrevorproject.org/survey-2023/assets/static/05_TREVOR05_2023survey.pdf) (last accessed Jan. 8, 2024) (hereinafter “*2023 National Survey*”); Stephen T. Russell et al., *Chosen Name Use*

*Is Linked to Reduced Depressive Symptoms, Suicidal Ideation, and Suicidal Behavior Among Transgender Youth*, 63 *J. Adolescent Health* 503, 503, 505 (2018).

Such policies and interventions protect the physical and psychological safety of TGD students so that they can succeed in school and beyond.

Schools that foster strong allyship across gender and sexuality, such as gay-straight alliances (“GSAs”), also provide students with greater support from faculty and a broader network of friendships and peer support. Tina Fetner & Athena Elafros, *The GSA Difference: LGBTQ and Ally Experiences in High Schools with and without Gay-Straight Alliances*, 4 *Soc. Sci.* 563, 569–70 (Aug. 7, 2015) (hereinafter “*GSA Difference*”); Carolyn Porta et al., *LGBTQ Youth’s Views on Gay-Straight Alliances: Building Community, Providing Gateways, and Representing Safety and Support*, 87 *J. Sch. Health* 489, 495 (July 2017). GSA activities and LGBTQ-affirming school-wide campaigns “can promote tolerance, respect, and inclusion for LGBTQ youth,” provide a space for advocacy and education, and help teachers better advocate for their students. *Systematic Study* at 13. Students in schools that do not have these structures in place, by contrast, have felt greater isolation, withdrawal, and open hostility from classmates and school employees. *GSA Difference* at 570–71.

**B. Without protection, TGD young people face increased bullying, abuse, stigma, and violence that lead to negative mental health and educational outcomes.**

Insufficient protections create preventable mental health risks for TGD young people that are significantly higher than in the general population.<sup>5</sup> A culture that punishes gender variance subjects TGD people to widespread physical abuse, harassment, and sexual violence throughout their lives. Sandy E. James et al., *The Report of the 2015 U.S. Transgender Survey*, 199 (2016) (hereinafter “2015 Transgender Survey”) (“Nearly half (48%) of respondents reported that they were denied equal treatment or service, verbally harassed, and/or physically attacked because of being transgender in the past year.”);<sup>6</sup> *see also* Rebecca L. Stotzer, *Violence Against Transgender People: A Review of United States Data*, 14 *Aggression & Violent Behavior* 170 (2009). Tragically, nearly 27% of TGD youth reported that they have been physically threatened or harmed in the past year due to their gender identity. *2023 National Survey* at 15.

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<sup>5</sup> It is important to note that being TGD 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> (last accessed Jan. 8, 2024).

<sup>6</sup><https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf> (last accessed Jan. 8, 2024).

Schools can be especially hostile environments for TGD students absent strong measures to affirm and protect them. TGD students are 1.66 times more likely to be bullied at school than their cisgender peers, 2.43 times more likely to be electronically bullied, and 4.15 times more likely to be threatened or injured with a weapon at school. 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, 214 tbl.2 (2019) (hereinafter “*Suicidality*”); see also Gilbert Gonzales & Cameron Deal, *Health Risk Factors and Outcomes Among Gender Minority High School Students in 15 US States*, 327 J. Am. Med. Ass’n 1498, 1499 (2022) (41.3% of transgender high schoolers reported bullying at school and 32.6% reported electronic bullying). Many LGBTQ students report feeling unsafe at school because of their gender expression and often avoid school bathrooms, lockers rooms, and gym classes due to safety issues. *National School Climate Survey* at 10–11; see also Soon Kyu Choi et al., *LGBTQ Youths in California’s Public Schools: Differences Across the State*, The Williams Institute 1, 17 (2017), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBTQ-Youth-CA-Public-Schools-Oct-2017.pdf> (last accessed Jan. 8, 2024) (finding that “LGBTQ youth also reported feeling less safe at school than did non-LGBTQ youth”).

In these environments, TGD students’ learning outcomes and engagement in learning suffer along with their mental health. TGD young people are more than

twice as likely than non-TGD people to miss school as a result of safety concerns. *Suicidality* at 218 tbl.4; *National School Climate Survey* at xxiv (reporting that nearly a third of LGBTQ students reported missing at least one day of school in the past month because they felt uncomfortable or unsafe). Even as school closures during the COVID-19 pandemic worsened mental health and learning outcomes among students, many TGD students welcomed those shutdowns as “sanctuary from harmful school environments,” calling them “freedom from ‘transphobic and homophobic people in real life for a while.’” Erin K. Gill & Mollie T. McQuillan, *LGBTQ+ Students’ Peer Victimization and Mental Health before and during the COVID-19 Pandemic*, 19 *Int’l J. Env’tl. Res. & Pub. Health*. 11537, 1, 9 (2022). Nevertheless, virtual learning took a harsher toll on TGD students than on others, with in-person harassment often giving way to cyberbullying that had similarly detrimental effects on its victims. Drew P. Cingel et al., *U.S. Adolescents’ Attitudes Toward School, Social Connection, Media Use, and Mental Health During the COVID-19 Pandemic: Differences as a Function of Gender Identity and School Context*, 17 *PLoS One* 12 (2022) (TGD “youth reported less satisfaction with school, lower levels of social connections and inclusion with a peer group, a larger drop in overall grades, and more mental health problems.”).

Unfettered bullying, discrimination, and violence result in far higher rates of depression, anxiety, disordered eating, and self-harm in TGD young people relative

to their cisgender peers. Michael J. Pellicane & Jeffrey A. Ciesla, *Associations Between Minority Stress, Depression, and Suicidal Ideation and Attempts in Transgender and Gender Diverse (TGD) Individuals: Systematic Review and Meta-Analysis*, 91 *Clinical Psych. Rev.* 102113, 6–7 (2022); Maureen D. Connolly et al., *The Mental Health of Transgender Youth: Advances in Understanding*, 59 *J. Adolescent Health* 489, 491–93 (2016). Over 60% of TGD 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 2020*, 3 (2020) (hereinafter “2020 National Survey”). These serious issues often go untreated, as nearly 60% of TGD youth surveyed in the past year wanted professional mental health care but were unable to access it, mainly because they were reluctant to seek their parents’ or caregivers’ help in doing so. See *2023 National Survey* at 11–12.

As a result, TGD young people experience devastating suicide rates. Transgender youth are 2.71 times more likely to attempt suicide than other young people. *Suicidality* at 214 tbl.2. One in five TGD youth respondents surveyed in 2020 said they had attempted suicide within the past year, *2020 National Survey* at 3, a figure that did not decline when the survey was repeated in 2023. See *2023 National Survey* at 5. These incidents are also more likely to be severe, with transgender youth

experiencing “suicide attempt[s] requiring medical care” with almost triple the frequency of a cisgender reference group. Brian C. Thoma et al., *Suicidalities Disparities Between Transgender and Cisgender Adolescents*, 144 *Pediatrics* 6 (2019). Unsurprisingly, TGD youth of color experience higher rates of suicidality and suicide attempts, likely due to the compounded effects of racism and transphobia. See *2023 National Survey* at 7. Statistics like these put into sharp relief the urgent need for school policies that affirm and protect the gender identity and expression of all students.

### **III. SCHOOL POLICIES THAT RESPECT THE AUTONOMY AND DISCRETION OF TGD YOUNG PEOPLE IMPROVE THEIR HEALTH, SAFETY, AND EDUCATIONAL OUTCOMES.**

Family responses to learning that a child is TGD are often “supportive, affirming, and celebratory.” National LGBTQIA+ Health Education Center & National Health Care for the Homeless Council, *Engaging the Families of Transgender and Gender Diverse Children*, 2 (Sep. 10, 2021), <https://nhchc.org/wp-content/uploads/2021/09/Engaging-the-Families-of-Transgender-and-Gender-Diverse-Children-9.10.21.pdf> (hereinafter, “*Engaging Families*”). Such home environments, like supportive school environments, significantly improve the health, safety, and happiness of TGD young people. When families support and nurture TGD youth alongside school administrators, their acceptance stands as a bulwark against many of the negative outcomes that TGD people might otherwise

face. *Id.* at 5. Parental support is “significantly associated with higher life satisfaction . . . and fewer depressive symptoms” among TGD people. Lisa Simons et al., *Parental Support and Mental Health Among Transgender Adolescents*, 53 *J. Adolescent Health* 791, 792 (2013); see also *Suicidality* at 217 (noting that “parental support of youth’s gender minority identity” is a protective factor against high risks of suicide). Family support also corresponds with improved mental health including lower levels of self-harm, distress, and anxiety, and higher levels of self-esteem and resilience. Elliot A. Tebbe & Stephanie L. Budge, *Factors That Drive Mental Health Disparities and Promote Well-Being in Transgender and Nonbinary People*, 1 *Nat’l Rev. of Psych.* 694, 700 (2022). Relatives can likewise improve a TGD young person’s life by helping them access gender-affirming healthcare, legal assistance, and other resources that support their ability to live in accordance with their gender identity. Jack Andrzejewski et al., *Perspectives of Transgender Youth on Parental Support: Qualitative Findings from the Resilience and Transgender Youth Study*, 48 *Health Educ. & Behavior* 74, 77–78 (2021) (hereinafter “*Parental Support*”).

For some families, learning that their child’s gender identity differs from their sex assigned at birth is a shock, particularly for those who are not familiar with what it means to be TGD or who do not know people that are openly TGD. But with time, communication, and resources like those provided by many *amici*, even family members who do not know how to react initially to a child’s gender identity

frequently come to understand their TGD child and even become their advocates and champions. Caitlin Ryan et al., *Family-Based Psychosocial Care for Transgender and Gender-Diverse Children and Youth*, *Child and Adolescent Psych. Clinics of N. Am.* 1, 12 (2023), [https://familyproject.sfsu.edu/sites/default/files/documents/Ryan-Barba-Cohen\\_Family-Based%20Psychosocial%20Care%20for%20Transgender%20Children%20and%20Youth-nu.pdf](https://familyproject.sfsu.edu/sites/default/files/documents/Ryan-Barba-Cohen_Family-Based%20Psychosocial%20Care%20for%20Transgender%20Children%20and%20Youth-nu.pdf) (last accessed Jan. 8, 2024) (“Parents and caregivers struggling with having a TGD child can benefit from building skills in key areas, including basic communication skills for talking with their child and specific communication skills like neutral, respectful, and non-harmful language for discussing their child’s gender identity and expression.”). Schools can play a critical role in connecting parents to resources that help them navigate the “wide array of emotions” that may accompany news of a child’s gender-diverse identity—ultimately empowering these family members with the tools they need to best support their TGD children. PFLAG, *Our Trans Loved Ones: Questions and Answers for Parents, Family, and Friends of People Who Are Transgender and Gender Expansive* 1 (2019); see also U.S. Dep’t of Educ., *Supporting LGBTQI+ Youth* at 1, 3 (listing examples of “ways for schools to provide safe and supportive environments and equal access to educational opportunities for all students,” such as “[a]dopting policies or model plans to guide school staff on how to support students and communicate with families” and

“develop[ing] gender support plans” for transgender students).

Some family members, however, respond to a child’s gender diversity with “anger, fear, doubt, and dismissiveness.” *Engaging Families* at 2. Forty percent of TGD survey respondents reported that their families were not supportive of their gender identity. *2015 Transgender Survey* at 65. And the results of familial hostility or rejection can be dire. TGD people are significantly more likely than non-TGD people to experience physical, psychological, and sexual abuse from an immediate family member. Andrea L. Roberts et al., *Childhood Gender Nonconformity: A Risk Indicator for Childhood Abuse and Posttraumatic Stress in Youth*, 129(3) *Pediatrics* 410, 413-14 (Mar. 2012); *see also 2015 Transgender Survey* at 65 (reporting that one in ten TGD survey respondents had been the victim of violence at the hands of an immediate family member). Research confirms that rejection by family members corresponds directly to “negative psychosocial outcomes” including depression, anxiety, and suicidality. Emily M. Pariseau et al., *The Relationship Between Family Acceptance-Rejection and Transgender Youth Psychosocial Functioning*, 7 *Clinical Practice in Pediatric Psych.* 267, 273–74 (2022).

Parents and relatives are also the most likely source of pressure for young LGBTQ people to undergo so-called “conversion therapy” aimed at altering their gender identity or sexual orientation, *2020 National Survey* at 5, which the American Medical Association describes as “clinically and ethically inappropriate” and has

been rejected by “[a]ll leading professional medical and mental health associations . . . as a legitimate medical treatment.” Am. Med. Ass’n, *LGBTQ Change Efforts (So-called “Conversion Therapy”)*, 3 (2019). Recognizing this fact, California—along with the majority of other states in this Circuit—restricts the practice of conversion therapy on minors. Cal. Bus. & Prof. Code § 865.2; Nev. Rev. Stat. § 629.600; Or. Rev. Stat. § 675.850; Wash. Code Rev. § 18.130.180. These laws were intended to “protect[] the physical and psychological well-being of minors, including [LGBTQ] youth . . . against exposure to serious harms caused by conversion therapy”—a purpose this Court has repeatedly acknowledged as undoubtedly legitimate. *Tingley v. Ferguson*, 47 F.4th 1055, 1078 (9th Cir. 2022) (quotation omitted); *see also Pickup v. Brown*, 740 F.3d 1208, 1231-32 (9th Cir. 2014) (“The record demonstrates that the legislature acted rationally when it decided to protect the well-being of minors by prohibiting mental health providers from using [conversion therapy] on persons under 18.”). In light of the serious dangers associated with this unscientific practice, every leading medical and mental health organization finds that efforts to change a young person’s sexual orientation or gender identity are closely linked with a broad range of negative health outcomes both during adolescence and into adulthood, such as higher risks of suicide attempts, depression, and substance abuse. Am. Med. Ass’n, *LGBTQ Change Efforts (So-called “Conversion Therapy”)*, 3; Caitlin Ryan et al., *Parent-Initiated Sexual*

*Orientation Change Efforts With LGBT Adolescents: Implications for Young Adult Mental Health and Adjustment*, 67 J. Homosexuality 159, 160–61 & tbl.3 (2020) (noting the connection between “conversion therapy” and depression, suicidality, and other negative effects); *see also Tingley*, 47 F.4th at 1064 (“[E]very major medical, psychiatric, psychological, and professional mental health organization opposes the use of conversion therapy.”).

Family members may also deny TGD youth financial support, housing, and education, or deprive them of other key resources. Nearly 40% of TGD individuals reported that they were either forced to leave their family homes or treated in a manner that compelled them to leave after their family learned of their gender identity. *2020 National Survey* at 8; *see also 2015 Transgender Survey* at 68 (“Within an hour of coming out to my parents, I was kicked out into the cold with very few items and my car taken away. I was soon informed by my college that my parents had withdrawn my tuition for the upcoming spring semester. I was devastated.”). Among TGD people rejected by their immediate family, 40% went on to experience houselessness, a figure twice as high as for those with supportive families. *2015 Transgender Survey* at 65. Even when family members do not remove financial support entirely, they can use that support to coerce TGD children into hiding their identities. As one TGD young person put it, she was “[s]till at present financially dependent on my parents, which allows for a lot of coercion and policing

of where I can be out and in what capacity I can be out, and a lot of need for hiding different things.” *Parental Support* at 77–78.

The familial rejection or abuse some TGD youth experience increases the already high mental health risks, discussed above, that TGD people face in adolescence and throughout their lives. TGD people rejected by their family members are over 300% more likely to attempt suicide, and about 250% more likely to suffer substance abuse problems. Augustus Klein & Sarit A. Golub, *Family Rejection as a Predictor of Suicide Attempts and Substance Misuse Among Transgender and Gender Nonconforming Adults*, 3 *LGBT Health* 193, 196 tbl.1 (2016); see also Kristy A. Clark et al., *How Do Sexual and Gender Minority People Acquire the Capability for Suicide?*, 2 *Qualitative Res. in Health* 100044, 6 (2022) (“[C]hronic identity rejection and invalidation, especially during childhood and adolescence, can severely harm healthy identity development, causing [LGBTQ] young people to feel erased, invisible, or even non-existent, thereby contributing to their capability for suicide.”). Likewise, 34% of LGBTQ youth who experienced housing instability—often prompted by hostile family members—reported attempting suicide. *2020 National Survey* at 8. Even a TGD young person’s perception of parents as unsupportive or rejecting is generally “linked to psychological maladjustment, including higher levels of depressive symptoms and LGBTQ-identity disclosure stress.” Arnold H. Grossman et al., *Parental Responses*

*to Transgender and Gender Nonconforming Youth: Associations with Parent Support, Parental Abuse, and Youths' Psychological Adjustment*, 68(8) *J. Homosexuality* 1260, 1271-72 (Nov. 27, 2019).

Given the varied responses families may have to a child's gender diversity, it is important to respect the reasons TGD youth may not be ready to share their identities at home. *Engaging Families* at 14. As noted above, family members often embrace and support their TGD children and relatives. But even youth who believe their parents will be supportive deserve the opportunity to share this part of themselves on their own terms and in their own way. And TGD youth from families that may struggle to understand their identity may need time to gather resources and determine the best way to engage their families for support. Moreover, as the evidence above shows, some families may not be supportive or willing to learn.

As those most familiar with their own families, TGD young people themselves are in the best position to decide when, how, and to whom they disclose their gender identity. Indeed, one's sexuality is "part of the physiological foundation necessary for self-actualization," and "sets the stage" for any important relationship in one's life. Jack Simons and Mary Cuadrado, *Narratives of School Counselors Regarding Advocacy for LGBTQ Students*, 22 *Prof. Sch. Counseling* 1, 5 (2019) (citation omitted). That is why it is clear that having a confidential relationship with a trusted school staff member—like a counselor—is of utmost importance for

LGBTQ students and directly impacts whether or not they seek potentially vital assistance and support from their schools. Kristopher M. Goodrich & Melissa Luke, *LGBTQ Responsive School Counseling*, 3 J. of LGBT Issues in Counseling, 113, 116 (2009). Indeed, many TGD students are reluctant to seek support at school for fear that school employees will “out” them to family members. *National School Climate Survey* at 26–27. A categorical rule requiring schools to notify parents of a TGD student’s identity, regardless of the student’s wishes or concerns about familial reactions, would place some students in a catch-22 whereby, in seeking essential support at school, they would risk exposing themselves to rejection or abuse at home. That outcome could deny these young people important and at times lifesaving support that school policies are specifically designed—and proven—to provide. Policies like Defendant-Appellee’s that respect the autonomy and discretion of TGD young people can help them build acceptance and create the best chances for safety, positive mental health outcomes, and academic success.

#### **IV. CONCLUSION**

For the foregoing reasons, *amici* respectfully urge this Court to recognize the importance of school support systems like those reflected in the Regulation and to affirm the District Court’s dismissal of Plaintiffs-Appellants’ Complaint.

Dated: January 9, 2024

Respectfully submitted,

*/s/ Jeffrey M. Gutkin*

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## CERTIFICATE OF COMPLIANCE

I, Jeffrey M. Gutkin, hereby certify that:

1. This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and 32(a)(7)(B) and Circuit Rules 29(a)(4) and 32-1(a) because it contains 5,395 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).
2. 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 in Times New Roman, size 14.

*/s/ Jeffrey M. Gutkin*

Jeffrey M. Gutkin