



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
RAÚL R. LABRADOR

February 8, 2024

Via Electronic Filing

Molly C. Dwyer, Clerk of Court
U.S. Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

Re: *Roe v. Critchfield*, Case No. 23-2807

Dear Ms. Dwyer:

Under Federal Rule of Appellate Procedure 28(j), I write to inform this Court about *Bridge v. Oklahoma State Department of Education*, which dismissed a challenge to an Oklahoma law designating private spaces in PreK-12 schools by sex. No. CIV-22-00787-JD, 2024 WL 150598 (W.D. Okla. Jan. 12, 2024).

1. *Bridge* confirmed that laws like Idaho’s at most classify “based on biological sex—not transgender status or gender identity.” *Id.* at *4 n.5 (citing *Adams by & through Kasper v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791, 808 (11th Cir. 2022) (en banc)).

2. *Bridge* agreed that these laws serve important interests: protecting “students’ privacy and safety from the opposite sex.” 2024 WL 150598, at *5. While Appellees attack that interest as “speculative” and mere “discomfort” (Reply Br.12-16), “the Supreme Court has recognized the need for privacy between members of each sex in intimate settings.” 2024 WL 150598, at *5.

3. *Bridge* rejected that courts must “conduct fact finding” before upholding these laws. 2024 WL 150598, at *5. As history shows, sex designation provides the “clearest limiting principle....” *Id.* at *6. Indeed, Appellants concede that Idaho can *generally* designate intimate spaces by sex. Reply Br.18-19. If Appellants’ proposed alternatives (like curtains) do not undermine this general practice, they do not undermine applying the same practice uniformly, regardless of someone’s gender identity.

4. *Bridge* confirmed that Title IX references “biological sex,” and that this definition “is determinative,” making Idaho’s law “perfectly in sync with Title IX.” 2024 WL 150598, at *7.

5. *Bridge* illustrates where Appellants’ argument leads. If biology and sex-specific privacy are mere “stereotypes” (Reply Br.6), then “no law recognizing the inherent differences between male and female would pass constitutional muster. This is an untenable position.” 2024 WL 150598, at *6. Appellants counter that they suffer “harm” whereas “cisgender people” required to use sex-specific spaces do not. Reply Br.8. But Appellants never tie this distinction or their subjective definition of harm to any text. Better to track well-established “principles” that affirm the enduring “[p]hysical differences between men and women...” 2024 WL 150598, at *1 (cleaned up).

The body of this letter contains 347 words.

Sincerely,

s/ Alan M. Hurst

Alan M. Hurst
Solicitor General
(208) 947-8773

Counsel for Defendants-Appellees

CERTIFICATE OF COMPLIANCE

I certify that the body of this letter contains 347 words and complies with Federal Rule of Appellate Procedure 28(j).

Date: February 8, 2024

s/ Alan M. Hurst

Alan M. Hurst
Solicitor General

Counsel for Defendants-Appellees

CERTIFICATE OF SERVICE

I certify that this letter was electronically filed with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit on February 8, 2024, using the appellate ACMS system, all participants in the case are registered ACMS users, and service will be accomplished by the appellate ACMS system.

Date: February 8, 2024

s/ Alan M. Hurst

Alan M. Hurst
Solicitor General

Counsel for Defendants-Appellees