

**In The  
Supreme Court of the United States**

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GLOUCESTER COUNTY SCHOOL BOARD,

*Petitioner,*

v.

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

*Respondent.*

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**On Writ Of Certiorari To The  
United States Court Of Appeals  
For The Fourth Circuit**

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**BRIEF OF AMICI CURIAE  
PFLAG, INC., TRANS YOUTH EQUALITY  
FOUNDATION, GENDER SPECTRUM  
CHARITABLE FUND, AND GENDER DIVERSITY  
IN SUPPORT OF RESPONDENT**

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## INTRODUCTION AND INTEREST OF AMICI CURIAE<sup>1</sup>

Like all parents, Rose Tapia wants the best for J, her seventeen-year-old son. J came out as transgender early in high school, in Milwaukee, Wisconsin. After coming to terms with the pain and distress she caused J by her initial refusal to take his gender transition seriously, Rose began to advocate for J's public school to treat him like his peers in every aspect of the school environment and educational program, including use of the restrooms. But the school's principal ignored her pleas. The school has barred him from the boys' restrooms and changing facilities, and some teachers refer to him by his birth name – involuntarily disclosing his transgender status to those around him. J is required to use a single-user staff restroom and chooses not to change after gym class. Wearing his gym clothes all day, J feels humiliated and set apart from other students. He frequently shares with his mom that he hates being at school.

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<sup>1</sup> Written consent to the filing of this brief has been granted by all parties and filed with the Clerk of the Court. 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 Allen<sup>2</sup> have been struggling with the passage of HB2,<sup>3</sup> which bars their transgender daughter, D, from using the girls' restroom. D had been using the girls' restroom in school for two years without incident, but with the passage of HB2 when she was eight years old, she was suddenly excluded from the girls' restroom. Like J, D was relegated to using a separate, single-user restroom. D cried when she was told about this new rule and didn't understand why she had to be separated from her friends. Although the school did ultimately allow her to use the girls' restroom again, she was initially only allowed to do so when no other girls were present. An ordinary, everyday event had become stigmatizing and isolating.

The challenges these two families confront 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 incident.

**PFLAG, Inc.** is the nation's largest LGBTQ family and ally nonprofit organization, with more than

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<sup>2</sup> "Anna Allen" and "Robert Allen" are pseudonyms. Because of the potential harm of disclosing their daughter's identity and the fact that she is transgender, pseudonyms are being used to protect their daughter's privacy.

<sup>3</sup> Public Facilities Privacy & Security Act, 2016 N.C. 2nd Ex. Sess. S.L. 2016-3 (H.B. 2); N.C. Gen. Stat. Ann. § 143-760.

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 Charitable Fund** 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 the Fourth Circuit's decision below should be affirmed. 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.

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## ARGUMENT

### **I. Treating Transgender Students Differently Than Their Peers Denies Them Dignity and Equal Educational Opportunity.**

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.<sup>4</sup> Children typically become aware of and often

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<sup>4</sup> 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).

articulate their gender identity between the ages of two and four.<sup>5</sup>

Separating children from their peers based on an innate characteristic “generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.” *Brown v. Bd. of Educ.*, 347 U.S. 483, 494 (1954). “The impact is greater when it has the sanction of the law, for the policy . . . is usually interpreted as denoting the inferiority of the [separated] group. A sense of inferiority affects the motivation of a child to learn.” *Id.* (citation and quotation marks omitted). 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.) (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 Highland Local Sch. Dist. v. U.S. Dep’t of Educ.*, No. 2:16-CV-524, 2016 WL 5372349, at \*14 (S.D. Ohio Sept. 26, 2016)

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

(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 dysphoria<sup>6</sup> 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

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<sup>6</sup> 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).

stories below, social transition significantly eases the symptoms of gender dysphoria.<sup>7</sup>

Barring transgender children from using restrooms consistent with their gender identity constitutes discrimination and causes harm. There is no rational basis for such discrimination or for denying transgender students equal educational opportunity. *See, e.g., Highland*, 2016 WL 5372349, at \*14, \*19.

## **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

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<sup>7</sup> 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).

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 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.”<sup>8</sup>

### **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.

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<sup>8</sup> 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 depondent.” 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 shopping 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.<sup>9</sup>

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.”<sup>10</sup>

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

<sup>10</sup> Source: February 14, 2017 Telephone Interview with Wayne Maines.

**Anna and Robert Allen<sup>11</sup> – 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.

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 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,

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<sup>11</sup> As noted above, “Anna Allen” and “Robert Allen” are pseudonyms.

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.<sup>12</sup> 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 the Fourth Circuit decision in this case, Anna asked the principal to allow D to use the girls' restroom with the others again. The school agreed, and

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<sup>12</sup> N.C. Gen. Stat. Ann. § 143-760; see *Carcaño v. McCrory*, No. 1:16-CV-236, 2016 WL 4508192 (M.D.N.C. Aug. 26, 2016).

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 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."<sup>13</sup>

### **Amber and Adam Briggie – Denton, Texas**

Amber and Adam Briggie 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.

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<sup>13</sup> Source: February 7, 2017 Telephone Interview with "Robert Allen" and "Anna Allen."



*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.”<sup>14</sup>

### **Monica and Jonathan Hon – Ottawa, Illinois**

Monica and Jonathan Hon live in Ottawa, Illinois, a rural town in the Illinois Valley between Chicago and Peoria. Monica is a healthcare consultant and Jonathan is an athletic trainer. They have four children ranging in age from eighteen to 25. Their eighteen-year-old daughter, Heather, is transgender.

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<sup>14</sup> Source: December 12, 2016 Telephone Interview with Amber and Adam Briggie; February 15, 2017 Telephone Interview with Amber Briggie.



*From left to right: Heather and her siblings,  
Hillary, Duncan, and Bridget*

Monica recalls experiencing a sense of surprise and disbelief when Heather first talked with her about being transgender. Heather had never engaged in stereotypical “girl” behaviors like playing with dolls or dress-up as a child. “She was your stereotypical kind of male child, so this was actually a shock,” explains Monica. In hindsight, Monica recognizes that there were signs she hadn’t noticed, like when Heather would dress in oversized clothes and try to hide her body.

Heather was twelve when she initially broached the subject with Monica: “She came to me one night and asked whether she could skip the haircut I had scheduled, and I said, ‘Sure, no problem.’ She then said, ‘No mom, you don’t understand, I don’t really want to

ever cut my hair.’ And that’s how her coming out started.” In the conversation that followed, Monica learned that Heather was suffering from tremendous and debilitating anxiety: “Puberty was really scaring her because she didn’t want to become a man, and have the characteristics of a man – the hair, the voice. That’s what was frightening her. And that’s what gave her the courage to say, ‘I need help because this is terrifying me.’”

Monica and Jonathan wanted to support their child and immediately began researching: “I wanted to know everything there was to know about it, and what the options were, because as a parent, I just wanted to be sure that I was giving her the proper support and directing her to the right professionals.” Jonathan recalls that, at the time, he didn’t have any awareness of what it meant to be transgender. Monica and Jonathan eventually found the Gender and Sex Development Program at Lurie Children’s Hospital in Chicago.

Heather began wearing dresses and skirts at home. At school, Heather still presented herself as a boy through seventh and eighth grade, but wore girls’ underwear and bras underneath her clothes. Monica recalls that Heather “felt happier that she could express herself as her true gender in some way, but she was suffering from anxiety, depression, and panic attacks because of the fear of ridicule and rejection.” Restrooms were a significant trigger for anxiety. At school, “she felt uncomfortable being in a boys’ bathroom so she would just try to avoid it and would run home. Sometimes she couldn’t even make it up to the house

because she was holding it that whole time. She was just doing everything possible not to have to deal with that feeling and that anxiety of going at school.”

Monica and Jonathan were trying to keep Heather’s life as normal as possible, so they initially planned for Heather to attend the local high school. By that time, Heather felt an increasing need to be recognized as the girl she is, but also felt tremendous anxiety about how she would be treated if she socially transitioned at school. Because of that fear, Heather was initially “willing to continue this façade” of hiding that she was a girl in school. Monica didn’t think that Heather “was going to last all four years pretending to be a boy,” so she spoke with the principal about how the school would handle Heather transitioning. Monica explained that Heather “would want to use the girls’ bathroom, and I wanted to make sure that it would be possible to do that. But he said that was not something they had contemplated, and that he would think it would be the safest route to use a staff bathroom.” Heather’s reaction was that that would just make her stand out. When Monica asked the principal about locker room usage, “he basically said, ‘well, she’s just not going to take gym class.’”

Monica and Jonathan were also worried about Heather’s safety. Heather’s older sister, who was already in high school, kept telling Monica, “‘Mom, there is no way you can send her to this high school.’ She told me that there was a lot of bullying, and she could just see that it wouldn’t be safe for her.” Ultimately, because of the lack of support and their concern for

Heather's safety and well-being, Monica and Jonathan decided to enroll Heather in a homeschool program.

Unfortunately, the social isolation contributed to Heather's depression. "I think a lot of it was not being with her friends from high school, and not participating in the band program," which was important to her, explains Monica. "It's kind of unfair that because of this, she has had to relinquish her social life completely to feel safe. I think that's really made her sad." Although things started to improve as Heather began hormone therapy to treat her gender dysphoria, "it was a very hard time." Monica would worry about Heather throughout the day, and would check on her as soon as she got home from work. "I [was] afraid of coming home and finding her on the floor unconscious, or not responsive, or dead . . . I would literally have to come home and just hold her because she would just be in a pool of tears."

Heather's confidence has gradually increased, and she is doing much better now. "She's still moody, but it's a normal, teen moodiness that I welcome," says Monica. "I see her smile when people refer to her as 'miss' or 'young lady,' and she loves that she's recognized for who she is. I think she is a lot happier now." But Monica and Jonathan still find it upsetting that they could not send Heather to public school without fearing how she would be treated there. "What is awful and very notable is the fact that we chose her sanity, her safety, and her well-being in keeping her home . . . because it was better than the option of going to our public school, and that's a shame," says Monica. "I just

think that for children you need to make them feel safe and loved, and schools should be supportive, and not be a block to that.”<sup>15</sup>

**Michelle Honda-Phillips and Travis Phillips  
– San Jose, California**

Michelle Honda-Phillips and Travis Phillips live near San Jose, California. Travis is a software architect and Michelle is a marketing and sales manager. They have three children: two sons, eight and twelve, and a ten-year-old daughter, M, who is transgender. Michelle’s father is former U.S. Representative Mike Honda, who made news in February 2015 when he tweeted that he was the proud *ji-chan*, or grandfather, of a transgender granddaughter.<sup>16</sup>

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<sup>15</sup> Source: February 1, 2017 Telephone Interview with Monica and Jonathan Hon; February 19, 2017 Interview with Monica Hon.

<sup>16</sup> Julia Prodis Sulek, *Transgender Grandchild: Rep. Mike Honda Says 8-Year-Old’s Gender Change Not a Phase*, San Jose Mercury News, Feb. 19, 2015, updated Aug. 12, 2016, <http://www.mercurynews.com/2015/02/19/transgender-grandchild-rep-mike-honda-says-8-year-olds-gender-change-not-a-phase/>.



*M (second from left), M's brothers, Michelle, and Travis*

Michelle says that M knew “a lot earlier than we did” that she was a girl. From the time she was very young, M would identify herself as a girl and would take on a daughter or sister role in play. When she was older, she would say things like, “Mom, you need to have another baby. You need to have another girl because we’re outnumbered three to two.” Michelle and Travis bought M pink clothes and “girl” toys at her request. Around the time M was four or five, Michelle began to suspect that M might be transgender. She started reading “books, blogs, websites, anything I could get my hands on for quite a few years just trying to help her figure out, help the whole family figure out what was going on.”

Around age six, a friend gave M a dress and long wig to wear for a Halloween costume. When a neighbor assumed M was a girl and complimented her on being a good big sister, M beamed with happiness.<sup>17</sup>

M formally transitioned on her eighth birthday. She had already grown her hair long, and she wore mostly girls' clothes by this time, but her birthday marked the official announcement to family and close friends. Most of their family was supportive, although many had questions. Michelle and Travis had "to explain that this child is no different. You're not saying goodbye to anyone or welcoming a new person. This is exactly the same child with a different name and pronoun."

The mother of M's best friend at the time "was not supportive at all" and forbade M's friend from seeing her. M's friend called and told M, "I don't care who or what you are, I love you. I love your personality. I love you. You're my friend, but my mom won't let me see you anymore." That "just broke M's heart." Michelle says that this friend's mother was the only person close to them who was not supportive of M's transition, and she realizes how lucky they were to have so many people around them who support M.

M and her brothers attend a public school. M has told most of her classmates that she is transgender and has explained to them what that means. M started at

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<sup>17</sup> *Malisa's Story: What It Means to Be a Transgender Child*, NBC News, Apr. 22, 2015, <http://www.nbcnews.com/video/malisas-story-what-it-means-to-be-a-transgender-child-431628355880>.

this school with a girl's name and registered as a girl. It was "never a question" that M would use the girls' restroom. "Everyone just knew that she would be using the girls' bathroom because that's what she is." Michelle and Travis credit the "great" school principal and district superintendent with making it easy for M to use the restroom consistent with her gender identity.

M also uses the girls' locker room at the studio for her competitive dance team. One of the other dancers' mothers questioned at one point whether it was "appropriate" for M to be changing with the girls. Michelle and Travis were relieved to hear that another mother replied: "Absolutely. She needs to be here. Why would she be anywhere else? She's a girl."

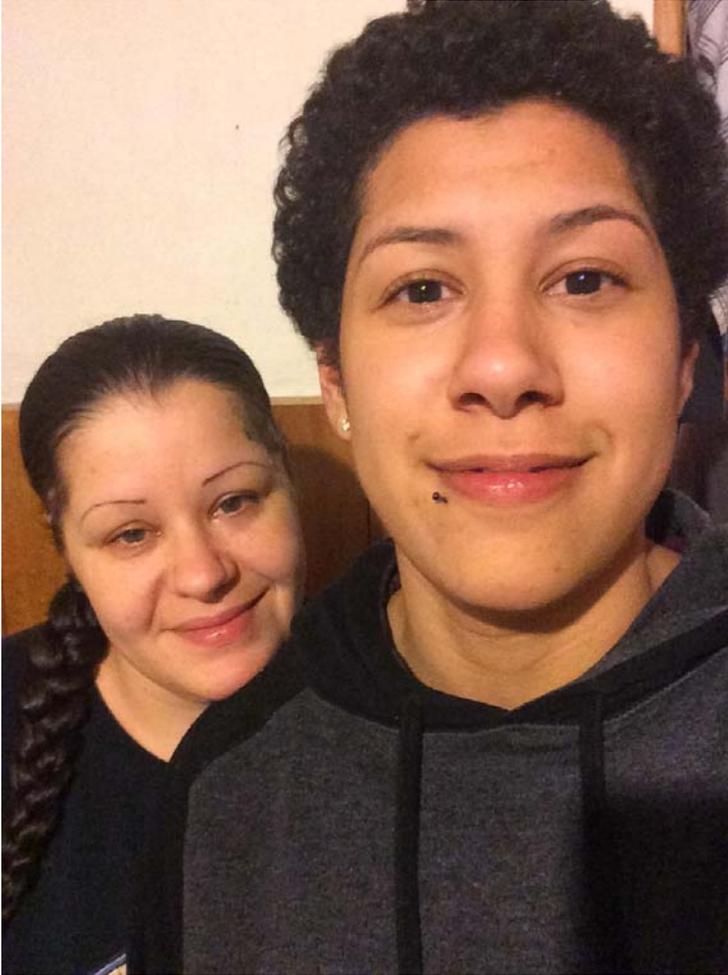
Before transitioning, "you could tell that there was something that was keeping her from fully being a comfortable person," says Michelle. Now, M "just lights up a room. She is more outgoing in class and . . . she just is so comfortable with herself at this point. She'll go out there and do a solo in dance, and she's on these competitive teams now, and she's just an incredibly confident person."<sup>18</sup>

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<sup>18</sup> Source: December 15, 2016 Telephone Interview with Michelle Honda-Phillips and Travis Phillips; February 16, 2017 Telephone Interview with Michelle Honda-Phillips.

**Rose Tapia – Milwaukee, Wisconsin**

Rose Tapia lives near Milwaukee, Wisconsin, and has five sons ranging in age from seven to seventeen. Rose works in a billing office and teaches Zumba classes. She describes herself as an “ordinary mom, a regular person.” Rose’s seventeen-year-old son, J, is transgender.



*Rose and J*

As a young child, J refused to wear dresses and didn't want any "girl" toys. When he was nine or ten, Rose found out he was telling children who did not attend his school that he was a boy. At twelve, J cut his hair short and asked for boxer shorts and boys' clothing. J also told Rose that he liked girls romantically. Rose knew that J was anxious and uncomfortable with his developing body because he took Ace bandages and used them to bind his breasts down. When he was about fifteen, J asked Rose to call him by a boy's name and refer to him using male pronouns. "I didn't always do it, because I was used to saying 'she,'" explains Rose. "He was frustrated with me because I wasn't taking him seriously and believing that's actually how he felt."

The turning point for J came during the summer he turned sixteen. He had been "really upset and frustrated" and struggling in school. One night, he refused to come home from his girlfriend's house. Rose immediately went to the house. After she arrived, J's girlfriend's father told Rose that J did not feel safe at home because his family called him "she" and continued to use his old name. "I didn't realize how serious it was until that point," recalls Rose. "And I felt like, oh my God, this is why my child is doing this."

Rose sought counseling for J and herself at Children's Hospital of Wisconsin. At the time, Rose did not know what being transgender meant. "I began to get educated," explains Rose. "I began to understand it more and then became more sensitive to it." J showed

her documentaries about other transgender children, “and I took it to heart.”

Rose went through a difficult process as she “really realized that I can no longer say ‘she.’ I don’t have a daughter, and I have to say ‘he.’ . . . I didn’t want him to hurt himself. He’d become really depressed and that’s how it all came out, with anger, with sadness.” J’s four younger brothers started using male pronouns and referring to J as their brother right away. Rose’s mother and sister had a harder time. They continued to refer to him as “she” and by his original first name. Rose told them, “This is how it is and this is how it has to be. . . . I need your support; he needs your support.”

J transferred to a different public school after he transitioned. J’s therapist from the children’s hospital met with the school social worker to help create a supportive environment, including having staff use J’s new name and male pronouns. The school arranged for J to use a staff restroom on the first floor. He initially used the boys’ locker room for gym class without incident. However, one day, the school principal intercepted J walking through the boys’ locker room and told him that he had to use the girls’ locker room instead. J was distraught. He told Rose, “Everybody knows me as a boy, and if I’m in the girls’ locker room, they’re going to call me a pervert.” Because he cannot use the boys’ or the girls’ locker room, J remains in his sweaty gym clothes all day. He feels conspicuous, uncomfortable, and humiliated.

After Rose complained to the Milwaukee Public School District about the principal's discriminatory treatment of J, the district sent a representative to meet with J without Rose's knowledge or presence. The representative told J that everyone knew he was a girl and that he should know that he was not a boy. J was deeply hurt and went home upset and crying. Rose was furious. Unsurprisingly, the incident has had a lasting and negative effect on J, causing him to withdraw further.

Some staff continue to call J by his birth name, and J sometimes texts Rose from school telling her that he hates being there. He is particularly embarrassed when teachers call him by the wrong name. Rose finds it "upsetting to know professionals in the education field can have the right to make [transgender students] feel uncomfortable or not wanted or just bad in general. They shouldn't have to feel that way."<sup>19</sup>



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<sup>19</sup> Source: February 11, 2017 Telephone Interview with Rose Tapia.

**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 affirm the decision of the Fourth Circuit.

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Respectfully submitted,

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