

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

JOHN AND JANE DOE NO. 1, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	Case No. 3:22-cv-00337
v.)	
)	
BETHEL LOCAL SCHOOL DISTRICT)	
BOARD OF EDUCATION, <i>et al.</i> ,)	Judge: Michael J. Newman
)	
Defendants.)	
)	
)	

**ANNE ROE’S MOTION TO INTERVENE AS DEFENDANT, AND
MOTION FOR LEAVE TO FILE *INSTANTER* MEMORANDUM IN OPPOSITION TO
PLAINTIFFS’ MOTION FOR PRELIMINARY INJUNCTION**

Proposed intervenor Anne Roe¹ (the “Movant”), through her undersigned counsel, respectfully submits this Motion to Intervene as defendant as of right pursuant to Federal Rule of Civil Procedure 24(a)(2), or, alternatively, for permissive intervention under Rule 24(b)(1). In support of this Motion, Movant respectfully refers the Court to the accompanying brief and exhibits.

Filed concurrently herewith is Movant’s Proposed Memorandum in Opposition to Plaintiffs’ Motion for Preliminary Injunction.² Movant respectfully requests leave to file this memorandum *instanter*.

¹ In addition to this Motion, Counsel for Movant have also filed a Motion to Proceed Pseudonymously on behalf of Movant Anne Roe.

² Movant also intends to comply with the applicable deadline for filing a responsive pleading to the Complaint, which is currently January 27, 2023. *See* Waiver of Service, ECF No. 7. The Sixth Circuit has recognized that a district court abuses its discretion by rejecting a “motion to intervene on the basis that it failed to attach a pleading,” so long as the parties were on notice of the nature

Pursuant to S.D. Ohio Civ. R. 7.3(b), counsel for Movant contacted counsel for Plaintiffs and for the existing Defendants, to request concurrence in the relief requested in this Motion. Defendants concur in the relief requested. Plaintiffs' counsel has stated that Plaintiffs have not yet decided whether to oppose intervention, but do not consent at this time.

Movant respectfully requests that this Court grant her Motion, permit her to intervene in this case as a defendant, and grant leave to file *instantly* her Memorandum in Opposition to Plaintiffs' Motion for Preliminary Injunction.

Respectfully submitted,

Date: January 9, 2023

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of the intervenor's claims and were not otherwise prejudiced." *Lattimer v. FCA US, LLC*, No. 1:19-cv-00117, 2019 WL 3323497, at *1 (E.D. Tenn. July 23, 2019) (quoting *Providence Baptist Church v. Hillandale Comm., Ltd.*, 425 F.3d 309, 314 (6th Cir. 2005)).

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**Applications for pro hac vice admission
forthcoming*

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Joanne Roe)*

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

JOHN AND JANE DOE NO. 1, *et al.*,

Plaintiffs,

V.

BETHEL LOCAL SCHOOL DISTRICT
BOARD OF EDUCATION, *et al.*,

Defendants.

Case No. 3:22-cv-00337

Judge: Michael J. Newman

**BRIEF IN SUPPORT OF ANNE ROE’S MOTION TO INTERVENE AS DEFENDANT,
AND MOTION FOR LEAVE TO FILE *INSTANTER* MEMORANDUM IN OPPOSITION
TO PLAINTIFFS’ MOTION FOR PRELIMINARY INJUNCTION**

INTRODUCTION

Anne Roe is a 14-year-old girl, and a current student enrolled in the ninth-grade class at Bethel High School. Anne is transgender and her use of the girls' communal restroom is at the center of the Plaintiffs' Complaint. ECF No. 1 ¶ 45. Simply put, Plaintiffs ask this Court to decide where Anne may use the restroom at her school. As the Court's adjudication of this action will directly impact her—in a deeply personal, tangible, and potentially harmful manner—she respectfully requests to intervene as a defendant and to file *instanter* a memorandum, attached hereto, opposing Plaintiffs' Motion for Preliminary Injunction.

Plaintiffs, a collection of students and parents, have sued Bethel Local School District (the "School District") because it allows Anne to use the same restrooms as all other girls. Plaintiffs complain that by doing so, the School District is infringing on Plaintiffs' purported right to exclude girls who are transgender from using facilities that are otherwise available to girls, and to exclude boys who are transgender from using facilities that are otherwise available to boys. There is no dispute that the School District gives the Plaintiff students access to single-person, private restrooms at their option, for use if they elect not to use a communal restroom. *See* Compl., ECF No. 1 ¶ 62. Plaintiffs do not and cannot complain that the School District is denying them access to a restroom designated for their gender, or mandating that they may only use a restroom to which they object. Rather, their complaint is that the School District is not denying Anne, and other students who are transgender, access to a restroom matching their gender.

Plaintiffs ask this Court, in part, to prohibit the School District from allowing Anne Roe and other transgender students to continue using the communal restroom consistent with their gender identity. *Id.* ¶¶ 115, 123–26, 129–32. If Plaintiffs were to prevail, Anne would be excluded from the communal facilities used by all other students. She would be forced to use single-

occupancy facilities that other students currently may *choose* to use, but that no other student who is not transgender is *required* to use. Such an outcome would cause irreparable harm to Anne, not least by endorsing the stigmatizing message that there is something so wrong with transgender students that their mere presence in the same facilities used by their peers is unacceptable. Because this lawsuit directly challenges Anne Roe’s full participation in school life, and because an adverse ruling would subject her to banishment as an outcast from facilities that her peers use, she has a substantial interest in this litigation that the existing parties cannot adequately represent.

FACTUAL BACKGROUND

I. ANNE ROE IS A STUDENT AT BETHEL HIGH SCHOOL WHO IS TRANSGENDER, AND REGULARLY USES THE GIRLS’ COMMUNAL BATHROOMS WITHOUT INCIDENT.

Anne Roe is a 14-year-old freshman girl at Bethel High School. She is also transgender. Decl. of Anne Roe (“Anne Roe Decl.”), Ex. A ¶¶ 2–4. Anne came out to her parents when she was eight years old, *id.* ¶¶ 5–6, began therapy for gender dysphoria when she was 11, *id.* ¶¶ 9–12, and started hormone therapy over a year ago. *Id.* ¶ 13. Today, although her sex assigned at birth was male, she lives consistently as a girl in all aspects of her life; transitioning has “completely changed [her] life for the better.” *Id.* ¶¶ 4, 14.

Since January 2022, when she was an eighth-grade student at Bethel Middle School, Anne has consistently used the girls’ communal restroom at school, having received permission from the principal in December 2021. *Id.* ¶¶ 40–41. She continues to use the girls’ restroom now as a student at Bethel High School, which shares the same building as the middle school. *See id.* She has never had any incidents or issues with other students related to her use of the girls’ communal bathroom. *Id.*

II. BEING REQUIRED TO USE SINGLE-OCCUPANCY RESTROOMS HAS SUBJECTED ANNE TO BULLYING, HARASSMENT, THREATS, AND MEDICAL HARM.

Receiving access to the regular school restrooms was a “turning point” for Anne, *see id.* ¶ 42, and she has not always enjoyed this access. When she first started at Bethel Middle School in 2020, the middle of her sixth-grade year, she used only the school’s single-occupancy restrooms, which she and her mother felt at that time “would be safest and most comfortable for [her] to use[.]” *Id.* ¶ 22. Like many students who come out as transgender, Anne faced severe harassment at her previous school—culminating in a serious physical assault—and learned that “for [her] own safety, and to avoid bullying, [she] needed to avoid using the boys’ communal restroom.” *Id.* ¶ 18; *see also id.* ¶ 38.

The arrangement of using only single-occupancy restrooms eventually became untenable, however, for multiple reasons. First, being subjected to a different restroom arrangement from her peers outed Anne as transgender, opening her up to humiliation and social stigma. *Id.* ¶ 31 (“It puts a target on your back.”). She was subjected to shouted transphobic remarks, slurs, and physical harassment—frequent shoving, shoulder-checking, and worse—in the school hallways and classrooms. The isolation of using only a single-occupancy restroom made the bullying worse, and students taunted her for using the “sissy bathroom.” *Id.* ¶¶ 32–33. Second, Anne has a medical condition that makes ready access to a restroom critical; she has been repeatedly advised by doctors never to hold in urine. *Id.* ¶ 26. Because of this medical advice not to hold her urine, she was regularly late to class, or had to absent herself from class time, missing lessons and sometimes being subject to discipline. *Id.* ¶¶ 26–30.

Eventually Anne began to avoid drinking liquids and to hold her urine, contrary to her doctor’s instructions, simply to avoid bullying. *Id.* ¶ 34. She suffered from dehydration and UTIs

as a result and found it difficult to concentrate in school. Her grades suffered, she found it difficult to socialize with classmates, and she rushed home every day after school to use the restroom. *Id.* ¶¶ 34–36.

III. ANNE HAS A STRONG INTEREST IN CONTINUED RESTROOM ACCESS.

Since being allowed to use the same restroom as other girls, Anne has thrived at Bethel High School. She describes receiving access to the girls’ restrooms as “a turning point.” *Id.* ¶ 42. Her grades have improved, and she feels “like [she] finally belong[s], and not like the outcast who has to use the separate restroom.” *Id.* ¶ 42–43. Anne’s mother describes her as “a whole different person,” “visibly more invested in school and her extracurricular activities,” having gone “from being anxious and depressed to extremely outgoing.” Decl. of Joanne Roe, Ex. B ¶ 36. She is “completely flourishing.” *Id.* ¶ 17.

Banning Anne from the girls’ restrooms—the relief Plaintiffs request—would undermine her mental and physical health as well as her ability to engage in school. She would again feel like an outcast and be subject to the same bullying as before. *See* Anne Roe Decl. ¶¶ 44–47. She would expect the harassment to resume—essentially returning her to the untenable situation she was in previously. *Id.* ¶ 48.

ARGUMENT

“As a general rule, a person cannot be deprived of his or her rights in a proceeding to which such person is neither a party nor summoned to appear in the legal proceeding.” *Jansen v. City of Cincinnati*, 904 F.2d 336, 339–40 (6th Cir. 1990). But as noted above, Anne Roe’s rights are inextricably linked to the disposition of this matter. Plaintiffs have, for example, directly asked this Court to adjudicate her entitlement to school facilities access under federal law, and asked for an injunction that would bar her from the girls’ communal restroom. Her participation as an

intervenor is therefore warranted and appropriate here, under either the principles of intervention as of right, or permissive intervention.

I. ANNE ROE IS ENTITLED TO INTERVENE AS OF RIGHT.

Under Federal Rule of Civil Procedure 24(a)(2), individuals may intervene as of right if: (1) their motion to intervene is timely; (2) they have a substantial legal interest in the case; (3) their absence from the case would impair that interest; and (4) their interest is not adequately represented by the parties. *Wineries of the Old Mission Peninsula Ass’n v. Twp. of Peninsula, Mich.*, 41 F.4th 767, 771 (6th Cir. 2022). Anne Roe satisfies all of these elements, entitling her to intervene as of right.

A. Anne Roe’s Motion Is Timely and Her Intervention Will Neither Delay the Proceedings Nor Prejudice Either Party.

In considering the timeliness of a motion to intervene, courts consider five factors: (1) the point to which the suit has progressed; (2) the purpose for which intervention is sought; (3) the length of time preceding the application during which the proposed intervenors knew or should have known of their interest in the case; (4) the prejudice to the original parties due to the proposed intervenors’ failure to promptly intervene after they knew or reasonably should have known of their interest in the case; and (5) the existence of unusual circumstances militating against or in favor of intervention. *In re Automotive Parts Antitrust Litig., End-Payor Actions*, 33 F.4th 894, 900 (6th Cir. 2022). Each of those factors support granting Roe’s motion to intervene.

Plaintiffs filed their Complaint on November 22, 2022, and simultaneously moved for a protective order. ECF Nos. 1, 3. They moved for a preliminary injunction on December 2, 2022. ECF No. 5. Pursuant to this Court’s December 13, 2022 Scheduling Order, Defendants’ response to Plaintiffs’ motion for a preliminary injunction is due on January 9, 2023—the date of this Motion—and Plaintiffs’ reply brief is due on January 23, 2023. ECF No. 9. On December 21,

2022, this Court issued a stipulated protective order. ECF No. 11. Defendants have not yet responded to the Complaint, and no response is currently due until January 27, 2023, nearly three weeks from the date of this Motion. *See* Waiver of Service, ECF No. 7.

This motion to intervene thus comes before this matter has significantly progressed, before the named Defendants’ deadline to file responsive pleadings, and before this Court has ruled on Plaintiffs’ motion for a preliminary injunction. To date, the Court has ruled only on the Plaintiffs’ motion for a protective order, and Anne Roe’s intervention will not disturb or impact the Court’s ruling on that matter. Given that the purpose of her intervention is to protect her interests and preserve her ability to continue to use the communal girls’ restrooms, Anne Roe’s motion to intervene is appropriately timed to coincide with the current deadline for the Defendant School District to respond to Plaintiffs’ motion for preliminary injunction.

Together with this motion, Anne also seeks this Court’s leave to file *instanter* a proposed memorandum in opposition to Plaintiffs’ motion for preliminary injunction, meeting the deadline for Defendants’ opposition brief.

Anne Roe and her counsel have worked diligently to ensure that this motion and brief are timely filed, and will continue to meet the Court’s deadlines and the deadlines to which the parties have agreed. Her intervention in this matter will neither prejudice Plaintiffs’ participation in this lawsuit nor unduly delay these proceedings.

B. Anne Roe Has a Substantial Interest in Continuing to Have Access to the Same Facilities and Educational Opportunities as Other Students.

The Sixth Circuit subscribes to an “expansive notion of the interest sufficient to invoke intervention as of right.” *Wineries*, 41 F.4th at 772; *see also Grutter v. Bollinger*, 188 F.3d 394, 398 (6th Cir. 1999). Courts are to engage in fact-specific balancing of countervailing considerations. *Wineries*, 41 F.4th at 772. While an intervenor need not allege a “specific legal or

equitable interest,” she must assert an interest that is “significantly protectable.” *Id.* When the facts could go either way, “close cases should be resolved in favor of recognizing an interest[.]” *Grutter*, 188 F.3d at 399.

Not only does this case threaten to remove Anne Roe’s access to restrooms consistent with her gender identity, but it was filed in large part for that specific reason. Anne Roe is a student who is transgender and currently attends Bethel High School. A ruling in this case will directly implicate her use of the communal girls’ restroom. As discussed above and detailed in her supporting declaration and memorandum in opposition to a preliminary injunction, Anne Roe’s ability to use the girls’ communal restroom at school is critically important to her and has drastically improved her experience and performance at school. Being denied access to the girls’ communal facilities and ordered to use the single-occupancy restrooms would not only be physically harmful to her health, but it would also be mentally and emotionally distressing, humiliating, and stigmatizing, and it would impair her ability to fully participate in school life.

The Southern District of Ohio has recognized similar interests in the recent past. It granted a transgender student’s motion to intervene in a lawsuit brought by a school district challenging the U.S. Department of Education’s finding that the school district’s policy barring the student from the girls’ restroom—the restroom matching her gender identity—constituted unlawful discrimination. *Bd. of Educ. of the Highland Local Sch. Dist. v. U.S. Dep’t of Educ.*, No. 2:16-CV-524, 2016 WL 4269080 (S.D. Ohio Aug. 15, 2016). The Court found that the student’s intervention sought to “vindicate her single interest in being treated in a non-discriminatory manner by her school[.]” which easily satisfied the Sixth Circuit’s “expansive notion of the interest sufficient to invoke intervention of right[.]” *Id.* at * 3.

The Sixth Circuit’s decision in *Grutter* further supports this conclusion. There, a group of white students challenged the University of Michigan’s consideration of applicants’ race in its admissions policy. *Grutter*, 188 F.3d. at 396–97. The Sixth Circuit held that a substantial interest is not limited to a “legally enforceable right” and affirmed the district court’s finding that the proposed intervenors—minority individuals who had applied or intended to apply to the University—had a direct and substantial interest in gaining admission to the University. *Id.* at 399. Similar to the *Grutter* plaintiffs, Plaintiffs here seek to alter a decision made by Anne’s school, specifically by prohibiting the School District from allowing her to use the communal girls’ restroom. As such, her interest in the resolution of this case is as substantial as that of those *Grutter* intervenors who had applied to the University under its policy before the legal challenge. And compared to the *Grutter* intervenors who had not yet but merely intended to apply for admission, Anne Roe’s interest is even more substantial.

In light of the facts set forth in the accompanying declarations, and the existing case law of this Court and of the Sixth Circuit, Anne Roe has shown that she has a substantial legal interest in this lawsuit, warranting her intervention as of right under Rule 24(a)(2).

C. Anne Roe’s Absence Would Impair Her Interest in This Lawsuit.

Once a proposed intervenor has shown her substantial interest, she need only demonstrate “that impairment of its substantial legal interest is possible if intervention is denied.” *Wineries*, 41 F.4th at 774 (quoting *Grutter*, 188 F.3d at 399). This is a “minimal” burden, and is satisfied whenever “disposition of the present action would put the movant at a practical disadvantage in protecting its interest.” *Wineries*, 41 F.4th at 744. Anne Roe easily satisfies this minimal burden.

A decision in Plaintiffs’ favor would impair Anne Roe’s interests in being permitted to use school facilities on the same basis as all other students, and in being free from discrimination on the basis of her sex and gender identity. The relief Plaintiffs seek includes an injunction that would

effectively prevent the School District from permitting Anne Roe to use the communal girls' restroom, and a declaratory judgment that would specifically adjudicate the rights of individuals in Anne's position. *See* Compl., ECF No. 1 at 25 (prayer for relief seeking, *inter alia*, a "[d]eclaratory judgment that Title IX expressly provides for separate intimate facilities based on biological sex"). She will therefore be directly regulated, have her rights adjudicated, and be subject to the ultimate decision in this case. This impairment is even more direct than those this Court has previously recognized as adequate for the purposes of intervention as of right under Rule 24(a)(2). *Bd. of Educ. of the Highland Local Sch. Dist. v. U.S. Dep't of Educ.*, No. 2:16-CV-524, 2016 WL 4269080 (S.D. Ohio Aug. 15, 2016). In *Highland*, the transgender student moving to intervene had not yet acquired the access to the communal restrooms that the plaintiff's lawsuit sought to prevent, but this Court still found that, "impairment of [her] interest is, at the very least, possible[.]" if the plaintiff prevailed. *Id.* at *3.

Similarly, Anne Roe's legal interest is more likely to be impaired than is necessary to pass Rule 24(a)'s impairment test. In *Grutter*, the Sixth Circuit held that a ruling for the plaintiffs would adversely affect the interests of proposed intervenors, not because that ruling would preclude their admission, but instead because it would diminish their likelihood of admission to the university and reduce the number of minority students at the university. *Grutter*, 188 F.3d at 399. By relying in part on evidence of such declines in the rates of admission under similar race-blind schemes in California and Texas, the Court concluded that the proposed intervenors had sufficiently shown that their interest would be "impaired to some extent" if the University were precluded from considering race as a factor. *Id.* at 400.

Here, a ruling in Plaintiffs' favor would certainly and directly impair Anne Roe's interest in continuing to access the girls' communal restroom like all other girls at Bethel High School,

and her interest in avoiding the stigma and humiliation of being forced to use a separate single-use facility.

D. The Existing Parties Do Not Adequately Represent Anne Roe’s Interests in This Lawsuit.

The inadequate-representation requirement imposes a “minimal burden” on a proposed intervenor, who need only show “that there is a *potential* for inadequate representation.” *Highland*, 2016 WL 4269080, at *3 (quoting *Grutter*, 188 F.3d at 400–01). While there must be more than a “slight difference in interests between the proposed intervenors and the supposed representative[,]” their interests need not be “wholly adverse.” *Jansen v. City of Cincinnati*, 904 F.2d 336, 342–43 (6th Cir. 1990). Moreover, the Sixth Circuit does not impose a higher standard for the inadequacy of representation requirement in cases involving a governmental entity. *Grutter*, 188 F.3d at 400. Nor must the proposed intervenor assert any specific separate or additional defenses that the supposed representative will not. *Id.*

While Defendants and proposed intervenor Anne Roe share the ultimate objective of defeating at least a subset of the Plaintiffs’ claims, Defendants cannot adequately represent Roe’s interests. She has a direct personal stake in the policy that is under attack, whereas Defendants have an obligation to all students and might elect to change their policies in the future.

The Sixth Circuit’s ruling in *Jansen* is instructive. In *Jansen*, a group of white applicants challenged the City of Cincinnati’s use of a race-based hiring practice, which the City implemented because of a consent decree that resolved an earlier lawsuit. 904 F.2d at 337–38. The plaintiffs from the earlier lawsuit moved to intervene in *Jansen*, asserting their substantial interest in the validity and enforceability of the consent decree they had previously fought to obtain. *Id.* The Court of Appeals concluded that, although both the proposed intervenors and the city shared the same ultimate objective of overcoming the Plaintiffs’ challenge to the Defendant’s policy, their

interests were distinct. *Id.* at 342–44. The intervenors had an interest in the present and future employment and promotion in the City’s Division of Fire, which was the subject of the consent decree, whereas the City’s primary interest was defending its hiring practices that were the subject of the litigation. *Id.*

Similarly, the School District here is a public entity charged with serving the interests of *all* students, including those who seek to deny Anne Roe access to the girls’ communal restrooms, whereas Anne Roe seeks to represent her specific interests as a transgender student. Her interests in this lawsuit are personal, and a ruling in Plaintiffs’ favor would directly, personally, and immediately affect her. The School District would not suffer this same harm if the Plaintiffs were to prevail.

In light of Anne Roe’s unique and personal interests in this litigation, the specific disadvantages she will suffer if the Plaintiffs prevail, and the School District’s responsibilities towards all students, the School District cannot adequately represent Anne Roe’s interests in her absence.

II. ANNE ROE MEETS THE REQUIREMENTS FOR PERMISSIVE INTERVENTION.

In the alternative to intervention as of right, this Court can and should permit Anne Roe’s intervention under Federal Rule of Civil Procedure 24(b). Courts have discretion under Rule 24(b) to permit intervention by any person whose motion is timely and whose claim or defense shares a common question of law or fact as those at issue in the lawsuit, so long as the intervention will not unduly delay or prejudice the adjudication of the original parties’ rights. *Buck v. Gordon*, 959 F.3d 219, 223 (6th Cir. 2020); *see also Highland*, 2016 WL 4269080, at *4. Anne’s motion is timely, as discussed above, and she meets the other criteria for permissive intervention as well.

In their Complaint, Plaintiffs assert that the School District is, *inter alia*, violating the Plaintiffs' rights to equal protection under the law by "treating religious students and parents, including the Plaintiffs, worse than the transgender students and parents and denying religious students, including the Plaintiffs, an educational benefit that the Board is providing for the transgender students." Compl., ECF No. 1 ¶ 124. They further assert that by allowing Anne Roe to use the girls' communal restroom, the School District has substantially burdened their free-exercise rights under the Ohio and federal Constitutions. *Id.* ¶¶ 129–31. Additionally, they have asked this Court to issue a declaratory judgment adjudicating the scope of Anne's rights, and those of other transgender students, under Title IX. *Id.* ¶¶ 106–08.

Unlike the Plaintiffs, Anne Roe's use of the girls' communal restroom denies no students—including Plaintiffs—the right to access that restroom. Also, unlike the Plaintiffs, Anne Roe has never sought to exclude any other girls from that restroom. At least as to Plaintiffs' equal protection claim, the Court will be tasked with determining whether Anne and the student Plaintiffs are in fact similarly situated with respect to their access to the restroom facilities while enrolled at Bethel Local School District.

Like the proposed intervenor in *Highland*, Anne's claims "undoubtedly share common legal and factual questions with the Plaintiff[s'] claims in this case." *Highland*, 2016 WL 4269080, at *4; *cf. Buck*, 959 F.3d at 220, 223 (reversing the district court's denial of a same-sex couple's motion for permissive intervention in a suit by a faith-based child placement agency challenging the state's policy prohibiting discrimination on the basis of sexual orientation, and finding that the claims asserted by the agency and the couple necessarily involved common questions of law).

Anne Roe has filed this motion to intervene promptly and before any substantial progress in the case has occurred. As such, granting her permissive intervention would cause neither delay

nor prejudice to the existing parties. Moreover, “the benefits to judicial economy of warding off additional suits and addressing the relevant issues with finality” weigh strongly in favor of permitting Anne Roe to intervene under Rule 24(b). *Highland*, 2016 WL 4269080, at *4.

As such, if this Court declines to find intervention warranted under Rule 24(a)(2), Anne Roe respectfully requests that intervention be permitted under Rule 24(b)(1).

CONCLUSION

For all of the foregoing reasons, Anne Roe respectfully requests that this Court grant her motion to intervene as of right pursuant to Federal Rule of Civil Procedure 24(a)(2), or in the alternative, permit her to intervene pursuant to Rule 24(b)(1).

Respectfully submitted,

Date: January 9, 2023

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**Applications for pro hac vice admission
forthcoming*

*Counsel for Proposed Defendant-Intervenors Anne
Roe (a minor, by and through her legal guardian
Joanne Roe)*

CERTIFICATE OF SERVICE

I, David J. Carey, hereby certify that on this 9th day of January, 2023, I electronically filed the foregoing with the Clerk of Court for the United States District Court for the Southern District of Ohio via the ECF system, which will send notification of such filing to all counsel of record.

/s/ David J. Carey

Exhibit A

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

JOHN AND JANE DOE NO. 1, <i>et al.</i> ,)	
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Plaintiffs,)	
)	Case No. 3:22-cv-00337
v.)	
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BETHEL LOCAL SCHOOL DISTRICT)	
BOARD OF EDUCATION, <i>et al.</i> ,)	Judge: Michael J. Newman
)	
Defendants.)	
)	
)	

DECLARATION OF ANNE ROE

I, Anne Roe,¹ declare as follows:

1. I have actual knowledge of the matters stated in this declaration, which I submit in support of my motion to intervene in the above-captioned matter.

PERSONAL BACKGROUND

2. I am a 14-year-old resident of Tipp City, Ohio.

3. I am currently enrolled in the ninth grade at Bethel High School. In addition to my classes there, I participate in the marching band, play the flute, and am planning to join the theater and newspaper clubs this year.

4. I am a girl who is transgender. Although my sex assigned at birth was male, I live consistently as a girl in all aspects of my life.

¹ Counsel for Proposed Intervenor have also filed a Motion to Proceed Pseudonymously on behalf of Anne Roe.

5. From as far back as I can remember, I always knew that I was not a boy. As a child, I liked to do things that are associated with girls, like playing with dolls, wearing dresses and high heels, and painting my nails. When I was around eight years old, I first learned about transgender people while I was visiting an uncle who is a transgender man. I was relieved that I finally had the words to describe what I have always known about myself.

6. When I returned from visiting my uncle, I immediately told my parents that I am a transgender girl.

7. Initially, my parents did not fully understand what it meant to be transgender, and did not know how to support me.

8. During this time, I was still being treated like a boy. I was extremely depressed as a result. I avoided going out and socializing because I hated being treated like a boy. Now that I understood more about my gender and my identity, trying to pretend I was a boy was extremely painful and my mental health suffered.

9. When I about eleven years old, I knew that my body would begin going through puberty and changing in ways that would be horrible for me. I remember having nightmares about growing up to become a man, and it was terrifying. Out of desperation, I started looking for ways to buy puberty blockers.

10. When my mom discovered that I was trying to find these medications, she really started to understand that my being transgender was real and could not be ignored. At that point, my mom and stepdad started researching and learning about transgender people. Since then, they have become incredibly supportive of my transition, and have completely accepted me as their daughter.

11. Following this period of learning, my mom took me to meet with a therapist to talk about my gender dysphoria and about being transgender. Therapy has helped me in so many ways, and I continue to go to therapy to this day.

12. In or around December of 2019, I began taking puberty blockers in order to avoid the traumatic experience of undergoing male puberty. It was such a huge relief for me that my nightmares of transforming into a man would not become my reality.

13. In September 2021, I started hormone therapy as part of the treatment for my gender dysphoria.

14. Coming out as transgender, and receiving the social and medical support I needed, have completely changed my life for the better. I am more emotionally stable and much less depressed than I was before transitioning.

15. Most people I encounter in the world recognize and treat me as a girl. When I go out in public, such as to the store or to the mall, people see me and treat me like other girls my age. They use the pronouns “she” and “her.” I have become much more social and willing to venture out of my house because I am no longer treated like a boy.

16. I know that I would not have made it this far if it weren’t for my coming out as transgender, receiving all of the love and support from my family and friends, and obtaining the medical care to treat my gender dysphoria.

BETHEL LOCAL SCHOOL DISTRICT

17. From kindergarten through the beginning of sixth grade, I attended Fairborn City Schools in Fairborn, Ohio.

18. The time I spent as a student at Fairborn City Schools was extremely difficult. I endured constant bullying and harassment by other students ever since I came out as transgender,

which I did at school in sixth grade. The bullying and harassment were both verbal and physical, and were always related to my gender identity, gender expression, and my general femininity. I quickly learned that for my own safety, and to avoid bullying, I needed to avoid using the boys' communal restroom.

19. I was also physically attacked by another student because I was transgender. I was beaten up so badly that later, I couldn't remember exactly what had happened. That incident happened in the school lunch room, during a time period when I was still using the boys' communal bathroom at Fairborn.

20. Around the middle of sixth grade, near the end of 2019, I moved with my mom and stepdad to Tipp City, Ohio. In January of 2020 I started at a new school, Bethel Middle School.

21. Even before I stepped foot on the campus of Bethel Middle School, my family and I informed the school's administration that I am transgender.

22. At that time, I felt that it would be safest and most comfortable for me to use the single-use restrooms. After having experienced so many problems at Fairborn, I wasn't sure of what to expect at this new school or what I could request in terms of access to the restrooms.

23. From the day I started at Bethel Middle School in January of 2020 until December of 2021, I used the school's single-use restrooms. At various times during my time at Bethel Middle School and Bethel High School, there have been several single-use restrooms at the school. One is located in the Nurse's office near the Bethel Middle School Gymnasium. There are two separate single-use restrooms designated as Family Restrooms located on either side of the Bethel Middle School Gymnasium. And there are two single-use restrooms designated as

Faculty Restrooms, one of which is located in the Staff Workroom, and the other of which is located in between the Bethel Middle School Office and the Bethel High School Office.

24. Of these five single-use restrooms, I had access to and used the single-use restroom inside the Nurse's Office, and the single-use Faculty Restroom located in between the Middle School and High School offices. The Family Restrooms would first open in or around August of 2022. The restroom in the Staff Workroom generally was not available for students.

25. Even though I initially asked for permission to use the single-occupancy restrooms, being limited to these few restrooms quickly became a problem.

26. Since birth, I have had a medical condition that makes it very important for me to have easy access to restrooms. This condition can make urination unpredictable and suddenly urgent. My doctor has told me consistently never to hold in urine, and to make sure I always go to the restroom immediately when I need to.

27. Generally, students only have about three minutes in between each period. The only exceptions are immediately before and after lunch, when we are given five minutes. During these three-minute passing periods, students must get from one class to another class, access their individual lockers if necessary, and use the restroom.

28. The restrooms at Bethel Middle School and Bethel High School can be crowded in between classes, because a lot of students are trying to use the same bathrooms in a short amount of time. All students are allowed to use the two single-use Family Restrooms, which means that those would sometimes be occupied by another student during passing periods. And the faculty would also use the one single-use Faculty Restroom that I had permission to use, which meant that it too was unavailable at times. This situation was difficult for me because of my medical condition.

29. When I was still using the single-use restrooms, it was difficult for me to use the restroom in between classes without being tardy to my class. I was regularly late to class during middle school, would miss part of the class time, and was disciplined several times, receiving a “strike” on my disciplinary record for being late. At least one time, I was sent to the principal’s office for being late to class because I needed to use the restroom.

30. To avoid being late, sometimes I would ask for permission to go to the restroom during class. But going to the restroom during class is distracting. I would miss some of the class instruction or activities and then I would have to try and catch up later.

31. Using the single-occupancy restroom also singled me out and called attention to the fact that I am transgender. It puts a target on your back. During the time that I would use the single-use restrooms, I started noticing that other students would taunt and harass me for using the “sissy bathroom.” I saw this happen to other transgender and gender nonconforming students who used the single-use bathroom. It was humiliating for me to walk to and from the single-occupancy restroom, passing by the other students who were using the communal restrooms.

32. I continued to get comments like this throughout middle school. Some of the other students would shout transphobic remarks or slurs, refuse to use my preferred pronouns, or ask inappropriate and invasive questions about my body. Students would routinely push or shoulder-check me in the hallways. Once, I heard a student in the hallway proclaim, “we should kill all transgenders.” Another time, someone left a pair of scissors on my seat in class, with the points facing upwards. In another incident, a student who had consistently made fun of me for being transgender sprayed me with antibacterial disinfectant. I was harassed in some way almost every day, especially in seventh and eighth grade.

33. Even though not all of the harassment had to do with restrooms specifically, I believe that having to use only a single-occupancy restroom made the bullying and harassment worse. It singled me out and called attention to the fact that I am transgender, which opened me up to bullying.

34. Eventually, because of the bullying and harassment, I started holding in my urine even when I had had time to use the single-occupancy restroom. I would often avoid drinking any liquids while at school so that I wouldn't have to urinate, to avoid using the restroom at school. This became a pretty regular occurrence for me.

35. Not using the restroom all day began negatively affecting my school performance. Although this meant I was no longer missing classes because I was late or because I was using the restroom during class, it became almost impossible for me to concentrate on the material I was meant to learn. My grades got worse as a result. It also made it difficult for me to socialize and interact with my classmates, through clubs and other after-school activities, because I would rush home immediately after school so that I could relieve myself. When I arrived home, I would run to the restroom.

36. Not using the restroom all day also began to negatively affect my physical health. During this time, I had two to three urinary tract infections from holding in my urine all day, and I felt dehydrated because I wasn't drinking liquids. It caused me a lot of pain and discomfort, and became unbearable.

THE SCHOOL DISTRICT'S ACCOMMODATION

37. My mom consistently told me she was worried about how the limited restroom access was impacting my health and my school performance. She would encourage me to use the restroom if and when I needed to, and to not hold in my urine because of the health impact. In or

around late 2021, after a doctor again reminded me not to try holding my urine, my mom and I decided that I should start using the girls' communal restroom in addition to the single-occupancy restrooms. This would give me the same number of restroom options as other students, and make it easier for me to perform my basic bodily functions without sacrificing academic performance.

38. At this time, I had also developed more of a friend and support network at the school, and I felt safe and comfortable using the girls' communal restroom. I would not feel safe using the boys' communal restroom because I am not a boy and I have experienced very serious and scary bullying and harassment when I used the boys' communal restroom at Fairborn City Schools.

39. My mom and I decided to reach out to the school administrators to inform the school that I needed to start using the girls' communal restroom. The last time we had spoken with the Middle School Principal about restrooms, we had all agreed that I would use the single-use restrooms because that is what felt safe for me at the time. But we had never specifically asked before about whether the school would allow me to use the girls' communal restroom.

40. In December of 2021, the Principal of Bethel Middle School, Mr. Triplett, and the Bethel Local School District Superintendent, Mr. Firks, told me that I could begin using the girls' communal restroom in January of 2022, when all the students returned to school from Winter Break.

41. Since January 2022, I have regularly used the girls' communal restroom. I have never had any incidents or issues with other students about doing so. I have continued using the girls' communal restroom as a student at Bethel High School, where I started as a freshman in 2022.

42. Having access to the regular restrooms has been a turning point, and has been amazing. I am super excited to not have to hold in my urine all day. My grades have improved now that I can focus on learning the materials during class. Also, with more restroom options I am able to use the restroom during passing periods and still make it to class on time. This means I don't have to sacrifice instruction time.

43. Also, being allowed to use the girls' communal restroom, like every other girl at my school, has helped me feel like I finally belong, and not like the outcast who has to use the separate restroom. Suddenly it wasn't everyone and then me; it was everyone *and* me.

44. I would be devastated and hurt if I were to be told that I could no longer use the girls' communal bathroom, like the other girl students at my school. It would be humiliating and degrading to be treated differently from other girl students by being required to use different restrooms.

45. It would feel unfair that my physical health is being harmed and my educational opportunities are being limited by denying me access to the same restrooms as other girls because I am transgender.

46. All of the single-use restrooms that I'm allowed to use are on the opposite side of the school from the Bethel High School classrooms. They're much farther away than the closest communal girls' and boys' restrooms, which are located right near most of the high school classrooms.

47. I would feel sad that I am being treated like a danger or an outcast, when I have never caused harm to anyone. It would be especially sad, given how much harassment and even violence I've suffered at the hands of classmates because I am transgender.

48. If I was forced to use only the single-occupancy restrooms again, I would also expect more uncomfortable questions and harassment. I don't have access to any single-use restrooms in the Bethel High School section of the school, so access to one of the single-use restrooms requires that I go to Middle School. I have been asked by other students what I, a high school student, was doing in the Middle School section. The harassment might even be worse than it was before, because of that.

49. It is very important to me that I be allowed to participate in this lawsuit. I am only halfway through my freshman year at Bethel High School, which means I have the rest of this year and another three years at this school. During that time, it is important to me that I continue to receive the same opportunities as my classmates, including access to the same facilities as other girls.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on

January 6th, 2023

Anne Roe
Anne Roe

Exhibit B

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

JOHN AND JANE DOE NO. 1, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	Case No. 3:22-cv-00337
v.)	
)	
BETHEL LOCAL SCHOOL DISTRICT)	
BOARD OF EDUCATION, <i>et al.</i> ,)	Judge: Michael J. Newman
)	
Defendants.)	
)	
)	

DECLARATION OF JOANNE ROE

I, Joanne Roe¹, declare as follows:

1. I have actual knowledge of the matters stated in this declaration, which I submit in support of Anne Roe’s motion to intervene in the above-captioned matter.
2. I am a 40-year-old resident of Tipp City, Ohio.
3. I am the mother of three children, including Anne Roe, and the stepmother to two children.
4. Anne and my youngest biological child currently attend Bethel High School and Bethel Elementary School, respectively.
5. My oldest biological child attended and graduated from Bethel High School in 2021.

¹ Counsel for Proposed Intervenor have also filed a Motion to Proceed Pseudonymously on behalf of Joanne Roe.

ANNE ROE

6. My husband, John Roe, and I have been together since 2011. He has been heavily involved in raising and supporting Anne Roe.

7. I have always known that Anne was not like the boys her age. From a young age, she was very feminine in her demeanor and interests. She like playing with dolls instead of playing with trucks. I remember her as a child wanting to wear dresses and heels, and to paint her nails.

8. At that time, I did not know or understand what it meant to be transgender. I just assumed that Anne was feminine.

9. Without fully understanding who she was, I tried to encourage Anne to be more masculine by telling her to play with trucks, for example.

10. When she was about 8 years old, Anne told me and John Roe that she was transgender. She had just returned from spending time with her uncle, who is a transgender man, and told us that she was a transgender girl.

11. I did not know what that meant, and I initially assumed that she was just trying to be like her transgender uncle. Looking back now, I wish that I had spent more time trying to understand what Anne was telling us, and learning about how to support her.

12. For the next few years, we continued to treat Anne like a boy. During this time, she became very depressed and anxious. She was very introverted, not wanting to interact with others. I was so scared for her but did not know what to do.

13. When she was 11 years old, I found Anne searching for puberty blockers to purchase on the internet. At this point, I realized that her being transgender was not a phase or

something that we could just ignore. I realized that in order for her to live a long and healthy life, she would need our love and support.

14. In or around September 2019, Anne began receiving therapy to help support her mental wellness. She also began receiving other medical care to treat her gender dysphoria.

15. In late 2019, she was prescribed and began taking puberty blockers, which prevented her from undergoing the physical changes associated with male puberty.

16. In September 2021, she began hormone therapy, to further align her body with her gender identity.

17. Receiving this treatment for her gender dysphoria has radically changed Anne. She used to struggle with depression, and anxiety, and she used to harm herself. Now she is completely flourishing.

18. When I look at her now, I can see that she is the person that she is supposed to be.

BETHEL LOCAL SCHOOL DISTRICT

19. In 2019, John Roe and I decided to move the family from Greene County, Ohio to Miami County, Ohio.

20. Anne Roe had been experiencing severe bullying and harassment throughout her enrollment in Fairborn City Schools because she is transgender, and we hoped to give her a fresh start at a new school.

21. We thought that a smaller and more rural community would be welcoming, and that Anne would experience less bullying and harassment at a smaller school.

22. In or about December 2019, I spoke with Tim Zeigler, who at that time was the Principal of Bethel Middle School. I informed him that we would be enrolling Anne in the

middle school's sixth grade class beginning in January of 2020. I also explained that Anne is a transgender girl.

23. During this discussion in December 2019, Mr. Zeigler, Anne and I all agreed that Anne would use the single occupancy bathroom in the Nurse's office, or the Faculty Restroom located between the middle school office and the high school office. We all reached this agreement because that is where Anne felt safest and the most comfortable at the time.

24. In January 2020, Anne was enrolled at Bethel Middle School and began attending classes with the other students after everyone returned from Winter Break.

25. From this time and until January 2022, Anne would use the single occupancy restroom in the Nurse's Office, or the Faculty Restroom located between the middle school office and the high school office.

26. Over time, Anne began telling me that she was feeling alienated for having to use a separate restroom because she was being harassed and taunted by other students. She also started experiencing urinary tract infections because the restrooms that she used were inconveniently located or were occupied by others when she needed to use them.

27. I told Anne repeatedly that she could not hold in her urine all day because it is dangerous for her health.

28. Since birth, Anne has had a medical condition that makes it very important for her to have easy access to restrooms. For years, her doctors have consistently told her, and me, that Anne should never attempt to hold in urine, and should go to the restroom immediately when she needs to. When her doctor reiterated that advice in or around late 2021, Anne explained that she only had access to single-occupancy restrooms. Her doctor suggested seeking an accommodation.

29. Eventually, we agreed that it would be safer and healthier for Anne if she were allowed to use the girls' communal restrooms, in addition to the single-use restrooms. We had not previously discussed this option with the school, so I wanted to confirm that Anne would be allowed to do so.

THE SCHOOL DISTRICT'S ACCOMMODATION

30. During the Summer of 2021, I learned that Mr. Zeigler was replaced as Bethel Middle School Principal by Matt Triplett.

31. On August 23, 2021, I emailed Mr. Triplett to schedule a meeting to discuss Anne's experiences at Bethel Middle School, and to identify some of her needs moving forward.

32. Shortly after sending this email, I received a phone call from Mr. Triplett in response to my email. I informed him about the problems that Anne was experiencing with regard to the restrooms. I explained that she was having health issues because her restroom access was limited to only two single-use bathrooms. I asked if the school would grant her an accommodation to use the girls' communal restroom in addition to the two single-use restrooms she was already allowed to use. Mr. Triplett said that the matter would be discussed and that he would let me know the outcome of that discussion.

33. On December 5, 2021, I emailed Mr. Triplett to inform him that Anne's experiences were worsening and to set up a meeting to discuss whether Anne would be granted the accommodation.

34. On December 17, 2021, Anne Roe, John Roe and I met with Mr. Triplett and Justin Firks, who was the Superintendent of Bethel Local School District at that time. At this meeting, Mr. Triplett and Mr. Firks informed us that Anne would be allowed to use the girls' communal restroom once she returned from Winter Break in January of 2022.

35. In January of 2022, Anne began using the girls' communal restroom in addition to the single-use restrooms, depending on which is more convenient or accessible. She continues to do so to this day.

36. Since being granted this accommodation, Anne has had no urinary tract infections. Even more than that, she seems like a whole different person, visibly more invested in school and her extracurricular activities. She went from being anxious and depressed to extremely outgoing.

37. Before this change, Anne would rush home after school in order to relieve herself after having held in her urine all or most of the day. After this change, she has been able to focus more on her academic performance, extracurricular activities, and even on building friendships with her classmates.

38. After this change, her grades also improved, which I believe is a direct result of her being able to concentrate more fully now that she is not distracted by her need to use the restroom.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 6th, 2023

Joanne Roe
Joanne Roe

Exhibit C

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

JOHN AND JANE DOE NO. 1, <i>et al.</i> ,)	
Plaintiffs,)	
)	
v.)	Case No. 3:22-cv-00337
)	
BETHEL LOCAL SCHOOL DISTRICT)	Judge: Michael J. Newman
BOARD OF EDUCATION, <i>et al.</i> ,)	
Defendants.)	
)	

**PROPOSED INTERVENOR-DEFENDANT ANNE ROE’S MEMORANDUM IN
OPPOSITION TO PLAINTIFFS’ MOTION FOR PRELIMINARY INJUNCTION¹**

I. INTRODUCTION

Anne Roe is a dynamic, active teenage girl: a social butterfly, a musician, and an eager participant in class. Anne is also transgender and, after being on the receiving end of years of bullying and harassment for her identity, finally feels like she belongs at her school. Plaintiffs’ Motion for Preliminary Injunction seeks an order from this Court that would effectively expel Anne from the girls’ communal restroom at Bethel High School. To do so would subject her to a range of very tangible harms, many of which she has already been subjected to in the past and would dread facing again.

In December 2021, the Bethel Local School District (the “School District”) granted Anne’s request to use the girls’ communal restrooms at school, where previously she had chosen to use

¹ This proposed memorandum is submitted concurrently with, and is in part the subject of, Anne Roe’s Motion to Intervene and Motion for Leave to File *Instantly* Memorandum in Opposition to Plaintiffs’ Motion for Preliminary Injunction.

only single-occupancy restrooms. That previous arrangement singled her out in front of her classmates as transgender, drawing unwanted attention to her as different from other girls, and subjected her to bullying, harassment, and even the threat of physical abuse. She describes the new arrangement as “a turning point” in her life, when she stopped feeling stigmatized and targeted for her identity. And indeed, the School District’s accommodation was necessary for Anne on multiple fronts, as she has been diagnosed with a medical condition that requires that she have regular and easy access to restrooms. The previous arrangement, which Plaintiffs now seek to reinstate by court order, did not provide sufficient access.

Plaintiffs are parents and students in the School District who object to Anne Roe and other transgender students using communal restrooms that correspond with their gender identity. Although it is undisputed that Plaintiffs, like all other students including Anne, are currently permitted to choose between using the communal restroom matching their gender or single-occupancy alternatives, they ask this Court to single out Anne and other transgender students and block them from this uniform arrangement. Although their Complaint asserts multiple purported bases for relief, Plaintiffs’ Motion rests on only one very particular and narrow claim. They contend that the process by which the School District granted Anne’s request violated Ohio’s Open Meetings Act, Ohio Revised Code § 121.22. On that procedural basis alone, they ask this Court to invalidate the School District’s accommodation to Anne and enjoin the School District from allowing any transgender student to use the same communal restroom facilities as other students.

Anne takes no position at this time as to whether the School District committed any violation of the Open Meetings Act, or for that matter, whether the School District’s accommodation to her was subject to the Open Meetings Act at all. She thus takes no position on the first two preliminary injunction factors: whether Plaintiffs have demonstrated a substantial

likelihood of success on the merits of their Open Meetings Act claim, or whether they have triggered the statutory presumption of irreparable harm on which they rely.

The third and fourth factors, however—risk of harm to others, and the public interest—weigh heavily against an injunction here, and Anne opposes Plaintiffs’ Motion on that basis. Anne would be severely harmed by an injunction barring her from using the girls’ communal bathroom, as it would subject her to social stigma, humiliation, and serious risks of both emotional and physical injury. She is especially well-situated to confirm these risks, as she was already subjected to them during the period of time in which she used only the single-occupancy facilities. Plaintiffs’ requested injunction would also stand contrary to the public interest, which would suffer gravely from a court order mandating discrimination against the vulnerable class of transgender students. The Court should deny Plaintiffs’ Motion.

II. FACTUAL BACKGROUND

Anne Roe is a 14-year-old girl in her freshman year at Bethel High School, where she plays the flute, participates in the marching band, and intends to join the theater and newspaper clubs this year. Declaration of Anne Roe, (“Anne Roe Decl.”), submitted as Exhibit A to Anne Roe’s Motion to Intervene and Motion for Leave to File *Instant* Memorandum in Opposition to Plaintiffs’ Motion for Preliminary Injunction, ¶¶ 2–3. Anne is also transgender. While her sex assigned at birth was male, she identifies as a girl and lives consistently with her gender in all aspects of her life. *Id.* ¶ 4. She came out to her parents at age 8 and started treatment for gender dysphoria at age 11. *Id.* ¶¶ 5-6, 9–12. Coming out as transgender and receiving the social and medical support that she needed, “have completely changed [her] life for the better.” *Id.* ¶ 14. She feels less anxious and depressed. As her mother describes, once Anne started transitioning, she flourished into “who she’s supposed to be.” Declaration of Joanne Roe (“Joanne Roe Decl.”),

submitted as Exhibit B to Anne Roe’s Motion to Intervene and Motion for Leave to File *Instant* Memorandum in Opposition to Plaintiffs’ Motion for Preliminary Injunction, ¶ 18.

A. Anne Moves to the School District and Starts Using the Single-Occupancy Restroom

From kindergarten through the beginning of sixth grade—the year she came out as transgender—Anne attended Fairborn City Schools in Fairborn, Ohio. Anne Roe Decl. ¶¶ 17–18. The time she spent there was extremely difficult. After coming out as transgender, she experienced constant bullying and harassment, culminating in a physical assault that was serious enough to leave her unable to remember what had happened. *Id.* ¶¶ 18–19. She quickly learned that using the boys’ bathroom, as she continued to do briefly after coming out as transgender, placed her at risk. *Id.*; see also *id.* ¶ 38 (“I would not feel safe using the boys’ communal restroom because I am not a boy and I have experienced very serious and scary bullying and harassment when I used the boys’ communal restroom at Fairborn City Schools.”). Near the end of 2019, the middle of her sixth-grade year, Anne moved to Tipp City, Ohio, and started at Bethel Middle School in January 2020. *Id.* ¶ 20.

During most of her time enrolled at Bethel Middle School, Anne chose to use the school’s single-occupancy restrooms. *Id.* ¶ 22–23. She did not always have time to travel to and from the single-occupancy restrooms during her break in classes and to avoid being late, she frequently requested permission to go to the restroom during class, leading to her missing class instruction or activities, and having to catch up later. *Id.* ¶¶ 25–30. Holding her urine was risky and inadvisable for Anne: she has a medical diagnosis that makes her urination urgent and unpredictable, and has been repeatedly advised that it is critical for her to have easy access to restrooms. *Id.* ¶ 26.

Eventually, using the single-occupancy restroom became humiliating for Anne. It isolated her from her peers, called unwanted attention to her for being transgender, and “puts a target on

your back.” Anne describes feeling humiliated as she walked to and from the single-occupancy restroom, passing the other students using the communal girls’ and boys’ restrooms. Anne experienced students harassing her during the walk, taunting her for using the “sissy bathroom.” *Id.* ¶ 31. This bullying and harassment continued throughout middle school. Students would shout transphobic remarks or slurs, refused to use the appropriate pronouns, and asked inappropriate and invasive questions about her body. Other students routinely pushed or “shoulder-checked” her in the hallways. Once, she heard a student in the hallway proclaim “we should kill all transgenders.” Another time, a student left a pair of scissors on her seat in class, pointed upwards. The harassment took many forms but was a near-daily occurrence. *Id.* ¶ 32. Though not all of it directly pertained to Anne’s restroom use, requiring her to use only the single-occupancy restroom singled her out and called attention to the fact that she was transgender, which made the bullying worse. *Id.* ¶ 33.

As a result, even when she did have sufficient time between classes to reach the single-occupancy restroom, Anne frequently held her urine. She describes arriving home and running to the restroom. Holding her urine distracted Anne and impacted her ability to focus and learn in class. *Id.* ¶¶ 34-35. Anne’s grades suffered; she was unable to socialize with her peers after class. *Id.* ¶ 35. During this time, Anne also frequently refrained from drinking water and suffered from dehydration. She experienced multiple urinary tract infections during this time period, and was frequently in a great deal of pain and discomfort. *Id.* ¶ 36.

B. Anne Receives Access to the Girls’ Restrooms

Over time, Anne and her mother concluded that the situation could not continue. After a doctor reminded her not to attempt to hold in her urine because of her medical condition, Anne and her mother contacted the Bethel Middle School principal and superintendent to advise them that Anne needed access to the girls’ communal restroom. *Id.* ¶ 37–39. In December 2021, the School District granted Anne permission to use the girls’ restrooms, which Anne started using at

Bethel Middle School in January of 2022. *Id.* ¶ 40. She has been using the communal girls’ restroom ever since—first at Bethel Middle and then at Bethel High School, which is an attached building, without any incidents or issues with other students. *Id.* ¶ 41.

Anne is thriving at Bethel High School. Being able to focus on class rather than on holding her urine, her grades improved. Anne describes being granted access to the girls’ restrooms as “a turning point.” She felt “like I finally belong, and not like the outcast who has to use the separate restroom.” She explains, “it wasn’t everyone and then me; it was everyone *and* me.” *Id.* ¶ 42–43. Anne’s mother describes her as “a whole different person” after she started using the girls’ restrooms at school, describing her as “visibly more invested in school and her extracurricular activities,” having gone “from being anxious and depressed to extremely outgoing.” Joanne Roe Decl. ¶ 36. She is, in short, “completely flourishing.” *Id.* ¶ 17.

Banning Anne from the girls’ restrooms would impact her mental and physical health and her ability to engage in school. She would again feel like an outcast, and be subject to the same bullying as before. *See* Anne Roe Decl. ¶¶ 44–47. She would expect the harassment to resume—and possibly even intensify, because she would be a high school student using bathrooms in the middle school wing of the school building. *Id.* ¶ 48.

III. ARGUMENT

Preliminary injunctive relief is “an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion.” *Enchant Christmas Light Maze & Mkt. Ltd. v. Glowco, LLC*, 958 F.3d 532, 539 (6th Cir. 2020) (quoting *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997)) (emphasis in original); *accord Overstreet v. Lexington-Fayette Urban Cty. Gov’t*, 305 F.3d 566, 573 (6th Cir. 2002) (“A preliminary injunction is an extraordinary remedy which should be granted only if the movant carries [their] burden of

proving that the circumstances clearly demand it.”). The movant has a burden of proof “more stringent than the proof required to survive a summary judgment motion.” *Enchant*, 958 F.3d at 539 (quoting *Leary v. Daeschner*, 228 F.3d 729, 739 (6th Cir. 2000)). A preliminary injunction involves “the exercise of a very far-reaching power,” and is appropriate only in limited circumstances. *Leary*, 228 F.3d at 739 (internal citation omitted).

Such relief is “never awarded as of right,” but only upon careful balancing of the relevant factors. *Winter v. NRDC*, 555 U.S. 7, 24 (2008). Those factors are: (1) whether Plaintiff has a strong likelihood of success on the merits; (2) whether Plaintiff would suffer actual, irreparable injury absent an injunction; (3) whether an injunction would cause substantial harm to others; and (4) whether the public interest is best served by issuance of an injunction. *E.g.*, *Overstreet*, 305 F.3d at 573; *Leary*, 228 F.3d at 736.

As noted above, Anne takes no position at this time on the merits of Plaintiffs’ Open Meetings Act claim, the subject of the first factor. For the second factor, Plaintiffs rely primarily on the statutory presumption of irreparable harm from Open Meetings Act violations; again, as Anne takes no position on the merits of that claim, she takes no position on the second factor. *See* Motion, ECF No. 5-1, at PAGEID# 61 (citing Ohio Rev. Code § 121.22(I)(3)). This Opposition addresses the third and fourth factors, both of which weigh against an injunction. Any injunction would necessarily inflict considerable harms on Anne, as well as others who may be similarly situated. It would also stand against the public interest in preventing discrimination.

A. Granting a Preliminary Injunction Would Cause Immediate and Irreparable Injury to Anne.

The myriad injuries that Anne would suffer from being denied access to the girls’ restrooms are neither hypothetical nor speculative. She already experienced a version of those injuries before the School District provided its accommodation: social stigma, harassment, invasion of privacy,

complications with her physical health, decrease in focus during class, and an inability to fully participate in school activities. *See supra* Section II.A. Federal courts, including the Southern District of Ohio, have repeatedly recognized these types of harms to be considerable and irreparable, as discussed below.

While unable to cure the full range of harms that transgender students face in schools, the District’s accommodation for Anne served to alleviate the particular aspects arising from restroom access. Entry of an injunction denying Anne access to the communal girls’ restroom would subject her to those harms all over again—in some ways, worse than ever.

1. Banning Anne’s access to the girls’ restrooms is stigmatizing and would negatively impact Anne’s mental health.

Banning Anne from the girl’s restroom would isolate her, alienate her from her peers during a vulnerable stage of her life, and communicate to her, her classmates, and even school staff that transgender students need to be segregated from other students. Numerous federal courts, including the Sixth Circuit and the Southern District of Ohio, have recognized that this exact type of isolation can cause great stress and anxiety, rising to the level of irreparable harm. *See, e.g., Bd. Of Educ. Of the Highland Local Sch. Dist. v. United States Dep’t of Educ.* (“*Highland Local Sch. Dist.*”), 208 F. Supp. 3d 850, 878 (S.D. Ohio 2016) (finding the “stigma and isolation” resulting from forced use of a separate restroom to “exacerbate . . . mental health challenges” and constitute irreparable harm); *Dodds v. United States Dep’t of Educ.*, 845 F.3d 217, 221–22 (6th Cir. 2016) (declining to stay the injunction entered in *Highland Local Sch. Dist.*, adding that a stay would inflict injuries that are “not distant or speculative,” and would “further confuse a young girl with special needs who would no longer be allowed to use the girls’ restroom”); *D.H. by A.H. v. Williamson Cnty. Bd. Of Educ.*, No. 3:22-CV-00570, 2022 WL 16639994, at *12 (M.D. Tenn. Nov. 2, 2022) (noting the “stress of deciding where and how to use the restroom”); *Evancho v.*

Pine-Richland Sch. Dist., 237 F. Supp. 3d 267, 294 (W.D. Pa. 2017) (to “compel [transgender students] to use ... the ‘special’ restrooms” is impermissible and would “further separate [transgender students] from their peers.”); *J.A.W. v. Evansville Vanderburgh Sch. Corp.*, 323 F. Supp. 3d 1030, 1039 (S.D. Ind. 2018) (“using the nurse’s restroom is not a satisfactory option . . . because it forces him to have different restroom arrangements from his peers, undermining his social role transition” with irreparable “negative emotional consequences”); *D.H. by A.H.*, 2022 WL 16639994, at *11 (being banned from facilities that correspond with gender identity leads to bullying, isolation, and ostracization).

For students with gender dysphoria, stigma and marginalization can be particularly harmful, causing further mental and emotional pain. *See Doe by & through Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 529 (3d Cir. 2018) (“[M]istreatment of transgender students can exacerbate gender dysphoria, lead to negative educational outcomes, and precipitate self-injurious behavior. When transgender students face discrimination in schools . . . it can be life threatening.”).

When Anne began using the girls’ restrooms at school, the stigma and distress were lifted; she finally felt like she belonged. *See supra* Section II.B. (“It wasn’t everyone and then me; it was everyone *and* me.”). A preliminary injunction banning Anne’s access to the girls’ restrooms would reverse that progress and risk Anne’s mental and emotional health.

2. Requiring Anne to use the single-occupancy restroom forces disclosure of Anne’s transgender identity.

Using the single-occupancy restroom would “put[] a target on [Anne’s] back,” Anne Roe Decl. ¶ 31, by calling attention to her as transgender in a manner that invades her privacy, and possibly even subjects her to physical danger. *See also id.* ¶¶ 4, 15 (noting that Anne is treated like a girl and most people she encounters recognize and treat her as such). Again, she knows all too well what that degree of public attention would entail. She describes feeling humiliated during

middle school as she walked to and from the single-occupancy restroom, passing the other students using the communal girls’ and boys’ restrooms and being subjected to harassment. *Id.* ¶¶ 31–32.

As another judge of this Court observed recently, “the excruciatingly private and intimate nature of being transgender, for persons who wish to preserve privacy in the matter, is really beyond debate[.]” *Ray v. McCloud*, 507 F. Supp. 3d 925, 931 (S.D. Ohio 2020) (internal citation and editing marks omitted). *See also J.A.W. v. Evansville Vanderburgh Sch. Corp.*, 323 F. Supp. 3d 1030, 1039 (S.D. Ind. 2018) (using the girls’ restroom at school caused a transgender boy discomfort by drawing attention to the fact that he is transgender). Even beyond the inherent harms from forcing a teenager to disclose intimate personal information, “forced disclosure of an individual’s transgender status could subject them to risk of bodily harm[.]” *Ray* at 931.

The policy Plaintiffs’ seek—requiring transgender students, and *only* transgender students, to use a specific restroom different from non-transgender students—outs those students as transgender and allows other students to target them for harassment and abuse. Courts routinely recognize this harm, and Anne’s personal experience confirms the point.

3. Requiring Anne to use the single-occupancy restroom would cause dehydration, UTIs, and other physical health consequences.

Removing Anne’s access to the girls’ restrooms, and thereby restricting the number of restrooms to which she has access, could also have serious direct consequences for her physical health. In middle school, Anne regularly held her urine, contrary to her doctor’s orders—both because she sometimes did not have time to use the single-occupancy restroom, and because even when she did, she wanted to avoid being singled out by her peers. Anne Roe Decl. ¶¶ 27-28, 34. *See H. by A.H. v. Williamson Cnty. Bd. Of Educ.*, No. 3:22-CV-00570, 2022 WL 16639994, at *11 (M.D. Tenn. Nov. 2, 2022) (students without equal access to restrooms hold their urine and limit their water and food intake, which can lead to dehydration and other health problems.). Requiring

her to use the single-occupancy restroom, rather than use the girls' restrooms in close proximity to her classes, risks dehydration, UTIs, and other medical complications. Anne Roe Decl. ¶ 36; *H. by A.H.*, 2022 WL 16639994, at *11.

Anne experienced a version of this harm before the School District's accommodation, but in fact, entry of an injunction now would leave her in a worse position than before the accommodation. As a high school student, Anne's classes are primarily on the far side of the building from the single-use restrooms to which she has access. Anne Roe Decl. ¶ 46. The distance she would have to travel in the time between classes, in other words, is greater now than it was when she was in middle school. *Id.* ¶ 48.

4. Banning Anne from using the girls' restrooms would limit Anne's ability to fully and equally participate in school.

Granting Plaintiffs' requested preliminary injunction would also limit Anne's ability to fully and equally participate in school classes and activities. When Anne was required to travel to the remote single-occupancy restroom, she was regularly late to class. It was not uncommon for her to be disciplined, and even sent to the principal's office. *See supra* Section II.B. Having to hold her urine distracted Anne and impacted her ability to focus and learn in class. She occasionally used the restroom during class time, but found it hard to catch up to the lesson when she returned. She also was unable to socialize with her peers after class because her attention was fixated on preventing herself from urinating. *Id.*; *see also Highland Local Sch. Dist.*, 208 F. Supp. 3d at 871 (“[the transgender student] often goes the entire day without using the bathroom because she hates being singled out when she is forced to use a separate bathroom, which would clearly impair her ability to focus on learning.”).

The School District's accommodation alleviated these problems; granting the injunction here would reimpose them. Further, as Plaintiffs concede, access to the single-occupancy restroom

is not available “for community events like school football games.” Complaint, ECF No. 1, ¶ 64. Prohibiting Anne from using the girls’ restrooms would effectively restrict her participation in after-school activities and school events, and would further deny her equal access to the education afforded to all other students.

5. Anne’s injuries are “impossible to reverse.”

The negative consequences of being denied access to the girls’ restrooms would be “difficult—if not impossible—to reverse.” *J.A.W.*, 323 F. Supp. 3d at 1039 (citing *Hollingsworth v. Perry*, 558 U.S. 183, 195 (2010) (per curiam); accord *Highland Local Sch. Dist.*, 208 F. Supp. 3d at 878 (stigma, isolation, and resulting emotional health issues constitute “a clear case of irreparable harm”); *Dodds*, 845 F.3d at 221–22 (similar). Anne’s high school years are ones she will experience “only once during [her] life.” *Cf. Doe v. Wood County Bd. Of Educ.*, 888 F. Supp. 2d. 771, 778 (S.D.W.Va. 2012) (balance of harms for Title IX violation tilts in favor of preliminary injunction because “the plaintiffs Anne Doe, Beth Doe, and Carol Doe will experience their middle school years only once during their life”); *Faulkner v. Jones*, 10 F.3d 226, 233 (4th Cir. 1993) (granting preliminary injunction for Shannon Faulkner to attend The Citadel because “[d]enying Faulkner’s access . . . might likely become permanent for her, due to the extended time necessary to complete the litigation”). With a preliminary injunction, Anne will have to spend each school day trying to avoid the need to use the restroom, and she will be stigmatized and isolated from her peers during those critical years of social development.

It cannot be doubted that an injunction barring Anne from the girls’ communal restroom at her school would inflict “substantial harm to others”—that is, to Anne. *E.g., Overstreet*, 305 F.3d at 573; *Leary*, 228 F.3d at 736. For their part, Plaintiffs argue that “[n]o cognizable harm results from stopping unconstitutional conduct.” Motion, ECF No. 5-1, at PAGEID# 61. Their Motion,

however, asserts only a statutory violation under the Open Meetings Act. Should they fail to demonstrate a violation of that statute, they will have made no showing of any harm at all.

B. The Public Has an Interest in Preventing Discrimination Against Transgender Students and in Providing Equal Educational Opportunities to All Students.

The public has a strong interest in preventing discrimination against a vulnerable class of persons, such as transgender students. *E.g.*, *Dodds v. U.S. Dep't of Educ.*, 845 F.3d 217, 222 (6th Cir. 2016) (public interest weighed “strongly” against staying an injunction allowing continued discrimination against a student based on gender identity); *Highland Local Sch. Dist.*, 208 F. Supp. 3d at 878 (same). *Cf. Ray*, 507 F. Supp. 3d at 936–37 (finding transgender individuals to be entitled to intermediate scrutiny on an equal protection claim, which entails a finding that, *inter alia*, they have historically been subject to discrimination and are a minority or politically powerless). Far from being safe havens from bullying and abuse, school environments can be especially hostile, making it particularly important for schools to take measures to affirm and protect transgender students. Supportive schools are important to all students, but particularly for transgender students who notoriously face outsized risks of all kinds, such as the harassment that Anne experienced. These harms can be amplified—or diminished—depending on the inclusiveness of the school environment. The public therefore has an interest in advancing policies that affirmatively protect transgender students and create inclusive school environments.

Further, the public has an interest in providing equal educational opportunities to all students. Students spend a substantial portion of their waking hours at school, and even more if they participate in school-sponsored activities that meet outside regular class hours. Schools offer students the opportunity to learn important social skills and cultivate responsibility and independence. A preliminary injunction removing Anne’s access to the girls’ restroom would burden her focus, concentration, and ability to fully participate in her education to the same extent

as all other students. The public has a strong interest in not subjecting vulnerable students to such a burden.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs' Motion for Preliminary Injunction should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, David J. Carey, hereby certify that on this 9th day of January, 2023, I electronically filed the foregoing with the Clerk of Court for the United States District Court for the Southern District of Ohio via the ECF system, which will send notification of such filing to all counsel of record.

/s/ David J. Carey