

No. 20-35813

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

LINDSAY HECOX ET AL.,

Plaintiffs-Appellees,

v.

BRADLEY LITTLE ET AL.,

Defendants-Appellants,

AND

MADISON KENYON, ET AL.,

Appellants-Intervenors.

On Appeal from the United States District Court
for the District of Idaho
Hon. David C. Nye (Case No. 1:20-cv-00184-DCN)

**MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT
OF PLAINTIFFS-APPELLEES AND IN FAVOR OF AFFIRMANCE**

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Trevor Project, Inc.*

1. The Trevor Project, Inc. (“The Trevor Project”) respectfully moves this Court for leave to appear as *amicus curiae* in support of the above-captioned case for review and for filing of the proposed *amicus curiae* brief. *See* Fed. R. App. P. 29(a). The proposed brief of the Trevor Project is being tendered concurrently with this motion.

2. The proposed brief is timely filed in support of Plaintiffs-Appellees who filed their principal brief on December 14, 2020. Fed. R. App. P. 29(a)(6).

3. Founded in 1998, The Trevor Project is the nation’s largest lesbian, gay, bisexual, transgender, queer, and questioning (“LGBTQ”) youth crisis intervention and suicide prevention organization. It is the only nationwide organization that offers accredited, free, and confidential phone, instant message, and text messaging crisis intervention services for LGBTQ youth. Because the Trevor Project is intimately familiar with the lived experiences of transgender youth, its knowledge and experience may be helpful to the Court’s evaluation of the petition for review. And because of its first-hand experience with the severe mental health effects that discrimination can have on transgender youth, the Trevor Project has a significant interest in ensuring that laws which target transgender youth for unconstitutional discrimination are not enforced.

4. As the proposed brief explains, the Trevor Project knows from decades of experience how societal discrimination contributes significantly to negative

health outcomes for transgender youth. When transgender youth are permitted to freely express their gender identities, they experience similar mental health outcomes to their cisgender peers, but when their identities are disaffirmed or invalidated they are placed at increased risk of depression and self-harm. In the realm of sports, as in other aspects of their lives, transgender youth thrive when their identities are recognized and supported, but suffer significantly when they are excluded or unfairly singled out. The proposed brief urges the Court to affirm the District Court's ruling enjoining Idaho House Bill 500 to avoid these harms to transgender youth.

5. The parties have consented to the filing of this amicus brief. Appellants provided consent through counsel Scott Zanzig on December 17, 2020 and Appellees provided consent through counsel Kathleen Hartnett on October 28, 2020.

6. For the foregoing reasons, *amicus* respectfully request leave to appear as *amicus curiae* in the above-captioned matter and to submit the brief accompanying this motion.

Dated: December 21, 2020

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 27(d), I hereby certify that this Motion complies with the applicable typeface, type-style, and type-volume limitations. This Motion was prepared using a proportionally spaced type (Times New Roman, 14 point) and contains 384 words. This certificate was prepared in reliance on the word-count function of the word-processing system used to prepare this brief.

Dated: December 21, 2020

/s/ Abbey J. Hudson

Abbey J. Hudson

CERTIFICATE OF SERVICE

I hereby certify that on December 21, 2020, I electronically filed the foregoing with the Clerk of the Court of the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. Registered CM/ECF users participating in this appeal will be served by the appellate CM/ECF system.

Dated: December 21, 2020

/s/ Abbey J. Hudson

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No. 20-35813

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LINDSAY HECOX ET AL.

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Defendants-Appellants.

On Appeal from the United States District Court
for the District of Idaho
Hon. David C. Nye (Case No. 1:20-cv-00184-DCN)

**BRIEF OF AMICUS CURIAE THE TREVOR PROJECT, INC. IN
SUPPORT OF PLAINTIFF-APPELLEE AND IN FAVOR OF
AFFIRMANCE**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(a)(4)(A), the undersigned counsel certifies that The Trevor Project, Inc. (“The Trevor Project”) is a 501(c)(3) organization. The Trevor Project does not have a parent corporation. The Trevor Project is not a publicly traded company, and no publicly held corporation owns 10% or more of its stock.

Dated: December 21, 2020

Respectfully submitted,

By: /s/ Abbey J. Hudson

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INTEREST OF THE TREVOR PROJECT

Founded in 1998, The Trevor Project Inc. (“The Trevor Project”) is the nation’s largest lesbian, gay, bisexual, transgender, queer, and questioning (“LGBTQ”) youth crisis intervention and suicide prevention organization. It is the only nationwide organization that offers accredited, free, and confidential phone, instant message, and text messaging crisis intervention services for LGBTQ youth. These services are used by thousands of individuals each month. Through analyzing and evaluating data obtained from these services and conducting national surveys, The Trevor Project produces innovative research and insights that bring new knowledge, with clinical implications, regarding issues affecting LGBTQ youth.

For decades, The Trevor Project has worked firsthand with transgender youth, many of whom struggle with the pain and stigma of being excluded from participating in school sports in a manner that is consistent with their gender identity. The Trevor Project is therefore acutely aware of the severe mental health effects that discrimination of this form can have on transgender youth, and can provide a unique and important perspective for the Court regarding the potential harm of lifting the District Court’s preliminary injunction.¹

¹ No party’s counsel authored this brief in whole or in part. No party or party’s counsel contributed money that was intended to fund preparing or submitting this brief. No person other than amicus curiae, its members, or its counsel contributed money that was intended to fund preparing or submitting the brief.

SUMMARY OF ARGUMENT

Transgender people, meaning people whose gender identity² differs from their sex assigned at birth, have “traditionally been unrecognized, unrepresented, and unprotected.”³ The enforcement of Idaho House Bill 500 (“H.B. 500”) will exacerbate a long history of discrimination against transgender people. H.B. 500 threatens immediate and irreparable harm to young people in Idaho by effectively denying transgender women and girls the opportunity to participate in sports;⁴ by forcing youth to undergo invasive testing as a prerequisite to participating in sports when there is a “dispute regarding” their sex;⁵ and by enforcing damaging and discriminatory rhetoric that transgender women and girls are not wanted in an activity—high school and college athletics—that for many is a hallmark of the educational experience.

² The term “gender identity” refers to an individual’s “deeply felt, inherent sense of their gender.” *Edmo v. Corizon, Inc.*, 935 F.3d 757, 768 (9th Cir. 2019). An individual’s gender identity is durable and cannot be changed by medical intervention. See *GLAAD Media Reference Guide - Transgender*, GLAAD, <https://www.glaad.org/reference/transgender>. Cisgender individuals have a gender identity aligning with the sex assigned at birth. *Id.*

³ *Grimm. v. Gloucester Cty. Sch. Bd.*, 853 F.3d 729, 730 (4th Cir. 2017) (Davis, J., concurring); See also *F.V. v. Barron*, 286 F. Supp. 3d 1131, 1145 (D. Idaho 2018) (“[T]ransgender people are unarguably a politically vulnerable minority.”).

⁴ Idaho Code Ann. § 33-6203(2).

⁵ *Id.* § 33-6203(3).

The Trevor Project’s daily experiences with transgender youth, corroborated by years of research, confirm that denying transgender youth the opportunity to join sports teams that align with who they are is a serious form of discrimination, which sends a harmful message of stigmatization and exclusion and deprives transgender youth of the physical, psychological, and emotional benefits of school sports. The Trevor Project urges the court to affirm the district court’s grant of provisional relief enjoining the enforcement of H.B. 500.

ARGUMENT

I. Discriminatory Laws and Policies Place Transgender Youth’s Health and Well-Being at Risk.

Laws like H.B. 500 stigmatize and exclude transgender youth, a group that already experiences significant harassment and discrimination.⁶ Discriminatory policies like H.B. 500 are inherently damaging to transgender youth as they single them out in order to exclude them and thus send the stigmatizing message that they are not deserving of inclusion or respect.⁷ Several courts have recognized the “detrimental physical and mental health effects” as well as the “injury” of

⁶ See *Grimm*, 972 F.3d at 610–12.

⁷ See, e.g., *Parents for Privacy v. Barr*, 949 F.3d 1210, 1239 n.21 (9th Cir. 2020) (recognizing the government’s interest in “assuring that [transgender youth] do not suffer the stigmatizing injury of discrimination by being denied access to multi-user bathrooms that match their gender identity”).

exclusionary policies denying transgender youth equal access.⁸ The Trevor Project's telephone lifeline and chat and messaging crisis services constantly receive outreach from transgender youth suffering from the effects of discriminatory policies like H.B. 500.⁹ When elected officials use their platforms to attack or make disparaging comments toward transgender people, The Trevor Project often sees an increase in crisis contacts from transgender youth.¹⁰

The Trevor Project documented the empirical impact of discrimination on transgender youth through a national cross-sectional survey of over 40,000 LGBTQ youth between the ages of 13 and 24, with approximately a third of respondents identifying as transgender and/or nonbinary.¹¹ It is the largest survey of LGBTQ youth mental health ever conducted.¹² The survey revealed a clear link between discrimination and risks to transgender youth: Youth who experienced

⁸ *Id.* at 1217, 1239; *Grimm*, 972 F.3d at 593.

⁹ The Trevor Project's evidence in Sections I and II underscores the discrimination that transgender youth regularly face and cuts directly against any argument under *Clark*, *ex rel. Clark v. Arizona Interscholastic Ass'n*, 695 F.2d 1126, 1131 (9th Cir. 1982).

¹⁰ THE TREVOR PROJECT, *Spike in Crisis Contacts Related to Anti-Trans Rhetoric* (Aug. 2, 2017), https://www.thetrevorproject.org/trvr_press/spike-in-crisis-contacts-related-to-anti-trans-rhetoric/.

¹¹ THE TREVOR PROJECT, *National Survey on LGBTQ Youth Mental Health* 14 (2020), <https://www.thetrevorproject.org/wp-content/uploads/2020/07/The-Trevor-Project-National-Survey-Results-2020.pdf> [hereinafter Trevor Project National Survey].

¹² *Id.* at 1.

discrimination were nearly three times as likely to report having attempted suicide than those who had not.¹³ Roughly 60% of LGBTQ youth reported being the subject of discrimination due to their sexual orientation or gender identity,¹⁴ and 86% of LGBTQ youth surveyed indicated that the current political climate negatively impacted their well-being.¹⁵ These statistics show the substantial risk of harm that H.B. 500, which overtly discriminates against transgender youth, will have on a group of youth already experiencing widespread institutional and daily discrimination.

The Trevor Project's findings are corroborated in peer-reviewed research. Several studies similarly detail the negative impacts of social discrimination on transgender youth's health and well-being.¹⁶ Research from GLSEN's 2019 School Climate Survey further corroborates The Trevor Project's findings, revealing that 59.1% of LGBTQ students reported experiencing LGBTQ-related discriminatory

¹³ *Id.* at 7.

¹⁴ *Id.*

¹⁵ *Id.* at 1.

¹⁶ See Myeshia Price-Feeney, Amy E. Green, and Samuel Dorison, *Understanding the Mental Health of Transgender and Nonbinary Youth*, 66 J. ADOLESCENT HEALTH 684, 689–90 (2020), [https://www.jahonline.org/article/S1054-139X\(19\)30922-X/pdf](https://www.jahonline.org/article/S1054-139X(19)30922-X/pdf); Erin C. Wilson et al., *The impact of discrimination on the mental health of trans*female youth and the protective effect of parental support*, 20 AIDS AND BEHAVIOR 1, 7–8 (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5025345/>.

policies or practices at school, and when compared to LGBTQ students who did not experience LGBTQ-related discrimination at school, were nearly three times as likely to have missed school in the past month, had lower GPAs, and had higher levels of depression.¹⁷

It should come as no surprise that, by contrast, when transgender youth are supported and affirmed, they benefit significantly.¹⁸ The Trevor Project found that transgender and nonbinary youth whose lives and experiences were affirmed by all or most people in their lives using pronouns consistent with their identities attempted suicide at half the rate of those who did not have their pronouns respected.¹⁹ Recent research has similarly found that “allowing children to present in everyday life as their gender identity rather than their natal sex is associated with developmentally normative levels of depression and anxiety.”²⁰ When transgender youth are supported by their families, there is “clear evidence that transgender children have levels of anxiety and depression no different from their nontransgender siblings.”²¹

¹⁷ GLSEN, *The 2019 National School Climate Survey* (2020), at xix, xx, <https://www.glsen.org/sites/default/files/2020-11/NSCS19-111820.pdf>.

¹⁸ *See, e.g.*, Trevor Project National Survey at 1.

¹⁹ *Id.*

²⁰ Kristina R. Olson et al., *Mental Health of Transgender Children Who Are Supported in Their Identities*, 137 PEDIATRICS 1, 5, 7 (2016), <https://pediatrics.aappublications.org/content/pediatrics/137/3/e20153223.full.pdf>.

²¹ *Id.* at 7.

Transgender students experience a greater incidence of emotional distress not because of their gender identity, but because of persistent discrimination by those around them.²² Affirming the District Court’s order enjoining the enforcement of H.B. 500 is necessary to protect transgender youth from the harms caused by discrimination.

II. Denying Transgender Youth Access to Participation on Sports Teams That Correspond with Their Gender Identities Will Cause Significant Harm.

The Trevor Project maintains data regarding the people who use its crisis and suicide prevention services.²³ Supervisors for The Trevor Project’s crisis services regularly assist transgender youth in navigating sports-related issues.²⁴ Many transgender youth have reached out to The Trevor Project with specific concerns about participation in sports at their high schools.²⁵ Terms like “sports” and

²² Joanna Almeida et al., *Emotional Distress Among LGBT Youth: The Influence of Perceived Discrimination Based on Sexual Orientation*, 38 J. YOUTH & ADOLESCENCE 1001, 1002 (2009), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3707280/pdf/nihms261853.pdf>.

²³ This information is derived from anonymized data that The Trevor Project has collected, compiled, and reviewed on its platforms—TrevorLifeline, TrevorText, TrevorChat, and TrevorSpace—pertaining to youth expressing concerns regarding school athletics. To protect the privacy of the youth using its services, The Trevor Project does not make this data publicly available.

²⁴ *Id.*

²⁵ *Id.*

“athlete” appear on TrevorText and TrevorChat hundreds of times.²⁶ The Trevor Project’s data confirm that fear of being denied the opportunity to participate in sports is a recurring theme for transgender youth.²⁷

Furthermore, The Trevor Project’s 2020 National LGBTQ Youth Mental Health Survey found transgender and/or nonbinary youth had significantly lower rates of participation in sports compared to their cisgender LGBTQ peers; youth who identified as transgender or nonbinary were nearly half as likely to report sports participation (17%) compared to cisgender LGBTQ youth, 27% of whom reported participating in sports.²⁸ Even so, Trevor’s research also revealed that transgender and nonbinary youth’s participation in sports is associated with positive well-being indicators. For example, 27% of transgender/nonbinary youth who participated in sports reported receiving mostly A’s compared to 19% who did not.²⁹

Building on its commitment to prevent suicide among LGBTQ youth athletes, The Trevor Project spent months meeting with LGBTQ athletes to understand the

²⁶ Id.

²⁷ Id.

²⁸ THE TREVOR PROJECT, *Research Brief: LGBTQ Youth Sports Participation* (June 23, 2020), <https://www.thetrevorproject.org/2020/06/23/research-brief-lgbtq-youth-sports-participation/>.

²⁹ THE TREVOR PROJECT, *Research Brief: The Well-Being of LGBTQ Youth Athletes* (Aug. 31, 2020), <https://www.thetrevorproject.org/2020/08/31/research-brief-the-well-being-of-lgbtq-youth-athletes/>.

challenges they face in youth sports.³⁰ One transgender youth athlete shared that when she came out as transgender, her love of sports greatly diminished because her school prevented her from using any gendered spaces, including locker rooms.³¹ As a result of the stress of her school's discriminatory behavior, this athlete began engaging in self-injury and ultimately attempted suicide.³² These are the types of injuries that, if not enjoined, H.B. 500 will exacerbate.

Nevertheless, participants shared that when surrounded by support and encouragement from teammates, transgender youth athletes thrived.³³ This is consistent with The Trevor Project's experience in its crisis services, as transgender youth regularly report to counselors that their participation in sports teams is an integral part of their lives and a source of positive energy.³⁴ Many students expressed that participating in sports built their self-esteem, created bonds with their peers, and supported their academic success.³⁵ For one transgender student who had been kicked out of her home after she transitioned, participating on a track team

³⁰ These accounts are derived from anonymized interviews of LGBTQ athletes conducted by The Trevor Project in the summer of 2020.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *See supra* note 20.

³⁵ *Id.*

served as a source of resilience and hope for the future.³⁶ Another student shared that their team is their only refuge.³⁷ A third shared that their coach was their “go-to” person that they were able to talk to about their challenges as a transgender youth.³⁸ H.B. 500 would jeopardize these positive experiences for transgender youth, excluding them from an important source of community and support. This is especially harmful given another statistic identified through The Trevor Project’s research; LGBTQ youth who report having at least one accepting adult were 40% less likely to report a suicide attempt in the past year.³⁹ Coaches, trainers, and other people associated with sports can serve as that critical adult.

H.B. 500 will greatly exacerbate the barriers and emotional hardships transgender youth already experience when participating in sports. Transgender students frequently express that they hope to be valued for their contributions to their school sports teams, just as other students are, and that they will not be excluded from participation simply for being transgender.⁴⁰ Yet, many transgender students

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ THE TREVOR PROJECT, *Research Brief: Accepting Adults Reduce Suicide Attempts Among LGBTQ Youth* (June 27, 2019), <https://www.thetrevorproject.org/2019/06/27/research-brief-accepting-adults-reduce-suicide-attempts-among-lgbtq-youth/>.

⁴⁰ *See supra* note 20.

express fear and distress that they will be prevented from playing or kicked off teams or excluded from sports that they love.⁴¹ A transgender student who had earned their spot on a cross-country team expressed that they began to experience harassment after their teammates learned they were transgender.⁴² A transgender basketball player who had played since childhood worried that if they transitioned they would not be able to play the sport in college.⁴³ A disabled transgender student expressed that they would have to give up on training for a Paralympic team because of the policies excluding transgender athletes.⁴⁴ Transgender students in Idaho will experience similar forms of emotional turmoil and pain if this Court allows H.B. 500 to be enforced, as the policy calls unnecessary attention to a youth's transgender status and forces them off teams that align with who they are.

Many transgender students who contacted the Trevor Project expressed their pain and distress at being excluded from sports because they are transgender. While the fear of losing their team was agonizing for many transgender students, the pain of being excluded from participation was even worse.⁴⁵ One student told a counselor

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

that their sport was the thing they loved most in the world and that the only thing that would ever make them any happier is if they were able to get sports back.⁴⁶

The common theme that The Trevor Project sees is that exclusionary policies like H.B. 500 send a message that transgender youth are unwanted and unwelcome in their school community. These youth fundamentally need the same respect, support, and access to school sports as their peers. H.B. 500 is an enormous step in the wrong direction.

CONCLUSION

Transgender women and girls simply want the same opportunities as their peers. Even for those transgender girls who may never join a sports team, benefits flow from knowing that their schools grant them an equal opportunity under the law. By excluding transgender women from participation in sports, Idaho's law demeans transgender women and legitimizes prejudice against them, which is particularly harmful to transgender youth.

For the foregoing reasons, The Trevor Project respectfully requests that this Court affirm the District Court's order enjoining the enforcement of H.B. 500.

Dated: December 21, 2020

Respectfully submitted,

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⁴⁶ *Id.*

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C), I certify that:

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 2,457 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionately spaced typeface using Microsoft Word 2010 Times New Roman 14-point font.

Date: December 21, 2020

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was 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.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

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