

No. 18-35708
**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

PARENTS FOR PRIVACY; JON GOLLY; KRIS GOLLY, individually and as guardians ad litem for A.G.; NICOLE LILLIE; MELISSA GREGORY, individually and as guardian ad litem for T.F.; PARENTS RIGHTS IN EDUCATION, an Oregon nonprofit corporation; LINDSAY GOLLY,
Plaintiffs-Appellants,

v.

JEFFERSON B. SESSIONS III, Attorney General; BETSY DEVOS; UNITED STATES DEPARTMENT OF EDUCATION; UNITED STATES DEPARTMENT OF JUSTICE; DALLAS SCHOOL DISTRICT NO. 2,
Defendants-Appellees,

BASIC RIGHTS OREGON,
Intervenor-Defendant-Appellee.

On Appeal from the United States District Court for the District of Oregon,
Portland Division, No. 3:17-cv-01813-HZ

BRIEF OF *AMICI CURIAE* PFLAG, INC., TRANS YOUTH EQUALITY FOUNDATION, GENDER SPECTRUM, GENDER DIVERSITY, AND TRANSACTIVE GENDER PROJECT IN SUPPORT OF APPELLEES AND SEEKING AFFIRMANCE OF THE DISTRICT COURT'S DECISION GRANTING APPELLEES' MOTION TO DISMISS

COOLEY LLP
JOHN C. DWYER (dwyerjc@cooley.com)
MAUREEN P. ALGER (malger@cooley.com)
SARAH R. BINNING (sbinning@cooley.com)
EMILY B. HARRINGTON (eharrington@cooley.com)
3175 Hanover Street
Palo Alto, California 94304
(650) 843-5000

Counsel for Amici Curiae
[Additional Counsel Listed on Next Page]

COOLEY LLP
KYLE WONG (kwong@cooley.com)
101 California Street, 5th Floor
San Francisco, California 94111
(415) 693-2000

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

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

Additional Counsel for Amici Curiae

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, *amici curiae* PFLAG, Inc., Trans Youth Equality Foundation, Gender Spectrum, Gender Diversity, and TransActive Gender Project, 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: March 11, 2019

s/ Maureen P. Alger

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

Counsel for Amici Curiae

TABLE OF CONTENTS

	Page
CORPORATE DISCLOSURE STATEMENT	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES	iii
INTRODUCTION	1
INTEREST OF <i>AMICI CURIAE</i>	2
SUMMARY OF ARGUMENT	5
ARGUMENT	6
I. Isolating Transgender Students from Other Students Constitutes Discrimination and Causes Serious Harm.....	6
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.	9
A. Kimberly Shappley – Austin, Texas	9
B. Jennifer and Bill Zins – Deltona, Florida	14
C. Danielle and Chuck Ehrismann – Portland, Oregon.....	19
D. Wayne and Kelly Maines – Austin, Texas	25
CONCLUSION.....	30

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Bd. of Educ. of the Highland Local Sch. Dist. v. U.S. Dep’t of Educ.</i> , 208 F. Supp. 3d 850 (S.D. Ohio 2016), <i>stay pending appeal denied, Dodds v. U.S. Dep’t of Educ.</i> , 845 F.3d 217 (6th Cir. 2016).....	9
<i>Brown v. Bd. of Educ.</i> , 347 U.S. 483 (1954).....	6
<i>Doe v. Boyertown Area Sch. Dist.</i> , 897 F.3d 518 (3d Cir. 2018), <i>appeal docketed</i> , No. 18-658 (U.S. Nov. 21, 2018)	7
<i>Doe v. Reg’l Sch. Unit 26</i> , 86 A.3d 600 (Me. 2014).....	29
<i>G.G. v. Gloucester Cty. Sch. Bd.</i> , 822 F.3d 709 (4th Cir. 2016) (Davis, J., concurring), <i>vacated on other grounds</i> , 137 U.S. 1239 (2017).....	7
<i>Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.</i> , 858 F.3d 1034 (7th Cir. 2017)	7
Statutes and Regulations	
Fed. R. App. P. 26.1.....	i
29(a)(2)	2
29(a)(4)(E)	2
Other Authorities	
Am. Psychiatric Ass’n, <i>Diagnostic & Statistical Manual of Mental Disorders</i> 451 (5th ed. 2013).....	6, 7
Bethany Gibson & Anita J. Catlin, <i>Care of the Child with the Desire to Change Gender – Part 1</i> , 36 <i>Pediatric Nursing</i> 53 (2010).....	8

TABLE OF AUTHORITIES
(continued)

	Page(s)
Blaise Vanderhorst, <i>Whither Lies the Self: Intersex and Transgender Individuals and a Proposal for Brain-Based Legal Sex</i> , 9 Harvard L. & Pol’y Rev. 241 (2015).....	6
Center for Disease Control and Prevention, <i>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</i> , https://www.cdc.gov/mmwr/volumes/68/wr/mm6803a3.htm?s_cid=mm6803a3_w ; Johns M.M., Lowry R., Andrzejewski J., et al. (2017).....	8, 9, 17
GLSEN, <i>The 2017 National School Climate Survey: The experiences of lesbian, gay, bisexual, transgender, and queer youth in our nation’s schools</i> , https://www.glsen.org/article/2017-national-school-climate-survey-1 ; Kosciw, J. G., Greytak, E. A., Zongrone, A. D., Clark, C. M., & Truong, N. L. (2018)	8
Milton Diamond, <i>Transsexuality among Twins: Identity Concordance, Transition, Rearing, and Orientation</i> , 14 Int’l J. of Transgenderism 24 (2013).....	6
World Prof’l Ass’n for Transgender Health, <i>Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People</i> (2012), https://goo.gl/WiHTmz	8

INTRODUCTION

Like all parents, Kimberly Shappley wants what is best for her daughter. Since age two, Kimberley's daughter K expressed that she was a girl, but Kimberly initially refused to accept that K was transgender. At four years old, K was so depressed that she seemed to be giving up on life, 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 allow K to be herself and live as a girl. Since then, K has blossomed. But her experience at school has been challenging. Most significantly, the school did not allow her to use the girls' restroom. This policy singled K out and kept her isolated and separated from her peers every time she needed to use the restroom. Kimberley was worried about the significant damaging effects this policy was having on her daughter. Ultimately, Kimberly decided to move her family so K could attend a school that allowed her to use the girls' restroom.

Jennifer and Bill Zins' son, D, began living as a boy in second grade; he quickly went from being unhappy and despondent to smiling all the time. However, he was soon prohibited from using either the boys' or girls' restrooms, and was forced to use limited gender-neutral restrooms. As a result, D felt isolated from his classmates and became anxious and unhappy. His health and academic performance began to suffer. Only after Jennifer and Bill initiated litigation

against the school board was D allowed to use the boys' facilities. Since that time, D's academic performance has dramatically improved, and he is finally able to enjoy being a teenager, no longer impeded by the daily stigma of being treated differently than his peers.

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 parents have chosen to share their very personal stories here to help the Court understand the children affected by the policies at issue and the harsh realities they face daily.

INTEREST OF *AMICI CURIAE*¹

Amici are five 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 the nation's largest LGBTQ family and ally nonprofit organization, with more than 200,000 members and supporters and 400

¹ 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).

affiliates. PFLAG's members are parents, children, grandparents, siblings, other family members, allies, and friends of lesbian, gay, bisexual, transgender, and queer (LGBTQ) individuals. PFLAG is committed to advancing equality and full societal affirmation of LGBTQ people through its threefold mission of support, education, and advocacy.

Trans Youth Equality Foundation ("TYEF") is a national non-profit organization that provides education, advocacy, and support for transgender children and their families. 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 Spectrum is a non-profit organization whose mission is to create a gender-inclusive world for all children. Gender Spectrum provides an array of services to help youth, families, schools, and organizations understand and address gender identity and gender expression. These services include running trainings for schools and coordinating local and national support groups for transgender youth and their families.

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.

TransActive Gender Project (“TransActive”) at Lewis & Clark Graduate School of Education and Counseling, a non-profit organization, was founded by transgender individuals dedicated to supporting transgender and gender-diverse youth. TransActive is committed to helping parents, caregivers, and communities understand that the imposition of narrow, binary-only gender stereotypes and expectations negatively impacts the well-being of all children. TransActive provides a holistic range of services and expertise to empower transgender and gender-diverse children, youth, and their families in living healthy lives, free of discrimination.

Given their missions, PFLAG, TYEF, Gender Spectrum, Gender Diversity, and TransActive have a strong interest in ensuring the right of transgender children to be treated equally in all aspects of the school environment, including the use of restrooms. These organizations, and the parents of transgender children with whom they work, are uniquely positioned to address how restrictions on restroom use can have profound and deleterious effects on transgender children, leading to social stigma, discrimination, bullying, and depression. They can also speak to the

positive effects of supportive schools that allow transgender children to be their true selves and to flourish and grow.

SUMMARY OF ARGUMENT

Amici request that this Court affirm the district court's decision, which granted Appellees' motion to dismiss with prejudice and held that the school district's plan allowing a transgender student to use facilities that match his gender identity did not violate the Fourteenth Amendment or Title IX. *Amici* offer the unique perspective of parents of transgender children who can explain the negative impact of preventing transgender children from using the same facilities used by other students. Through the personal stories of these parents, *amici* seek to provide a broader view of transgender youth, and to help the Court understand the critical importance of letting transgender children be themselves and live authentically in all aspects of their lives, including at school. These stories illustrate how preventing transgender students from using the same restrooms as other students, consistent with their gender identity, denies them the opportunity to participate as full and equal members of the school community.

ARGUMENT

I. Isolating Transgender Students from Other Students Constitutes Discrimination and Causes Serious Harm.

Gender identity is 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.² Children typically become aware of, and often articulate, their gender identity between ages two and four.³

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). It should be no surprise that when transgender students face such discrimination—when they are singled out and treated differently from others of the same gender identity or are segregated from

² Blaise Vanderhorst, *Whither Lies the Self: Intersex and Transgender Individuals and a Proposal for Brain-Based Legal Sex*, 9 Harvard 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).

³ Am. Psychiatric Ass’n, *Diagnostic & Statistical Manual of Mental Disorders* 451 (5th ed. 2013).

their peers—the impact can be devastating. *See, e.g., Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 529 (3d Cir. 2018), *appeal docketed*, No. 18-658 (U.S. Nov. 21, 2018) (“When transgender students face discrimination in schools, the risk to their wellbeing cannot be overstated—indeed, it can be life threatening.”); *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1045 (7th Cir. 2017) (school district stigmatized student “when it dismissed him to a separate bathroom” because he was transgender); *G.G. v. Gloucester Cty. 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 U.S. 1239 (2017).

Medical research confirms what these courts have found. According to established medical consensus, the only effective treatment for gender dysphoria⁴ is to enable a transgender person to live fully in accordance with the person’s

⁴ 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* 451 (5th ed. 2013).

gender identity. Social transition, the only treatment available to children with gender dysphoria prior to puberty, may include adopting a new haircut, new clothes, a new name, and different pronouns, and interacting with peers and one's environment in a manner that better matches the child's gender identity. A critical part of any such transition is allowing the child to use the same restrooms as other students, consistent with their gender identity. As illustrated by the family stories below, social transition significantly eases the symptoms of gender dysphoria, prevents severe harm, and allows transgender children to thrive.⁵

Isolating transgender children from the restrooms used by other students, consistent with their gender identity, constitutes discrimination and causes harm.⁶ The harm is long lasting and can have a profound negative impact on a child's life.⁷ Subjecting transgender youth to this harm serves no legitimate governmental

⁵ World Prof'l Ass'n for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People* (2012), <https://goo.gl/WiHTmz>; Bethany Gibson & Anita J. Catlin, *Care of the Child with the Desire to Change Gender – Part 1*, 36 *Pediatric Nursing* 53, 55 (2010).

⁶ LGBTQ youth who experience victimization because of their gender expression are twice as likely to not pursue a secondary education. GLSEN, *The 2017 National School Climate Survey: The experiences of lesbian, gay, bisexual, transgender, and queer youth in our nation's schools*, <https://www.glsen.org/article/2017-national-school-climate-survey-1>; Kosciw, J. G., Greytak, E. A., Zongrone, A. D., Clark, C. M., & Truong, N. L. (2018).

⁷ Nearly two percent of high school students identify as transgender. Thirty-five percent of those transgender students attempted suicide in the past year. Center for Disease Control and Prevention, *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*,

interest and cannot survive any level of Equal Protection review. *See Bd. of Educ. of the Highland Local Sch. Dist. v. U.S. Dep't of Educ.*, 208 F. Supp. 3d 850, 877 (S.D. Ohio 2016), *stay pending appeal denied*, *Dodds v. U.S. Dep't of Educ.*, 845 F.3d 217 (6th Cir. 2016).

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

A. Kimberly Shappley – Austin, Texas

Kimberly Shappley lives in Austin, Texas. She recently moved from a small town outside of Houston, which she describes as “ultra-conservative.” Kimberly

https://www.cdc.gov/mmwr/volumes/68/wr/mm6803a3.htm?s_cid=mm6803a3_w; Johns M.M., Lowry R., Andrzejewski J., et al. (2017) (“Center for Disease Control and Prevention”).

was born in Alabama and raised in Mississippi. She is an evangelical Christian and a Faith Outreach Coordinator at Equality Texas. She is also an ordained minister, and led ministries at Lakewood Church from 2007 until 2014. Kimberly has seven children ranging in age from six to 31. Her eight-year-old daughter, K, is transgender.



Kimberly and K Shappley

From the age of two, K showed signs that she identified as a girl. She turned her t-shirts into skirts and once tried to wear clothing from a neighbor's girl doll—even though the clothing was far too small for her.

At first, Kimberly tried to force K to act more like a boy and would punish her, at times even spanking her, when she 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, “[Y]ou know, Mommy, you know I’m a girl!” Looking back, Kimberly recognizes that K “always knew who she was.” She regrets her attempts to force K to live as a boy, though, at the time, she did not know what else to do. Family and community pressure to “do something” about K’s “girly” behavior only exacerbated the problem.

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. Kimberly remembers K crying with joy and hugging the robe. One day, Kimberly found K crying when she picked her up from daycare. K told her that she 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.” At that moment, Kimberly recalls feeling, “in my heart, I knew that I had to do something different.” She began researching more about gender identity and gender dysphoria in children.

Around this time, Kimberly remembers hearing K—whose birth name is JP—praying and asking “the Lord to take JP home to be with Jesus and never

come back.” She became concerned that K was depressed and was “starting to just give up.” Kimberly describes K during this time period:

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 to allow K to wear girls' undergarments. The day K came home to find girls' undergarments in her drawer, “she fell to the floor.” She hugged the clothes and started crying out of happiness. One day, however, K's daycare teacher discovered that she was wearing girls' undergarments and forced her to change into boys' undergarments. 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 realized that her problem was not with God, but with what other people might think of her. Kimberly now believes she is “a better Christian because of K.” She explains:

Honestly, being the mom of a transgender kid has made me kinder, more compassionate, empathetic, loving, less judgmental. . . . I am a better human being for being K's mom. . . . I think that I am stronger in my faith because of K, and . . . I portray more of what He wants us to be. I still go to church . . . but I am a totally different person, and I think that the greatest gift that I've ever been given is just being K's mom.

It was only after K transitioned that Kimberly realized how truly unhappy K had been. Kimberly explains, "It wasn't that my child was now happy, it's that my kid was now joyful. . . . All of a sudden I had this kid who was truly happy. . . . 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 in her classroom, but was required to use the nurse's restroom when she was outside the classroom. Kimberly contested the policy and tried to educate school officials, but the situation deteriorated. Starting in first grade, K no longer had the option of using a gender-neutral restroom inside the classroom. Additionally, the school revised its policy so that K was not even allowed to use the nurse's restroom. Instead, her only option was to use the staff restroom. Because of the stigma and isolation she 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 on her well-being. 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. Due to the lasting effects of exclusion from the restroom, K is now under the care of a urologist and a counselor.

Kimberly felt helpless and frustrated with the situation at school and, in the spring of 2018, made the difficult choice to move her whole family to Austin so K could go to a school where she could use the girls' restroom. After being able to use the girls' restroom at her new school, K came home and excitedly wrote in her journal all the details of using the girls' restroom. She is adjusting well and enjoying her new school.⁸

B. Jennifer and Bill Zins – Deltona, Florida

Jennifer and Bill Zins live in Deltona, Florida with their four children, ages twelve to twenty-four. Bill is a sales and marketing representative for a power tool company, and Jennifer is a homemaker. Their sixteen-year-old son, D, is transgender.

⁸ Sources: December 13, 2016 and January 11, 2018 Telephone Interviews with Kimberly Shappley; October 31, 2018 Email from Kimberly Shappley.



From left to right: Bill, D, and Jennifer Zins

From a very young age, D seemed unhappy and distressed. In particular, getting dressed was very stressful. When D was three, he had a “complete meltdown” over wearing a “flower girl” dress for his parents’ wedding. He was miserable the entire day in the outfit and unable to enjoy the festivities. As he reached school age, getting dressed became a huge struggle, often taking over an hour because he hated wearing “girls’ clothes.” He would kick and scream and tell his mother that he “would rather have cut his arms off” than wear girls’ clothes. D even said he “hated his life.” Jennifer recalls watching D in the car one day around this time and realizing that he was completely “checked out,” unable to enjoy being a child. She remembers worrying that D might even kill himself because he was so unhappy.

Starting in first grade, at D's request, Jennifer and Bill allowed D to shop for "boys' clothes" for school. D was so much happier once he was allowed to wear the clothes he wanted. He would get dressed for school quickly, without any issues. Later that year, D insisted on cutting his hair short. When Jennifer and Bill explained that with his short hair and boys' clothes, he might be perceived as a boy, D responded that he was "okay" with that. And indeed, when strangers would refer to him as a boy, D would beam.

Throughout first grade, Jennifer and Bill thought D was going through a "phase or a tomboy thing." Then Jennifer saw the 20/20 episode where Barbara Walters interviewed Jazz Jennings, one of the first transgender youth to be in the public spotlight, where Jazz Jennings talked about her transition. Jennifer looked at Bill and said, "They're talking about our kid." After that, Jennifer sought out a therapist for D. The therapist's advice was to let D socially transition over the summer and enter second grade as a boy. Shortly after he began seeing the therapist, D asked his mother, "Do you love me?" Jennifer responded, "Of course I love you, you're my daughter, I am always going to love you." D responded, "I wish you would call me your son." That was the moment Jennifer began to really understand D's gender identity. Bill recalls that he was initially skeptical about

D's transition but came "fully on board" as soon as he learned how high the suicide rate is for transgender children who do not have parental support.⁹

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

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

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

⁹ Center for Disease Control and Prevention, *supra* note 7, at 8-9.

psychological distress over his isolation caused him to pull out his eyelashes, a medical condition called trichotillomania. He began therapy and started on antidepressants.

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

In high school, D was required to change in the media center for gym class. Unsurprisingly, this caused him to be frequently late for class. D was also only allowed to use the school's single-user restrooms. However, most of the single-user restrooms were kept locked. D began limiting his water intake to avoid using the restroom. These issues affected D's focus at school and his grades began to suffer. He almost failed his sophomore year and refused to discuss college or his future at all. D often came home from school agitated and upset and would lash

out at his family or withdraw. Jennifer and Bill became seriously concerned about his well-being.

In January 2017, in the middle of D's sophomore year, Jennifer and Bill filed a lawsuit against the school district. As a result of a settlement in that suit, D is now, finally, able to use the boys' facilities. D's confidence has gone "through the [] roof." As Bill explains, the heavy weight on D's shoulders "has been lifted." Today, D is getting As and Bs and is on the honor roll. Where it had been a "constant battle" to get D to complete his homework, he's now "taking initiative [and] he's proactive." D can now focus on his schoolwork and no longer has to worry about "all those other things that were really a struggle." He enjoys music, reading, and sports, and is excitedly planning for college and his future.

Jennifer and Bill are extremely proud of what D has overcome to get to this point. Jennifer says D is her "hero" who has "one of the biggest hearts" and who "doesn't even realize that he is changing the world" for the better.¹⁰

C. Danielle and Chuck Ehrismann – Portland, Oregon

Danielle and Chuck Ehrismann live in Portland, Oregon with their three children, ages 13 through 22. They moved to Portland in 2014 from Boca Raton, Florida. Chuck is a corporate investigator and Danielle is a case manager for a

¹⁰ Source: November 24, 2018 and December 11, 2018 Telephone Interviews with Jennifer and Bill Zins.

non-profit organization that works with youth. Their fourteen-year-old daughter, E, is transgender.



From left to right: Chuck, Andrew, A, Danielle, and E Ehrismann

From a young age, E gravitated toward anything feminine. Even as a toddler and preschooler, E would fashion Danielle’s shirts into dresses and run around in her mom’s high heels. When out shopping, E would pull princess dresses from the rack, and could not keep her hands off anything sparkly. One day in kindergarten, E hid a sparkly t-shirt under her clothing, snuck nail polish out of the house to paint her nails, and ran around her classroom shouting, “I’m a girl, I’m a girl, I’m a girl!” Chuck recalls being “mortified” when the school principal called him about this incident.

Before she transitioned, E was deeply unhappy. She was a “closed off human being” who would have “persistent meltdowns.” Danielle remembers that around age three, E would hide her private parts when in the bathtub, while asking if “God made mistakes?” Danielle began to understand around this time that this was much more than a “phase.”

While Danielle was quick to accept her daughter’s gender identity, for Chuck, who was raised in a conservative and devout Christian family, it was a more gradual and “painstaking” process. At first, Chuck believed that E’s feminine behavior was just a phase, but as time went on, and E’s behavior persisted, he began to think “enough was enough.” By the time E was three, Chuck banned the color pink, dolls, and dress-up from their home. For both Chuck and Danielle, this was one of the hardest times in their relationship and in their lives.

Around this same time, Danielle watched the 20/20 episode where Barbara Walters interviewed Jazz Jennings. Before this, “transgender” was not a term Chuck and Danielle were familiar with or understood. The episode made Danielle realize that what their child was going through “had a name” and that they were “not the only family going through this.” Danielle convinced Chuck to watch the episode, which he did, and it opened him up to trying to understand what E was experiencing.

The 20/20 episode featured a therapist, Dr. Marilyn Volker from Fort Lauderdale, who practiced not far from where the Ehrismann family lived. Danielle immediately made an appointment. After watching the episode, Chuck decided that he would “go and listen” to Dr. Volker even though he thought that being transgender “went against all of [his] beliefs and everything that [he] had ever been taught.” Dr. Volker helped Chuck come to understand that what E was going through was more than a phase, and that E’s identity “is a hard-wired deal.” Chuck explains that “I still didn’t know what to do, but I began to shift.”

Dr. Volker advised Chuck and Danielle to give E time to “express herself,” so they began to allow her to dress as a girl at home. To E, getting to wear girls’ clothes was “like Christmas morning”—in the beginning, she would bubble over with excitement at each opportunity. Initially Chuck “didn’t want the neighbors to see” when E dressed as a girl, but E was so excited she would fly through their front door and run around the neighborhood before he could stop her. On Halloween, which was E’s favorite holiday because she could be “anything she wanted,” E was always “over the top” and would run around trick-or-treating in LED-flashing high heels.

Chuck vividly recalls one moment when E was four years old: he was trying to force a “boys” t-shirt over E’s head saying, “You’re a boy, you’re going to wear this and that is what is going to happen.” After initially fighting him, E

eventually “crumbled,” as if her “will left her,” telling her dad, “I hate you.” That was a pivotal moment for Chuck, who is both a deeply spiritual person and a deeply loving father. After that, Chuck went through a “soul-seeking phase,” and came to realize that he had to accept E for who she was, and had to stop trying to “force a square peg into a round hole.” After both studying the Bible and educating himself on gender dysphoria—including the alarmingly high suicide rates seen in transgender children who are not supported by their families—Chuck eventually reconciled his religious beliefs and the needs of his child. For him, it came down to a simple question: “What is my goal as a parent? Is my purpose to force a gender on someone or to nurture and make sure that this human being becomes a successful, productive, [physically] healthy, and emotionally healthy member of society?”

Chuck says that today he is a “totally different person,” who fully supports E’s gender identity and stands behind her, even at the expense of painful separation from many family members, including his own mother. Chuck’s struggle to accept E’s gender identity also took a toll on his relationship with E—it took several years, until the family moved to Portland in 2014, for Chuck and E to rebuild trust and become close again.

E transitioned when she was six years old. At that time, the Ehrismann family lived in Boca Raton, Florida. E faced constant discrimination both at

school and in the community. In elementary school, E was only allowed to use the gender-neutral restrooms in her classroom and the restrooms in the school clinics, which presented issues whenever she was away from her classroom. Danielle worked hard to get the Palm Beach School District to modify its anti-bullying policy to protect gender identity and expression, but E still faced regular bullying in the classroom. E and her family were also asked not to return to their church after E wore a necklace to Sunday school and told all the children that she was a girl, which caused an “uproar” among the congregation.

Danielle and Chuck ultimately determined that their family needed a healthier, more affirming environment for E and her siblings, and made the difficult decision to move to Portland, Oregon. The move was not an easy decision for their family because it uprooted them from their family, friends, and jobs. However, Chuck and Danielle decided it was necessary to ensure that E would be safe and that her needs would be met.

Today, E is a freshman in high school in northeast Portland, which is a much healthier and more supportive environment for her. E is no longer treated differently than her peers, and she can use the girls’ restroom. In Chuck’s words, E is “thriving.” Being transgender is not the center of E’s life. She is a typical high school girl who, like most teens, is focused on fitting in and spending time with close friends. E is an exceptional student—in fact, she is number one in her

ninth grade class. She is also creative, ambitious, and self-confident. Today, Chuck and Danielle almost have to be reminded that E is transgender because their focus is simply on supporting their high school-aged daughter, who is nervous about her upcoming play in theater class, wanting to join the golf team, and working hard to get into a top college. E is just “living her authentic life” and her parents are thrilled that she is so “successful and emotionally healthy.”¹¹

D. Wayne and Kelly Maines – Austin, Texas

Wayne and Kelly Maines recently moved to Austin, Texas. Wayne is Vice President of Safety and Operations at Austin Community College, and Kelly is currently looking for a home for their family. Wayne and Kelly have twenty-one-year-old identical twins, Jonas and Nicole. Nicole is transgender.

¹¹ Source: November 24, 2018 Telephone Interview with Chuck and Danielle Ehrismann.



From left to right: Wayne, Nicole, Kelly, and Jonas Maines

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. Kelly researched why Nicole might be behaving this way but found very little information regarding transgender children online at that time. 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,” Wayne had “no idea how to respond” at the time.

Before she transitioned, Nicole was “a very angry, very depressed” child. When Nicole was four, her parents bought her action figures for Christmas. Wayne recalls that he had “never seen a kid so despondent.” Kelly got upset and

told him, “We’re not doing this anymore.” She took Nicole to the store and bought her the “girl toys” she wanted.

While Kelly was supportive of Nicole from early on, Wayne struggled to come to terms with the disappointment he felt at not having the life he envisioned with twin boys. Wayne recalls, “When I had my boys . . . I had these dreams of what my life with my children was going to be . . . And, man, was I wrong!” He struggled to understand why Nicole felt the way she did and hoped it was something she would outgrow. It was not until later, when he and Kelly consulted with medical professionals, that he learned “that it wasn’t anything we did.” Wayne now regrets not supporting Nicole from a young age. He explains what he now knows about gender identity: “It’s persistent and consistent, and it’s 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 when they got out of the car. Jonas pulled away. Nicole, however, 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.”

Today, Wayne and Kelly are enthusiastic advocates for transgender children and their parents. Around ten years ago, they were unintentionally thrust into the public eye 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. The school also assigned Nicole a "bodyguard"—not to protect her, but to prevent her from trying to use 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 made the difficult decision to move Kelly and the twins to Portland, Maine. Wayne had no choice but to stay behind because of his job, and he 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.¹²

Nicole, who is pursuing a career as an actress, recently landed a job as Supergirl's best friend on the CW network, playing the first transgender superhero on television. Wayne also counsels parents of transgender children on how to start conversations with their schools. While he is "not real thrilled about telling everybody about [his] most personal weaknesses," he thinks it is important to share his family's story to help other transgender children. Wayne explains that kids like Nicole are "not hurting anybody" by using the restroom aligned with their gender identity and that "they want to grow and be successful and productive Americans, and it's that simple. It's not just about the [restrooms]. Every child has the right to the same educational experience." Wayne describes his daughter as "probably one of the strongest people I've ever met who is also still one of the most vulnerable, and has had to deal with so much that it has just made me a better person, a better father, and a better husband to be around her . . . a better American."¹³

¹² See *Doe v. Reg'l Sch. Unit 26*, 86 A.3d 600 (Me. 2014).

¹³ Sources: February 14, 2017 Telephone Interview with Wayne Maines; January 5, 2018 and November 4, 2018 Emails from Wayne Maines.

CONCLUSION

On behalf of the parents of transgender children, who want their children to be supported and treated equally, *amici* urge this Court to affirm the district court's decision granting Appellees' motion to dismiss with prejudice.

Dated: March 11, 2019

By: s/Maureen P. Alger
Maureen P. Alger

John C. Dwyer
Maureen P. Alger
Sarah R. Binning
Emily B. Harrington
COOLEY LLP
3175 Hanover Street
Palo Alto, California 94304
Telephone: (650) 843-5000
dwyerjc@cooley.com
malger@cooley.com
sbinning@cooley.com
eharrington@cooley.com

Kyle Wong
COOLEY LLP
101 California Street, 5th Floor
San Francisco, California 94111
(415) 693-2000
kwong@cooley.com

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

-and-

Shannon Minter
Amy Whelan
Asaf Orr
NATIONAL CENTER FOR
LESBIAN RIGHTS
870 Market Street, Suite 370
San Francisco, California 94102
(415) 365-1326
SMinter@nclrights.org
AWhelan@nclrights.org
AOrr@nclrights.org

Counsel for *Amici Curiae*

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
Form 8. Certificate of Compliance for Briefs**

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form08instructions.pdf>

9th Cir. Case Number(s)

I am the attorney or self-represented party.

This brief contains **words**, excluding the items exempted

by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

I certify that this brief (*select only one*):

- complies with the word limit of Cir. R. 32-1.
- is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.
- is an **amicus** brief and complies with the word limit of Fed. R. App. P. 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).
- is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.
- complies with the longer length limit permitted by Cir. R. 32-2(b) because (*select only one*):
 - it is a joint brief submitted by separately represented parties;
 - a party or parties are filing a single brief in response to multiple briefs; or
 - a party or parties are filing a single brief in response to a longer joint brief.
- complies with the length limit designated by court order dated
- is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature **Date**

(use "s/[typed name]" to sign electronically-filed documents)

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

CERTIFICATE OF SERVICE

I, Maureen P. Alger, hereby certify pursuant to NINTH CIRCUIT RULE 25-5(f) that on March 11, 2019, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

Dated: March 11, 2019

By: s/ Maureen P. Alger
Maureen P. Alger
Counsel for *Amici Curiae*