

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE**

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D.H., a minor, by her next friends A.H., mother, and
E.H., father,

Plaintiff,

v.

WILLIAMSON COUNTY BOARD OF
EDUCATION; JASON GOLDEN, in his official
capacity as Director of the Williamson County
Schools; THE TENNESSEE DEPARTMENT OF
EDUCATION; and PENNY SCHWINN, in her
official capacity as Commissioner of the Tennessee
Department of Education,

Defendants.
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Case No. 22-cv-_____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff D.H.,¹ a minor, by her next friends A.H., mother, and E.H., father, by and through their undersigned counsel, files this Complaint against Williamson County Board of Education; Jason Golden, in his official capacity as Superintendent of Williamson County School Board; the Tennessee Department of Education; and Penny Schwinn, in her official capacity as Commissioner of the Tennessee Department of Education (collectively, the “Defendants”) as follows:

¹ Plaintiff is simultaneously filing a Motion to Proceed Pseudonymously to request permission for her and her parents to use pseudonyms in this action to protect D.H.’s identity.

INTRODUCTION

1. This lawsuit challenges a recently enacted Tennessee law, the “Tennessee Accommodations for All Children Act,” Tenn. Code Ann. § 49-2-801, *et seq.* (the “School Facilities Law” or “Law”), which bans transgender public school students from accessing multi-occupancy restrooms and other facilities consistent with their gender identity.² By singling out transgender students for disfavored treatment and explicitly writing discrimination against transgender people into State law, the School Facilities Law violates the most basic guarantees of equal protection under the U.S. Constitution and Title IX of the Education Amendments of 1972.

2. D.H. is an 8-year-old girl entering the third grade at an elementary school (the “Elementary School”) in Williamson County, Tennessee. She is a girl who is transgender, which means that she was designated male sex at birth, but knows herself to be female. According to D.H.’s 504 Plan,³ she is experiencing adjustment disorder. The American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders describes adjustment disorder as the development of emotional or behavioral symptoms in response to an identifiable stressor within three months of onset. Am. Psychiatric Ass’n, *Diagnostic and Statistical Manual of Mental Disorders* 319 (5th ed. 2022) (the “DSM-5”). As described in the DSM-5, adjustment disorder

² While the School Facilities Law applies to students, teachers, and employees, this Complaint focuses specifically on the student population since Plaintiff is a student. Further details of the School Facilities Law are explained below. *See infra* ¶¶ 92–105.

³ A 504 Plan is an educational plan developed according to Section 504 of the Rehabilitation Act to ensure that a child attending an elementary or secondary educational institution who has a qualifying disability receives accommodations necessary to ensure the child’s academic success and access to the learning environment. *See* 29 U.S.C. § 794; 34 C.F.R. § 104.33(a) (establishing that federally-funded schools “shall provide a free appropriate public education” to each qualifying disabled student); *see also* Univ. of Wash., *What Is the Difference Between an IEP and a 504 Plan?*, Disabilities, Opportunities, Internetworking, and Tech. Ctr. (May 24, 2022), <https://www.washington.edu/doit/what-difference-between-iep-and-504-plan>.

can result in significant impairment in social, occupational, and other areas of functioning. *Id.* at 319–22.

3. With the support of her family, D.H. began her “social transition” in the spring of 2020 during the COVID-19 pandemic, which means that at that time, D.H. began living in accordance with her gender identity, first with her family and then with her broader community. This followed a period in which D.H. was persistently unhappy and upset, consistent with the distress experienced because of her adjustment disorder. In the first grade, the first year D.H. attended the Elementary School in-person while using “she/her” pronouns, D.H. was often misgendered by teachers, and bullied and harassed by students who became hostile and argumentative when she attempted to share her gender identity with them.

4. An anonymized picture of D.H. is below.



5. Since the age of six, D.H. has expressed the desire to her parents to present and be treated as a girl, including dressing in a manner typical of other girls and being referred to using female pronouns. D.H.’s parents approached the Elementary School administration, expressing the desire for D.H. to be treated by her peers and teachers as a girl. The school district which oversees the Elementary School was also made aware of the need for D.H. to be: (a) treated as the

girl that she is; (b) referred to using “she/her” pronouns; and (c) allowed access to the girls’ restrooms at school.

6. When A.H. and E.H. met with the Elementary School about how to support D.H. in her social transitioning, the Elementary School initially agreed to use “she/her” pronouns, but did not want to make a public announcement to students. Instead, the Elementary School instructed D.H. to tell each of her 19 classmates individually. After two failed attempts at this one-by-one approach, D.H. was too distressed to continue trying. Boys in her class had become increasingly argumentative and hostile with her about her gender identity. D.H. told her parents she was thankful for having to wear a mask for COVID-19 because it hid her face, and she even learned how to cry out of one eye so other kids would not notice.

7. At the beginning of second grade in the fall of 2021, D.H.’s parents enrolled her in an online school because they feared the Elementary School’s no-mask policy and D.H. had not yet been vaccinated against COVID-19. While at that school, D.H. was introduced with “she/her” pronouns. Although classes were not in-person, the school permitted D.H. to use the restroom facilities corresponding to her gender identity for any in-person event. This support of D.H.’s social transition helped alleviate some of the social stressors D.H. experienced at the Elementary School.

8. D.H., however, wanted to return to the Elementary School to be reunited with her friends and community, and so her family re-enrolled her at the Elementary School in-person for the second half of second grade, beginning in January 2022. At that time, D.H.’s parents made multiple attempts to speak with various school administrators about D.H.’s transition and how the Elementary School could best support D.H. By that time, however, the Elementary School administration could not provide D.H. with the support she needed to complete her social transition

as the School Facilities Law had come into full effect, preventing D.H. from using the restrooms corresponding with her gender identity, unlike the rest of her non-transgender classmates.

9. Instead, D.H. was forced to use one of four single-occupancy restroom facilities at the Elementary School—each of which presented its own issues. These issues included D.H. having to clean restrooms covered in human waste before using them, and being forced to out herself as transgender in front of other students or janitorial staff.

10. These restroom “accommodations” provided to D.H. by the Elementary School are not accommodations at all. They reinforce the differential treatment and trauma associated with living under the School Facilities Law, violating D.H.’s constitutional and statutory rights under the Equal Protection Clause of the U.S. Constitution and Title IX of the Education Amendments of 1972.

11. Unless enjoined, the School Facilities Law will continue to perpetuate discrimination against, and stigmatization of, transgender children, like D.H., and negatively impact the already poorer mental health outcomes experienced by transgender youth as a result of such treatment.

12. D.H. therefore seeks declaratory and injunctive relief from this Court to allow her to use the girls’ restroom in accordance with her gender identity.

JURISDICTION AND VENUE

13. This action arises under 42 U.S.C. § 1983 to redress the deprivation under color of State law of rights secured by the United States Constitution and under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, *et seq.* (“Title IX”).

14. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1343 because the matters in controversy arise under the laws of the United States, including laws providing for the protection of civil rights, and because this suit

seeks redress for the deprivation, under color of State law, for rights secured by the United States Constitution.

15. Venue lies in this District pursuant to 28 U.S.C. § 1391 as Plaintiff and Defendants are located in this District and all events or omissions giving rise to this action occurred in this District.

16. This Court has the power to enter declaratory judgment and to provide injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 2202.

17. This Court has personal jurisdiction over Defendants because they are domiciled in Tennessee and because their denial of Plaintiff D.H.'s federal constitutional and statutory rights occurred within Tennessee.

PARTIES

18. Plaintiff D.H. is a typical 8-year-old girl who loves state parks, painting her nails, outdoor activities like hiking, and attending community events at her school. D.H. is described as incredibly smart and intuitive. Her school benchmark tests show that D.H. scores in the top 98% for English Language Arts and top 96% in Math nationally. D.H. is a resident of Tennessee and will begin third grade on August 5, 2022. D.H. is a girl who is transgender.

19. Plaintiff A.H. is D.H.'s mother and Plaintiff E.H. is D.H.'s father, and both participate in this action as her next friends.

20. Defendant Williamson County Board of Education (the "School Board") is an elected body responsible for the operation of the Williamson County Schools, including the promulgation of policies. The School Board is a person within the meaning of 42 U.S.C. § 1983. At all times relevant, the School Board has acted and continues to act under color of State law.

21. Defendant Jason Golden (“Defendant Golden”) is the Director of the Williamson County Schools, appointed by the School Board. As Director, Defendant Golden has a duty to “[a]ct for the board in seeing that the laws relating to the schools and rules of the state and the local board of education are faithfully executed.” Tenn. Code Ann. § 49-2-301(b)(1)(A). Defendant Golden is a person within the meaning of 42 U.S.C. § 1983 and is sued in his official capacity. At all times relevant, Defendant Golden has acted and continues to act under color of State law.

22. The Tennessee Department of Education (the “Department of Education”) is the administrative department of the Tennessee state government responsible for primary and secondary public education in the State, including implementing law and policy for students. *See* Tenn. Code Ann. § 49-1-201(a). The Department of Education is a person within the meaning of 42 U.S.C. § 1983. At all times relevant, the Department of Education has acted and continues to act under color of State law.

23. Defendant Penny Schwinn (“Defendant Schwinn”) is the Commissioner of the Department of Education. As Commissioner, Defendant Schwinn “is responsible for the implementation of law or policies established by the general assembly or the state board of education,” Tenn. Code Ann. § 49-1-201(a), and must “[s]ee that the school laws and the regulations of the state board of education are faithfully executed,” *id.* § 49-1-201(c)(5). She must also “[p]repare and present to the state board of education . . . rules that are necessary to implement the policies, standards, or guidelines of the state board or the education laws of the state.” *Id.* § 49-1-201(c)(20)(A). She is therefore required to faithfully execute the School Facilities Law’s prohibition on transgender youth’s ability to use multi-occupancy restrooms that correspond to their gender identity. Defendant Schwinn is a person within the meaning of 42 U.S.C. § 1983 and

is sued in her official capacity. At all times relevant, Defendant Schwinn has acted and continues to act under color of State law.

24. Defendants, through their respective duties and obligations, are responsible for enforcing the School Facilities Law. Each Defendant, and those subject to their direction, supervision, and control, has or intentionally will perform, participate in, aide, and/or abet in some manner the acts alleged in this Complaint, has or will proximately cause the harm alleged herein, and has or will continue to injure Plaintiff irreparably if not enjoined. Accordingly, the declaratory and injunctive relief requested herein is sought against each Defendant, as well as all persons under their supervision, direction, or control, including but not limited to their officers, employees, and agents.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

I. D.H. IS A TRANSGENDER GIRL WHO WILL BE STARTING THIRD GRADE THIS YEAR

A. D.H. is a Transgender Girl

25. D.H. is an 8-year-old girl who will be starting third grade on August 5, 2022.

26. D.H. lives within the school zone for attendance at the Elementary School.

27. D.H. was born in Tennessee, and thus has a Tennessee birth certificate.

28. D.H. has grown up and lived in Williamson County her whole life.

29. A.H. and E.H. know D.H. as their “Rainbow Baby” because D.H. was born after the couple unfortunately suffered a miscarriage. A.H. and E.H. decorated D.H.’s room before her birth in a beach theme, as “the best treasures on a beach are washed up after a rainstorm.”

30. D.H. is transgender. Thus, although D.H. was assigned male sex at birth, she has a female gender identity.

31. Upon information and belief, D.H. is one of few, if not the only, known transgender students who will be attending the Elementary School in the Williamson County School District in the fall of 2022.

32. D.H. has long expressed a preference for assuming roles traditionally associated with girls, stating that she feels more of what it means to be a girl in her heart than a boy. She enjoys growing her hair long and painting her nails.

33. As early as age four, D.H. experienced violent outbursts at home in addition to nightmares, migraines, acid reflux, and depression. D.H. would reflux uncontrollably, unrelated to her eating habits. Later that year, D.H. underwent a procedure to scope her esophagus and stomach, resulting in a regurgitation diagnosis—a psycho-social problem rather than a medical one. In essence, D.H. was unintentionally making herself vomit to ease anxiety, and no one knew why.

34. At age four, D.H. nervously confided in her mother that she did not have clothes that made her “feel pretty.” A.H. wanted to support her child and took D.H. shopping. D.H. picked out several clothes, including a hot pink tank top from the girls’ section displaying a balloon unicorn with a gold glitter horn. It quickly became D.H.’s favorite article of clothing. These clothes, in addition to getting her nails painted and wearing her hair long, made D.H. feel pretty.

35. Prior to coming out, D.H. expressed a strong dislike for any term of endearment other than her name. For instance, D.H. insisted that her family not refer to her as “cutie pie,” “love bug,” “boo,” or “lovie.” Name identity has always been very important to D.H.

36. D.H. came out as transgender to her parents in the spring of 2020, at the age of six.

37. A.H. vividly recalls cuddling with D.H. one night in the dark as D.H. whispered, “Mom, there is something I have to tell you, but I don’t want to hurt you or for you to be mad.”

D.H. told A.H. and E.H. that she thought something was wrong with her because “I think I’m supposed to be a girl. It’s just that I feel closer to what it means to be a girl in my heart than a boy.” D.H. asked her parents if they could help her understand these feelings. A.H. and E.H. assured D.H. that nothing was wrong with her, and that there were others like her. A.H. and E.H. joined PFLAG, the first and largest organization dedicated to supporting, educating, and advocating for LGBTQ+ people and their families, to learn more about the transgender community and support D.H. in affirming her gender identity.

38. To affirm D.H.’s gender identity, the family began using “she/her” pronouns and referring to D.H. as “daughter” at D.H.’s request. Thus, early on, the use of correct pronouns was important to D.H.

39. Currently, D.H. is experiencing adjustment disorder. Adjustment disorder is the development of emotional or behavioral symptoms in response to an identifiable stressor within three months of onset. *See DSM-5* at 319. As described in the DSM-5, adjustment disorder can result in significant impairment in social, occupational, and other areas of functioning with symptoms like depression, anxiety, and even suicidal thoughts or behavior. *Id.* at 319–22. D.H.’s psychologist has linked her adjustment disorder to D.H.’s inability to live her life fully as a girl in all respects, which has been aggravated in particular by her inability to use the girls’ restroom at school. D.H.’s adjustment disorder materializes in alarming symptoms, including regurgitation as well as migraines and nightmares.

40. The fact of being transgender is not a mental disorder. According to the American Psychiatric Association, being transgender “implies no impairment in judgment, stability, reliability, or general social or vocational capabilities.” Jack Drescher *et al.*, *Position Statement on*

Discrimination Against Transgender and Gender Diverse Individuals, Am. Psychiatric Ass’n Official Actions 1 (July 2018).⁴

41. Transgender children are often distressed by the onset of puberty, which initiates the development of secondary physical characteristics. *See DSM-5* at 514. The development of irreversible secondary-sex characteristics inconsistent with gender identity can cause transgender adolescents tremendous psychological pain, often leading to depression, anorexia, social phobias, and suicidality. Bethany Gibson & Anita J. Catlin, *Care of the Child with the Desire to Change Gender – Part 1*, 36 *Pediatric Nursing* 53, 54 (2010).

42. The distress that transgender individuals may experience can be eased with appropriate treatment. Established medical consensus supports alleviating stressors, rather than attempting to eliminate or realign an individual’s gender identity. Past efforts to realign gender identity with sex assigned at birth have caused extraordinary harm and anguish to transgender individuals. *See Substance Abuse & Mental Health Servs. Admin., Ending Conversion Therapy: Supporting and Affirming LGBTQ Youth* 1 (2015).⁵

43. Thus, proper support for transgender youth, according to leading authorities, focuses on “alleviating the distress associated with the incongruence between gender identity and birth-assigned sex,” with the ultimate goal being for individuals to experience “identity integration, where being transgender is no longer the most important signifier of one’s identity and the

⁴ Available at <https://www.psychiatry.org/File%20Library/About-APA/Organization-Documents-Policies/Policies/Position-2018-Discrimination-Against-Transgender-and-Gender-Diverse-Individuals.pdf> (last visited July 20, 2022).

⁵ Available at <https://store.samhsa.gov/sites/default/files/d7/priv/sma15-4928.pdf> (“[C]onversion therapy—efforts to change an individual’s sexual orientation, gender identity, or gender expression—is a practice that is not supported by credible evidence and has been disavowed by behavioral health experts and associations.”).

individual can refocus on their relationships, school, jobs, and other life activities.” Brief of Amici Curiae Medical, Public Health and Mental Health Organizations in Support of Plaintiff-Appellee, at 12–17, *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586 (4th Cir. 2020) (No. 19-1952, ECF No. 32-1).

44. Support for transgender adolescents can include psychotherapy support and counseling, support for social transition, and hormone therapy. *See generally* World Prof’l Ass’n for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People* (2012) (7th Version).⁶ Transgender status, however, does not depend on the presence or absence of any aspects of social or medical transition. Transgender people are transgender because their identity does not align with the sex they were assigned at birth.

B. D.H.’s Early Experiences as a Transgender Girl at School

45. On the first day of kindergarten in August 2019, D.H. asked her mother to cut her hair short so that she would look more like a boy. A.H. cut D.H.’s hair as requested but remembers watching D.H.’s face fall in sadness when D.H. saw her haircut in the mirror for the first time.

46. D.H.’s kindergarten year was cut short when the COVID-19 pandemic hit in March 2020. After the end of kindergarten, in the spring of 2020, D.H. began her social transition.

47. By the start of first grade in August 2020, D.H. asked her family to use “she/her” pronouns but was not ready to have the entire school know about her transition. D.H. began first grade at the Elementary School presenting masculine. By the end of the second month of first

⁶ Available at <https://www.wpath.org/publications/soc>.

grade, however, D.H. changed her mind and decided that she wanted to present as feminine so that her gender expression fit how she felt internally.

48. D.H. was “out” as transgender for her first-grade year beginning in October of 2020. This means that D.H. began publicly living consistent with her gender identity, asking to be referred to using “she/her” pronouns. She also wore a mix of boys’ and girls’ clothes and continued to grow her hair long. Around this time, prior to the enactment of the School Facilities Law, A.H. and E.H. made repeated attempts to contact and share their concerns with the Elementary School and Williamson County school officials about their treatment of D.H.’s social transition.

49. For example, A.H. and E.H. presented a slideshow to administrators about what being transgender meant and provided examples of the ways in which the Elementary School could support D.H.’s social transition. The slideshow suggested that the Elementary School “validate [her] feelings, identity, [and] experiences.”

50. After hearing the presentation, the Elementary School’s administration proposed that D.H. reveal herself “organically” to the other students. They wanted the kids to figure D.H.’s gender identity out by hearing teachers use “she/her” pronouns and for D.H. to explain it one-on-one to her classmates. Thus, the Elementary School’s approach put the onus on D.H. to explain the larger conception of gender identity to her peers, and the burden of understanding on six-year-olds without direction.

51. This suggested approach by the Elementary School, however, was not supportive of D.H.’s social transition. Despite her parents’ concerns and following the Elementary School administration’s desired approach, D.H. tried to reveal herself “organically” but on two separate occasions of doing so to certain boys in her class, the boys became argumentative and hostile with

her. Although the school administration was notified of these incidents, they were slow to respond in addressing them and did not change their view that D.H. should “organically” reveal herself to her classmates. Her teachers also often continued to misgender her—*i.e.*, referred to D.H. with “he/him” pronouns.

52. This caused D.H. great distress and she stopped trying to explain herself repeatedly. She began hiding her face and learned how to cry out of one eye, so her peers could not see how upset she was. Based on this difficulty, and the ongoing COVID-19 pandemic, A.H. and E.H. enrolled D.H. in an online-only school for her second-grade year, which began in August 2021.

53. For the fall of second grade, D.H. thus attended the online school where her gender was warmly received and widely supported. At this time, she began living socially as a girl, for example wearing exclusively girls’ clothing. In the 504 Plan developed by this school, the school’s administration offered all of the accommodations D.H. needed for her adjustment disorder, including introducing her as a girl. The administration even insisted on including the usage of the restroom of her choice during field trips and in-person testing.

C. D.H.’s Second Grade Experience at the Elementary School

54. D.H. returned to the Elementary School halfway through second grade, in January of 2022. D.H. explained to her parents that she missed her friends and the benefits of being able to attend school in-person and be around other people her own age. By that time, D.H. had been vaccinated against COVID-19 and the Elementary School adopted a mask policy, so A.H. and E.H. felt more comfortable sending their daughter back to the Elementary School.

55. When D.H. expressed her desire to return to complete the spring of her second-grade year at the Elementary School, A.H. and E.H. met with the Elementary School’s superintendent, principal, and D.H.’s psychologist via Zoom before enrolling D.H. to ensure that the Elementary School would take the right steps to protect and affirm D.H.’s gender identity.

56. After receiving assurances from the Elementary School that they would support D.H., reprimand students who bullied her, and hold students accountable who repeated the offense, A.H. and E.H. re-enrolled D.H. in the Elementary School for the second half of her second-grade year.

57. At the time that D.H. was re-enrolled at the Elementary School, the School Facilities Law was in effect.

58. Not until after A.H. and E.H. enrolled D.H. at the Elementary School—the day before school was set to begin, in fact—did the Elementary School inform the family that D.H. would not be allowed to use the girls' restroom. Instead, the Elementary School's officials insisted that D.H. use single-occupancy restroom facilities, as compared to the multi-occupancy facilities that the rest of the students in her class used. The multi-occupancy facilities are U-shaped restrooms where girls' and boys' facilities are separated but share a common handwashing trough. Though this was unacceptable to D.H.'s parents because of the distress they knew it would cause, the registration deadline was past and changing schools was no longer an option.

59. The single-occupancy restrooms made available to D.H. were: (1) the therapy room restroom; (2) the family restroom in the lobby of the school; (3) a restroom near the school gym; and (4) the restroom in the nurse's office. All of the restrooms D.H. was permitted to use present unique issues.

60. D.H. used the single-occupancy, therapy room restroom most often in second grade because it was closest to her classroom. The therapy room restroom is used by students experiencing emotional distress or who have certain disabilities. D.H. does not like using this restroom because the toilet and floor are often covered in human waste that she must clean before using. This restroom is not always accessible, and even when it is, D.H. has been forced to out

herself to prove she is allowed to be there. On one occasion, D.H. approached the therapy room restroom and was greeted by janitorial staff who asked her why she needed to use the therapy room restroom as opposed to the girls' restroom. D.H. uncomfortably responded, that since she is a transgender girl, she was permitted to use the therapy room restroom because the Elementary School did not allow her to use the girls' restrooms.

61. The single-occupancy family restroom in the lobby of the school is unlike the other restrooms that are only accessible to students and teachers behind a secure wing of the school. Instead, the family restroom is open to the public and close to the school entrance, presenting safety concerns for D.H., especially in today's climate where shootings at public schools are increasingly frequent. D.H.'s parents fear for D.H.'s safety when she uses this restroom.

62. The single-occupancy restroom near the gym was on the opposite side of the school from D.H.'s second grade classroom, causing D.H. to miss more class time to access it.

63. The single-occupancy restroom in the nurse's office presented COVID-19 and other health concerns as the restroom was often not hygienic and used by kids who were actively ill and seeing the nurse for treatment. In addition, the nurse's office was not always accessible and, thus, not always available for D.H.'s use. Furthermore, using the nurse's restroom inevitably outed D.H. as transgender to other students waiting to be treated in the nurse's office, because they were able to observe D.H. enter and exit the single-occupancy restroom without being attended to by the nurse.

64. The Elementary School's insistence that D.H. use these four, single-occupancy restrooms isolated her and distinguished her from the rest of her classmates, further exacerbating the stress and anxiety that D.H. experienced while trying to fit in and avoid being stigmatized on the basis of her sex and gender identity.

65. Often, teachers at the Elementary School would take entire groups to the restrooms at once. As one of D.H.'s accommodations in her 504 Plan, however, the Elementary School agreed that her class should not stop as a group to use the restrooms because doing so singles D.H. out as the only student in her class who must use one of the single-occupancy facilities, thus ostracizing her. Although the Elementary School initially agreed not to conduct group trips to the restrooms, her second-grade teachers nevertheless continued to do so for over nine weeks of the semester. During these times, D.H.'s teachers would separate D.H. from the group, sending her alone down the hall in the opposite direction towards one of the single-occupancy restrooms. Thus, D.H. was often forced to choose between outing herself and being confronted by classmates or refraining from using the restroom altogether.

66. D.H. tried to enter the girls' restroom once, but several classmates waiting in the hallway started yelling "D.H. is in the girls' room!" Despite multiple attempts by A.H. and E.H. to speak with various school administrators, teachers, counselors, the school principal, and the superintendent about D.H.'s social transition and how the Elementary School could support D.H., the school administration failed to provide the full support D.H. needed to complete her social transition at the Elementary School as a transgender girl.

67. In particular, the restroom "accommodations" provided to D.H. by the Elementary School were not accommodations at all. They are, in fact, discriminatory to D.H. and reinforced the differential treatment and trauma associated with living under the School Facilities Law.

68. Due to the lack of gender-affirming restroom options, at one point in the second grade D.H. stopped using the restroom entirely at school. D.H. refrained from using the restroom between 8 A.M. (when the bus picked her up for school) to 4 P.M. (when the bus returned her home). At times, D.H. limited her food and water intake to minimize her need to use the restroom

for over eight hours a day. On one occasion, A.H. had to go to the Elementary School and pick D.H. up because she was not using the restroom. Though the Elementary School later reported that D.H. began to use the restroom about three times a week, she was still not using the restroom every day.

69. In addition to the stress D.H. experienced with the restrooms, D.H. has also been subjected to more aggressive bullying and harassment by her classmates and has even reported some incidents to the Elementary School's bullying hotline. For example, one student (whom D.H. does not know) questioned D.H. about her gender on three separate occasions over the course of three weeks on the playground without intervention by any teachers. After the third instance, D.H. told her parents what was happening, and they reported it to the principal.

70. D.H. has also been subjected to physical assault when another student repeatedly punched D.H. in her head at the bus stop. The following week, the same student stood up on the bus and persistently shouted "this kid is gay!"

71. D.H. has been told by her classmates that she is a boy in a girl's dress, and when she attended the Elementary School's Daddy-Daughter Dance, her classmate questioned her about whether she was "*really* a girl."

72. D.H. has even heard a student she does know speak about her gender. One student who was walking around the classroom was heard telling other kids that they did not need to call D.H. a girl because she was a boy.

73. All of these instances upset D.H. and when she sought help from her teachers, she was told that everyone is "allowed to have an opinion." When D.H.'s mother spoke with one of D.H.'s teachers, she reminded the teacher that D.H. was not upset about opinions, but rather upset about having to prove her gender. The teacher, however, did not view the situation in the same

way. A.H. even tried to reason with the parents of D.H.'s classmates, but one parent stated that D.H. was "just confused" and many parents refused to discuss gender identity with their children.

74. A.H. and E.H. have shared resources with the school about LGBTQ+ issues and invited teachers and school officials to attend meetings with the family's PFLAG chapter. They have also offered to arrange for a third-party non-profit organization, GLSEN, to provide "trans 101" training to the principal and D.H.'s teachers, but the offer was declined.

75. D.H.'s psychologist has even spoken with the principal and superintendent of the Elementary School and explained to them why what the Elementary School is doing is harmful to D.H.

76. To this day, the Elementary School maintains no education on LGBTQ+ issues and continues to struggle to understand a gender non-conforming experience like that of D.H. The Elementary School has failed to take any affirmative action to train staff and teachers.

77. To this day, D.H. is misgendered and referred to as a boy or by male pronouns, by teachers and students alike. As a result, D.H. has shared with A.H. that she wishes to stay home from school because she feels safer at home.

D. In the Upcoming 2022-2023 School Year, D.H. Will Enter the Third Grade

78. D.H.'s behavior changed noticeably during the second grade, and she had "bad days" one to three times a week. During these days, she would have explosive screaming fits and throw objects. These episodes were usually brought on by any perceived or real rejection, and set her off for extended periods of time.

79. Other times, D.H. would become apathetic and lethargic, rather than her normal, energetic, and excitable self. This occurred at the end of her second-grade school year, around Easter weekend, and only improved two days before the end of the school year.

80. D.H. has also developed migraines, reflux, and recurring nightmares of school. Prior to her return to in-person schooling in January 2022, she was not showing any signs of gender dysphoria, but she is now showing signs of internalized transphobic thoughts, which have been a large detriment to D.H.'s mental and physical health. These internalized transphobic thoughts are a direct result of other children fixating on D.H.'s restroom use and inability to use the girls' restroom.

81. The incongruence between an individual's gender identity and sex assigned at birth can manifest in clinically significant and disabling distress which the American Psychiatric Association calls "gender dysphoria." *DSM-5* at 512. As described in the *DSM-5*, gender dysphoria can result in anxiety, depression, and impairment of daily functioning. *Id.* at 519. This distress can be greatly exacerbated by external influences, such as discrimination, stereotyping, and social expectations, but it is the incongruence between one's physical body and internal gender identity that drives gender dysphoria. *Id.*

82. A.H. and E.H. fear that D.H. will develop gender dysphoria and continue to experience depressive episodes because the outside world, including the Elementary School, tells her that because she does not match the School Facilities Law's expectation of what it means to be a girl in school, she cannot identify as a girl.

83. A.H. and E.H. hope that the discrimination that D.H. faces at school by not being able to use the girls' restroom in accordance with her gender identity does not lead to a worsening of D.H.'s symptoms.

84. As a result, D.H. has been seeing a psychologist and a licensed clinical social worker ("LCSW"). D.H. meets with her psychologist one to two times per month. Her psychologist has linked all of D.H.'s physical symptoms and emotional suffering to the

discriminatory treatment and harassment to which D.H. is subjected by virtue of being transgender. D.H. was initially receiving treatment from the LCSW biweekly, but now attends meetings with her weekly (driven largely by the high costs, which are not fully covered by insurance). D.H. finds it difficult to open up to both. D.H. also finds it difficult to discuss her body or her use of restrooms. She dislikes others talking about the same issues and has told her parents that sometimes she wishes she did not have private parts at all so that others would stop fixating on whether they were right or wrong for her.

85. A.H. and E.H. initially enrolled D.H. in a different elementary school in Williamson County for the third grade. D.H., however, still wishes to attend the Elementary School for her third-grade year. She has stated that her desire to return to the Elementary School stems partially from the fact that she fears having to come out all over again in a new school. At the Elementary School, at least she now knows who is safe. Consequently, after speaking with D.H.'s psychologist and LCSW to ensure that D.H. could cope with the stress of returning to the Elementary School, A.H. and E.H. re-enrolled D.H. in the Elementary School on July 12, 2022.

86. Notably, all of the physical symptoms from which D.H. was suffering while attending the Elementary School for second grade – the migraines, regurgitation, nightmares, and extreme highs and lows in her mood – abated during the summer vacation. However, D.H.'s parents are very worried that they will quickly re-appear once school starts again, and D.H. has to go back to using only single-occupancy restrooms at the Elementary School. Indeed, not only does the School Facilities Law's prohibition further exacerbate D.H.'s current stressors associated with fitting in as a transgender girl and being outcasted by having to use single-occupancy restrooms, but it is also in direct violation of D.H.'s rights secured by the United States Constitution Equal Protection Clause and Title IX of the Education Amendments of 1972.

E. Request to Correct D.H.'s School Records

87. Prior to reenrolling D.H. at the Elementary School, A.H. and E.H. requested that the Elementary School's principal update D.H.'s records to change her gender marker from male to female, consistent with D.H.'s gender identity.

88. On June 23, 2022, the Elementary School's principal denied A.H. and E.H.'s request, stating that "[i]t is the procedure of Williamson County Schools that the gender used on the record of a student attending WCS is the same as that shown on the birth certificate, unless evidence is presented that such gender has been legally changed. At this time, I have not received a legal document that sets out a legal change, so I am denying your request to change."

89. No School District policies are applicable, however. For example, School District Policy 6.600, entitled "Student Records," only states that a student's name used on their school records must be the same as shown on their birth certificate, "unless evidence is presented that such name has been legally changed." It says nothing about changing a student's gender.

90. Similarly, School District Policy 6.602, entitled "Student Records Inspection & Correction Procedure," also appears inapposite. It only says that "[t]he Superintendent of Schools shall develop an acceptable procedure to establish an orderly process to review and potentially correct an education record." Plaintiff is unaware of any such procedure that has been developed to change a student's gender maker on their school records.

91. On July 13, 2022, Plaintiff, through counsel, appealed the principal's decision to Defendant Golden.

II. THE SCHOOL FACILITIES LAW UNFAIRLY DISCRIMINATES AGAINST TRANSGENDER STUDENTS

92. On May 14, 2021, Tennessee Governor Bill Lee signed the School Facilities Law into law, which took effect on July 1, 2021.

93. The School Facilities Law was just one of several laws restricting the rights of transgender people enacted in Tennessee around the same time. Governor Lee also signed a bill to prevent transgender students from participating in high school and middle school sports,⁷ a bill that prevents physicians from prescribing hormone treatment for prepubertal transgender youth,⁸ a bill that requires public schools to notify parents before offering any curriculum about sexual orientation and gender identity,⁹ and a bill that requires businesses with restrooms open to the public to post a notice at the entrance of each public restroom if the business allows transgender individuals to use the restrooms corresponding with their gender identity.¹⁰

94. A court in this district recently granted a permanent injunction enjoining enforcement of the last of these laws in *Bongo Productions, LLC v. Lawrence*, No. 3:21-CV-00490, 2022 WL 1557664 (M.D. Tenn. May 17, 2022). In *Bongo*, the court characterized the law as “a brazen attempt to single out trans-inclusive establishments and force them to parrot a message that they reasonably believe would sow fear and misunderstanding about the very transgender Tennesseans whom those establishments are trying to provide with some semblance of a safe and welcoming environment.” *Id.* at *19.

95. The School Facilities Law states in relevant part that public schools are required, “to the extent practicable,” to provide a “reasonable accommodation” to a student, teacher, or employee who:

Desires greater privacy when using a multi-occupancy restroom or changing facility designated for the student’s, teacher’s, or employee’s sex and located within a public school building, or when using multi-occupancy sleeping quarters

⁷ Tenn. Code Ann. § 49-6-310.

⁸ Tenn. Code Ann. § 63-1-169.

⁹ Tenn. Code Ann. §§ 49-6-1301 & 1308.

¹⁰ Tenn. Code Ann. § 68-120-120.

designated for the student's, teacher's, or employee's sex while the student, teacher, or employee is attending a public school-sponsored activity.

Tenn. Code Ann. § 49-2-803(a)(1).

96. The School Facilities Law strictly defines “sex” to mean “a person’s immutable biological sex as determined by anatomy and genetics existing at the time of birth. Evidence of a person’s biological sex includes, but is not limited to, a government-issued identification document that accurately reflects a person’s sex listed on the person’s *original* birth certificate.” *Id.* § 49-2-802(4) (emphasis added). Notably, Tennessee prohibits amending a gender marker on a birth certificate. *See id.* § 68-3-203(d); *see also* Movement Advancement Project, *Identity Document Laws and Policies*.¹¹ And this narrow definition of “sex” obviates even the amending of birth certificates to reflect an individual’s gender identity by referring to “the person’s original birth certificate” and by declaring a person’s sex to be “immutable.”

97. Because of the extremely narrow definition of “sex” in the School Facilities Law, even students born in states permitting the change of gender markers on birth certificates are still prohibited from using a multi-occupancy restroom or changing facility associated with their gender identity as the School Facilities Law only takes into account the sex listed on a person’s “original” birth certificate.

98. The School Facilities Law provides that a “reasonable accommodation” “includes, but is not limited to, access to a single-occupancy restroom or changing facility or use of an employee restroom or changing facility.” Tenn. Code Ann. § 49-2-802(2). Expressly excluded from this definition, however, is any “[a]ccess to a restroom or changing facility that is designated

¹¹ Available at https://www.lgbtmap.org/equality-maps/identity_document_laws (last visited July 20, 2022).

for use by members of the opposite sex while members of the opposite sex are present or could be present.” *Id.* § 49-2-802(2)(A). Similarly excluded from the scope of a “reasonable accommodation” is any “[r]equest[] that a school construct, remodel, or in any way perform physical or structural changes to a school facility; or [r]equest[] that a school limit access to a restroom or changing facility that is designated for use by members of the opposite sex.” *Id.* § 49-2-802(2)(B)–(C).

99. The School Facilities Law’s “reasonable accommodation” is therefore anything but reasonable or accommodating, leaving transgender students no choice but to use restrooms corresponding with their assigned sex at birth or being singled out, and outed as transgender, by requesting to use single-occupancy restrooms such as employee restrooms or nurse’s restrooms.

100. In other words, the School Facilities Law forces transgender students into the position of using a multi-occupancy restroom inconsistent with their gender identity or being singled out and required to ask for a purported “reasonable accommodation.”

101. The School Facilities Law’s provisions requiring use of single-sex facilities in accordance with the sex stated on one’s original birth certificate not only disproportionately burdens transgender people, but also intentionally targets them for differential treatment. The School Facilities Law tells transgender individuals in no uncertain terms that they are different and less valuable.

102. The School Facilities Law further provides a student, teacher, or employee a “private right of action against the [Local Education Agency (“LEA”)] or public school” if they “encounter[] a member of the opposite sex in a multi-occupancy restroom or changing facility” while using such a facility associated with their designated “sex,” and the LEA or public school “intentionally allowed a member of the opposite sex to enter the multi-occupancy restroom or

changing facility while other persons were present.” Tenn. Code Ann. § 49-2-805(a)(1)(A), (C). Successful plaintiffs may recover “monetary damages, including . . . reasonable attorney fees and costs.” *Id.* § 49-2-805(2)(c). Thus, Tennessee public schools are not free to enact policies more inclusive of transgender students allowing them to use restrooms consistent with their gender identity, as doing so opens them up to lawsuits by innumerable individuals.

103. Under the School Facilities Law, then, transgender students like D.H. are precluded from using restrooms and changing facilities consistent with their gender identity.

104. In other words, D.H., a girl, cannot use the girls’ restroom or changing facilities because she was assigned “male” sex at birth. Not being able to do so causes D.H. to suffer from anxiety, depression, and stigmatization.

105. Although portrayed as a law that protects “all children,” it is anything but. The School Facilities Law is widely recognized and condemned as an effort intended to single out and force transgender students to use the restroom associated with the gender they were assigned at birth, even though that is not consistent with their gender identity, or otherwise face the stigmatizing and harmful effect of being one of the only students in the entire school who must use a “different” restroom from everyone else.

III. THE U.S. SUPREME COURT HAS PROHIBITED DISCRIMINATION ON THE BASIS OF GENDER IDENTITY, AND THE DEPARTMENT OF JUSTICE, THE DEPARTMENT OF EDUCATION, AND THE BIDEN ADMINISTRATION HAVE CONFIRMED THAT TITLE IX PROHIBITS DISCRIMINATION ON THE BASIS OF GENDER IDENTITY

106. On June 15, 2020, the Supreme Court of the United States ruled in *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020), that Title VII of the Civil Rights Act of 1964 protects employees against discrimination based on their sexual orientation or gender identity. The Court held that discrimination on the basis of gender identity is necessarily also discrimination “because of sex” as prohibited by Title VII. *Bostock*, 140 S. Ct. at 1740–43.

107. On January 20, 2021, the Biden administration issued the Executive Order on Preventing and Combatting Discrimination on the Basis of Gender Identity or Sexual Orientation (“E.O. 13988”).¹² Exec. Order No. 13988, 86 Fed. Reg. 7023 (Jan. 25, 2021). In E.O. 13988, the Biden administration sets forth a policy in which “[c]hildren should be able to learn without worrying about whether they will be denied access to the restroom, the locker room, or school sports.” *Id.* at 7023.

108. Accordingly, the E.O. instructs each head of agency to consider actions that their agency should take to ensure that it is fully implementing the policy set forth in E.O. 13988. *Id.* at 7024.

109. On March 26, 2021, the U.S. Department of Justice’s (“DOJ”) Civil Rights Division issued a Memorandum on the “Application of *Bostock v. Clayton County* to Title IX of the Education Amendments of 1972” (the “DOJ Memorandum”).¹³

110. The DOJ Memorandum notes that both before and following *Bostock*, numerous federal appellate courts have reached the conclusion that Title IX protects transgender students from discrimination on the basis of gender identity. *See* DOJ Memorandum at 2 (citing cases).

111. Accordingly, the DOJ Memorandum explains the DOJ’s view that Title IX “prohibit[s] discrimination on the basis of gender identity and sexual orientation,” *id.* at 1, explaining that:

After considering the text of Title IX, Supreme Court caselaw, and developing jurisprudence in this area, the Division has determined that the best reading of Title IX’s prohibition on discrimination “on the basis of sex” is that it includes discrimination on the basis of gender identity and sexual orientation.

¹² Available at <https://www.govinfo.gov/content/pkg/DCPD-202100057/pdf/DCPD-202100057.pdf>.

¹³ Available at <https://www.justice.gov/crt/page/file/1383026/download>.

Id. at 2.

112. The DOJ Memorandum concludes with hopes that “this memorandum provides a starting point for [Federal Agency Civil Rights Directors and General Counsels] to ensure the consistent and robust enforcement of Title IX, in furtherance of the commitment that every person should be treated with respect and dignity.” *Id.* at 3.

113. On June 22, 2021, the Department of Education (“the ED”) similarly issued an official interpretation to clarify its enforcement authority over discrimination based on sexual orientation and gender identity under Title IX in light of the Supreme Court’s decision in *Bostock* (the “ED Notice”). *See* Enforcement of Title IX of the Education Amendments of 1972 With Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of *Bostock v. Clayton County*, 86 Fed. Reg. 32637 (June 22, 2021).¹⁴

114. According to the ED Notice, the ED’s Office for Civil Rights “has long recognized that Title IX protects all students, including students who are lesbian, gay, bisexual, and transgender, from harassment and other forms of sex discrimination.” *Id.* at 32637.

115. The ED Notice concludes that Title IX “encompass[es] discrimination based on sexual orientation and gender identity,” *id.* at 32639, and that the ED’s Office for Civil Rights “will fully enforce Title IX to prohibit discrimination based on sexual orientation and gender

¹⁴ While a court in the Eastern District of Tennessee recently preliminarily enjoined enforcement of the ED Notice, it did so on the narrow grounds that Plaintiffs were likely to succeed on their claim that the ED failed to adhere to the notice and comment requirements of the Administrative Procedure Act. *See Tennessee v. U.S. Dept. of Educ.*, No. 3:21-CV-308, 2022 WL 2791450, at *19–*22 (E.D. Tenn. July 15, 2022). That court did not interpret the meaning of “on the basis of sex” in Title IX, *see id.* at *20 (“The Court begins, and ends, with assessing Plaintiffs’ notice and comment claim.”), and the ED has already published a proposed rule to codify its previous guidance. *See infra* ¶ 117.

identity in education programs and activities that receive Federal financial assistance from the Department,” *id.* at 32639.

116. On June 15, 2022, the Biden administration issued the Executive Order on Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals (“E.O. 14075”).¹⁵ Exec. Order No. 14075, 87 Fed. Reg. 37189 (June 22, 2022). According to E.O. 14075, the Secretary of Education shall establish a Working Group on LGBTQI+ Students and Families that will lead initiatives to address discrimination against LGBTQI+ students and families, including by developing “guidance, technical assistance, training, promising practices, and sample policies for States, school districts, and other educational institutions to promote safe and inclusive learning environments in which all LGBTQI+ students thrive and to address bullying of LGBTQI+ students.” *Id.* § 37192.

117. The Department of Education has also recently issued a proposed rule addressing Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance. 87 Fed. Reg. 41390-01 (July 12, 2022).¹⁶ The purpose of the proposed rule is to “[c]larify the Department’s view” regarding “the scope of Title IX’s prohibition on sex discrimination” including “discrimination on the basis of . . . gender identity.” *Id.* at 41390–91. The comment period for this proposed rule is open through September 12, 2022.

¹⁵ Available at <https://www.govinfo.gov/content/pkg/FR-2022-06-21/pdf/2022-13391.pdf>.

¹⁶ Available at <https://www.federalregister.gov/documents/2022/07/12/2022-13734/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>.

CAUSES OF ACTION

COUNT I

Deprivation of Equal Protection

U.S. Const. Amend. XIV

(Against All Defendants)

118. Plaintiff realleges and incorporates by reference the allegations in paragraphs 1 through 117 as though fully set forth herein.

119. Plaintiff states this cause of action against Defendants in their official capacities for purposes of seeking declaratory and injunctive relief, and to challenge the School Facilities Law both facially and as applied to her.

120. The Fourteenth Amendment to the United States Constitution, enforceable pursuant to 42 U.S.C. § 1983, provides that no State shall “deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1. Defendants are all governmental actors and/or employees acting under color of State law for purposes of 42 U.S.C. § 1983 and the Fourteenth Amendment.

121. Transgender people have suffered a long history of extreme discrimination in Tennessee and across the country and continue to suffer such discrimination to this day.

122. Transgender people are a discrete and insular group and lack the political power to protect their rights through the legislative process. Transgender people have largely been unable to secure explicit local, state, and federal protections to protect them against discrimination.

123. A person’s gender identity or transgender status bears no relation to a person’s ability to contribute to society.

124. Gender identity is a core, defining trait and is so fundamental to one’s identity and conscience that a person cannot be required to abandon it as a condition of equal treatment.

125. Gender identity generally is determined at an early age and highly resistant to change through intervention.

126. Under the Equal Protection Clause of the Fourteenth Amendment, discrimination based on sex is subject to at least heightened scrutiny and presumptively unconstitutional absent a showing by the government that the discrimination is adequately tailored to further a sufficiently important state interest. Discrimination based on sex includes but is not limited to discrimination based on gender nonconformity, gender identity, transgender status, and gender transition.

127. The School Facilities Law facially classifies people based on sex, gender identity, and transgender status.

128. The School Facilities Law discriminates against transgender people on the basis of sex.

129. The School Facilities Law treats transgender people differently than non-transgender people who are similarly situated.

130. Under the School Facilities Law, non-transgender people can access multi-occupancy restrooms and other single-sex facilities consistent with their gender identity, but transgender people are banned from multi-occupancy restrooms and other single-sex facilities consistent with their gender identity.

131. The School Facilities Law categorically discriminates against transgender people based on gender nonconformity. For example, although D.H. is a girl and is perceived as a girl in public, she has a birth certificate with a male gender marker that does not conform to the School Facilities Law's expectations for girls. Furthermore, if girls such as D.H. had been assigned female at birth, they would not be banned by the School Facilities Law from the restrooms and other

single-sex facilities consistent with their gender identity. No person has any control over the sex that person is assigned at birth.

132. By prohibiting D.H.—a transgender girl—from using the restrooms and other facilities corresponding to her gender identity because the State does not deem them to be of the gender she identifies, the Defendants treated and continue to treat D.H. differently from similarly situated students based on her gender identity.

133. The School Facilities Law’s discrimination against transgender people based on sex is not necessary and narrowly tailored to the achievement of a compelling government interest. Indeed, it is neither substantially related to an important government interest, nor even rationally related to any legitimate government interest.

134. The School Facilities Law endangers the safety, privacy, security, and well-being of transgender individuals. For example, if a transgender girl were to use the boys’ restroom, she would be exposed to potential harassment and assault by students who believe that she should not be in the boys’ restroom. Similarly, if a transgender boy were to use the girls’ restroom, he likely would be similarly exposed to potential harassment and assault by students who believe he should not be in the girls’ restroom.

135. The School Facilities Law does not promote the safety, privacy, security, or well-being of non-transgender people. In fact, the Law invites potential harassment and assault of non-transgender students who may not fit gender expectations or stereotypes associated with their gender identity by giving private persons a right of action to sue under the Law, and thereby encouraging independent policing of everyone who uses a multi-occupancy restroom.

136. The School Facilities Law deprives transgender people of their right to equal dignity, liberty, and autonomy by branding them as second-class citizens.

137. The School Facilities Law's intentional and inherent discrimination against transgender people based on sex denies them the equal protection under the law, in violation of the Equal Protection Clause of the Fourteenth Amendment. Forcing transgender individuals to use a restroom that is incongruent with their gender identity communicates the State's moral disapproval of their identity, which the Constitution and federal law protect. *See Lawrence v. Texas*, 539 U.S. 558, 583 (2003) ("Moral disapproval of a group cannot be a legitimate governmental interest under the Equal Protection Clause.").

138. The School Board is the final policymaker for Williamson County Public Schools.

139. The Defendants' discrimination against D.H. based on her gender identity denies her equal protection under the law, in violation of the Fourteenth Amendment to the United States Constitution.

140. The Defendants are liable for their violation of D.H.'s Fourteenth Amendment rights under 42 U.S.C. § 1983.

141. Absent injunctive relief, D.H. will be irreparably harmed.

COUNT II

Violation of Title IX

20 U.S.C. § 1681

(Against Defendants Department of Education and the School Board)

142. Plaintiff realleges and incorporates by reference the allegations in paragraphs 1 through 141 as though fully set forth herein.

143. Plaintiff brings this Count against Defendant Department of Education and Defendant School Board.

144. Tennessee’s state educational institutions, including Tennessee’s public school system and Defendant Department of Education, are education programs receiving Federal financial assistance.

145. The Department of Education is a proper defendant because “State[s] shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in federal court for a [Title IX] violation.” 42 U.S.C. § 2000d-7(a)(1).

146. The School Board is a recipient of Federal financial assistance that operates education programs and activities.

147. The public school that D.H. attends is also an education program receiving Federal financial assistance.

148. Title IX provides that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” 20 U.S.C. § 1681(a).

149. Under Title IX, discrimination “on the basis of sex” encompasses both discrimination based on biological differences between men and women and discrimination based on gender nonconformity.

150. By requiring D.H.—a transgender girl—to use separate restrooms and related facilities because the School Board does not deem her to be of the gender she identifies with, the Department of Education and School Board have and continue to exclude D.H. from participation in, deny her the benefits of, and subject her to discrimination in education programs and activities at the Elementary School “on the basis of sex,” which violates D.H.’s rights under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681.

151. Absent injunctive relief, D.H. will be irreparably harmed.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that proper process issue and be served upon Defendants, requiring them to answer the Complaint within the time prescribed by law and further Plaintiff requests an order and judgment:

1. Declaring that the provisions of and enforcement by Defendants of the School Facilities Law as discussed above violate Plaintiff's rights under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution;

2. Declaring that the provisions of and enforcement by the Department of Education and the School Board of the School Facilities Law as discussed above violate Plaintiff's rights under Title IX of the Education Amendments of 1972;

3. Preliminarily and permanently enjoining enforcement by Defendants, their officials, agents, employees, assigns, and all other persons acting in concert or participating with them, of the School Facilities Law or any other law, custom, or policy that precludes D.H. from using (i) multi-occupancy restrooms and changing facilities located within a public-school building that correspond with her gender identity, rather than her gender assigned at birth; and (ii) multi-occupancy sleeping quarters while attending a public school-sponsored activity that correspond with her gender identity, rather than her gender assigned at birth;

4. Preliminary and permanently requiring Defendants to permit D.H. to use: (i) multi-occupancy restrooms and changing facilities located within a public-school building that correspond with her gender identity, rather than her gender assigned at birth; and (ii) multi-occupancy sleeping quarters while attending a public school-sponsored activity that correspond with her gender identity, rather than her gender assigned at birth;

5. Preliminary and permanently requiring Defendants in their official capacities to allow individuals, including transgender people, to use: (i) multi-occupancy restrooms and changing

facilities located within a public school building that correspond with their gender identity, rather than their gender assigned at birth; and (ii) multi-occupancy sleeping quarters while attending a public school-sponsored activity that correspond with their gender identity, rather than their gender assigned at birth; and requiring Defendants in their official capacities to allow local governments to enact and to continue to enforce anti-discrimination protections for LGBTQ+ people;

6. Permanently require Defendants to correct all of Plaintiff's school records to reflect her female gender;

7. Waiving the requirement for the posting of a bond as security for entry of temporary or preliminary injunctive relief;

8. Awarding nominal damages as well as Plaintiff's costs, expenses, and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988 and other applicable laws; and

9. Such other relief as the Court deems just and proper.

10. The declaratory and injunctive relief requested in this action is sought against each Defendant; against each Defendant's officers, employees, and agents; and against all persons acting in active concert or participation with any Defendant, or under any Defendant's supervision, direction, or control.

Dated: August 1, 2022

Respectfully submitted,

By: /s/ Tricia Herzfeld

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* Motions for admission *pro hac vice* forthcoming

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