

No. 23-2807

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

REBECCA ROE, by and through her
parents and next friends, Rachel and Ryan Roe, *et al.*,
Plaintiffs-Appellees,

v.

DEBBIE CRITCHFIELD, in her official capacity as
Idaho State Superintendent of Public Instruction, *et al.*,
Defendants-Appellants.

On Appeal from the United States District Court for the District of Idaho
No. 1:23-cv-00315-DCN

**CIRCUIT RULE 27-3 CERTIFICATE
RELIEF REQUESTED BY NOVEMBER 1, 2023**

Peter Renn
Kell Olson[†]
Tara L. Borelli[†]
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.
4221 Wilshire Blvd, Suite 280
Los Angeles, CA 90010 | (213) 382-7600
[†]*Mailing address only*

Samuel L. Linnet
ALTURAS LAW GROUP, PLLC
101 E Bullion St., Unit 2H
Hailey, ID 83333 | (208) 788-6688

Katherine M. Forster
Robyn K. Bacon
Nicholas R. Sidney
Paul Martin
Avery P. Hitchcock
Jimmy P. Biblarz
MUNGER TOLLES & OLSON LLP
350 South Grand Ave., 50th Fl.
Los Angeles, CA 90071 | (213) 683-9100

J. Max Rosen
max.rosen@mto.com
MUNGER TOLLES & OLSON LLP
560 Mission Street, 27th Fl.
San Francisco, CA 94105 | (415) 512-4000

Counsel for Plaintiffs-Appellants

CIRCUIT RULE 27-3 CERTIFICATE

The undersigned counsel certifies that the following is the information required by Circuit Rule 27-3:

- (1) The names, telephone numbers, e-mail addresses, and office addresses of the attorneys for all parties**

Counsel for Plaintiffs-Appellants

Peter C. Renn
prenn@lambdalegal.org
Kell L. Olson†
kolson@lambdalegal.org
Tara L. Borelli†
tborelli@lambdalegal.org
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.
800 South Figueroa St., Suite 1260
Los Angeles, CA 90017
†*Mailing address only*
(213) 382-7600

Katherine M. Forster
katherine.forster@mto.com
Robyn K. Bacon
robyn.bacon@mto.com
Nicholas R. Sidney
nick.sidney@mto.com
Paul Martin
paul.martin@mto.com
Avery P. Hitchcock
avery.hitchcock@mto.com
Jimmy P. Biblarz
jimmy.biblarz@mto.com
MUNGER TOLLES & OLSON LLP
350 South Grand Ave., 50th Fl.
Los Angeles, CA 90071-3426
(213) 683-9100

J. Max Rosen
max.rosen@mto.com
MUNGER TOLLES & OLSON LLP
560 Mission Street, 27th Fl.
San Francisco, CA 94105-2907
(415) 512-4000

Samuel L. Linnet
sam@alturaslawgroup.com
ALTURAS LAW GROUP, PLLC
101 E Bullion St., Unit 2H
Hailey, ID 83333
(208) 788-6688

Counsel for Defendants-Appellees

James Edward Monroe Craig
james.craig@ag.idaho.gov
IDAHO OFFICE OF ATTORNEY GENERAL
Civil Litigation and Constitutional Defense
P.O. Box 83720
Boise, ID 83720-0010
(208) 854-8088

Rafael John Droz
rafael.droz@ag.idaho.gov
IDAHO OFFICE OF ATTORNEY GENERAL
Civil Litigation and Constitutional Defense
514 W. Jefferson Street
Ste. 3rd Floor
Boise, ID 83702
(208) 334-4139

(2) Facts showing the existence and nature of the emergency

As set forth more fully in the motion, the district court denied a preliminary injunction to enjoin S.B. 1100, a newly enacted Idaho law that will categorically

ban all transgender students across the state from using school restrooms and other facilities consistent with their gender identity. Prior to enactment of that law, numerous Idaho schools have had longstanding policies or practices allowing transgender students to use facilities consistent with their gender identity, including those the Plaintiffs in this action attend. On August 10, 2023, the district court granted a temporary restraining order (“TRO”) against enforcement of the law, in order to maintain the status quo pending disposition of the preliminary injunction motion. On October 12, 2023, the district court denied the motion for a preliminary injunction and ordered that the TRO will expire, and “S.B. 1100 will take effect, 21 days from the date of this order,” Addendum (“A.”) 37, which is November 2, 2023.

On October 16, 2023, Plaintiffs-Appellants (“Plaintiffs”) filed a notice of interlocutory appeal. They respectfully seek a ruling from this Court on the instant motion for an injunction pending that appeal by November 1, 2023. If an injunction pending appeal is not granted by that date, transgender students across the state of Idaho, including the Plaintiffs in this action, will be abruptly ousted from the facilities that they have already been using—in some cases for years—without incident. This exclusion will immediately and irreparably endanger their welfare and will also cause the irreversible disclosure of their transgender status to others in violation of their right to privacy.

(3) Why the motion could not have been filed earlier

The district court issued its decision at approximately 3:57 P.M. (PST), on Thursday, October 12, 2023. Plaintiffs filed this motion as early as logistically possible thereafter, on Monday, October 16, 2023.

(4) When and how counsel have been notified

Counsel for Plaintiffs notified counsel for Defendants by email on October 16, 2023, of Plaintiffs' intent to file this motion. Service will be effected by electronic service through the ACMS system. Defendants-Appellees ("Defendants") oppose this motion.

(5) Whether relief was sought in the district court

Because of the imminent dissolution of the TRO, Plaintiffs simultaneously moved for an injunction pending appeal in both the district court and this Court on October 16, 2023. This Court should not remand or deny the motion on this basis. Under Federal Rule of Appellate Procedure 8(a)(2)(A)(i), moving first in the district court would have been "impracticable" for two reasons. First, the TRO is set to expire in only 17 days, triggering this Court's emergency motions requirements under Circuit Rule 27-3. There is not time to await a decision by the district court on the motion for a stay pending appeal before seeking relief from this Court. Second, the record establishes that moving for that relief would be futile. *See Chem. Weapons Working Grp. (CWWG) v. Dep't of the Army*, 101 F.3d

1360, 1362 (10th Cir. 1996) (“When the district court’s order demonstrates commitment to a particular resolution, application for a stay from that same district court may be futile and hence impracticable.”). The district court already previously indicated at the hearing on the preliminary injunction that, in the event the court were to deny the preliminary injunction, it would also deny relief pending appeal. Addendum (“A.”) 49 (“And as a practical matter, if I decide to dissolve the TRO, you’re going to ask me for a stay of that decision while you appeal. I’m going to deny it because, otherwise, I just gave you the preliminary injunction you’re looking at.”). Plaintiffs have nonetheless filed a motion for an injunction pending appeal in the district court in an abundance of caution. Given the emergent nature of the harms at issue here, Plaintiffs have filed this emergency motion concurrently to shield themselves from the irreparable harms that will flow from the denial of the relief that the district court has already said it will order.

I further certify that on October 16, 2023, counsel for Plaintiffs contacted the Court’s emergency motions unit via voicemail left at the unit’s phone number (415-355-8020), and via the unit’s email address (emergency@ca9.uscourts.gov).

I declare under penalty of perjury that the foregoing is true. Executed this 16th day of October 2023 in Los Angeles, California.

/s/ Peter C. Renn
Peter C. Renn

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate ACMS system on October 16, 2023, and that service will be accomplished by the appellate ACMS system on all registered participants.

/s/ Peter C. Renn
Peter C. Renn