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IN THE

MISSOURI SUPREME COURT

SC96683

R.M.A., by his next friend Rachelle Appleberry,

Appellant,

v.

BLUE SPRINGS R-IV SCHOOL DISTRICT and
BLUE SPRINGS SCHOOL DISTRICT BOARD OF EDUCATION,

Respondents.

Appeal from the Circuit Court of Jackson County, Missouri

The Honorable Marco Roldan

Case No. 1516-CV20874

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

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Electronically Filed - SUPREME COURT OF MISSOURI - February 27, 2018 - 03:58 PM

Electronically Filed - SUPREME COURT OF MISSOURI - February 27, 2018 - 03:58 PM

Table of Contents

Page

STATEMENT OF JURISDICTION AND STATEMENT OF FACTS 1

INTRODUCTION 1

INTEREST OF AMICI CURIAE 2

SUMMARY OF ARGUMENT 4

ARGUMENT 5

I. Treating Transgender Students in a Manner Inconsistent with Their Gender Identity Constitutes Discrimination and Causes Serious Harm. 5

II. The Experiences of Parents Raising Transgender Children Demonstrate that Transgender Students Face Severe Harm When Their Gender Identity Is Not Affirmed. 7

Amber and Donte Gilleylen—St. Louis, Missouri 8

Kimberly Shappley—Pearland, Texas 13

Alisa Bowman—Emmaus, Pennsylvania 17

Amber and Adam Briggle—Denton, Texas 22

Wayne and Kelly Maines—Portland, Maine and Austin, Texas 26

CONCLUSION 30

Electronically Filed - SUPREME COURT OF MISSOURI - February 27, 2018 - 03:58 PM

Table of Authorities

Page(s)

Cases

Bd. of Educ. of the Highland Local Sch. Dist. v. U.S. Dep't of Educ., 208 F. Supp. 3d 850 (S.D. Ohio 2016), *stay pending appeal denied, Dodds v. U.S. Dep't of Educ.,* 845 F.3d 217 (6th Cir. 2016) 6, 7

Brown v. Bd. of Educ., 347 U.S. 483 (1954) 5

Doe v. Regional School Unit 26, 86 A.3d 600 (Me. 2014) 29

G.G. v. Gloucester Cty. Sch. Bd., 822 F.3d 709 (4th Cir. 2016) 6

Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ., 858 F.3d 1034 (7th Cir. 2017) 5

Other Authorities

Am. Psychiatric Ass'n, *Diagnostic & Statistical Manual of Mental Disorders* 451 (5th ed. 2013) 5, 6

Bethany Gibson & Anita J. Catlin, *Care of the Child with the Desire to Change Gender – Part 1*, 36 Pediatric Nursing 53 (2010) 7

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 (2015) 5

Milton Diamond, *Transsexuality among Twins: Identity Concordance, Transition, Rearing, and Orientation*, 14 Int'l J. of Transgenderism 24 (2013) 5

World Prof'l Ass'n for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People* (2012), https://goo.gl/WiHTmz 7

Electronically Filed - SUPREME COURT OF MISSOURI - February 27, 2018 - 03:58 PM

STATEMENT OF JURISDICTION AND STATEMENT OF FACTS

Amici Curiae adopt and incorporate by reference the jurisdictional statement and statement of facts set forth in Appellant's brief filed with this Court.

INTRODUCTION

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

Like all parents, Amber Gilleylen wants her daughter, M, to be happy. M told her mother from the time she was two that she was a girl and wanted to wear "girls' clothes" and play with "girl toys." Amber and her husband, Donte, initially resisted. But after M told Amber she did not want to live anymore, they realized something needed to change. They consulted with a school social worker and at the end of second grade M transitioned to live publicly as a girl. M's school was supportive and allowed her to use the girls' restroom, but she was bullied relentlessly, so she withdrew. Amber home-schooled M for about two years, until M recently decided to return to public school. Her middle school has been supportive, and allows her to use the girls' restroom and locker room, which has helped M feel comfortable returning to school.

Kimberly Shappley also wants what is best for her daughter, K. From the age of two, K expressed that she was a girl, but Kimberly initially refused to accept that K was transgender, repeatedly insisting that she was a boy. At four years old, K was so

depressed that she seemed to be giving up on life, and Kimberly realized the damage she and others were causing K by not accepting her for her true self. After consulting with professionals, Kimberly decided to allow K to live authentically as the girl she is. Since then, K has blossomed. But K's experience at school has been challenging. Her school will not allow her to use the girls' restroom. Kimberly is particularly worried about the damaging effects the school's policy has on her daughter. This policy singles her daughter out and keeps her separated and isolated from her peers every time she needs to use the restroom.

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

INTEREST OF AMICI CURIAE

PFLAG, Inc. is the nation's largest LGBTQ family and ally nonprofit organization, with more than 200,000 members and supporters and 400 affiliates. PFLAG's members are parents, children, grandparents, siblings, other family members, allies, and friends of lesbian, gay, bisexual, transgender and queer (LGBTQ) individuals. Founded in 1972, PFLAG is committed to advancing equality and full societal affirmation of LGBTQ people through its threefold mission of support, education, and advocacy.

Electronically Filed - SUPREME COURT OF MISSOURI - February 27, 2018 - 03:58 PM

Electronically Filed - SUPREME COURT OF MISSOURI - February 27, 2018 - 03:58 PM

Trans Youth Equality Foundation ("TYEF"), founded by the mother of a transgender child, is a national non-profit organization that provides education, advocacy, and support for transgender children and their families. TYEF's mission is to share information about the unique needs of this community, partnering with families, educators, and service providers to help foster a healthy, caring, and safe environment for all transgender children.

Gender Spectrum is a non-profit organization whose mission is to create a gender-inclusive world for all children. Gender Spectrum provides an array of services to help youth, families, schools, and organizations understand and address concepts of gender identity and gender expression. These services include running trainings for schools and other educational institutions and coordinating local and national support groups for transgender youth and their families.

Gender Diversity, an organization led by trans people and parents of trans children, is dedicated to increasing awareness and understanding of the wide range of gender variations in children, adolescents, and adults. Gender Diversity works extensively with schools to create gender-inclusive learning environments, identify measures to decrease bullying, and provide assistance for gender-transitioning students. Through trainings, group meetings, individual consultations, and conferences, Gender Diversity provides support to families raising transgender and gender-diverse children and teens.

Given their missions, PFLAG, TYEF, Gender Spectrum, and Gender Diversity have a strong interest in ensuring the right of transgender children to be treated like their

peers in all aspects of the school environment. This includes 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.

SUMMARY OF ARGUMENT

Amici respectfully submit that this Court should reverse the trial court's dismissal of Appellant's petition. 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 transgender students are denied the use of a school restroom consistent with their gender identity, they are denied the opportunity to participate as full and equal members of the school community.

Electronically Filed - SUPREME COURT OF MISSOURI - February 27, 2018 - 03:58 PM

Electronically Filed - SUPREME COURT OF MISSOURI - February 27, 2018 - 03:58 PM

ARGUMENT

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

Gender identity is a person's inner sense of belonging to a particular gender. It is an innate, core component of human identity, with a strong biological basis.[1] Children typically become aware of, and often articulate, their gender identity between the ages of two and four.[2]

Separating children from their peers based on an innate characteristic "generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." *Brown v. Bd. of Educ.*, 347 U.S. 483, 494 (1954). "The impact is greater when it has the sanction of the law; for the policy . . . is usually interpreted as denoting the inferiority of the [separated] group. A sense of inferiority affects the motivation of a child to learn." *Id.* (citation and quotation marks omitted). It should be no surprise that when transgender students face such discrimination—when they are singled out and treated differently from others of the same gender identity or are segregated from their peers—the impact can be devastating. *See, e.g.*, *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1045 (7th Cir. 2017) (school district exacerbated the harm to Ash Whitaker "when it dismissed him

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[1] 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).

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

Electronically Filed - SUPREME COURT OF MISSOURI - February 27, 2018 - 03:58 PM

to a separate bathroom where he was the only student who had access," observing that such action "further stigmatized Ash, indicating that he was 'different' because he was a transgender boy"); *G.G. v. Gloucester Cty. Sch. Bd.*, 822 F.3d 709, 728 (4th Cir. 2016) (Davis, J., concurring) (citing expert testimony that forcing G.G. to use a separate restroom "accentuat[es] his 'otherness,' undermin[es] his identity formation, and imped[es] his medically necessary social transition process. The shame of being singled out and stigmatized in his daily life every time he needs to use the restroom is a devastating blow . . . and places him at extreme risk for immediate and long-term psychological harm."); *Bd. of Educ. of the Highland Local Sch. Dist. v. U.S. Dep't of Educ.*, 208 F. Supp. 3d 850, 870-71 (S.D. Ohio 2016) (finding that "Jane feels stigmatized and isolated when she is forced to use a separate bathroom and otherwise not treated as a girl"), *stay pending appeal denied, Dodds v. U.S. Dep't of Educ.,* 845 F.3d 217 (6th Cir. 2016).

Medical research confirms what these courts have found. According to established medical consensus, the only effective treatment gender dysphoria[3] 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, adopting a new name, using new pronouns, and interacting with peers and one's environment in a manner that matches the

[3] Gender dysphoria is the scientific term for a "marked incongruence" between one's gender identity and assigned sex and is accompanied by clinically significant distress unless treated. Am. Psychiatric Ass'n, *Diagnostic & Statistical Manual of Mental Disorders* 451 (5th ed. 2013).

Electronically Filed - SUPREME COURT OF MISSOURI - February 27, 2018 - 03:58 PM

child's gender identity. A critical part of any such transition is allowing the child use of restrooms consistent with their gender identity. As illustrated by the family stories below, social transition significantly eases the symptoms of gender dysphoria.[4]

Barring transgender children from using restrooms consistent with their gender identity constitutes discrimination and causes harm. Discrimination against transgender people is subject to heightened scrutiny, yet there is no rational basis for such discrimination. *See Bd. of Educ. of the Highland Local Sch. Dist.*, 208 F. Supp. 3d at 877.

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. Parents of transgender students see their children experience significant distress when their gender identities are invalidated and their schools implement policies that isolate and target those children for different treatment. By contrast, parents whose children attend schools that do not discriminate against transgender students have witnessed positive changes in their children's social, emotional, and behavioral well-being. They have seen that, when their children are treated the same as their peers in school, they are

[4] 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).

more readily accepted by those 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.

Amber and Donte Gilleylen—St. Louis, Missouri

Amber and Donte Gilleylen live in St. Louis, Missouri with their fourteen-year-old son and twelve-year-old daughter. Donte is a porter at the St. Louis airport, and Amber is a homemaker. Amber and Donte were both raised in Christian homes, and Donte's father was a preacher. Their daughter, M, is transgender.

From left to right: Donte, M, and Amber Gilleylen, and S Phillips

Electronically Filed - SUPREME COURT OF MISSOURI - February 27, 2018 - 03:58 PM

When M was two years old, Amber and Donte began to notice that M only wanted to play with "girl things." This did not raise any concerns at that age, but M's desire for "girl toys" intensified as she got older. Over time, Amber began to acquiesce and buy "girl toys" for M, even though Donte had reservations. M's father encouraged her to play with stereotypically male toys, such as army figures and footballs, but M was never interested.

Soon after M started to play with girl toys, she also started asking, and then begging, to wear girls' clothing. Initially, Amber refused—a decision she now regrets. Amber recalls M wanting to purchase a Cinderella costume, even if all she could do was wear it in her room or under her "boy clothes," but Amber refused out of fear that M would be mistreated or bullied. Looking back, Amber says that "it breaks [her] heart to think about it now" because "everyone was against [M] at that point." Amber felt she was faced with the choice to either "put [M] in the danger zone or protect her."

M struggled with anxiety and depression as early as first grade. The girls at school were not receptive when M tried to join them at recess because they did not understand why M wanted to play with them. M had a very hard time making friends at school, and came home in tears almost every day throughout first and second grade.

M's depression reached its peak during second grade, and Amber and Donte were both very concerned for her. Amber recalls a pivotal moment around Christmas time. M was staying at her grandparents' house for Christmas break and called her mom very late one night, upset and crying inconsolably. M told Amber that she had just seen a cartoon featuring a character who cried out: "I'm so sad and lonely, nobody wants to play with

Electronically Filed - SUPREME COURT OF MISSOURI - February 27, 2018 - 03:58 PM

me." M told her mom that this is how she felt, and pleaded, "Please just fix it. I don't want to live anymore. I'm so tired." Amber realized then that she had to do whatever she could to help M, or she was going to "break."

After Christmas break, Amber and Donte went to M's principal with their concerns, who referred them to a school social worker. The social worker was the first person to use the word "transgender" in reference to M, and at the time, neither Amber nor Donte understood what that meant. They were confused and afraid for M, and Donte in particular initially struggled to come to terms with having a transgender daughter. Amber began researching what it meant to be transgender, and soon realized how harmful it would be if they prevented M from living as her true self.

Gradually, Amber began to allow M to purchase girl clothes when they would shop together, despite Donte's initial disapproval. M would sprint into her room when they got home to put on her new outfits and would stay in her room all night wearing her new girl clothes. Her room also has a walk-in closet and she spent so much time in there with her girl clothes that her family began referring to it as M's "Girl Room." Although M was still deeply distressed at school—where she was still dressing as a boy—Amber noticed a significant change at home, where M found joy in being able to express her true identity. In many ways, Amber explains, M was "living a double life."

During this time Donte struggled to reconcile having a transgender daughter with his religious upbringing. A turning point occurred for Donte after the family met with M's school social worker and a representative from an organization that provides support to families with transgender children. Donte began to understand the severity of M's

Electronically Filed - SUPREME COURT OF MISSOURI - February 27, 2018 - 03:58 PM

depression and the pain she would feel if he did not fully support her. Now, both parents are "110% supportive" of M.

Amber and Donte are grateful for the support they received from M's school when she decided to socially transition. On M's last day of second grade, she decided to come out as a girl for the first time in front of her peers. About a week before, M had asked her mom if she could go to school "as herself"—a girl. Amber hesitated because she worried about how M would be treated by the other students. Ultimately, though, Amber knew M had to choose for herself how she wanted to dress at school. Amber emailed the principal, assistant principal and superintendent a week before to let them know that M planned to come to school as herself the last day of school, and braced herself for resistance. But when the assistant principal responded, "I'm so excited to meet your little girl," she cried "tears of relief." As the last day of school approached, Donte reminded M that if she was afraid, she did not have to go through with it, and M responded, "Daddy, I *do* have to do this."

On the last day of school, the school's social worker introduced M to her class with female pronouns and the new name M had selected for herself, explaining that it is important for everyone to be their authentic self. Amber recalls the day was "truly a good day," as both the faculty and students were overwhelmingly supportive of M. Amber says it felt like "the first time she ever met her child." From that day on, M never wore her boy clothes again, and her parents immediately saw a profound positive shift in her spirits and demeanor.

Electronically Filed - SUPREME COURT OF MISSOURI - February 27, 2018 - 03:58 PM

M's school district has allowed M to use the girls' restroom since her transition in second grade. Despite M's school's supportive policies, though, M still faced discrimination. In third grade, a group of parents complained that there was a "boy" in the girls' restroom. But the school supported M and assured these parents that there was no problem with M using the girls' restroom. M was also severely bullied by other students when she moved to another school within the district. The bullying was so bad that M became severely depressed and suicidal again. Fearing for her daughter's safety and well-being, Amber decided to home school M for two-and-a-half years. This school year, though, M decided to return to public school. Now in sixth grade, M's middle school allows her to use the girls' restroom and locker room. In fact, when M expressed anxiety about changing in the girls' locker room for gym class, the school agreed to install privacy stalls to make M more comfortable.

Since M's transition, M and her family have dealt with backlash from some extended family and community members. In one instance, a family member publicly accused Amber on social media of "forcing her kid to be a freak." On a separate occasion, a group of teenagers confronted Amber and M in a restaurant and told M, "You're really a boy, you shouldn't be wearing girl clothes." In response, M "slinked down in her seat and broke down crying." When Amber asked them to leave M alone, the teenagers became physically aggressive and shoved Amber. She called the police, but they told her there was nothing they could do. M was extremely upset by the encounter, and frustrated by the lack of response by the police. Despite these challenges,

Electronically Filed - SUPREME COURT OF MISSOURI - February 27, 2018 - 03:58 PM

Electronically Filed - SUPREME COURT OF MISSOURI - February 27, 2018 - 03:58 PM

Amber and Donte appreciate the support they have received from many in their community during this time.

While M still faces discrimination from some peers, the support from her family and school officials has helped her become more confident. She is proud of who she is and even went to the Missouri state capitol to speak out against a discriminatory bathroom bill. M has now legally changed her name, and her entire immediate family is supportive and proud of her. Amber and Donte see M as a "real life hero," with "the biggest heart," even toward people who have bullied her. The Gilleylens remain committed to telling M's story to create "a safer path for [their] child, and kids like her."[5]

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 Faith Outreach Coordinator at Equality Texas. She is also an ordained minister, and led ministries at Lakewood Church from 2007 until 2014. Kimberly has seven children ranging in age from five to 30. Her seven-year-old daughter, K, is transgender.

[5] Sources: February 14 and 15, 2018 Telephone Interviews with Amber Gilleylen.

Electronically Filed - SUPREME COURT OF MISSOURI - February 27, 2018 - 03:58 PM

Kimberly and K Shappley

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.

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, though, at the time, she did not know

what else to do. Family and community pressure to "do something" about K's "girly" behavior only exacerbated the problem.

When K was four, Kimberly began to see things differently. She noticed a dramatic, positive change when she allowed K to have "girl things." For example, at K's fourth birthday party, K's uncle gave her a wizard's robe, which K believed was a dress. Kimberly remembers K crying with joy and hugging the robe. One day soon after this, Kimberly found K crying when she picked her up from daycare. 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 remembers hearing K—whose birth name is JP—praying and asking "the Lord to take JP home to be with Jesus and never come back." She became concerned that K was depressed and was "starting to just give up." Kimberly describes K during this time period:

> She wasn't a happy kid anymore. She was an angry, sad kid, crying for, trying to die, really. And talking about stuff around death . . . about animals that die and people that die, and it just became really weird . . . [unlike] conversations I'd had with my other kids . . . And this was not normal.

Kimberly conferred with K's pediatrician and other medical professionals. Based on their advice, she reluctantly began to allow K to wear girls' underwear. The day K came home to find girls' underwear in her drawer, "she fell to the floor." She hugged the underwear and started crying out of happiness. One day, however, K's daycare teacher

Electronically Filed - SUPREME COURT OF MISSOURI - February 27, 2018 - 03:58 PM

discovered that K was wearing girls' underwear and forced her to change into boys' underwear. When Kimberly picked her up, 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. She felt conflicted about "what the Lord want[ed] from" her. Over time, though, she realized that her problem was not with God, but with what other people might think of her. Kimberly now believes she is "a better Christian because of K." She explains:

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

It was only after K transitioned that Kimberly realized how truly unhappy K had been. Kimberly explains, "It wasn't that my child was now happy, it's that my kid was now joyful. . . . All of a sudden I had this kid who was truly happy. . . . She was validated, and [there] was a huge difference in everything about her."

When K entered kindergarten, the school district refused to allow K to use the girls' restroom. Kimberly spoke out against the district's policy and tried to educate school officials, but K, who is now in first grade, is still not allowed to use the girls' restroom. In fact, the situation has deteriorated. Last year, K's kindergarten classroom had a unisex restroom that she could use, but she was required to use the nurse's restroom

Electronically Filed - SUPREME COURT OF MISSOURI - February 27, 2018 - 03:58 PM

any time she was outside of the classroom. Now that she is in first grade, she no longer has the option of using a unisex bathroom inside the classroom. Even worse, the school revised its policy so that K is not even allowed to use the nurse's restroom. Instead, her only option is to use the staff restroom. Predictably, because of the stigma and isolation she feels being separated from her peers when using the staff restroom, K tries to avoid using the restroom altogether. The exclusion has had devastating and traumatic consequences on her well-being. In Kindergarten, K had at least five "accidents" because of the difficulty of getting to the restroom in time. This year, she has already had at least one. When K has tried to use the girls' restroom on occasion this school year, she has been physically removed by school staff. It 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. "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."[6]

Alisa Bowman—Emmaus, Pennsylvania

Alisa and Mark Bowman live in Emmaus, Pennsylvania. Their thirteen-year-old son, A, is their only child and is transgender.

[6] Sources: December 13, 2016 Telephone Interview with Kimberly Shappley; January 11, 2018 Telephone Interview with Kimberly Shappley.

Electronically Filed - SUPREME COURT OF MISSOURI - February 27, 2018 - 03:58 PM

From left to right: Mark, A, and Alisa Bowman

When A was around two years old, Alisa says it "was just very noticeable that this little toddler was incredibly masculine." She recalls that, at that time, transgender was not a word she knew: "this wasn't something that was in the news or that people talked about." Even though A preferred "boy things"—A asked to shop in the boys' department, consistently chose the boy character when playing Chutes and Ladders, and was only friends with boys at his day care—Alisa viewed her child as a tomboy who did not like to conform to "girly things." She explains:

> I was kind of learning from this experience but still not thinking that my kid was actually a boy. . . . It just didn't occur to me that that was a thing . . . but I was also really celebrating this incredibly unique and different child that we had, and being incredibly scared for this child.

Around the time A was in second grade, he began asking for a buzz cut like the other boys. His father was vehemently opposed. Soon thereafter, the family went to see a

Electronically Filed - SUPREME COURT OF MISSOURI - February 27, 2018 - 03:58 PM

counselor who specialized in gender-diverse children. The counselor told Alisa and Mark that A wanted them to know that he was a boy.

Alisa recalls that she and Mark were in shock. She went through "a deep mourning process that [she's] not necessarily proud of." She explained, that before A's birth, she looked forward to having a daughter and "fantasized about ponytails . . . brushing hair and going clothes shopping and all of these things." But she had to come to terms with having a son instead. She says:

> Some cisgender people assume that parents like us really wanted a boy so we forced our daughter to become transgender. In reality, we both deeply mourned the loss of our daughter. . . . I am not proud of this, but I share it with cisgender people so they can understand that, if anything, parents like us often only reach acceptance after we've tried every other option.

Although the counselor suggested socially transitioning A around second or third grade, Alisa and Mark were not yet ready. Alisa "was scared to talk to the school" and "to announce it to our extended family." During fifth grade, A's last year of elementary school, they notified A's school that his gender should be listed as male. They also asked the school to start using A's male name and male pronouns. By that time, most people already assumed A was a boy. That school year, the guidance counselor conducted a training for teachers on trans children, and A's teachers used his new name and male pronouns. Alisa says that overall the transition went smoothly and A's teachers were "very affirming . . . beautifully affirming." But A could not use the boys' restroom.

A had not used the girls' restroom since second grade, not because of a school policy but because the girls made A feel like he could not use it. Even in first grade and

Electronically Filed - SUPREME COURT OF MISSOURI - February 27, 2018 - 03:58 PM

long before A's transition, the girls at the school thought he was a boy and told him, "you do not belong here!" Because A was discouraged from using the boys' restroom, A would not use the restroom for the entire school day. At first, Alisa was unaware of this situation. She noticed, however, that when she picked A up from school that "he'd be doing his potty dance the whole way home." Finally, after A had an accident in the school cafeteria in second grade, A told her that the girls would not let him use the restroom and that he was therefore "holding it" all day.

Alisa spoke to A's teacher and principal, and they arranged for A to use the girls' restroom during class when nobody else was inside. Later, the school arranged for A to use either the nurse's or the teachers' restroom. At the time, Alisa thought that was an acceptable solution, but A still refused to use the restroom at school. "[H]e just didn't want to bring attention to himself, and I think it was just difficult to get to the [special] bathrooms. It was a big school." In order to avoid unwanted attention and the inconvenience of getting to the restrooms he could use, A's solution was to not drink anything all day.

Because he was dehydrated from not drinking water, A—who had always been a good student—began to struggle in fifth grade, particularly in math. It was not until the end of the school year that Alisa and Mark figured out why his math scores had suffered so much. Math was A's last class of the afternoon, and by that point in the day he was dehydrated and drowsy, and found it hard to concentrate.

When A began middle school in sixth grade, Alisa "didn't really give the school a choice" about A using the boys' restroom. Initially, the administration and counselor at

Electronically Filed - SUPREME COURT OF MISSOURI - February 27, 2018 - 03:58 PM

A's middle school offered the nurse's restroom as a solution again. But Alisa told them, "That's not okay. He's using the boys' bathroom." The school agreed, and A began using the boys' restroom and locker room.

A, who is now in eighth grade, has used the boys' restroom and locker room throughout middle school. His friends now know he is trans, although A "was a bit stealth" about it in sixth grade when he met a lot of new people in middle school. Alisa says: "It was a nervous year for me, but I wanted to let him decide when he wanted to come out to these kids." A's friends took the news in stride. Alisa hopes that next year, when A goes to high school, he will continue to be able to use the boys' restroom and locker room.

A now earns straight A's in school, acts in school plays, and sings in the choir. He "gets invited to sleepovers and plays boys' soccer, and just basically lives a normal life." However, A is still out of the habit of drinking water regularly. The years of dehydration have led to repeated bladder infections, bladder inflammation, and even a kidney stone. He is now under the care of a pediatric nephrologist because of the damage done to his body during the years he was unable to use the restroom that matched his identity. Alisa says A is "so habituated to dehydrating himself that [she has] to force him to drink water. It's really hard to undo that kind of damage."

Alisa wants others "to listen to the experiences of kids like mine before they make up their minds. . . . If I hadn't lived through this, I might've been one of the people who didn't believe that it was possible for a child to be trans. My son is going to grow up, and

Electronically Filed - SUPREME COURT OF MISSOURI - February 27, 2018 - 03:58 PM

he's going to contribute to society in really important ways. Why would someone want to stop him from doing that?"[7]

Amber and Adam Briggle—Denton, Texas

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

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

[7] Source: December 1, 2017 Telephone Interview with Alisa Bowman.

Electronically Filed - SUPREME COURT OF MISSOURI - February 27, 2018 - 03:58 PM

Electronically Filed - SUPREME COURT OF MISSOURI - February 27, 2018 - 03:58 PM

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," it 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." 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

Electronically Filed - SUPREME COURT OF MISSOURI - February 27, 2018 - 03:58 PM

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. His teacher told Amber and Adam that would not work—he still needed to use the nurse's restroom. Amber did not communicate this 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.

Electronically Filed - SUPREME COURT OF MISSOURI - February 27, 2018 - 03:58 PM

Electronically Filed - SUPREME COURT OF MISSOURI - February 27, 2018 - 03:58 PM

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 say 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."

M recently legally changed his name to a male name and is thriving both academically and socially.[8]

Wayne and Kelly Maines—Portland, Maine and Austin, Texas

Wayne and Kelly Maines will soon be living in Austin, Texas. Wayne was recently hired as Vice President of Safety and Operations at Austin Community College and Kelly is currently an Executive Assistant at the Cumberland County Sheriff in Portland, Maine. Wayne and Kelly have twenty-year-old identical twins, Jonas and Nicole. Nicole is transgender.

[8] Sources: December 12, 2016 Telephone Interview with Amber and Adam Briggle; February 15, 2017 Telephone Interview with Amber Briggle; January 4, 2018 Telephone Interview with Amber Briggle.

Electronically Filed - SUPREME COURT OF MISSOURI - February 27, 2018 - 03:58 PM

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

Wayne explains that Nicole always knew she was a girl. He recalls that when Nicole and her brother would play together, Nicole always played the "girl" while her brother played the "boy." Nicole also consistently preferred "girl" things, unlike her twin. Kelly researched why Nicole might be behaving this way but found very little information regarding transgender children online at that time. By the time Nicole was four, Wayne recalls, "she was persistently telling us, 'I hate my penis. When does my penis go away?'" As a self-described "conservative guy," Wayne 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, her parents bought her action figures for Christmas. Wayne recalls that

he had "never seen a kid so despondent." Kelly got upset and told him, "We're not doing this anymore." She took Nicole to the store and bought her the "girl" toys she wanted.

While Kelly was supportive of Nicole from early on, Wayne struggled to come to terms with the disappointment he felt at not having the life he envisioned with twin boys. Wayne recalls, "When I had my boys . . . I had these dreams of what my life with my children was going to be . . . And, man, was I wrong!" He struggled to understand why Nicole felt the way she did and hoped it was something she would outgrow. It was not until later, when he and Kelly consulted with medical professionals at Boston Children's Hospital, that he learned "that it wasn't anything we did." Wayne now regrets not supporting Nicole from a young age. He explains what he now knows about gender identity: "It's persistent and consistent, and it's who they are. It's in their brain, in their soul, and I fought it every step of the way."

A pivotal moment for Wayne occurred when Nicole was around nine. By this time, Nicole had already gradually transitioned at school, but Wayne still had not completely accepted that he had a daughter and son rather than twin sons. Wayne recalls taking both children to Walmart and grabbing Jonas's hand when they got out of the car. Jonas pulled away. Nicole, however, grabbed her father's hand, and they swung their arms "all the way into the store." Wayne explains: "It hit me like a ton of bricks. I [have] a beautiful daughter . . . she's going to hold my hand until I die."

Today, Wayne and Kelly are enthusiastic advocates for transgender children and their parents. Nearly ten years ago, they were unintentionally thrust into the public eye because of a long-fought battle with Nicole's school. Shortly after moving to Orono,

Electronically Filed - SUPREME COURT OF MISSOURI - February 27, 2018 - 03:58 PM

Maine, when Nicole was in first grade, she began to gradually transition to living publicly as a girl. Initially, the school was supportive. Nicole grew her hair long and wore barrettes and girls' clothes. In fifth grade, Nicole legally changed her name. Wayne recalls, "For the first time in this kid's life, she was beaming, successful, not angry." She was vice president of her class and "had a fashion newsletter called *Sassy*."

Not long after, however, a classmate's grandfather targeted Nicole and the school for allowing her to use the girls' restroom. The school district, fearing a lawsuit, told Nicole she could no longer use the girls' restroom. The school also assigned Nicole a "bodyguard"—not to protect her, but to prevent her from trying to use the girls' restroom. Wayne recalls that Nicole's teachers "wanted to do the right thing because they were with Nicole every day" and understood that she was a girl, but they "were afraid of losing their jobs."

Wayne and Kelly could not allow their daughter to live this way and made the difficult decision to move Kelly and the kids to Portland. Wayne had no choice but to stay behind because of his job, and he commuted to see his family on weekends and holidays for five years. During this difficult time, Wayne and Kelly sued the Orono School District. After years of litigation, the Maine Supreme Court found that the school district violated the Maine Human Rights Act by prohibiting Nicole from using the girls' restroom.[9]

Wayne is now a national speaker regarding transgender children and helps educate schools, communities, and families on how to protect all children. Wayne also counsels

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

Electronically Filed - SUPREME COURT OF MISSOURI - February 27, 2018 - 03:58 PM

parents of transgender children on how to start conversations with their schools. While he is "not real thrilled about telling everybody about [his] most personal weaknesses," he thinks it is important to share his family's story to help other transgender children. Wayne explains that kids like Nicole are "not hurting anybody" by using the restroom aligned with their gender identity and that "they want to grow and be successful and productive Americans, and it's that simple. It's not just about the bathrooms. Every child has the right to the same educational experience." Wayne describes his daughter as "probably one of the strongest people I've ever met who is also still one of the most vulnerable, and has had to deal with so much that it has just made me a better person, a better father, and a better husband to be around her . . . a better American."[10]

CONCLUSION

On behalf of the parents of transgender children, who want their children to be supported and treated equally at school, amici urge this Court to reverse the trial court's judgment dismissing Appellant's petition.

Respectfully submitted this the 27th day of February, 2018.

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[10] Sources: February 14, 2017 Telephone Interview with Wayne Maines; January 5, 2018 Email from Wayne Maines.

Electronically Filed - SUPREME COURT OF MISSOURI - February 27, 2018 - 03:58 PM

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CERTIFICATE OF SERVICE AND COMPLIANCE

The undersigned hereby certifies that on February 27, 2018, the foregoing *amici* brief was filed electronically and served automatically on the counsel for all parties.

The undersigned further certifies that pursuant to Rule 84.06 (c), this brief: (1) contains the information required by Rule 55.03; (2) complies with the limitations in Rule 84.06; (3) contains 7,988 words, as determined using the word-count feature of Microsoft Office Word. Finally, the undersigned certifies that the electronically filed brief was scanned and found to be virus-free.

/s/ Kristen J. Dunnett