

No. 18-35708
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PARENTS FOR PRIVACY; KRIS GOLLY and JON GOLLY, individually and as guardians ad litem for A.G.; NICOLE LILLY; MELISSA GREGORY, individually and as guardian ad litem for T.F.; and PARENTS RIGHTS IN EDUCATION, an Oregon nonprofit corporation,
Plaintiffs-Appellants,

v.

DALLAS SCHOOL DISTRICT NO. 2; OREGON DEPARTMENT OF EDUCATION; GOVERNOR KATE BROWN, in her official capacity as SUPERINTENDENT OF PUBLIC INSTRUCTION; 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-Appellees,

BASIC RIGHTS OREGON,
Intervenor-Defendant-Appellee.

On Appeal from the United States District Court for the District of Oregon
Portland Division, No. 3:17-cv-01813-HZ
Honorable Marco A. Hernandez

**SUPPLEMENTAL EXCERPTS OF RECORD OF
INTERVENOR-DEFENDANT-APPELLEE
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

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,)

Plaintiffs,)

vs.)

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.; JEFF SESSIONS, in)
his official capacity as United)
States Attorney General, as)
successor to LORETTA F. LYNCH,)

Defendants.)

and)

BASIC RIGHTS OREGON,)

Defendant-Intervenor.)

No. 3:17-cv-01813-HZ

May 23, 2018

Portland, Oregon

MOTION HEARING

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE MARCO A. HERNANDEZ

UNITED STATES DISTRICT COURT JUDGE

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1 some -- at least one school board meeting, where people in the
2 community expressed their displeasure with it. And so we can
3 assume that the school board in some fashion has ratified
4 that, which means that perhaps it extends beyond Student A,
5 but that's not really clear at this point.

6 So if it's limited to Student A, then it's not
7 something that's generally applicable. And to the extent that
8 the plaintiffs have argued -- the Gollys in particular have
9 argued that this infringes their free exercise of religion, it
10 cannot be justified on a rational basis standard.

11 And I would also point out that there are a number of
12 allegations in the Complaint which address why it is the
13 School District's statement that there's nothing to indicate
14 that this has impacted the free exercise of their religion for
15 the Golly family, when it points out that it's contrary to the
16 teaching of their kids at home -- and to the extent that
17 something happens at school which works at cross-purposes with
18 that, the Gollys have every right to say that that's
19 interfering with their free exercise of religion.

20 THE COURT: Have any of the Gollys actually
21 encountered the situation that you're most concerned about,
22 and that is a transgender student in either a bathroom or a
23 shower or anything like that?

24 MR. GREY: Not to this point, Your Honor.

25 THE COURT: Have any of the plaintiffs encountered

1 that?

2 MR. GREY: Not to my knowledge.

3 THE COURT: Does that matter?

4 MR. GREY: Well, again, what we're saying is that
5 even the District's own policies say that we need to be
6 mindful of the reasonable fears and the psychological
7 well-being of students. And if the Student Safety Plan is
8 intended to extend beyond Student A, then arguably that is
9 policy which means that anybody that comes on the school
10 campus would be able to avail themselves of whichever
11 facilities they choose to, which means the members of the
12 community who come for an event --

13 THE COURT: The harm that you're describing isn't
14 harm that has been realized as a result of somebody
15 encountering somebody. The harm that you're describing is the
16 risk that that might happen.

17 MR. GREY: Correct, which we have alleged. And I
18 believe the allegations are sufficient to --

19 THE COURT: So your response to my question is: It
20 doesn't matter that an encounter has not ever occurred between
21 any of the plaintiffs and a transgender student in the
22 facilities that you're most concerned about, which are showers
23 and bathrooms.

24 MR. GREY: I would say that that's -- that's correct.
25 And I believe it's going too far to say that there has to have

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I certify, by signing below, that the foregoing is a correct transcript of the record of proceedings in the above-titled cause. A transcript without an original signature, conformed signature or digitally signed signature is not certified.

/s/ Nancy M. Walker

9-26-18

NANCY M. WALKER, CSR, RMR, CRR
Official Court Reporter
Oregon CSR No. 90-0091

DATE

CERTIFICATE OF SERVICE

Case No. 18-35708

I hereby certify that on March 4, 2019, I caused the foregoing Supplemental Excerpts of Record to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

s/ Peter D. Hawkes

Peter D. Hawkes

Of Attorneys for Intervenor-Defendant-
Appellee Basic Rights Oregon