

No. 15-2056

IN THE
United States Court of Appeals
FOR THE FOURTH CIRCUIT

G. G., BY HIS NEXT FRIEND AND MOTHER, DEIRDRE GRIMM,

Plaintiff-Appellant,

—v.—

GLOUCESTER COUNTY SCHOOL BOARD,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA, NEWPORT NEWS DIVISION

**BRIEF OF *AMICI CURIAE* PFLAG, INC., TRANS YOUTH EQUALITY
FOUNDATION, GENDER SPECTRUM, AND GENDER DIVERSITY
IN SUPPORT OF PLAINTIFF-APPELLANT AND REVERSAL**

JENNIFER LERNER
KARA C. WILSON
COOLEY LLP
1114 Avenue of the Americas
New York, New York 10036
Phone: (212) 479-6000
jlerner@cooley.com
kwilson@cooley.com

JANNA FISCHER
COOLEY LLP
380 Interlocken Crescent, Suite 900
Broomfield, Colorado 80021
Phone: (720) 566-4000
jfischer@cooley.com

ILONA M. TURNER
SASHA J. BUCHERT
TRANSGENDER LAW CENTER
P.O. Box 70976
Oakland, California 94612
Phone: (510) 587-9696
ilona@transgenderlawcenter.org
sasha@transgenderlawcenter.org

MAUREEN P. ALGER
Counsel of Record
JOHN C. DWYER
COOLEY LLP
3175 Hanover Street
Palo Alto, California 94304
Phone: (650) 843-5000
malger@cooley.com
dwyerjc@cooley.com

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

Attorneys for Amici Curiae

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 15-2056 Caption: G.G. v. Gloucester County School Board

Pursuant to FRAP 26.1 and Local Rule 26.1,

PFLAG, Inc.
(name of party/amicus)

who is amicus, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? YES NO

2. Does party/amicus have any parent corporations? YES NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? YES NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(a)(2)(B))? YES NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) YES NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? YES NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: s/ Maureen P. Alger

Date: 5/15/2017

Counsel for: PFLAG, Inc.

CERTIFICATE OF SERVICE

I certify that on 5/15/2017 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

s/ Maureen P. Alger
(signature)

5/15/2017
(date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 15-2056 Caption: G.G. v. Gloucester County School Board

Pursuant to FRAP 26.1 and Local Rule 26.1,

Trans Youth Equality Foundation
(name of party/amicus)

who is amicus, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? YES NO

2. Does party/amicus have any parent corporations? YES NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? YES NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(a)(2)(B))? YES NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) YES NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? YES NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: s/ Maureen P. Alger

Date: 5/15/2017

Counsel for: Trans Youth Equality Foundation

CERTIFICATE OF SERVICE

I certify that on 5/15/2017 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

s/ Maureen P. Alger
(signature)

5/15/2017
(date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 15-2056 Caption: G.G. v. Gloucester County School Board

Pursuant to FRAP 26.1 and Local Rule 26.1,

Gender Spectrum Charitable Fund
(name of party/amicus)

who is _____ amicus _____, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? YES NO

2. Does party/amicus have any parent corporations? YES NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? YES NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(a)(2)(B))? YES NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) YES NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? YES NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: s/ Maureen P. Alger

Date: 5/15/2017

Counsel for: Gender Spectrum Charitable Fund

CERTIFICATE OF SERVICE

I certify that on 5/15/2017 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

s/ Maureen P. Alger
(signature)

5/15/2017
(date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 15-2056 Caption: G.G. v. Gloucester County School Board

Pursuant to FRAP 26.1 and Local Rule 26.1,

Gender Diversity
(name of party/amicus)

who is _____ amicus _____, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? YES NO

2. Does party/amicus have any parent corporations? YES NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? YES NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(a)(2)(B))? YES NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) YES NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? YES NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: s/ Maureen P. Alger

Date: 5/15/2017

Counsel for: Gender Diversity

CERTIFICATE OF SERVICE

I certify that on 5/15/2017 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

s/ Maureen P. Alger
(signature)

5/15/2017
(date)

Table of Contents

	Page
TABLE OF AUTHORITIES	ii
INTRODUCTION AND INTEREST OF AMICI CURIAE.....	1
SUMMARY OF ARGUMENT	5
ARGUMENT	5
I. Treating Transgender Students in a Manner Inconsistent with Their Gender Identity Constitutes Discrimination and Causes Serious Harm.....	5
II. The Experiences of Parents Raising Transgender Children Demonstrate that Transgender Students Face Severe Harm When Their Gender Identity Is Not Affirmed.....	8
Kimberly Shappley – Pearland, Texas.....	9
Wayne and Kelly Maines – Portland, Maine	14
Amber and Adam Briggles – Denton, Texas.....	18
Anna and Robert Allen – North Carolina	23
CONCLUSION	28
CERTIFICATE OF COMPLIANCE.....	29

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 den.</i> , 845 F.3d 217 (6th Cir. 2016)	6
<i>Brown v. Bd. of Educ.</i> , 347 U.S. 483 (1954).....	6
<i>Carcaño v. McCrory</i> , 203 F. Supp. 3d 615 (M.D.N.C. 2016)	26
<i>Doe v. Regional School Unit 26</i> , 86 A.3d 600 (Me. 2014).....	17
<i>G.G. v. Gloucester Cty. Sch. Bd.</i> , 822 F.3d 709 (4th Cir. 2016)	6
<i>Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.</i> , No. 16-CV-943, 2016 WL 5239829 (E.D. Wis. Sept. 22, 2016)	6, 8
Statutes	
2017 N.C. Laws S.L. 2017-4 (H.B. 142)	2, 26
N.C. Gen. Stat. Ann. § 143-760	2, 26
Other Authorities	
Am. Psychiatric Ass’n, <i>Diagnostic & Statistical Manual of Mental Disorders</i> 451 (5th ed. 2013)	5, 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, 55 (2010).....	7
Blaise Vanderhorst, <i>Whither Lies the Self: Intersex and Transgender Individuals and a Proposal for Brain-Based Legal Sex</i> , 9 <i>Harvard L. & Pol’y Rev.</i> 241 (2015)	5

Milton Diamond, *Transsexuality among Twins: Identity Concordance, Transition, Rearing, and Orientation*, 14 Int'l J. of Transgenderism 24 (2013)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>7

INTRODUCTION AND INTEREST OF AMICI CURIAE¹

Like all parents, Kimberly Shappley wants what is best for her daughter, K. K expressed that she was a girl from the time she was two years old, but Kimberly initially refused to accept that K was transgender, repeatedly insisting that she was a boy. 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 her for her true self. After consulting with professionals, Kimberly decided to allow K to live authentically as the girl she is, and K has blossomed. But K's experience at school has been challenging. Although K and the other kindergarteners use a unisex restroom in their own classroom, K is forced to use the nurse's restroom when she is elsewhere in the school. K has had several accidents because she's been unable to get to the nurse's restroom in time, and she has acted out with embarrassment and anger. Kimberly is particularly worried about the damaging effects the school's policies will have on K next year, when the other students in her grade will use the boys' and girls' restrooms, and K will be singled out, separated and isolated from her peers, each and every time she needs to use the restroom.

¹ Counsel for amici obtained consent from counsel of all parties prior to filing this brief. No party's counsel authored this brief in whole or in part, no party or party's counsel contributed money that was intended to fund preparing or submitting this brief, and no one other than amici, their members, or their counsel contributed money intended to fund preparing or submitting this brief.

In North Carolina, Anna and Robert Allen² and their transgender daughter D have had to struggle with frequently shifting rules about where D can use the restroom at school. D had been using the girls' restroom in school for two years without incident, but when HB2³ passed last year, she was suddenly excluded. Like K, D was relegated to using a separate, single-user restroom. D cried when she was told about this new rule, not understanding why she had to be separated from her friends. Although the school later allowed D to use the girls' restroom when no other girls were present, and ultimately relented and allowed her to use the girls' restroom with other girls, the uncertainty about how D will be treated in the future is a constant worry.

The challenges faced by K, D, and Gavin Grimm are, unfortunately, not isolated or rare. Every day thousands of transgender youth across America face discrimination, hostility, and violence in schools (among other places), and their parents worry about their safety. Amici are four organizations that combat this injustice daily and work with families to advocate for open, supportive schools where transgender youth can lead authentic lives without facing discrimination.

² "Anna Allen" and "Robert Allen" are pseudonyms. Because of the potential harm of disclosing that their daughter is transgender, pseudonyms are being used to protect her privacy.

³ N.C. Gen. Stat. Ann. § 143-760, *repealed in part*, 2017 N.C. Laws S.L. 2017-4 (H.B. 142).

PFLAG, Inc. is the nation's largest LGBTQ family and ally nonprofit organization, with more than 200,000 members and supporters and 400 affiliates. PFLAG's members are parents, children, grandparents, siblings, other family members, allies, and friends of lesbian, gay, bisexual, transgender and queer (LGBTQ) individuals. Founded in 1972, 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, founded by the mother of a transgender child, is a national non-profit organization that provides education, advocacy, and support for transgender children, youth, and their families. TYEF's mission is to share information about the unique needs of this community, partnering with families, educators, and service providers 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 concepts of gender identity and gender expression. These services include running trainings for schools and other educational institutions, 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 extensively 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.

Given their missions, PFLAG, TYEF, Gender Spectrum, and Gender Diversity have a strong interest in ensuring the right of transgender children to be treated like their peers 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. But 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 just as any other children.

SUMMARY OF ARGUMENT

Amici respectfully submit that this Court should reverse the district court's dismissal of Gavin Grimm's Title IX claim and hold that he is entitled to a

preliminary injunction. Amici offer the unique perspective of parents of transgender children who can explain the impact restrictions on restroom facilities have on their children and their families. Through the personal stories of these parents, amici seek to provide a broader view of transgender youth and their families, and to help the Court understand the critical importance of letting these children live authentically in all aspects of their lives, including at school. These stories demonstrate that when schools deny transgender students use of a restroom consistent with their gender identity, schools are denying them the opportunity to participate as full and equal members of the school community.

ARGUMENT

I. Treating Transgender Students in a Manner Inconsistent with Their Gender Identity 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.⁴ Children typically become aware of and often articulate their gender identity between the ages of two and four.⁵

⁴ 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).

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

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). 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 their peers—the impact can be particularly severe. *See, e.g., G.G. v. Gloucester Cty. Sch. Bd.*, 822 F.3d 709, 728 (4th Cir. 2016) (Davis, J., concurring) (citing expert testimony that forcing G.G. to use a 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 in his daily life 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.”); *Bd. of Educ. of the Highland Local Sch. Dist. v. U.S. Dep’t of Educ.*, 208 F. Supp. 3d 850, 870-71 (S.D. Ohio 2016) (finding that “Jane feels stigmatized and isolated when she is forced to use a separate bathroom and otherwise not treated as a girl”), *stay pending appeal den.*, 845 F.3d 217 (6th Cir. 2016); *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of*

Educ., No. 16-CV-943, 2016 WL 5239829, at *5-6 (E.D. Wis. Sept. 22, 2016)

(There was “no question that the plaintiff’s inability to use the boys’ restroom has caused him to suffer harm” as he had spent last school year “trying to avoid using the restroom, living in fear of being disciplined, [and] feeling singled out and stigmatized.”).

Medical research confirms what these courts have found. According to established medical consensus, the only effective treatment for the potentially disabling experience of gender dysphoria⁶ is to enable a transgender person to live fully in accordance with the person’s gender identity. A social transition, the only treatment available to children with gender dysphoria prior to puberty, may include a new haircut, new clothes that reflect one’s gender identity, adopting a new name, using new pronouns, and interacting with peers and one’s environment in a manner that matches the child’s gender identity. As illustrated by the family stories below, social transition significantly eases the symptoms of gender dysphoria.⁷

⁶ Gender dysphoria is the scientific term for the experience of being transgender, indicated by a “marked incongruence” between one’s gender identity and assigned sex, which generally results in clinically significant distress unless treated. Am. Psychiatric Ass’n, *Diagnostic & Statistical Manual of Mental Disorders* 451 (5th ed. 2013).

⁷ 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).

Barring transgender children from using restrooms consistent with their gender identity constitutes discrimination and causes harm. There is no rational basis for such discrimination, *see, e.g., Whitaker*, 2016 WL 5239829, at *4, or for imposing such harms on these already-vulnerable youth.

II. The Experiences of Parents Raising Transgender Children Demonstrate that Transgender Students Face Severe Harm When Their Gender Identity Is Not Affirmed.

Parents raising transgender children witness firsthand the harm caused by discriminatory school policies and practices that fail to affirm students' gender identity and that deny transgender students access to the same facilities used by other students. As described below, parents of transgender students see their children experience significant distress when their gender identities are invalidated and their most basic bodily needs are ignored at school. By contrast, parents whose children attend schools with affirming policies that do not discriminate against transgender students have witnessed positive changes in their children's social, emotional, and behavioral well-being. They have seen that, when their children are treated the same as their peers in school, they are readily accepted by their peers and are able to thrive. The stories of the families below reflect this reality, and demonstrate why schools must not be allowed to discriminate against transgender students.

Kimberly Shappley – Pearland, Texas

Kimberly Shappley lives in Pearland, Texas, a small town outside of Houston, which she describes as “ultra-conservative.” Kimberly was born in Alabama and raised in Mississippi. She is an evangelical Christian and a full-time nursing student. She is also an ordained minister, and led ministries at Lakewood Church from 2007 until 2014. Kimberly has seven children ranging in age from four to 29. Her six-year-old daughter, K, is transgender.



Kimberly and K

From the age of two, K showed signs that she identified as a girl. K turned her t-shirts into skirts and once took underwear from a neighbor’s girl doll so that

she could wear it—even though the underwear was far too small for her and cut off circulation to her legs.

At first, Kimberly tried to force K to act more like a boy and would punish K, at times even spanking her, when she acted like a girl. Kimberly recalls repeatedly insisting to K, “No, you are not a girl. You are a boy.” On several occasions, Kimberly demanded that K admit she was a boy, but K would still 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 and explains that she did not know what else to do, especially in the face of 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 in K when she was allowed to have “girl things.” For example, at K’s fourth birthday party, Kimberly’s brother gave K a wizard’s robe, which K believed was a dress. Kimberly remembers K crying with joy and hugging the robe. One day soon after this, Kimberly went to pick up K from daycare and found K crying. K told her that she was not 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 recalls that she would hear 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' underwear. Kimberly recalls the day K came home to find girls' underwear in her drawer and “she fell to the floor.” She hugged the underwear and started crying out of happiness. One day, however, K's daycare teacher discovered that K was wearing girls' underwear and made her wear someone else's boys' underwear. When Kimberly picked up K, K's teacher threw the girls' underwear at Kimberly and told her “this will never happen again here.” Kimberly never took K back to that daycare.

Shortly after that incident, Kimberly decided to let K socially transition. As a self-described conservative Christian, she did not come to the decision easily and 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.”

Kimberly’s family was thrown into the spotlight when their school district refused to allow K to use the girls’ restroom when she entered kindergarten, and Kimberly spoke out against the district’s policy. While K’s current kindergarten classroom has a unisex restroom, she is required to use the nurse’s restroom any time she is outside her own classroom—for example, during computer lab or lunch. Because of the stigma and isolation she feels being separated from her peers when using the nurse’s restroom, K tries to avoid using the restroom during those times altogether. The exclusion has had devastating and traumatic consequences on her well-being. In the current school year, K has had at least five

“accidents” because of the difficulty of getting to the nurse’s restroom in time.

Each is a humiliating and painful experience for K.

As a mother, Kimberly feels helpless and frustrated that the superintendent has put K and her teachers in such a difficult position. She fears that next year will be even worse, because first-grade classrooms do not have their own unisex restrooms in the classroom. “The people that are with her every day, they know she’s a girl. There’s no doubt in anyone’s mind who’s ever spent any time with her.”⁸

Wayne and Kelly Maines – Portland, Maine

Wayne and Kelly Maines live in Portland, Maine. Wayne is an Air Force veteran and the Executive Director of Safety and Environmental Management at the University of Maine. Kelly is an Executive Assistant to the Cumberland County Sheriff. Wayne and Kelly have nineteen-year-old identical twins, Jonas and Nicole. Their daughter, Nicole, is transgender.

⁸ Source: December 13, 2016 Telephone interview with Kimberly Shappley.



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” part while her brother played the “boy” role. Nicole also consistently preferred “girl” things, unlike her twin brother. Kelly began researching why Nicole might be behaving this way, but found that there was 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 did not know how to respond and “couldn’t even say the word ‘penis’ back then.”

Before she transitioned, Nicole was “a very angry, very depressed” child. When Nicole was four years old, 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 at Boston Children’s Hospital, that he learned “that it wasn’t anything we did.” Wayne now regrets not supporting Nicole from a young age, as his wife did. 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 this 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 Walmart 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 explains: "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. Nearly ten years ago, they were unintentionally thrust into the public eye as the result 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." She was "vice president of her class" and "had a fashion newsletter called *Sassy*."

Not long after, however, a classmate's grandfather targeted Nicole and the school for allowing her to use the girls' restroom. The school district, fearing a lawsuit, 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 recalls that Nicole's teachers "wanted to do the right thing because they were with Nicole every day" and understood that she was a girl, but they "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 kids to Portland. 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.⁹

Today, Wayne 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 bathrooms. 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.”¹⁰

⁹ *Doe v. Regional School Unit 26*, 86 A.3d 600 (Me. 2014).

¹⁰ Source: February 14, 2017 Telephone Interview with Wayne Maines.

Amber and Adam Briggles – Denton, Texas

Amber and Adam Briggles live in Denton, Texas, with their nine-year-old son and four-year-old daughter. Amber and Adam met in college in central Minnesota. Amber is a massage therapist and owns a massage studio. Adam is an Associate Professor in the Philosophy and Religion department at the University of North Texas. Their son, M, is transgender.



Clockwise from top left: M, M's younger sister, Amber, and Adam

Amber recalls that M started expressing that he was a boy from the time he began forming sentences: “Around the age of two, I remember so clearly we were driving home from his preschool one day, and he had done something just really

outstanding at school, and I said, ‘[Your teacher] said that you were such a good girl at school today. I’m so proud of you!’ He said, ‘No, Mom, I not a girl. I a boy.’” M never played with stereotypical “girl” toys and chose “boy” clothes and toys from a very young age. Amber tried to explain to M that just because he didn’t want to play with “girl toys” didn’t mean he wasn’t a girl: “I told him that there’s lots of different ways that you can be a girl, and we’re going to redefine ‘girly’ together. And you can be any kind of girl you want to be, but you’re always going to be a girl.” At that time, “I didn’t think that he was transgender because I didn’t know what that was.”

When M was around four, Amber realized that there might be something more going on: “Out of the blue, he said, ‘Mom, do you think scientists could turn me into a boy?’ . . . [T]hat’s really when I started delving into research on gender expression in kids and gender nonconforming kids, again, not thinking that he was transgender, but just doing some research and reading, and just kind of learning more.” The turning point came about midway through first grade. M’s teacher had requested a meeting because M was acting up and having difficulty paying attention in school. This was completely out of character for him. Amber also noticed that when M got home from school, he would run straight to the restroom without even saying hello.

I finally started putting it together, and I sat him down and asked, “What’s going on? Are you holding it at school all day?” He

admitted that he was, and when I asked him why, he said, “If I go into the girls’ bathroom, people tell me I’m in the wrong bathroom, and I have to go in the boys’ room.” And when I asked him why he didn’t go to the boys’ room, he said, “Well, because if I go in the boys’ room, then the people who do know me tell me I’m in the wrong room.”

So he’s a little first grader who’s trying to do what he’s told, and he just couldn’t please everybody, so he decided just to hold it all day. So that was the reason he was not following his teacher’s directions to line up for a bathroom break. It was because he didn’t know where to go. It’s why he was having such a hard time sitting still on the rug and why he couldn’t concentrate in school—because he was holding his bladder. It was just heartbreaking.

During that discussion, M also told Amber that he wanted to use male pronouns and be referred to by his initials rather than by a girl’s name. At that point, Amber and Adam had already spent a great deal of time researching gender nonconformity and gender dysphoria in children, and had decided that it was important to support M. “It was a long process of doing research, reading blogs, talking to other parents who have gender nonconforming kids,” explains Amber. “And after doing all that research over the years, and learning about suicide rates and depression for transgender kids who are not accepted by their parents, I asked myself, how could I turn my back on this child because of some cultural expectation that I had?” According to Adam,

It’s always been just what’s best for M. And you see him just kind of flourish with all these transitions. I can’t imagine what it would be like if we would have said ‘no’ somewhere along the way. If we’d said, “No, you’re a girl, you get long hair, you get dresses, that’s the way girls are.” We can’t run that experiment because I think that

would be psychological torture, but I strongly believe that he would be miserable. That's simply not who he is.

When Amber contacted the principal of M's school about referring to M by his initials and using male pronouns, she was "very supportive." She also said that M could use the nurse's restroom, which "was the best solution for us at the time." It took a little time for everyone to get used to using different pronouns, "but everyone was just right on board; he didn't lose any friends," says Amber. "And when we got his report card back a couple weeks later, his reading scores shot up three levels in three weeks, and he's been ahead of his peers ever since then."

By the start of second grade, M wanted to use the boys' restroom, but his teacher told Amber and Adam that he still needed to use the nurse's restroom. Amber did not communicate that to M: "I thought it was nobody's business which bathroom he used. And I thought it would single him out and create this awkward situation where he would just not use the bathroom instead of being separated from his peers on a regular basis." M used the boys' restroom that entire year without incident.

In third grade, M's teacher did group restroom breaks for the whole class. "At the start of the year, M lined up to go in the boys' line, and the teacher singled him out and said, 'No, M, you need to go to the nurse's room.' He was told, explicitly, in front of all of his friends . . . He was just shocked and embarrassed. That was not okay." At that point, Amber contacted the principal:

The accommodation they made was that they wouldn't do group bathroom breaks anymore, but M still needed to use the nurse's bathroom. So I said, "Thank you for allowing that option. I will let him know that he has that choice." . . . And then things just went back to normal. He went back to using the boys' room as he had been doing for over a year with no problems.

Amber and Adam are thankful that the school has been willing to work with them to do what is best for M. If that had not been the case, they are certain that they would have pulled M out of public school:

I'm not going to publicly shame my kid or make him uncomfortable to the point where he pees in his pants. The school wouldn't be doing their job if they forced him to use the girls' room or followed him to the nurse's room because if that happened, he would just hold it. And at that point, he's no longer getting an education. So what would be the point of keeping him in that school?

"Fortunately," says Adam, "I think we've been blessed by having so much support at just about every level. I just wish that for all kids, and I don't see why anybody would object to just supporting kids being who they are."¹¹

Anna and Robert Allen¹² – North Carolina

Anna and Robert Allen live in North Carolina with their two children, a nine-year-old daughter and a six-year-old son. Robert was career military but is now retired. Anna is a stay-at-home mom. Their daughter, D, is transgender.

¹¹ Source: December 12, 2016 Telephone Interview with Amber and Adam Briggie; February 15, 2017 Telephone Interview with Amber Briggie.

¹² As noted above, "Anna Allen" and "Robert Allen" are pseudonyms.

From the time she started preschool when she was two, D played primarily with girls. When she started dressing in a tutu from the dress-up box, “at first, everyone thought that was so funny and cute how a little boy would always dress up like a little ballerina. But it went on and on for months,” says Anna. Anna recalls that D would grow increasingly agitated about getting to preschool on time. “It took me literally months to figure out why she was so stressed out about being late. It was because she knew if she didn’t get there when they opened, she wouldn’t get to wear one of the princess dresses because all the other girls would have already taken those dresses.”

Robert was taken aback by D’s interest in girls’ clothes and toys: “I just thought it was a phase, but it just kept going.” He believed that once D was in kindergarten and there was no longer a dress-up box, D would settle into being a boy. But getting D dressed for kindergarten was “a nightmare,” says Anna. At home, D insisted on wearing skirts and dresses that Anna purchased at a consignment store, but D was not allowed to wear them outside the house. “We really, literally thought we were doing the best thing by steering her away, trying to lead her just to be a boy.”

Anna began searching for information about little boys who only played with girls and wore girls’ clothes. “Everything I would put into Google about how she was acting, that’s what would come up: transgender, transgender, transgender.”

At first, Robert didn't think his child was transgender, but "Anna, you know, she's showing me in these books . . . and just all these different points that are all kind of leading up to transgender."

Anna and Robert found a therapist to work with D. After meeting with D for a few months, the therapist told them, "I'm not an expert . . . but I can tell you right now, of all the books that I have read about this, she's hitting all the spots." The therapist suggested that they let D go out in public dressed as a girl to see if she would lose interest or want to continue. They decided to give it a try, and Anna says she had never seen D happier than on that first outing dressed as a girl: "She was just skipping."

The information they discovered on the rates of transgender children harming themselves terrified Anna and Robert. Robert remembers that they asked themselves: "Are we trying to satisfy ourselves, or are we trying to help our child?" Anna recalls:

One of the things that I told my husband, I said, 'what if we are in a car accident tomorrow and she dies, what is the one thing I'm going to regret? . . . I would regret, and I don't think I could live with it, if in her short life . . . I never let her be who she was because I was so embarrassed and I was so scared of what other people were going to say about our family.' Because that's really the only thing that held us back.

The Allens' parents were supportive of D from the start. Robert's father, a Baptist minister, said, "You know, this is your child, what are you going to do?"

Are you not going to love your kids?” The Allens say their friends’ reaction was “a mixed bag.” Robert acknowledges that they did lose some friends, “but we’re not going to lose our child over this. I’ll lose a friend all day long, but I’m not going to lose my child.”

Before the start of D’s first-grade year, the Allens met with D’s teacher, the principal, and the school social worker to discuss D’s transition. The principal was “100% on board” with the Allens and told them: “This is confidential. This is medical information and nobody has any business knowing it. And we’re just going to treat this little girl for the girl she is.” The Allens were relieved that the school would allow D to use the girls’ restroom. They credit the principal with setting the tone, making it clear that D was a girl and would be treated like any other girl by everyone at the school.

D moved to a different public elementary school in second grade. The principal from her first elementary school helped the Allens explain to the new school that D used the girls’ restroom with no problems and that there would not be a problem unless the school created one. The new school continued to allow D to use the girls’ restroom.

In March of D’s second-grade year, the North Carolina legislature passed HB2, which mandated that, in government buildings, individuals could only use

restrooms corresponding to the sex on their birth certificates.¹³ On D's first day back at school after spring break, the principal called Anna and told her that the school board attorney had informed the school that D could no longer use the girls' restroom. The Allens had a meeting with D and her teacher to break the news. D cried. She said, "But why? But why? I just want to use the bathroom with my friends." Anna says: "Here we are, trying to tell an eight-year-old why she can't use the bathroom. She's been using the girls' bathroom for two years now with no incidents at all whatsoever."

The school told D that she now was required to use a single-user restroom in the assistant principal's office. Her teacher, however, allowed her to use the girls' restroom if no other girls were in it. To avoid the humiliation of having to use the restroom in the assistant principal's office, D would pretend she did not need to go to the restroom during recess or at other times that others were using it. She would wait until class started, ask for a hall pass, and go to the restroom by herself. After this Court issued its April 2016 decision in this case, Anna asked the principal to allow D to use the girls' restroom with the others again. The school agreed, and D has continued to use the girls' restroom into third grade.

The Allens emphasize that they have asked for anonymity here not because they are ashamed that D is transgender, but because they fear for her safety and

¹³ N.C. Gen. Stat. Ann. § 143-760, *repealed in part*, 2017 N.C. Laws S.L. 2017-4 (H.B. 142); *see Carcaño v. McCrory*, 203 F. Supp. 3d 615 (M.D.N.C. 2016).

well-being. When the local television station profiled another local transgender girl, some people posted “horrible comments” on the story. Anna and Robert want to protect D as much as they can: “I cannot let my kid go through living her life feeling ashamed of herself or feeling that something is wrong with her when there’s nothing wrong with her. She is just a kid.”¹⁴

CONCLUSION

On behalf of the parents of transgender children, who want their children to be supported and treated equally at school, amici urge this Court to reverse the district court’s dismissal of Gavin Grimm’s Title IX claim and hold that he is entitled to a preliminary injunction.

Respectfully submitted this the 15th day of May, 2017.

s/ Maureen P. Alger

Maureen P. Alger
John C. Dwyer
COOLEY LLP
3175 Hanover Street
Palo Alto, California 94304
Phone: (650) 843-5000
Fax: (650) 849-7400
malger@cooley.com
dwyerjc@cooley.com

¹⁴ Source: February 7, 2017 Telephone Interview with “Robert Allen” and “Anna Allen.”

Patrick Gunn
Kyle Wong
COOLEY LLP
101 California Street, 5th Floor
San Francisco, California 94111
Phone: (415) 693-2000
Fax: (415) 693-2222
pgunn@cooley.com
kwong@cooley.com

Jennifer Lerner
Kara C. Wilson
COOLEY LLP
1114 Avenue of the Americas
New York, New York 10036
Phone: (212) 479-6000
Fax: (212) 479-6275
jlerner@cooley.com
kwilson@cooley.com

Janna Fischer
COOLEY LLP
380 Interlocken Crescent, Suite 900
Broomfield, CO 80021
Phone: (720) 566-4000
Fax: (720) 566-4099
jfischer@cooley.com

-and-

Ilona M. Turner
Sasha J. Buchert
TRANSGENDER LAW CENTER
P.O. Box 70976
Oakland, CA 94612
Phone: (510) 587-9696
ilona@transgenderlawcenter.org
sasha@transgenderlawcenter.org

Attorneys for Amici Curiae

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitations set forth in Fed. R. App. P. 29(a)(5) and 32(b)(5). This brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman and contains 6,491 words in compliance with the 6,500-word limit on briefs of *amicus curiae* set forth in Fed. R. App. P. 29(a)(5) and this Court's April 13, 2017 briefing order.

s/ Maureen P. Alger
Maureen P. Alger

CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2017, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit using the Court's CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ Maureen P. Alger
Maureen P. Alger