No. 23-35288

In the United States Court of Appeals
for the Ninth Circuit

RACHEL G. DAMIANO; KATIE S. MEDART,
Plaintiffs-Appellants,
v.
GRANTS PASS SCHOOL DISTRICT NO. 7, an Oregon public body; KIRK T. KOLB, Superintendent, Grants Pass School District 7, in his official and personal capacity; THOMAS M. BLANCHARD, Principal, North Middle School, Grants Pass School District 7, in his official and personal capacity; SCOTT NELSON; CLIFF KUHLMAN; GARY RICHARDSON; DEBBIE BROWNELL; CASSIE WILKINS; BRIAN DELAGRANGE; CASEY DURBIN,
in their official and personal capacities,
Defendants-Appellees.

On Appeal from the United States District Court for the District of Oregon Case No. 1:21-cv-00859-CL / Hon. Mark D. Clarke

BRIEF OF *AMICUS CURIAE* WOMEN'S LIBERATION FRONT IN SUPPORT OF APPELLANTS AND REVERSAL

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INTEREST OF *AMICUS CURIAE*[1]

Amicus is the Women's Liberation Front ("WoLF"), a non-profit feminist organization dedicated to the liberation of women and girls by ending male violence, protecting reproductive sovereignty, preserving woman-only spaces, and abolishing gender and sex discrimination. WoLF has over 3,600 active supporters who live, work, and attend school across the United States, including more than 900 in the 9th Circuit. These supporters are primarily women who have expressed through their engagement with WoLF a concern for the state of women's rights in the United States, particularly in regard to the protection of the civil rights of women and girls. Several of WoLF's supporters are women who have lost employment and have been shunned by professional networks simply for expressing the belief inside or outside the workplace believing that human sex is immutable.

[1] No counsel for any party authored any part of this brief, and no party, their counsel, or anyone other than WoLF, has made a monetary contribution intended to fund its preparation or submission, and counsel of record for all parties have consented to its filing.

WoLF's interest in this case stems from its interest in empowering and protecting the safety and privacy of women and girls and preserving women's sex-based civil rights and liberties.

At the same time, recognition of sex is the foundation for protecting many of the rights women and girls have fought for and won. Discrimination on the basis of pregnancy, childbirth, or breastfeeding are considered forms of sex discrimination. e.g., *Cleveland Bd. of Ed. v. LaFleur,* 414 U.S. 632 (1974) (mandatory leave for pregnant teachers violates due process). Likewise, recognition of members of the female sex class as similarly situated has powered thousands of statutes, regulations, and case laws Government endorsement or imposition of the fiction that sex is untethered to reproductive class, that men can also get pregnant and give birth, is not only unconstitutional, but also renders these and other protections vulnerable to challenge or exploitation by diverse actors across the political spectrum, causing women and girls material harm, including disability and death. *Dobbs v. Jackson County*

Women's Health Organization, No. 19-1392, 597 U.S. ___ (2022) (revoked right to terminate a pregnancy).[2]

ARGUMENT

I. THE RIGHTS OF WOMEN AND GIRLS DEPEND ON LEGAL RECOGNITION OF SEX AND THE ERASURE OF SEX IN THE LAW IS A MATTER OF PUBLIC CONCERN FOR WOMEN AND GIRLS

Although Rachel and Katie largely cite their religious beliefs as the motivation for their sincere opposition to "gender identity" policies and their offer of alternative policy, many women (including religious women) agree with their policy proposals for completely secular reasons. The district's policy and others like it have harmful impacts on women and girls; lesbian, gay, and bisexual individuals, gender non-conforming youth, and other vulnerable populations.

Though women and girls are a globally and historically marginalized group, we have made tremendous strides in the western world since the early 20th century.

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[2] https://www.usatoday.com/story/news/politics/2021/02/18/tennessee-abortion-bill-fathers-would-get-veto-no-rape-exception/6796871002/

Over three-quarters of teachers are female[3] [4] which means that compelling, infringing, and imposing prior restraint on the speech of teachers has a disproportionate impact on women, and it is notable that the speech being suppressed is speech in favor of protecting women's legal rights.

The Supreme Court has long held that "[s]peech on public issues is entitled to special protection under the First Amendment because it serves the 'the principle that debate on public issues should be uninhibited, robust, and wide-open.'" *Snyder v. Phelps*, 131 S. Ct. 1207 (2011).

Women have always faced backlash against speech and action in defense of their rights; this seems to hold steady even as the rights they enjoy have ebbed and flowed.[5] Appellants Rachel and Katie became the targets of misogynistic backlash when they spoke out against policies that directly harm women and girls and had the temerity to propose alternatives that maintain women's sex-based rights. 2-ER-121.

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[3] https://nces.ed.gov/programs/coe/indicator/clr/public-school-teachers

[4] Digest of Education Statistics, 2017 - Chapter 2: Elementary and Secondary Education

[5] https://nationalwomenshistoryalliance.org/history-of-the-womens-rights-movement/

A. Women cannot defend their sex-based rights if not permitted to weigh in on matters of public concern.

The right to freedom of speech guaranteed by the First Amendment has been critical to the advancement of women's rights in the last century, and continues to be a vital tool in the fight to defend these rights. But the while soapboxing has its own benefits and value, the most impactful acts of speech are those which directly engage with policymakers and the public.

i. Women have suffered global, historical oppression on the basis of sex.

Women have been controlled and disadvantaged on the basis of their immutable, material status as women--and the desire of men to control their domestic, sexual, and especially their reproductive labor. Elizabeth V. Spelman, *Women As Body, Ancient and Contemporary Views*, 8 FEMINIST STUDIES 109 (1982) (discussing how women's only value, historically, has been their bodies and their reproductive capacities). *See also* Saraswathi Vedam et al., *The Giving Voice to Mothers study: inequity and mistreatment during pregnancy and childbirth in the United States*, 16 REPRODUCTIVE HEALTH 77 (2019), https://doi.org/10.1186/s12978-019-0729-2.

The vulnerabilities of the female sex, and the lack of autonomy afforded them, kept women out of the male-dominated public sphere for thousands of years (and in some places still do). Women could not inherit property or titles in most societies (and in some places still cannot). They could not (and in some places still cannot) study at universities, serve in the military, or be treated as credible witnesses in courtrooms. Women have been (and in some places still are) the longstanding victims of marital rape clauses, discriminated against in employment, and unprotected from domestic abuse as long as public peace was not disturbed. *Timeline of Legal History of Women in the United States*, NATIONAL WOMEN'S HISTORY ALLIANCE, (last accessed Sept. 12, 2023) https://nationalwomenshistoryalliance.org/resources/womens-rights-movement/detailed-timeline/.

The legal equality women now have in the United States is a blip on the radar of human history. This progress is not inevitable, not linear, and is threatened when those in power use coercive actions to stifle speech that might effect change to harmful policy.

ii. Women's exceptional gains in legal equality cannot be maintained without free speech and a voice in public policy.

Every right guaranteed by the First Amendment has been instrumental in advancing the interests of marginalized groups in America, none more so than free speech. Women have long faced censorship, harassment, and violations of their rights when they speak out on issues that impact them as a class.[6] [7]

When women advocate for their rights it is often disruptive. Or, as feminist author Naomi Wolf put it, "Democracy is disruptive… there is

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[6] "The second annual Anti-Slavery Convention of American Women was scheduled to take place in Pennsylvania Hall in May 1838. The women who organized the event were known for their outspoken activism calling for the abolition of slavery and in favor of women's equal rights. As history scholar Sally G. McMillen relates, "The week before the upcoming interracial forum, hecklers were in the street denouncing it. Notices posted around the city urged people who cared about their jobs and the Constitution to attend and protest this convention of 'amalgamators.' . . . As the convention opened . . . some three thousand protestors filled the aisles and galleries of the hall and began to smash windows. The women found it almost impossible to conduct their meeting . . . , hissing and shouting drowned them out . . . . Protestors threatened speakers with bricks and rocks . . . . The mayor refused [to provide police protection] claiming that the female abolitionists had brought this chaos on themselves."
https://www.bu.edu/bulawreview/bulronline/franks-censoring-women/

[7] https://www.history.com/news/night-terror-brutality-suffragists-19th-amendment

no right in a democratic civil society to be free of disruption."[8] Speech by an oppressed class speaking up for their rights is rarely well received by the oppressor. For just as Martin Luther King Jr. wrote in his *Letter From Birmingham Jail*, "We know through painful experience that freedom is never voluntarily given by the oppressor; it must be demanded by the oppressed."[9]

The disruptive nature of free speech when used to advocate for progress and civil rights is often used as an excuse to limit the free speech of civil rights advocates. Suffragists, seeking nothing more than the fundamental right to vote, were arrested (some held in indefinite detention), force-fed, subjected to terrible police brutality, lost custody of their children, and even gave their lives. Lizzie Pook, *Groped, imprisoned and force-fed: what the suffragettes really went through*, *Stylist* (2018), *available at* https://www.stylist.co.uk/visible-women/suffragettes-force-fed-imprisoned-uk-tactics-punishment-history/188085 (last accessed Sept. 12, 2023).

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[8] https://www.theguardian.com/commentisfree/2011/nov/06/naomi-wolf-occupy-movement

[9] http://abacus.bates.edu/admin/offices/dos/mlk/letter.html

B. Mandatory "gender identity" policies harm women and girls.

Feminists have improved women's legal and political status by fighting to dismantle sex-stereotyping and enforcement of gender roles. A person self-identifying as transgender is not inherently claiming to possess reproductive anatomy and physiology of the opposite sex (though some do, which is largely related to the spiritual precepts or political beliefs of many who share "gender identity" beliefs, rather than any genuine belief in transmogrification). Rather, this self-identification relies on the continued existence of the same sex-stereotypes we have long fought against to secure other interests. The Appellees cannot legally mandate adherence and feigned agreement with positions that are at odds with civil rights jurisprudence, nor retaliate against Rachel and Katie as women or for their own substantive objections.

i. "Gender identity" relies on the continued existence of regressive sex-stereotypes.

"Sex" and "gender" both have distinct definitions and criteria. Sex is an immutable characteristic based in reality and defined by one's reproductive class. The National Institute of Health (NIH) describes sex as "a classification based on biological differences… between males and

females rooted in their anatomy and physiology. By contrast, gender is a classification based on the social construction (and maintenance) of cultural distinctions between males and females." National Institute of Health Institute of Medicine (US) Committee on Assessing Interactions Among Social, Behavioral, and Genetic Factors in Health; Hernandez LM, Blazer DG, editors. *Genes, Behavior, and the Social Environment: Moving Beyond the Nature/Nurture Debate*. Washington (DC): National Academies Press (US); 2006. 5, Sex/Gender, Race/Ethnicity, and Health. Available from: https://www.ncbi.nlm.nih.gov/books/NBK19934/.

The World Health Organization (WHO) agrees, defining "gender" as "the socially constructed roles, behaviour, activities and attributes that a particular society considers appropriate for men and women." World Health Organization, *Gender, Equity, and Human Rights in Western Pacific*, found at https://www.who.int/westernpacific/health-topics/gender-equity-and-human-rightslast accessed Sept. 12, 2023). WHO further notes that these socially constructed roles "give rise to gender inequalities, i.e., differences between men and women that systematically favor one group." *Id*.

Although people's lives and personalities are not defined by their sex, their sex is always defined by their biology. By contrast, a "gender identity" is a subjective statement of self-perception and has no inherent meaning to any other person unless that person. Under gender identity ideology, a woman is simply a person who "identifies" as a woman. But what exactly does it mean to "identify" as a woman? Identifying as a member of the female sex would mean identifying as a member of the reproductive class that produces eggs, gestates, and gives birth. Of course, that is nonsense. Instead, to "identify as a woman" means embracing the socially constructed gender roles that are imposed upon women.

Feminists have been fighting against this toxic system for generations. The Nineteenth Amendment provides that "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex." U.S. CONST. amend. XIX. The U.S. state and federal governments knew what a woman was when their laws prohibited women from voting; at no point were those disenfranchised women asked whether they identified with the sex-stereotypes or social limitations imposed on women at the time.

Rather, women as an entire sex-class were presumed to be defined by the stereotypes and limitations imposed upon them.

ii. Women and girls without access to single-sex intimate facilities are less safe and have fewer opportunities to go to school or work.

Proscribing female-only spaces, services, and resources, educational institutions withhold from female students any sense of agency, or of physical and psychological safety, at school - a place they are required by law to attend, and must therefore by necessity use the bathroom and the locker room. Female students use bathrooms in more intimate ways than male students have a need for, and having to wash bloody clothes in the communal area of multi-use stall bathrooms is distressing enough without male classmates present (irrespective of the how sincere or deeply held their beliefs in gender identity).

iii. Mandatory "gender identity" policies stifle free speech.

The District purports to have a ban on controversial topics on campus - which is bad enough - and requires disclaimers to precede discussion of controversial topics off campus - which is even worse. But it is not true and accurate to say that controversial topics are banned: it is evident that it is only certain controversial viewpoints that are not

permitted. 3-ER-442, 3-ER-445, 3-ER446 (442-446: Plaintiffs Verified Complaint, "Defendant's viewpoint-based enforcement—or non-enforcement—of the Original Speech Policy, on the subject of Black Lives Matter"), 2-ER-220 (Plaintiff's Exhibit 16: email from Superintendent Kirk Kolb stating district did not support the message of I Resolve). Academic educational researchers and political advocates can be frequently found insisting that teachers have an obligation to speak instead of remain silent, and to take positions on matters of public concern instead of remaining neutral. *Amicus* was unable to find a single scholarly source or communication from one of the national advocacy groups that argued that teachers with the correct opinions (such as the hecklers) should be held to the same standard as Rachel and Katie.[10]

[10] 'Education is Political': Neutrality in the Classroom Shortchanges Students | NEA; "I Don't Want to Come Off as Pushing an Agenda": How Contexts Shaped Teachers' Pedagogy in the Days After the 2016 U.S. Presidential Election - Alyssa Hadley Dunn, Beth Sondel, Hannah Carson Baggett, 2019 (sagepub.com)

C. The Court must not obstruct women's exercise of their rights based on certain actions or reactions by those who oppose such rights altogether.

Rachel and Katie did not cause any disruption and if a disruption occurred, it was intentional and for the purpose of punishing Rachel and Katie and chilling their speech.

Outsized emotional reactions by others are not a valid basis for diminishing protections for women under the law, under any of the analyses before the court. But this was not a "reaction" from the hecklers, it was a pressure campaign against the district, and it worked to directly cause the "actual, material and substantial disruption" used to justify termination. *Robinson v. York*, 566 F.3d 817, 824 (9th Cir. 2009).

The hecklers entirely caused any disruption. While they expressed views on the same controversial topic as Rachel and Katie did, only the hecklers engaged in a personal campaign to silence and shame their coworkers for espousing a different view. Rachel and Katie's speech did not interfere with their working relationships because the only relationships that were materially and substantially disrupted were with the hecklers, a situation that was wholly manufactured by the hecklers. They were harassed and then fired for discussing an issue that primarily

and deeply impacts women and girls. The school not permitted this harassment from other teachers and the public, but actively solicited it. This occurs alongside a worrisome trend of targeted censorship and harassment against women who believe sex is objective and matters in law.

To punish Rachel and Katie for resulting disruption is to punish them for actions that ultimately (whether intended or not) serve to defend the rights of female students in Grants Pass.

Rachel and Katie's position can be arguably analogized to whistleblowers exposing practices with very harmful impacts on vulnerable students. Precedent is clear that "it would be absurd to hold that the First Amendment generally authorizes corrupt officials to punish subordinates who blow the whistle simply because the speech somewhat disrupted the office." *Czurlanis v. Albanese*, 721 F.2d 98, 107 (3d Cir. 1983) (quoting *Porter v. Califano*, 592 F.2d 770, 773-74 (5th Cir. 1979)).

Any disruption experienced by Grants Pass School District was not caused by the "I Resolve" website, but rather was intentionally caused by hecklers within the District (2-ER-65, 2-ER-214) who sent and solicited

complaints for the purpose of advancing policies that directly harm women and girls and silencing dissent against those policies. By making an example of Rachel and Katie, speech on an issue of public concern impacting women and girls has likely been chilled not only across the District, but in schools across the country where fellow educators have watched this case unfold with concern.

II. THERE IS SUBSTANTIAL FACTUAL, LEGAL, AND PUBLIC POLICY SUPPORT FOR RACHEL AND KATIE'S SPEECH AND ACADEMIC FREEDOM.

Rachel and Katie's speech should be protected in this situation whether as private or public citizens, and in this situation the matters of public concern they spoke on were central to the mission of their vocation as teachers, and this speech should be protected as well. There is substantial factual, legal, and public policy support for the Ninth Circuit to recognize Rachel and Katie's academic freedom. Although a general right to free speech protection for K-12 educators is not found at the same level enjoyed by university professors, precedent does support Rachel and Katie's right to protection for their speech as educators in the instant case. This conclusion is bolstered by overwhelming public policy considerations considering the implications of restricting this speech has

for the rights of women and girls, gays and lesbians, and many other vulnerable populations who rely upon the ability of K-12 educators to engage in commentary in these contexts related to their position as educators.

A. Public policy considerations supporting academic freedom are overwhelmingly present in this case.

The concept of academic freedom, tied to the First Amendment, is a public policy carve-out of a general rule that public employees have are more limited in free speech protection as a worker than they are as a citizen.[11] *Pickering v. Board of Education,* 391 U.S. 563, 568 (1968). There is less precedential support and public policy rationale for a broad academic freedom right in K-12, but courts can and do find that primary and secondary teachers sometimes enjoy academic freedom as well. *Brown v. Chic. Bd. of Educ.,* 824 F.3d 713 (7th Cir. 2016). *(Lee-Walker v. N.Y.C. Dep't of Educ.*, No. 16-4164-cv (2d Cir. Oct. 17, 2017)).

At the university level more broadly, students have the right to be taught by educators with academic freedom; furthermore, our country cannot run properly if the intellectual development of those running it

[11] https://www.ce9.uscourts.gov/jury-instructions/node/147

was starved of heterodoxy. *Keyishian v. Bd. of Regents*, 385 U.S. 589 (1967) (society needs future leaders who received "wide exposure to that robust exchange of ideas which discovers truth 'out of a multitude of tongues, (rather) than through any kind of authoritative selection." *See* also *Meriwether*.

The "expansive freedoms of speech and thought" in the university are created by students (and professors) who are both aware of and capable of exercising that expansive right. *Grutter v. Bollinger*, 539 U.S. 306 at 329 (2003). The role of K-12 educators is to incrementally develop into critical thinkers which ideally leads them to university environments that can properly be considered a 'marketplaces of ideas.' *Keyishian v. Bd. of Regents*, 385 U.S. 589 (1967). *See also Adams v. Trs. of the Univ. of N.C.-Wilmington*, 640 F.3d 550, 563 (4th Cir. 2011); *Lee-Walker v. N.Y.C. Dep't of Educ.,* 2017.

Educators are tasked with creating and maintaining a learning environment where students can express and exchange ideas in a developmentally-appropriate way.[12] *See Craig v. Rich Tp. High School*

[12] "Creating a Space for Open Dialogue," Association for Supervision and Curriculum Development, https://www.ascd.org/el/articles/creating-a-space-for-open-dialogue (last visited Sept. 12, 2023).

Dist., 736 F.3d 1110 (7th Cir. 2013) ("public-school teacher must maintain a classroom that is conducive to learning where the student is comfortable and feels safe when interacting with the teacher.").

Every individual party to this case is an educator in some capacity; the Appellees are supposed to support teachers and other school staff when they model the expression and exchange of ideas in the professional and respectful manner Rachel and Katie did. Instead, the Appellees have taught their students they are not safe expressing viewpoints that are not shared by the administration. *Craig,* 2013.

B. The facts of the case mirror the university cases and are inapposite to the K-12 cases

Rachel and Katie objected to the district's policy on very similar grounds as did Professor Meriwether at Shawnee University, and the lower court rightly noted they were likewise commenting on a "matter of public concern." 1ER-12. *Meriwether v. Hartop*, 992 F.3d 492 (6th Cir. 2021). *Meriwether* established that speech related to school policy that is completely separate from curriculum and lesson plans is still protected by academic freedom. *Id.*

Rachel and Katie's speech merits protection both in and out of the classroom. The university may be a 'marketplace of ideas' but Rachel and

Katie are middle school teachers and they took their arguments to the adults responsible for creating and implementing the policy (the administration) and their employer (the public).

To leave Rachel and Katie's speech unprotected here gives the Appellees "alarming power to compel ideological conformity." *Meriwether*. The district demands students and teachers deny their five senses and their deep understanding of the world, whether based on science or religion. The Sixth Circuit said this is the same as "requir[ing] a pacifist to declare that war is just, a civil rights icon to condemn the Freedom Riders, a believer to deny the existence of God, or a Soviet émigré to address his students as "comrades"" and concluding that to do so is to prescribe what is "orthodox" and "force citizens to confess by word or act their faith therein." *Meriwether*, also quoting *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642.

III. THE DISTRICT COURT ERRED BY TREATING THE APPELLEES' "ANTI-TRANS" ALLEGATION AS NEITHER MATERIAL NOR IN DISPUTE WHEN IT IS CLEARLY BOTH.

In summary judgment, the moving party must first establish that no genuine issue of material fact exists. *Celotex Corp. v. Catrett,* 477 U.S. 317, 323 (1986); *Devereaux v. Abbey*, 263 F.3d 1070, 1076 (9th Cir. 2001)

(en banc). In evaluating whether this burden has been met, the court may not "determine the truth but may only determine whether there is a genuine issue of fact." *Playboy Enters., Inc. v. Welles*, 279 F.3d 796, 800 (9th Cir. 2002). Rachel and Katie have repeatedly objected to the characterization of their views as stemming from animus, clarifying that and have maintained that their proposed policies are a sincere attempt to balance the rights of all students equally. 2-ER-248, 2-ER-265. The district court repeated verbatim claims made by the Appellees that Rachel and Katie, their policy proposals, and their beliefs are "anti-Trans," and falsely described their policy proposals as "advocating to reduce rights of transgender students" even though this "fact" is clearly in dispute. 1-ER-20.

Nor is it semantics, or an opinion, or mere pretext. To the contrary, the policies opposed by Rachel and Katie are factually, demonstrably harmful to all female students and school staff, but especially women and girls of color; who have a disability or health condition; are low-income, are same-sex attracted or gender non-conforming or are otherwise vulnerable. Furthermore, the policy proposals they approached the

Appellees (and the public) with were empathetic, reasoned, and thoughtful.

A. Advocating for the rights of women and girls is not 'anti-trans' nor is it 'seeking to reduce the rights of transgender students"

The "gender identity" policies discussed by Rachel and Katie have specific material impacts in the real world and it is perfectly reasonable for somebody affected by a policy to have an opinion on its value or detriment. This policy dismantles single-sex spaces, opens up female student-athletics to male athletes, and compels demonstration of agreement with a doctrine that says stereotypes define women and girls; and that being feminine and being female are intertwined or synonymous. This belief is offensive and harmful to women and antithetical to civil rights jurisprudence.

B. Policies that deny that sex is objective or relevant are homophobic and lesbophobic.

The "gender identity" policies discussed by Rachel and Katie, which were the pretext to their firing, also disproportionately harm students who are same-sex attracted. Many gay, lesbian, and bisexual people do not agree with "gender identity" doctrine and related policy aims. This doctrine promotes homophobia by pathologizing same-sex attraction and

gender-nonconforming behavior. This ideology has in recent years effectively barred "LGB" people from collectively organizing, created a modern outlet for homophobia (especially lesbophobia), and systematically targeted entire generations of gender nonconforming youth with lifelong medicalization including sterilization.

Gender identity theory promotes the idea that a person can be "born in the wrong body," a view adopted by countries such as Pakistan and Iran (where homosexuality is punished by death, but "sex change" is government-subsidized as a form of conversion therapy). Sofia Bloem, *Pathologizing Identities Paralyzing Bodies IRAN*, Justice for Iran, 2014.[13] This attitude is not limited to the Middle East, but is pervasive throughout Western gender ideology, as well. Whistleblowers from a child "gender" clinic in the UK have even stated that "gender-affirming" care is sometimes sought by families who prefer a "transgender" child over a gay child. Lucy Bannerman, *It feels like conversion therapy for gay children*, The Times, August 4, 2019.[14] Indeed, the vast majority of children with gender dysphoria do not grow up to identify as transgender,

[13] https://www.iglyo.com/wp-content/uploads/2019/11/IGLYO_v3-1.pdf

[14] https://www.peaktrans.org/it-feels-like-conversion-therapy-for-gay-children-say-clinicians-lucy-bannerman-in-the-times-08-04-19/

but rather become same-sex-attracted adults. M.S.C. Wallien, et al., Psychosexual outcome of gender-dysphoric children, Journal of the American Academy of Child and Adolescent Psychiatry, 47, 1413–1423 (2008). Rachel and Katie may not be approaching this issue from the same perspective as *amicus*, but their concern for these vulnerable young people is no less genuine; and sex is no less relevant to their vulnerability.

The court erred when it described the Appellee's beliefs as "anti-LGB…" and contrasted them to "pro-LGB…" beliefs. 1-ER-24. Policy advocacy against the further encroachment of a homophobic ideology into public schools protects same-sex attracted youth from further harm, including the harms of medicalization that Rachel and Katie specifically cite. 3-ER-335

C. This is a disputed issue of material fact that the court improperly assumed as truth

There is evidence that Rachel and Katie's speech was perceived by others to also be advocating for the safety of women and girls. For example, in a complaint letter written by Rosemary Williams, a member of the public, to Rachel Damiano, Williams stated: "If you want to protect the women at your school, it is not the trans students you need to worry about. It is the boys." (2-ER-110). This complaint was used by the

Appellee, in part, to justify the firing of the two women and yet indicates that at least one individual who heard Rachel and Katie's proposals also interpreted their goal to be protecting women.

In an email to District Superintendent Kirk Kolb, Rachel explicitly stated that the claims her policy proposals were 'transphobic' were false, writing, "I believe this has affirmed the false narrative and opinions that have been circulated by district staff and community members that this is somehow a discriminatory, transphobic, suggestion of verbiage for policy. This is a FALSE narrative and nothing that we have advocated for." 2-ER-219.

The Appellants did not abandon this argument, clearly stating that "Plaintiffs' intent was not to 'reduce rights of transgender students,' as Defendants assert" (2-ER-265).

Nonetheless, the lower court repeated the disputed assertions by the Appellee as truth, going so far as to directly copy and paste entire lines of the Appellee's Motion for Summary Judgment into the Order (3-ER-324 and 1-ER-20). In doing so, the court failed to properly apply the standards of review for summary judgment.

CONCLUSION

For the foregoing reasons, Women's Liberation Front urges the Court to reverse the ruling below and remand to the district court for further proceedings.

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitations of Fed. R. App. P. 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3), as the brief contains 4,663 words. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type styles requirements of Fed. R. App. P. 32(a)(6), as it has been prepared in a proportionately spaced typeface using Microsoft Word in 14-point Century Schoolbook.

s/ Lauren A. Bone
Lauren A. Bone