

No. 24-6072  
**UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT**

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ANDREW BRIDGE, *et al.*,  
*Plaintiffs-Appellants,*

v.

OKLAHOMA STATE DEPARTMENT OF  
EDUCATION, *et al.*,  
*Defendants-Appellees.*

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On Appeal from the United States District Court for Western District of Oklahoma  
No. 5:22-cv-00787-JD

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**BRIEF OF *AMICI CURIAE* PFLAG, INC., TRANS YOUTH EQUALITY  
FOUNDATION, GENDER DIVERSITY, AND FREEDOM OKLAHOMA  
IN SUPPORT OF APPELLANTS AND SEEKING REVERSAL OF THE  
DISTRICT COURT'S DECISION GRANTING APPELLEES' MOTION  
TO DISMISS AND MOTION FOR JUDGMENT ON THE PLEADINGS**

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## CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, *amici curiae* PFLAG, Inc., Trans Youth Equality Foundation, Gender Diversity, and Freedom Oklahoma, 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: July 19, 2024

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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, K was so depressed 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 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 and, ultimately, made the difficult decision to move her family so K could attend a school that allowed her to use the girls' restroom.

Lizette and Jose's son, D, began living as a boy in fourth grade. D faced bullying and harassment from other students that resulted in one particularly severe incident where a peer threatened D with serious violence. But D was fortunate to be at a school with an administration and teachers who supported him, including by allowing him to use the bathroom that aligned with his gender identity. D credits that

support for his current confidence and wellbeing. He has good friends, is active at school, and is involved in the community.

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 to help the Court understand the children affected by the policies at issue and the harsh realities they face daily.

### **INTEREST OF AMICI CURIAE<sup>1</sup>**

*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.

**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

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<sup>1</sup> 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 *amici* and their counsel contributed money intended to fund preparation or submission of this brief. *See* Fed. R. App. P. 29(a)(4)(E).

the organization's founding in 1973, PFLAG has worked every day to ensure LGBTQ+ people everywhere are safe, celebrated, empowered, and loved.

**Trans Youth Equality Foundation** ("TYEF") is a national nonprofit 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.

**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.

**Freedom Oklahoma** advocates and organizes across Oklahoma and within the 39 sovereign tribal nations that call this land home to build a future where all Two Spirit, Lesbian, Gay, Bisexual, Transgender, Queer, and fuller spectrum of



people whose gender identity exists beyond a heteronormative, binary framework (2SLGBTQ+) have the safety to thrive.

### **SUMMARY OF ARGUMENT**

*Amici* request that this Court reverse the district court’s decisions granting Appellees’ motions to dismiss and for judgment on the pleadings, which disposed of Petitioners’ challenges to Oklahoma Senate Bill 615 (“S.B. 615”), which excludes Petitioners and all other transgender students in Oklahoma from school restrooms 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 as 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.

### **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.<sup>2</sup> Children typically become aware of, and often articulate, their gender identity between ages two and four.<sup>3</sup>

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 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.*

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<sup>2</sup> *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>.

<sup>3</sup> Am. Psychiatric Ass’n, *Diagnostic & Statistical Manual of Mental Disorders* 455 (5th ed. 2013).

*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) (same), *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 refers to the intense distress caused when a transgender person cannot live consistently with their gender identity,<sup>4</sup> is to enable a transgender person to live fully in accordance with who they are. Social transition, the only treatment available to

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<sup>4</sup> 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).

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.<sup>5</sup> Indeed, non-discriminatory school policies dramatically improve transgender students' quality of life, not just during childhood and adolescence, but into adulthood as well. Transgender youth who have been in non-discriminatory school environments experience depression at levels commensurate with non-transgender youth, and only minimal elevations in anxiety.<sup>6</sup> And transgender youth who find mentors in teachers and school staff are "three times as likely to graduate from high school . . . and ha[ve] positive[] . . . engagement and

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<sup>5</sup> 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.pdf](https://www.wpath.org/media/cms/Documents/SOC%20v7/SOC%20V7_English.pdf); Bethany Gibson & Anita J. Catlin, *Care of the Child with the Desire to Change Gender – Part 1*, 36 *Pediatric Nursing* 53, 55 (2010).

<sup>6</sup> See Kristina R. Olson, et al., *Mental Health of Transgender Children Who Are Supported in Their Identities*, 137(3) *Pediatrics* 1 (Mar. 2016).

connectedness to their school[s].”<sup>7</sup>

Conversely, isolating transgender children and excluding them from the restrooms used by other students, consistent with their gender identity, causes severe harm.<sup>8</sup>

The harm is long lasting<sup>9</sup> and can have a profound negative impact on a child’s life.<sup>10</sup>

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<sup>7</sup> 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).

<sup>8</sup> 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>.

<sup>9</sup> 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.

<sup>10</sup> 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](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. 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 such policies. By contrast, when schools support transgender students, 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 thirteen-year-old daughter, K, is transgender.



*Kimberly and K*

From the age of two, K showed signs 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 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. 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 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 a 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. After starting at a supportive school, K thrived. She developed confidence and became outspoken. 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 2023, however, given the passage of legislation in the state barring trans youth from accessing transition-related care, Kimberly felt 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 was 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 enrolled K in a school that supported her and, for the first time, Kimberly began experiencing “a little bit of relief as a parent.” Unfortunately, this relief was short-lived: earlier this year, Kimberly had to pull K out of school because of persistent and vindictive bullying, and K is currently being homeschooled. Once again, Kimberly and K are looking for a safe place to call home. “The safe states are just fewer and fewer for families like ours these days.”<sup>11</sup>

**B. Melissa Brown – Denver, Colorado**

Melissa Brown<sup>12</sup> and her 13-year-old daughter, H, who is transgender, recently left their home in Oklahoma City, Oklahoma to relocate to Denver, Colorado. Melissa, a pastor’s daughter, was raised in Oklahoma, and H had lived in Oklahoma City since she was born. But Oklahoma’s policies targeting transgender

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<sup>11</sup> Sources: Dec. 13, 2016, Jan. 11, 2018, Nov. 11, 2019, Nov. 11, 2021, Nov. 7, 2023, and May 20, 2024 telephone interviews with and October 31, 2018 email from Kimberly Shappley.

<sup>12</sup> “Melissa Brown” is a pseudonym, which is being used because of the potential harm that may arise from sharing publicly that her daughter is transgender.

youth, like SB 615, were taking a “significant toll on [H’s] mental and emotional wellbeing” and Melissa made the difficult decision to uproot their lives to protect H: “I knew that if she didn’t have support, the likelihood of her continuing to live a thriving life—or continuing to live at all—was very low. . . . We moved, not because we wanted to, but because we felt we had to.”

As a child, H was loud, gregarious, and funny. She was curious and excited about life. Early on, Melissa recalls she showed signs she was interested in stereotypically “girl” things: when H was 3, she found a headband with a “popping pink flower” on the ground and “was passionate about taking it home.” Melissa initially tried to resist, telling H it was dirty because it had been on the ground, but H insisted. So, they took it home and washed it and H wore it for weeks. A few years later, H started playing with makeup, doing her nails, and playing dress up in girls’ clothes. She chose a pink backpack and pink Converse sneakers for school, not caring that other kids may make fun of them.

In fourth grade, H made a conscious decision about her identity. “She wanted to talk about pronouns and talk about her name; she wanted to start growing her hair out.” “Her hair was *the* thing—that’s what helped her embody herself and feel like she was affirmed as a girl.” H’s fourth grade year was during the height of the COVID-19 pandemic, which meant H was attending school from home. This offered H an opportunity to transition and then start fifth grade, which was the beginning of

middle school and was partially in person, as a girl. “In her head, starting at a new school in fifth grade lined up with how [H] felt like she could start over and be herself but keep herself safe.”

Before starting middle school, H was already anxious about using public bathrooms. Because she had presented as “girly” in elementary school but still used the boys’ bathroom, another student followed her into bathroom one time and urinated on her back. The “trauma of this incident . . . made her associate choosing to be herself in the bathroom with not being safe.” This association followed H to middle school, and she experienced a lot of fear about being bullied or outed in the bathroom. Despite SB 615 having been signed into law, “[H] would try to use the girls’ bathroom but was afraid. . . she thought she was in danger of getting beat up every time.”

The stress was so acute that H “wouldn’t go to the bathroom if there was another person in there.” H “wouldn’t want to eat or drink so she wouldn’t have to use the restroom at school.” Melissa recalls that they had to pack extra clothes because H ended up having accidents. The school designated a teachers’ bathroom as nonbinary, but that meant “[H] was outed every time she used that bathroom.” In fact, a teacher stopped her once and told her she was not allowed to use that restroom because it was only for nonbinary students. H was trying to pass as a girl and use the teachers’ bathroom as surreptitiously as she could and was humiliated. “We can’t

underestimate the damage to the psyche that so much calculation of safety and public perception does to a child. . . . It's not normal or okay to hold your pee so long you almost pee in your pants. It's not normal or okay to go into a bathroom and look around to see if it's unsafe.”

The toll on H was enormous. She was struggling to focus in school: “her grades were bad; she wasn't able to pay attention. She couldn't retain or learn or stay engaged or have any motivation at all. You think it's just about a stall, but there is reverberation in a child's brain and development and ability to learn.” H began to isolate herself and started to self-harm. Melissa recalls this being the “beginning of the reality check. This wasn't going to stop for us as long as we stayed in a place where [H] lived in fear of being herself.”

Melissa began talking to her ex-husband, H's dad, about how to keep H safe. H's dad “loves [H] and has accepted her,” but still repeats the “dehumanizing language that's being used to talk about trans kids related to things like the bathroom ban.” Melissa explained that she knows that he and much of their extended family “love [H] and care about her wellbeing” but they “fear anything that is outside of what they are told is okay.” Melissa is shocked by how much this fear dictates: “This is your kid, not some stranger. And these policies are not just logistical. They are deeply, deeply traumatic because of the dehumanizing nature of them.”

Ultimately, Melissa made the very painful decision to leave Oklahoma. H has an older brother, B, who is sixteen. He is “deeply embedded in his world in Oklahoma City,” so although he was “very torn” and is “really supportive and protective of [H]” the family decided that he would stay with H’s dad. “They text and talk every day” and see each other every few weeks, but the “grief and cost” of separating the family to keep H safe “is very high. This was not a fun, joy-filled transition. We’ve done our best to seek out goodness and healing . . . but it comes with a lot of loss.” Every time H leaves Oklahoma City or B leaves Denver, it is “heavy and hard.” But when they are together, “it’s exactly how it should be: so much joy and laughter and fun . . . there’s a lot of love between [H and B].”

Despite the pain of leaving Oklahoma, H is thriving in Colorado. She loves her school, is getting all As and Bs, and is volunteering. After being “shut down in survival mode for two years straight,” H is her curious and open self again. Upon seeing her daughter in this new, supportive environment, Melissa thought, “Oh, there she is!” H has found a wonderful community and gets to “just be a kid.” She “does TikTok dances, has group chats and inside jokes with her friends, and doesn’t want to eat her vegetables at dinner.” She is lighter because she can be “the fullness of who she is.” Melissa shared that one of the reasons they moved was so H could “see old trans people—not ones who are public figures.” Melissa does not “want her to feel this burden to be exceptional, to prove she deserves to live only because of how

much she’s doing.” Melissa explained, H “just wants the experiences and milestones—the difficulty, complexity and beauty of adolescence—but was painfully aware of the ways that wouldn’t be safe for her in Oklahoma.” In Denver, H can just live her life.<sup>13</sup>

**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*

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<sup>13</sup> Source: June 10, 2024 telephone interview with Melissa Brown.



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 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 eight, 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 prior] 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, another student threatened to assault D in a graphic and violent way. 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. Some of his friends just got their driver’s licenses, and D is looking forward to starting driving lessons this summer. D and three other transgender students also recently organized “Trans Prom” on the National Mall in Washington DC. Over 200 people attended, 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.”<sup>14</sup>

**D. Wayne and Kelly Maines – Stanford, California**

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 has since moved to California, where Kelly will join him this fall. Wayne and Kelly have twenty-six-year-old identical twins, Jonas and Nicole. Nicole is transgender.

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<sup>14</sup> Source: Nov. 7, 2023 and May 20, 2024 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 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.<sup>15</sup>

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. Last year, Nicole

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<sup>15</sup> 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” came out this past spring. Nicole is currently doing book signings for the graphic novel, and her memoir will come out later this year.

Wayne was recently featured in a documentary titled, “The Dads,” about fathers’ experiences with masculinity and raising transgender children. The Dads—filmed in Oklahoma—premiered on Netflix in November 2023. As Wayne has explained, kids like Nicole “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.”<sup>16</sup>

### **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.

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<sup>16</sup> Sources: Feb. 14, 2017, Nov. 8, 2019, Nov. 14, 2023, and May 20, 2024 telephone interviews with and Jan. 5, 2018 and Nov. 4, 2018 emails from Wayne Maines.



Respectfully submitted on July 19, 2024.

*/s/ Maureen P. Alger*

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**CERTIFICATE OF COMPLIANCE**

I hereby certify that:

1. This brief complies with type-volume limitation of Rule 29(a)(5) and Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure and Circuit Rule 32(B) because it contains 6,498 words, excluding the parts of the brief exempted by Rule 32(f) of the Federal Rules of Appellate Procedure.

2. This Brief complies with the typeface and type style requirements of Rule 29 (a)(4) and Rules 32(a)(5) and (6) of the Federal Rules of Appellate Procedure and Circuit Rule 32(A) because this Brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

/s/ Maureen P. Alger  
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