

**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' RESPONSE TO
MOTION FOR EXPEDITED ORAL ARGUMENT**

Plaintiffs take no position on the ultimate relief requested in Defendants' motion for expedited oral argument (which has no impact on Plaintiffs' pending unopposed motion for a 7-day extension for their reply brief in light of the holidays, Dkt. 51, as noted in Defendants' motion for expedited oral argument, Dkt. 46.1 at 7 n.2) but nonetheless provide this response to make the following points.

First, this appeal is already accorded priority because it is a preliminary injunction appeal. Under Circuit Rule 34-3, civil appeals involving "[a]pplications for temporary or permanent injunctions" automatically receive priority in hearing date. Defendants' additional arguments for seeking expedited oral argument are superfluous, and this Court need not consider them in disposing of the motion.

Second, and for the record, Defendants’ arguments are wrong. For the reasons previously set forth in Plaintiffs’ motion for an injunction pending appeal, Dkt. 4.1, and opening brief, Dkt. 26.1, Defendants suffer no harm from a preliminary injunction that merely maintains the long-standing status quo in Idaho. *See Hecox v. Little*, 79 F.4th 1009, 1024 (9th Cir. 2023) (preliminary injunction against Idaho law that excluded transgender women from women’s sports teams did “not appear to inflict any comparable harm to [Idaho], as the injunction expressly maintained the status quo”). Until the recent adoption of S.B.1100 in 2023, there has never been a statewide ban against transgender students accessing public school facilities consistent with their gender identity in Idaho. To the contrary, many schools across Idaho have maintained inclusive policies for as long as *seven years*, expressly *permitting* such access, without any evidence of any harm. Defendants’ reliance on generic arguments about state sovereignty only underscores their inability to prove any case-specific harms supported by record evidence that they experience from an injunction against the law. Rather, it is only transgender people like Plaintiffs who stand to be injured if the statewide discrimination mandated by S.B.1100 takes effect.

DATED: January 2, 2024

Respectfully submitted,

/s/ Peter C. Renn

Peter C. Renn

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Response complies with the type-volume limitation of Fed. R. App. P. 27 because it contains 317 words. This Response 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 January 2, 2024, 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