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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

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

Case No. 3:17-cv-01813-HZ

DECLARATION OF AMY HERZFELD-
COPPLE IN SUPPORT OF BASIC
RIGHTS OREGON'S MOTION TO
INTERVENE

Plaintiffs,

PAGE 1 - DECLARATION OF AMY HERZFELD-COPPLE IN SUPPORT OF BASIC
RIGHTS OREGON'S MOTION TO INTERVENE

v.

**DALLAS SCHOOL DISTRICT NO. 2;
OREGON DEPARTMENT OF
EDUCATION; GOVERNOR KATE
BROWN**, in her official capacity as the
Superintendent of Public Instruction; and
**UNITED STATES DEPARTMENT OF
EDUCATION; BETSY DEVOS**, in her official
capacity as United States Secretary of Education
as successor to **JOHN B. KING, JR.**; **UNITED
STATES DEPARTMENT OF JUSTICE;
JEFF SESSIONS**, in his official capacity as
United States Attorney General, as successor to
LORETTA F. LYNCH,

Defendants.

I, Amy Herzfeld-Copple, declare as follows:

1. I am a resident of Milwaukie, Oregon. I am the Co-Executive Director of Basic Rights Oregon (“BRO”).

2. I submit this declaration in support of BRO’s motion to intervene, in order to explain BRO’s interest in this litigation.

3. BRO is an Oregon nonprofit founded in 1996 and is tax-exempt under Section 501(c)(4) of the Internal Revenue Code. The affiliated Basic Rights Education Fund (“BREF”) was formed in 1999 and is tax-exempt under Section 501(c)(3) of the Internal Revenue Code.

4. BRO has over 450 active volunteers; 4,700 individual donors; and 82,000 supporters.

5. BRO works to ensure that all lesbian, gay, bisexual, transgender and queer (“LGBTQ”) Oregonians experience equality. BRO is dedicated to ensuring that all lesbian, gay, bisexual, transgender, and queer Oregonians live free from discrimination, are treated with dignity and respect, and have a strong political presence. BRO is the primary policy advocacy organization for LGBTQ Oregonians.

PAGE 2 - DECLARATION OF AMY HERZFELD-COPPLE IN SUPPORT OF BASIC RIGHTS OREGON’S MOTION TO INTERVENE

6. In particular, BRO is dedicated to supporting and empowering LGBTQ youth in Oregon. BRO recognizes that LGBTQ youth are the future leaders for equality and social justice—for the LGBTQ population and beyond. BRO’s dedication to LGBTQ youth also stems from their vulnerable position in society. For example, according to a report by the Williams Institute, LGBTQ youth make up 40 percent of the youth population experiencing homelessness, despite the fact that LGBTQ youth comprise only 10 percent of the general youth population.¹ Family rejection on the basis of sexual orientation and gender identity was the most frequently cited factor contributing to LGBTQ youth homelessness. Nearly 70 percent of LGBTQ homeless youth have experienced family rejection and more than half have experience abuse in their family.² Moreover, LGBTQ youth experiencing homelessness are more likely to experience victimization and mental health issues. Relative to other homeless youth, 58 percent of service providers report that transgender homeless youth have worse physical and mental health.³ Nearly two-thirds of LGBTQ homeless youth clients have mental health issues and more than half have histories of alcohol and substance abuse.⁴ About 40 percent of LGBTQ homeless youth have been subject to sexual exploitation and sexual assault.⁵

7. LGBTQ students are far more likely to be subject to discrimination in schools leading to poorer education outcomes. For example, according to a report by GLSEN, over 80 percent of LGBTQ students reported that their school engaged in LGBTQ-related discriminatory policies or practices, with two-thirds saying that they personally experienced this anti-LGBTQ discrimination.⁶ Over 50 percent of transgender students report being prevented from using their

¹ The Palette Fund, True Colors Fund, and the Williams Institute, *Serving Our Youth: Findings from a National Survey of Services Providers Working with Lesbian, Gay, Bisexual and Transgender Youth Who Are Homeless or At Risk of Becoming Homeless*, <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Durso-Gates-LGBT-Homeless-Youth-Survey-July-2012.pdf>

² *Id.* at 9.

³ *Id.* at 10.

⁴ *Id.*

⁵ *Id.*

⁶ GLSEN, *The 2015 National School Climate Survey: The experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Youth in Our Nation’s Schools* at xviii (2016) avail. at xvii,

preferred name or pronoun and 60 percent of transgender students had been required to use a bathroom or locker room that did not match their gender identity.⁷ This systemic and continuous discrimination and harassment in educational settings leads to poorer educational outcomes for LGBTQ students. LGBTQ students who experience higher levels of victimization because of their gender expression were almost three times as likely to have missed school in the past month; had lower GPAs; were twice as likely to report that they did not plan to pursue and post-secondary education; were more likely to have been disciplined at school; and had lower self-esteem and school belonging and higher levels of depression.⁸

8. According to a survey of the National Center for Transgender Equality (“NCTE”) and the National Gay and Lesbian Task Force (“NGLTF”), 83 percent of transgender students in grades K-12 in Oregon reported harassment, 44 percent reported experiencing physical assault and 13 percent reported experiencing sexual violence.⁹ Nationwide, 31 percent of harassment of transgender and gender nonconforming students comes from teachers or staff.¹⁰ The harassment these young people experienced caused 15 percent to leave school settings.¹¹ In the same report, NCTE and NGLTF found that whereas only 1.6 percent of the general population reports attempting suicide, 41% of transgender and gender nonconforming survey respondents reported attempting suicide.¹² That number increases when the population is younger¹³ and when people reported experiencing harassment or assault from teachers or school staff.¹⁴

9. BRO has spent over 20 years securing legal protections for the LGBTQ community in Oregon. These victories include strengthening nondiscrimination laws; creating safer schools

https://www.glsen.org/sites/default/files/2015%20National%20GLSEN%202015%20National%20School%20Climate%20Survey%20%28NSCS%29%20-%20Full%20Report_0.pdf

⁷ *Id.*

⁸ *Id.* at xviii.

⁹ Oregon specific data.

https://transequality.org/sites/default/files/docs/resources/ntds_state_or.pdf

¹⁰ Full report at 33. https://transequality.org/sites/default/files/docs/resources/NTDS_Report.pdf

¹¹ *Oregon data, supra note 1.*

¹² Full Report at 3.

¹³ Full report at 82.

¹⁴ Full report at 45.

through policy change and enforcement, and training members of school communities, teachers and administrators; increasing access to transgender-inclusive health care; banning so-called conversion therapy for LGBTQ youth; and, winning the freedom to marry in Oregon. BRO's programs prioritize the most marginalized LGBTQ communities like LGBTQ youth, who face high rates of homelessness, bullying and suicide.

10. BRO works with Oregon Department of Education ("ODE") staff leaders to advise on policies ensuring nondiscrimination for LGBTQ students in Oregon's public schools. For example, BRO successfully requested the adoption of policies allowing transgender youth to maintain academic records that accurately reflect their name and gender.

11. Even in Oregon, where the rights of transgender students are protected by statute and case law, BRO is routinely contacted by parents and students experiencing discrimination or harassment in schools after a student identifies as transgender. BRO supports these transgender youth and their families who contact BRO for resources and intervention when they are being mistreated in Oregon schools. BRO will act as an intermediary with (ODE) personnel and elected officials to achieve a quick remedy and ensure enforcement of state law and ODE guidelines.

12. Despite numerous federal and state laws that protect LGBTQ students, including the First Amendment of the U.S. Constitution, Article I, sec. 8 of Oregon Constitution, Title IX¹⁵, Oregon Equality Act,¹⁶ Oregon's Safe Schools Act¹⁷ and Oregon Department of Education Guidance¹⁸, transgender students still suffer disproportionate amounts of bullying, harassment and negative developmental outcomes when compared to their peers.¹⁹ The adoption of LGBTQ-

¹⁵ Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et. seq.

¹⁶ Oregon Equality Act, SB 2 (2007).

¹⁷ Oregon Safe Schools Act, HB 2599 (2009).

¹⁸ Oregon Department of Education, Guidance to School Districts: Creating a Safe and Supportive School Environment for Transgender Students (May 5, 2016) avail. at <http://www.ode.state.or.us/groups/supportstaff/hklb/schoolnurses/transgenderstudentguidance.pdf>.

¹⁹ See Declaration of Amy Herzfeld-Copple in Support of Motion to Intervene ¶¶ 6-8.

inclusive policies in schools at a local level has a significant impact on preventing and addressing violence against LGBTQ students.

13. For over a decade, BRO has prioritized LGBTQ youth in their work and achieved a number of policy changes that reflect their goal of ensuring that all students in Oregon are safe regardless of their sexual orientation or gender identity.

14. In 2007, BRO championed the Oregon Equality Act which prohibits discrimination based on sexual orientation and gender identity in employment, housing, public accommodations, and other settings, including public schools.²⁰ This bill required the State Board of Education and State Board of Higher Education to establish rules that ensured Oregon public schools did not discriminate based on sexual orientation and gender identity.

15. In 2009, BRO championed the Oregon Safe School's Act to expand state-level anti-bullying protections to cover LGBTQ students.²¹ This law added protections for LGBTQ students from harassment, intimidation or bullying and required school districts to establish harassment, intimidation and bullying policies and procedures for responding to reports of harassment, intimidation and bullying.²² The law also encouraged school districts to provide training to staff relating to the prevention of, and appropriate response to, acts of harassment, intimidation and bullying.²³

15. In 2010, a gay student teacher was removed from a student teaching placement in a Beaverton School District middle school. Beaverton is Oregon's third largest school district. BRO worked with the superintendent, senior school administrators and staff to update school policies regarding the "discussion of controversial topics" policy and non-discrimination policies for students, faculty and staff. BRO also facilitated and made referrals for various staff training on LGBTQ issues.

²⁰ Oregon Equality Act, SB 2 (2007).

²¹ Oregon Safe Schools Act, HB 2599 (2009).

²² *Id.*

²³ *Id.*

16. On May 21, 2015, Oregon became the third state to pass a ban on so-called conversion therapy for LGBTQ youth when Governor Kate Brown signed the *Youth Mental Health Protection Act*, which prohibits conversion therapy for youth under the age of 18 by licensed mental health providers. BRO led the efforts to pass the act and had endorsements from more than 30 organizations, including all major health care and social service professional associations in the state.

17. In November 2015, Dallas City Councilman Mickey Garus made threatening comments about transgender youth on his Facebook page. Garus' comments inspired anti-trans sentiments and endangered students, such as 14-year-old transgender boy and Dallas High School student, Elliot Yoder. BRO mobilized community support for transgender students in the Dallas School District, circulating a petition in support of Elliot, which gathered 1,100 signatures from Oregonians in 29 counties. BRO organized affirming testimony from parents and townspeople at several Dallas School Board meetings.

18. In December of 2015, BRO organized a convening between community members and school administration in response to Portland-based private Multnomah University's application for a Federal Title IX waiver, requesting the right to ban LGBTQ students on religious grounds. During this convening, transgender people of faith shared their experiences with the university's administrators and faculty. BRO organized a petition calling on the school to withdraw their request, which gathered nearly 650 signatures. BRO also organized a letter from area faith leaders to Multnomah University authorities entreating them to treat their LGBTQ students with dignity and respect.

19. In the spring of 2016, BRO advised ODE staff on the creation of education guidelines to school districts to ensure a safe and supportive school environment for transgender students. Adopted in May 2016, these education guidelines ensure that all students, including those who are transgender, can learn and succeed in school without fear of bullying, harassment or

isolation. These guidelines, adopted by the Dallas School District are the framework for the policies at issue in this case.

20. In 2017, BRO launched its Fierce Families program for parents and family members of transgender youth who want to educate their colleagues, neighbors and friends on what life is like for transgender people. Fierce Family members have lobbied legislators, shared their stories with Members of Congress, and spoken up for their kids at press conferences and community events.

21. In 2017, BRO presented trainings for teachers, counselors and administrators on transgender student inclusion to eight school districts throughout Oregon.

22. BRO seeks to intervene in this litigation because the outcome will have significant consequences for transgender students in Oregon. Protecting the rights of transgender students is central to BRO's mission and BRO's past and current advocacy work. The policy challenged by Plaintiffs in this case is the product of years of advocacy and organizing by BRO, both in Oregon's capitol and in schools across the state. As discussed above, BRO's work defending transgender students and their ability to access facilities that match their gender identity across the state and in this very school district has been extensive. Moreover, BRO represents both students and parents who would be directly impacted by a finding for Plaintiff in this case. *See Decl. of Christine Staub In Support Of Basic Rights Oregon Motion to Intervene; Decl. of Colleen Yaeger In Support of Basic Rights Oregon Motion to Intervene.*

23. Based on my conversations with BRO staff involved with organizing efforts in Dallas, I understand that there are several students at Dallas High School who identify as transgender or gender non-conforming, at least one of whom uses the single-sex restroom and/or locker facilities that correspond with his gender.

24. Regardless how many students take advantage of Dallas School District's practice of permitting transgender students to access facilities consistent with their gender, the existence of

the practice is an essential component in establishing a safe and inclusive space for transgender students at Dallas High School.

25. I make this declaration from my own knowledge of the facts and circumstances set forth above. If necessary, I could and would testify to these facts and circumstances.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

DATED: February 20, 2018



Amy Herzfeld-Copple
Co-Executive Director
Basic Rights Oregon