

16-3522

IN THE
United States Court of Appeals
FOR THE SEVENTH CIRCUIT

ASHTON WHITAKER, by his mother and next friend, MELISSA WHITAKER,
Plaintiff-Appellee,

—v.—

KENOSHA UNIFIED SCHOOL DISTRICT NO. 1 BOARD OF EDUCATION, et al.,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
NO. 2:16-CV-00943-PP
HONORABLE JUDGE PAMELA PEPPER

**BRIEF FOR *AMICI CURIAE* GAY STRAIGHT ALLIANCE FOR
SAFE SCHOOLS, INC., ILLINOIS SAFE SCHOOLS ALLIANCE,
INDIANA YOUTH GROUP, INC., AND GENDER
SPECTRUM CHARITABLE FUND IN SUPPORT OF
PLAINTIFF-APPELLEE AND AFFIRMANCE**

MAUREEN P. ALGER
JOHN C. DWYER
COOLEY LLP
3175 Hanover Street
Palo Alto, California 94304
(650) 843-5000

PATRICK GUNN
KYLE WONG
COOLEY LLP
101 California Street, 5th Floor
San Francisco, California 94111
(415) 693-2000

JENNIFER LERNER
COOLEY LLP
1114 Avenue of the Americas
New York, New York 10036
(212) 479-6000

CHRISTOPHER STOLL
ASAF ORR
NATIONAL CENTER FOR
LESBIAN RIGHTS
870 Market Street, Suite 370
San Francisco, California 94102
(415) 392-6257

*Attorneys for Amici Curiae Gay Straight Alliance for Safe Schools, Inc.,
Illinois Safe Schools Alliance, Indiana Youth Group, Inc.,
and Gender Spectrum Charitable Fund*

Appellate Court No: 16-3522

Short Caption: Whitaker v. Kenosha Unified School District No. 1 Board of Education

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i) Identify all its parent corporations, if any; and

None

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

None

Attorney's Signature: s/ Maureen P. Alger Date: 1/30/2017

Attorney's Printed Name: Maureen P. Alger

Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d). Yes X No _____

Address: Cooley LLP, 3175 Hanover Street, Palo Alto, California, 94304

Phone Number: (650) 843-5000 Fax Number: (650) 849-7400

E-Mail Address: malger@cooley.com

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None

Attorney's Signature: s/ John C. Dwyer Date: 1/30/2017

Attorney's Printed Name: John C. Dwyer

Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d). Yes _____ No X

Address: Cooley LLP, 3175 Hanover Street, Palo Alto, California, 94304

Phone Number: (650) 843-5000 Fax Number: (650) 849-7400

E-Mail Address: dwyerjc@cooley.com

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None

Attorney's Signature: s/ Patrick Gunn Date: 1/30/2017

Attorney's Printed Name: Patrick Gunn

Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d). Yes _____ No X

Address: Cooley LLP, 101 California Street, 5th Floor, San Francisco, California, 94111

Phone Number: (415) 693-2000 Fax Number: (415) 693-2222

E-Mail Address: pgunn@cooley.com

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None

Attorney's Signature: s/ Kyle Wong Date: 1/30/2017

Attorney's Printed Name: Kyle Wong

Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d). Yes _____ No X

Address: Cooley LLP, 101 California Street, 5th Floor, San Francisco, California, 94111

Phone Number: (415) 693-2000 Fax Number: (415) 693-2222

E-Mail Address: kwong@cooley.com

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None

Attorney's Signature: s/ Jennifer Lerner Date: 1/30/2017

Attorney's Printed Name: Jennifer Lerner

Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d). Yes _____ No X

Address: Cooley LLP, 1114 Avenue of the Americas, New York, New York, 10036

Phone Number: (212) 479-6000 Fax Number: (212) 479-6275

E-Mail Address: jlerner@cooley.com

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None

Attorney's Signature: s/ Christopher Stoll Date: 1/30/2017

Attorney's Printed Name: Christopher Stoll

Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d). Yes _____ No X

Address: National Center for Lesbian Rights, 870 Market Street, Suite 370, San Francisco, California, 94111

Phone Number: (415) 392-6257 Fax Number: (415) 392-8442

E-Mail Address: cstoll@nclrights.org

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None

Attorney's Signature: s/ Asaf Orr Date: 1/30/2017

Attorney's Printed Name: Asaf Orr

Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d). Yes _____ No X

Address: National Center for Lesbian Rights, 870 Market Street, Suite 370, San Francisco, California, 94111

Phone Number: (415) 392-6257 Fax Number: (415) 392-8442

E-Mail Address: aorr@nclrights.org

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INTEREST OF AMICI CURIAE¹

Amici are four nonprofit organizations dedicated to promoting the safety and well-being of transgender youth and providing support to their families and allies.

The Gay Straight Alliance for Safe Schools, Inc. (“GSAFE”) is a Wisconsin-based organization that supports lesbian, gay, bisexual, transgender, and questioning (LGBTQ) students, educators, and families in developing school environments in Wisconsin where all youth can thrive. Toward this end, GSAFE has undertaken a number of initiatives, including supporting gay-straight alliances, training educational staff on LGBTQ issues, and developing and supporting LGBTQ student leaders. GSAFE works in collaboration with parents and family members of LGBTQ youth to create inclusive, supportive family environments and to advocate on school issues.

The Illinois Safe Schools Alliance (the “Alliance”) promotes safety, support, and healthy development for LGBTQ youth in Illinois schools and communities through advocacy, education, youth organizing, and research. The Alliance works with school districts throughout Illinois to draft and implement transgender-inclusive policies, and advocates for gender inclusivity in schools, LGBTQ-affirming curriculum, and bullying prevention. Recognizing the crucial role adults play in helping LGBTQ youth feel safe and respected in school, the Alliance encourages

¹ Counsel for *Amici Curiae* 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 Curiae*, their members, or their counsel contributed money intended to fund preparing or submitting this brief.

parents to have a voice in their school communities and supports them in those efforts.

Indiana Youth Group, Inc., based in Indianapolis, has created safe spaces, provided wellness programming, and educated LGBTQ youth and the community for nearly 30 years. Among its many efforts, the organization offers support to parents of LGBTQ youth to help them create and maintain nurturing and accepting homes. It also provides training for educators on ensuring welcoming environments and safe spaces in schools across Indiana.

Gender Spectrum Charitable Fund is a national organization whose mission is to create a gender-inclusive world for all children and youth. Gender Spectrum provides an array of services designed to help families, schools, professionals, and organizations understand and address concepts of gender identity and expression. They are a resource for parents of transgender children throughout the country.

INTRODUCTION

Parents of transgender children know firsthand the struggles their children face every day to live as their true selves. They witness the often severe negative consequences of their children's gender dysphoria prior to gender transition, and the stigma and psychological distress their children experience every time they are treated differently from their peers because they are transgender. Parents of transgender youth, however, have also seen their children blossom and thrive when they are affirmed by their families and communities and allowed to live fully authentic lives.

These parents know that an affirming and supportive school environment is of paramount importance to the positive development of their children, and that access to restrooms consistent with gender identity is a key element of that environment. At their best, schools are not only places for learning but also safe, nurturing environments in which children can grow and thrive socially and emotionally. Parents of transgender youth want their children, just like any other children, to be able to participate fully and openly in all aspects of school, and to be protected from exclusion and discrimination.

The perspective of these parents, who have nourished confidence and resilience in their children and advocated for their children's safety and survival, provides a valuable context for understanding the difficulties faced by transgender children. The experiences of these parents illustrate why it is critical that transgender youth be treated consistently with their gender identity in school, like all other students, including allowing them access to restrooms consistent with their gender identity. This brief, filed on behalf of organizations that work with and support the parents of transgender children, presents the voices of some of these parents.

ARGUMENT

I. Treating Transgender Students in a Manner Inconsistent with Their Gender Identity Causes Serious Harm.

Gender identity is a person's inner sense of belonging to a particular gender. It is an innate, deeply felt, and core component of human identity, which has a

strong biological basis.² Children become aware of their gender identity between the ages of two and four years old.³

Separating children from their peers in school 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 Cnty. 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.”), *cert. granted in part*, 137 S. Ct. 369 (2016); *Bd. of Educ. of the*

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 American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* 451 (5th ed. 2013).

Highland Local Sch. Dist. v. U.S. Dep't of Educ., --- F. Supp. 3d ---, No. 2:16-CV-524, 2016 WL 5372349, at *14 (S.D. Ohio Sept. 26, 2016) (“Some issues in this case are difficult, but determining whether Jane has been harmed from the School District’s policy is not one of them. Testimony . . . indicates that Jane feels stigmatized and isolated when she is forced to use a separate bathroom and otherwise not treated as a girl. . . . Jane often goes the entire day without using the bathroom because she hates being singled out when she is forced to use a separate bathroom, which would clearly impair her ability to focus on learning.”), *stay pending appeal den.*, 845 F.3d 217 (6th Cir. 2016).

In granting a preliminary injunction allowing Ash Whitaker, a transgender boy, to use the boys’ facilities, the district court in this case had “no question that the plaintiff’s inability to use the boys’ restroom has caused him to suffer harm.”

Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ., No. 16-CV-943, 2016 WL 5239829, at *5 (E.D. Wis. Sept. 22, 2016). As the lower court observed, Ash had spent his “last school year trying to avoid using the restroom, living in fear of being disciplined, feeling singled out and stigmatized, [and] being subject to fainting spells or migraines.” *Id.* at *6. The court also recognized that a policy that prohibits students from using facilities that are consistent with their gender identity may forcibly “out” them to their classmates, potentially exposing them to harassment or physical violence, and that restrooms “re-purposed . . . as private bathrooms for the plaintiff” were unhelpful because “they were far from his classes and because using them would draw questions from other students.” *Id.* at *2.

Preventing transgender children from using a restroom consistent with their gender identity is discrimination and causes real harm. There is no rational basis for such discrimination, *see id.* 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.

According to the established medical consensus, the only effective treatment for the disabling experience of gender dysphoria is the provision of medical and social support to enable a transgender person to live authentically. This treatment typically involves bringing the person's body and social presentation into alignment with the person's gender. Contrary to some popular misunderstandings, medical treatment does not change a man into a woman or vice versa; rather, treatment helps to alleviate the person's gender dysphoria and to bring the person's life appearance into alignment with the person's gender, which already exists and is defined by the person's gender identity, just as it is for everyone. A social transition, which is the only treatment available to children with gender dysphoria prior to puberty, may include wearing clothes associated with one's gender identity, using a different name, switching pronouns, and interacting with peers and one's social environment in a manner that matches the person's gender identity. By creating congruity between the

person's identity and their appearance, the treatment significantly alleviates the symptoms of gender dysphoria.⁴

Parents raising transgender children experience firsthand the significant harm caused by discriminatory school policies and practices that disaffirm the gender identity of transgender students, including by singling them out and denying them access to facilities on the same basis as all other students. By contrast, parents whose children attend schools that affirm transgender students have witnessed the marked positive changes in their children—socially, emotionally, behaviorally, and academically—when they are treated the same as their peers in school. The stories of the families below reflect this reality, and illustrate why schools must not be allowed to discriminate against transgender students.

Sarah and Kevin Baumgartner – Mt. Horeb, Wisconsin

Sarah and Kevin Baumgartner live in the rural farming community of Mt. Horeb, Wisconsin. Both grew up on dairy farms; the farm Kevin runs has been in his family for 130 years. Sarah and Kevin have a son who is twelve and a daughter who is seven. Their daughter, L, is transgender. L's school has fostered an accepting and welcoming environment for transgender students, allowing L to flourish.

Since she was three years old, L gravitated toward television shows and toys geared toward girls. In imaginary play, she wanted to play the role of female characters, and she liked to take Sarah's clothes to wear as dresses. Kevin recalls

⁴ World Prof'l Ass'n for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People* (2012); Bethany Gibson & Anita J. Catlin, *Care of the Child with the Desire to Change Gender – Part 1*, 36 *Pediatric Nursing* 53, 55 (2010).

that L would often talk about “being like mommy when she grew up.” When this behavior became more insistent during kindergarten, Sarah contacted the school psychologist. That was when she first heard the term transgender. According to Sarah, she and Kevin were initially in denial, and they thought it was impossible that L could be a girl. They were fine with L wearing dresses at home, but resisted allowing that in public: “We didn’t want our kid to be made fun of. At the same time, we were concerned about what other people were going to think of us. We don’t live in a big city; we live in a small town, a rural area . . . what are people going to think of our family?”

Ultimately, their unconditional love for L and their concern for her health and well-being led Sarah and Kevin to change their minds. “In the fall of first grade, I had a six-year-old child [who] was noticeably depressed, and anxiety issues started to pop up to the point where our child was lying on the couch in a nightgown at home, sobbing and wondering ‘why can’t I just be a girl, why can’t I be a girl at school too, what’s wrong with that?’” Kevin remembers that when L would come home from school, “she’d be crying and she’d be so withdrawn.” Sarah credits L’s older brother with helping her and Kevin understand just how dire the situation was: “He came downstairs one night after we put the kids to bed, and was crying . . . and said ‘Mom, on the school bus, L just stares out the window and cries. L is so sad, and I don’t understand why you can’t just let L wear dresses to school.’” Sarah and Kevin did a lot of research, and talked with the school psychologist about L’s increasing depression. At that point, “we realized that we didn’t care what other people

thought anymore, we care about our child and this needs to happen for the well-being of our kid,” explains Sarah. “[W]e came to the point where we had to ask, do we want to end up losing our child to suicide or do we want to have a daughter? And we decided to have a daughter.”

Sarah and Kevin discussed L’s transition in school with the school psychologist. In order to help L’s classmates understand her transition, the school planned a reading of *I am Jazz*, a children’s book written by a transgender teen that explains to children what it means to be transgender. But the reading was cancelled when a parent contacted a Florida organization that threatened a lawsuit. Despite this, the family received an outpouring of support from the community when L went to school as a girl. The Mt. Horeb community organized readings of *I am Jazz* in the public library and at the local high school.⁵ A few weeks later, the Mt. Horeb school board unanimously voted to adopt guidelines ensuring that transgender students could use restrooms and locker rooms and participate in sports on the same basis as their classmates.⁶

⁵ Amanda Finn & Doug Erickson, *In Response to Controversy, Hundreds Pack Mount Horeb Library for Reading of Transgender Book*, Wisconsin State Journal, Dec. 3, 2015, available at http://host.madison.com/wsj/news/local/education/in-response-to-controversy-hundreds-pack-mount-horeb-library-for/article_095da109-0caf-534e-9879-3cb4e0c769ee.html.

⁶ Parth Shah, *Mt. Horeb School Board Approves Accommodations for Transgender Students*, WPR NEWS, Dec. 8, 2015, available at <http://www.wpr.org/mt-horeb-school-board-approves-accommodations-transgender-students>; see Mount Horeb Area School District, Equal Educational Opportunity, Policy #411, available at <http://www.mhasd.k12.wi.us/cms/lib04/WI01001388/Centricity/Domain/605/Important%20Info%20from%20Dec7-2015.pdf>.

Initially, Sarah and Kevin “hadn’t thought the issue of which restroom a transgender student should use was going to be a big deal because the school had already given L a gender-neutral restroom on the second floor,” and they “thought it would be fine.” But L’s classroom was on the third floor. Every time L had to go down to the second floor to go to the restroom, she felt singled out and conspicuous. L didn’t want to be seen as different from the other kids, and “she started not going to the restroom at school, and holding it all day long, which obviously causes health issues.” Once the school board passed the transgender-inclusive policy, L was able to use the girls’ restroom.

Sarah explains the remarkable change in L since her transition:

Her teacher even said within a week of her transition, her reading was already getting better, her focus was much better, she was already doing better in school because she had been struggling academically. And that all started to change within a week. . . . This shy, timid kid who wasn’t doing well in school . . . was talking all the time, and just happy, because she could finally be who she really is. It was amazing. This year, she’s already ahead of her grade level in reading. So it’s a tremendous difference.

Sarah’s perspective has changed markedly as well: “[I]f the bathroom stuff had come out before all of this happened to us I would probably have been on the side that boys shouldn’t be in the girls’ bathroom, because I just did not understand it.” Now she sees that transgender children “just want to be treated fairly. They just want to go in and use the restroom without having to feel ashamed or ridiculed or singled out.” She observes that when you know someone who is transgender, “you

know that they are not choosing this, that this is not a choice for them, and it's a real thing . . . your view is totally different.”

Sarah and Kevin appreciate the strong support they have received from their community, including from their Lutheran church. Sarah explains that “one of the first people I talked to about all of this was our pastor. The first thing I asked her was, ‘what does God say about this?’ And she researched it, and said, ‘our church’s stance is Jesus loves everyone.’ And she has spoken in our church about these kinds of issues and [about] supporting us as a family, so I feel very lucky.” L’s older brother is “very supportive, and they get along great.” “He’s always said, ‘it’s not a big deal because she was always like my sister anyway.’ Her brother knew that’s who she was.”⁷

Sara and Micah Heumann – Champaign, Illinois

Sara and Micah Heumann both grew up in Illinois and met at the University of Illinois. They lived in Champaign, Illinois with their two sons, ages eleven and eight, until this past summer when they moved to Connecticut. Their older son, D, is transgender.

Sara and Micah recall that from a very young age, D chose “boy” clothes—rejecting dresses and wanting to wear hand-me-downs from his male cousins. He wanted short hair and was very athletic. D would repeatedly say “I wish I were a

⁷ Sources: December 29, 2016 Interview with Sarah Baumgartner; January 23, 2017 Telephone Interview with Kevin Baumgartner.

boy,” but the possibility that D was transgender did not occur to Sara and Micah until friends raised that possibility.

Sara recalls a pivotal moment when D was seven. For years, people would assume D was a boy, and Sara would tell them, “No, that’s my daughter.” She remembers getting blank stares in response. “It upset me mainly from the standpoint that, since D was five, he’s been hearing these conversations. And so it’s just like his gender is always up for question.” After one such incident, “I said to him at our dining room table, ‘do you want me to correct people, and tell them you’re a girl?’ And he said, ‘No.’” Micah remembers that this led to “a long conversation where D spoke so eloquently. It was so clear that he had been having this dialogue in his head for years. He was just now sharing it with us.” Sara agrees: “[T]his was something so big for him, and so uncomfortable for him because every time somebody said, girls line up here and boys line up there, that’s the conversation he was having in his head.”

After doing a great deal of research and consulting with professionals, Sara and Micah decided it was important to affirm D’s identity as the boy he is. Sara recalls that, once they said he could change his name and tell people about his transition, “he wanted to go full speed ahead.” D was scared about the possible reaction, but he wanted people to know. In fact, on the day his parents were going to talk to the school’s administration, D went to the head of the school independently and told her before Micah even got to the school. Sara notes that it “was just so uncharacteristic of him because he was always very timid around adults, and his

teachers, and wouldn't be one to speak up if he had a question or concern. But on this day, he went and did that." Micah remembers shortly after that, the night before they were going to tell D's classmates, that D "was a nervous wreck." But his need to live consistent with his identity as a boy was inexorable:

I went up to him that night, right before bed, I just said, 'Look, we don't have to go through with this at this time. You can make all this stress and anxiety go away.' And he looked at me and he said, 'Dad, I can't go on not being genuine to who I am. I'd rather deal with the stress because dealing with the other side of just being fake and not being me is more painful.' . . . [He was] being so genuine and saying no, this is who he is and he can't live a lie. It's not in him to live a lie. And that's what he was doing before that.

The positive impact on D was immediate. "I think in just a week or two, the head of the school and the teachers were all coming up to us and saying they had never seen him so smiley before. They said he seemed lighter and more present," says Micah. Sara and Micah observe that living as a boy has allowed D to just be himself. "It's been so great to watch him as his confidence grows," says Micah. According to his parents, D loves the outdoors, including camping and backpacking. He is into computers and music. Sara thinks "he has a stronger confidence now than he's ever had." Micah attributes this to the affirmation D has been given: "I strongly believe that confidence came from the support he received, not just from us, but from his community, including his school" in Champaign.

D's teachers and school were supportive, and they allowed him to use the restroom that was best for him. But both Sara and Micah note that using the restroom has continued to be a source of anxiety and concern. According to Micah,

“D, for years, even after being supported, still struggled with going to the restroom, at school, or just in public in general. Because there’s always that fear of being called out or worse.” Sara notes that when she would ask if he had been using the restroom at school, his answer would be that he didn’t have to go. But she knew that he was holding it throughout the day because he would go as soon as he’d get home. It angers and frustrates Sara and Micah that something as simple as using the restroom becomes so fraught for transgender youth. Micah recalls an incident from before D transitioned:

D had just gone in to the girls’ restroom, and as a woman came out, she said, “Oh, he’s not fooling anybody.” He used the girls’ restroom, and the reaction was that he shouldn’t have been in there. So now he goes to the boys’ restroom, and people think he shouldn’t be in there? . . . It bothers me so much that people think my son is trying to hurt someone when it’s just completely the opposite. So it hurt me as a parent, that he has to hold it, that he feels the need, doesn’t feel the safety, the security to do this.

While Sara’s father initially struggled with understanding D’s transition, that changed once he spent time with D after his transition. “He got it, because he just saw a child,” says Micah. “Still his grandchild. Everything’s the same; just different name and pronouns.” Sara notes that this is “a perfect example of it just taking a conversation to counter the stereotypes that you’ve always had about this group of people. Then you get to know someone, and it changes your opinion.” “My parents are just very conservative,” says Sara, “but they have definitely come around, and are the most supportive grandparents.” Micah stresses that “all we’re trying to do is

make sure we're doing the right thing for our child[ren], so that they will be happy and successful in life.”⁸

Kathy Blazer-Williams and Kevin Williams – Madison County, Indiana

Kathy Blazer-Williams and Kevin Williams live in Madison County, Indiana, just outside the city of Anderson. Kathy describes it as a “small community; fairly rural and very conservative.” Kathy has lived her entire life within a fifteen-mile radius of where she lives right now. She and Kevin went to high school together and were both raised in conservative environments. Kathy’s grandfather was an Evangelical Pentecostal minister, and she attended his church growing up. Kevin comes from a farming family, and he was raised with “small town traditional values.” Kathy and Kevin have been together for 25 years and have four children ranging in age from twelve to 20 years old. Their thirteen-year-old daughter, R, is transgender.

Kathy explains that R always knew she was a girl: “The way I like to put it is that R told us from the beginning that she was a girl. It just took us about seven years to hear her.” Kathy remembers that, when R was very young, she would wrap towels around her head and pretend “it was her long pretty hair.” When she talked about growing up, “she always said, ‘When I’m a mommy.’” Kathy acknowledges that, “I didn’t really start thinking it was more than playing, until, when she was four or five, she asked me when her penis was going to fall off so she could be a girl. She

⁸ Source: January 11, 2017 Telephone Interview with Sara and Micah Heumann.

just thought that, at some point in time, you became what you were, so she expected that to happen.”

The turning point came when R was six-and-a-half and cut her penis with cuticle nippers. Kathy remembers rushing the badly bleeding R to the hospital:

And after the doctor fixed her up, he said to R, “You can’t be doing stuff like that because you could have seriously hurt yourself. You could have killed yourself by accident.” R just looked at this stranger, and with the most blank dead expression I have ever seen on her face, said “It doesn’t matter. I’m not really alive.” And the doctor said, “That’s silly, of course you’re alive,” and he poked her knee and was trying to have fun with her, and she shook her head at him, and said “No. I’m not a boy. I’m not really alive,” and I had to walk out of the room. And he talked to her for a few minutes, and when he came out, he gave me some information for a psych evaluation, and that began our journey.

Kathy notes that it took some time to find a doctor who knew anything about gender dysphoria and would see someone as young as R:

When I finally did get her evaluated, and it took about a month, the doctor said that he had never seen such an acute case of gender dysphoria in someone so young. He helped me find a doctor here locally who could see R for regular therapy sessions. And after the doctor here in town had seen her a couple of times, he sat down with Kevin and me alone, and explained what social transition was, and explained the risk factors involved. That was also the first time I heard the really scary statistics about trans youth and self-harm. And given what had already happened with R, I was terrified. I was terrified that our child wasn’t going to see adulthood. And my husband and I agreed that you do what you have to do to keep your child healthy.

R was two months shy of her seventh birthday when she began living fully as a girl. Kathy says the change in R’s personality was dramatic: “R is bubbly; she’s smart; she’s sassy. And prior to almost age seven, she wasn’t any of those things. She was sullen. She was quiet. When she was about five, I talked to the pediatrician

because she was so withdrawn. I just thought that she was shy, which is funny because if you knew her now, she's anything but shy." Kathy explains that they hadn't initially realized that it was a possibility for R to transition as a child, but once they learned this was an option and decided to move forward, "it was just like a light switch click. And she came to life as quickly as that. It was like she was terminal and then suddenly told that there was a magic cure."

Kathy explains that, "when we were first told that R had gender dysphoria and learned what that meant, it almost felt like a relief—to know that there's a name for it, and there's something we can do, and there's a way forward." Although there was real concern that R wouldn't have an easy path in life given the pervasive levels of discrimination and rejection that transgender people experience, Kathy and Kevin never questioned that they needed to support and affirm R as the girl she is. Unfortunately, things did not go smoothly when they attempted to ensure that R would be treated like other girls at school. In 2009, when R transitioned, the family lived farther out from town, where the school district was small enough that kindergarten through ninth grade were in a single building. Kathy recalls:

I made an appointment with the principal, and I had all my paperwork from the doctor. R's brother has an orthopedic disease where he had to spend some time in a wheelchair, and I foolishly walked in there thinking it was just going to go like the meeting I had for R's brother—where it was just matter-of-fact, we have a diagnosis, this is what we need to do. But that is not how it went. The principal said, "No. Legally, your child is a male." And I remember him saying, "I can't risk those little girls by letting some boy walk in that restroom." And I said, "She's not a boy. She's a girl." And he said, "I don't care. He can act like a girl at school if he wants to, but he's going to be in boys' gym class, and he's going to use the boys' restroom."

Kathy recalls having “this mental image of my little girl walking into the boys’ room with a big fourteen-year-old boy, and was worried that my daughter would get hurt.” At the end of the school year, Kathy withdrew R and began homeschooling her. Kathy says that she “ended up pulling all three of R’s siblings out of school as well,” because “word got around quickly [about R being transgender], and the siblings started having issues at school—and not just from other students.” A year later, the family moved closer to Anderson, where R’s siblings enrolled in a more accepting public school.

Kathy has continued to homeschool R, but recently spoke with the administration at the school that R’s older brother attends about the possibility of enrolling R there next fall. She, Kevin and R all think it would be a good idea for R to go to a “brick and mortar” public high school so R will not miss the social experience and education available there. But Kathy is concerned about whether the law will protect R from discrimination and allow her to use restrooms consistent with her gender identity. She explains, “I can’t put her in a situation where she’s not safe. And if Title IX protections for transgender children get [rolled back], she won’t be safe.”

Kathy wants people to understand that this case is not just about using the restroom:

When a child transitions, they finally begin to be in the body they are comfortable with. But to have somebody telling them that they’re not enough of a person, that they’re not enough of a human being to be allowed something so common as the simple dignity of relieving

yourself, it's invalidating that child as a human being. That's why the numbers are so scary for trans youth. Not letting a child use the restroom consistent with the gender they identify with is not affirming that person's humanity. When a child is not affirmed, seven out of ten trans kids try to hurt themselves. It's literally life or death for these kids.

Kathy and Kevin are thankful that their family lives in a relatively accepting neighborhood now. They also note that "central Indiana is absolutely blessed to have Indiana Youth Group," which "has literally been a life saver."⁹

Melissa Solano¹⁰ – near Madison, Wisconsin

Melissa was born and raised in the Madison, Wisconsin area. She went to college at the University of Wisconsin, Platteville, and currently lives just outside of Madison. She has two teenaged daughters and a son, S, who is nine. S is transgender. He attends public school in the Madison Metropolitan School District.

Melissa recalls that S identified as a boy from the time he could speak. At first, Melissa thought S's typical "boy" interests were because he was in daycare primarily with boys. But among his first words was the sentence: "I boy." S's father is Mexican-American, and Melissa explains there were many fancy occasions like weddings and quinceañeras where she would dress S up in formal dresses with hair in pig tails. "Absolutely every single time, he'd pull his hair out of the pig tails, and he would always manage to spill something on the dress so we'd have to change him into shorts and a t-shirt." At age three, "he would throw huge fits whenever we'd try

⁹ Source: January 20, 2017 Interview with Kathy Blazer-Williams.

¹⁰ Melissa Solano is a pseudonym. Because of the potential harm of "outing" her son as transgender, a pseudonym is being used to protect her son's privacy.

to put anything that he felt was sort of feminine on him.” She asked her doctor for help, and eventually S was diagnosed with gender dysphoria. That’s when Melissa learned about the disturbingly high suicide rate for transgender youth, and that the number one deterrent is acceptance: “I never forgot that. Never. And that’s really helped in all the decisions we’ve had to make.” Melissa says that the pivotal moment for her came when S was about to turn four, and the only thing he wanted for his birthday was to get his hair cut short like his best friend. “We were at the barber shop, and we cut off all his curls and his hair, and he started to resemble the boy that he knew he would be. And I saw a smile on his face that I had never seen before. Ever.” According to Melissa, S’s father needed a bit more reassurance about S’s diagnosis and the recommended course of action going forward. “But he loves S, and he saw how happy S was, and he came around. And he recently sought help through the school system to see if someone could talk to his extended family about the importance of embracing S with male pronouns, and as a male.”

Melissa describes S as “extremely happy, healthy, outgoing, and loved by his teachers. He has absolutely no psychological issues at this time, and no sign of them going forward.” Melissa believes that S is well-adjusted in large part because of the support their family has received from the Madison public schools. She explains that “his school system allows him to be enrolled as a boy, and only a few people are aware of his status. He uses the restroom of his gender, and participates in all things gender-related as a male.” He is treated as a boy in all respects and is affirmed in his gender identity. She notes that S’s school “received an allowance from the Madison

school system to educate every teacher that S has had,” and that Gender Spectrum trained school staff to make classrooms gender inclusive. Melissa appreciates that the school has always taken precautions to ensure that S is not unintentionally “outed” to his classmates, because none of them are aware that he is transgender. While she hopes that they would be accepting because they have known S for so many years as a boy, she worries that if they were to find out, or their parents were to find out, he might “be rejected and treated like an outcast. Certainly his self-esteem would suffer.” She thinks she would probably have to withdraw him from his current school, and possibly from public school in general. Melissa “can’t imagine how different our life would be if we didn’t have a system in place that allows S to be treated like any other boy.”¹¹

Joanne and Nancy Rae – Antioch, Illinois

Joanne and Nancy Rae live in Antioch, Illinois with their twelve-year-old son and seven-year-old daughter. Antioch is a small town in the northeast corner of Illinois. Joanne, who is originally from Scotland, works as a teacher’s aide, principal’s assistant, and substitute teacher. Nancy is a teacher. Their son, K, is transgender.

Joanne and Nancy recall that K first began telling them he wanted to be a boy at age two-and-a-half, shortly after starting daycare. As a young child, when asked what he wanted to be when he grew up, K consistently answered that “he wanted to be a man, as if it was some kind of employment option.” By the time he was ready

¹¹ Source: January 11, 2017 Telephone Interview with “Melissa Solano.”

for kindergarten, K was fixed on cutting his hair short “like a boy.” Nancy recalls that when K was five or six years old, his grandfather sent him a pair of camouflage pants and a remote-controlled car for Christmas. Upon opening the gift, K responded, “My grandpa, he gets me.” To Nancy, his reaction was deeper and more profound than being happy about a gift that he loved; it was about an external recognition of his identity.

Around this time, K began to exhibit anxiety behaviors: chewing on clothes and fixating on fears about his and his family’s safety. At night, he began to cry and ask, “Why did God make a mistake with me? Why do I have to have this problem?” As he grew older, K’s need to be recognized as a boy intensified. Joanne recalls that, when he was seven or eight, he liked to hold the door open for people, and when they would say, “Thanks, son,” his face would light up. He eventually told his parents that they didn’t need to correct strangers who assumed he was male. It also became important to K “to have short hair, really short hair, a boy’s haircut, in a barber shop with clippers if possible. This was a big deal to him.” After getting his hair cut short just shy of his ninth birthday, K said it was the first time he felt like himself in his whole life.

K began to transition in fourth grade when he was nine. Prior to this, the anxiety he felt related to his gender affected all aspects of his life. Something that might initially seem to be unrelated, such as disliking gym class, would turn out to be about the alienation he felt as a result of the gender segregation in gym class. Joanne explains: “You’d find out they were playing boys versus girls, and he didn’t know

[which] team to go on.” Joanne and Nancy had also become increasingly concerned about the despair K expressed about his future, and began researching resources to help him. “He was saying things like he didn’t want to have breasts, and he didn’t want to be a girl, and he just didn’t see a future for his life.” Around this time, Joanne and Nancy learned about the sex and gender clinic at Lurie Children’s Hospital in Chicago. Joanne explains that, after they made that appointment, K “started to get information for himself, and he knew that there was an option, that he could live consistent with his gender identity and not fear the future.”

At school, K began using the boys’ restroom shortly after his transition. However, he had to wait nine months before he was allowed to use the boys’ locker room. Joanne explains that, from K’s perspective, the issue was, “I want to be treated the same as all the other boys. And they keep their tennis shoes in a locker room that says ‘Boys’ on it. But I have to walk three corridors away and change in a private restroom and leave my stuff in a bucket on the floor. I am constantly asked: ‘Why are you changing over there?’ And K has to come up with a story.” Joanne and Nancy saw how important it was for K to be treated as male in school, and the psychological damage caused by the school’s initial decision to isolate him, instead of treating him like his male peers.

Joanne and Nancy observe that one of the most striking aspects of K’s transition was how quickly his anxiety behaviors disappeared. Nancy explains that “he stopped chewing his clothes” and that “all his nervousness just went away.” Joanne concurs: “He doesn’t have any of the anxiety behaviors that he had before,

and it's not even changed as he's grown up—he just doesn't have them anymore. He's much more content, a much more confident person.”¹²

CONCLUSION

Transgender children face significant harm when they are unable to live consistently with their gender identity. On behalf of the parents of transgender children, who want their children to be supported and affirmed in their gender identity, and to be treated equally in school, *Amici* urge this Court to affirm the decision of the district court.

Respectfully submitted this the 30th day of January, 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

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

¹² Source: January 6, 2017 Telephone Interview with Joanne and Nancy Rae.

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

-and-

Christopher Stoll
Asaf Orr
NATIONAL CENTER FOR LESBIAN
RIGHTS
870 Market Street, Suite 370
San Francisco, California 94102
Phone: (415) 392-6257
Fax: (415) 392-8442
cstoll@nclrights.org
aorr@nclrights.org

Attorneys for Amicus Curiae

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitations set forth in Seventh Circuit Rules 29 and 32(b). This brief contains 6,929 words in compliance with this Circuit's 7,000-word limit on briefs of *amicus curiae* set forth in Circuit Rule 29.

s/ Maureen P. Alger
Maureen P. Alger

CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2017, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh 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