

IN THE
Supreme Court of the United States

GLOUCESTER COUNTY SCHOOL BOARD,

Petitioner,

v.

G.G., BY HIS NEXT FRIEND AND MOTHER,
DEIRDRE GRIMM,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT

**AMICI CURIAE BRIEF OF NATIONAL
PTA, GLSEN, AND OTHER EDUCATION
ORGANIZATIONS IN SUPPORT
OF RESPONDENT**

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**INTEREST OF *AMICI CURIAE*
AND INTRODUCTION¹**

Amici² are a diverse group of national education organizations whose membership and constituents are on the front lines every day, doing the hard work of educating students through academic instruction and support; furnishing counseling and guidance; and providing opportunities for engagement with peers and others. Critical to this educational mission, Amici seek to build and maintain non-discriminatory learning environments for all students, regardless of their backgrounds, characteristics, or experience.

Through their work, Amici have gained extensive, hands-on experience in what works in serving all students while providing transgender students with full access to a non-discriminatory learning environment. Amici have seen transgender students' capacity for educational success and healthy socio-emotional development when properly supported, and the tragic consequences for transgender students when that essential support is denied. This brief shares this experience with the Court.

1. No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the *Amici Curiae*, or their counsel made a monetary contribution to its preparation or submission. The Petitioner has filed a blanket consent and the consent from the Respondent is being submitted herewith.

2. Amici are identified individually in the Appendix hereto.

First, Amici provide their perspective on all too common experiences where transgender students are relegated to the shadows or stigmatized by differential treatment. This includes the negative effects of being forced to use a restroom that is not aligned with their gender identity or being shunted to a “special” restroom for transgender students. For one example, in those situations, nearly 40% of transgender students fast, dehydrate, or otherwise force themselves not to use the restroom during the school day. See Joseph Kosciw, *et al.*, *The 2015 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual, Transgender, & Queer Youth in Our Nation’s Schools*, GLSEN (2016) (hereinafter “2015 NSCS”) (39.4% avoid restrooms); see also Jody L. Herman, *Gendered Restrooms and Minority Stress: The Public Regulation of Gender and its Impact on Transgender People’s Lives*, *Journal of Public Management and Social Policy* 19, 74-75 (2013) (54% of adult transgender students and employees surveyed “reported having some sort of physical problem from trying to avoid using public restrooms”). Transgender students subjected to restroom discrimination also experience elevated levels of severe depression and even suicide. On the other hand, dramatic benefits for transgender students manifest when they effectively transition to conform to their gender identity. In those instances (where, *e.g.*, they are addressed with appropriate names and pronouns and use restrooms that conform to their gender identity), transgender students reflect the same, healthy psychological profile as their peers. Lily Durwood *et al.*, *Mental Health and Self-Worth in Socially Transitioned Transgender Youth*, 56 *Journal of the American Academy of Child & Adolescent Psychiatry* 116, 116 (2017).

Second, we show that schools and school districts across the nation have already developed and successfully deployed practical, effective strategies to ensure transgender students receive appropriate support and, ultimately, the educational experiences they need to succeed and live healthy, fulfilling lives. This includes allowing each student to use the restroom that matches their gender identity. These schools have experienced none of the ominous consequences—*e.g.*, students pretending to be transgender to obtain access to opposite-gender restrooms, complaints of invasion of privacy, or other harms to the broader student population—that Petitioner and certain of its amici speculate would result from these affirming approaches. To the contrary, these inclusionary policies have been implemented with little controversy and great success, with respect for the human dignity and educational needs of the schools’ entire student populations.

This Court’s cases barring discrimination on the basis of sex recognize “dispositive realities” that put the lie to “self-fulfilling prophecies” that are “routinely used to deny rights or opportunities.” *U.S. v. Virginia*, 518 U.S. 515, 543 (1996). This case is no different. Here, Petitioner’s unsubstantiated contention that schools would be “upended” if they were required to implement an inclusive, Title IX-compliant restroom policy is shown to be unfounded and specious by the experience and successful practices of Amici and other educators throughout the nation. Petitioner’s unsubstantiated prophecy cannot be permitted to prevail at the expense of transgender students’ rights to take advantage of a “state supplied educational opportunity for which they are fit,” *id.* at 550-551; receive full access to non-discriminatory

educational facilities; and live free of stigmatizing and discriminatory practices that cause them immediate and enduring harms.

SUMMARY OF ARGUMENT

Educators throughout the country share one fundamental goal: to help all students understand and achieve their full potential so that they become citizens and workers who are productive, engaged, and fulfilled. A growing body of research, educational policy, and practice establish that certain basic conditions must be present in schools for educators to achieve this singular aim:

- passionate, creative, and effective school leaders, teachers, and counselors;
- stimulating and engaging education strategies that generate critical and innovative thinking, enhance peer engagement and teamwork, and promote the joy of discovery;
- engaged parents, guardians, and community members;
- timely supports designed to meet each student's unique needs; and
- a culture of high expectations and standards for *all* students.

See, e.g., Richard Riley and Arthur Coleman, *Turning the Page on the Equity Debate in Education: How to Give All Children A Real Opportunity*, American Educator (Spring 2011), <https://www.aft.org/sites/default/files/periodicals/Riley.pdf>.

But these factors alone are not enough. Without a school environment that is authentically welcoming and that honors and protects the dignity and best interests of all students—every one of whom is different in some way—many students are thwarted from achieving their full potential. In other words, lacking a culture that embraces safety, respect, and inclusion for all, regardless of background and circumstance, puts students at risk. *Id.*; see also, Emily Greytak, Joseph Kosciw, Christian Villenas, and Noreen Giga, *From Teasing to Torment: School Climate Revisited, A Survey of U.S. Secondary School Students and Teachers*, GLSEN (2016), https://www.glsen.org/sites/default/files/TeasingtoTorment%202015%20FINAL%20PDF%5B1%5D_0.pdf.

All too often, transgender students have been denied welcoming and inclusive environments that offer them equal access to educational opportunity, and the opportunity for healthy social and emotional development. As set forth in Section I, extensive research shows the myriad harms transgender students experience in non-inclusive school settings, including when subjected to restroom discrimination. Dire educational and life consequences flow from those harms. Understanding the severity of these harms is crucial to the Court’s consideration of this case. Indeed, throughout this Court’s history, and in U.S. Department of Education policy pronouncements, the contours of federal non-discrimination law have been shaped by evidence of harms experienced by students.³

3. See, e.g., *Brown v. Board of Educ. of Topeka, Kan.*, 347 U.S. 483, 495 n.11 (1954) (premising forbidding “separate but equal” on extensive social science research and information); *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629, 651 (1999) (examining the severity of student-on-student harassment sufficient to constitute a Title IX claim on the basis of interference

But these harms are not inevitable, as we show in Section II. Educators can and do provide transgender students the inclusive and supportive environment they need—including equal access to restrooms and other essential facilities—to thrive in school and beyond. Indeed, contrary to Petitioner’s assertion that the implementation of non-discriminatory restroom policies would “upend the ingrained practices of nearly every school in the Nation...,” Br. of Petitioner at 20, *Gloucester County School Bd. v. G.G. ex rel. Grimm*, No. 16-273 (Jan. 3, 2017), schools and districts across the country have already experienced longstanding successes in implementing restroom policies that do not discriminate against transgender students. These policies have transformed the educational experience of transgender students while—critically—avoiding any disruption or harm to the educational experience of other students.

ARGUMENT

I. TRANSGENDER STUDENTS ARE PARTICULARLY SUSCEPTIBLE TO HARMS STEMMING FROM THEIR LACK OF ACCESS TO RESTROOMS ALIGNED WITH THEIR GENDER IDENTITY.

G.G. is one of the approximately 150,000 transgender students who attend grades K-12 schools throughout

with equal access to educational opportunities); U.S. Dep’t of Education Sexual Harassment Guidance (2001) (explaining in detail, with examples, the harm to students that is an element of federal harassment standards); U.S. Dep’t of Education Racial Harassment Guidance (1994) (same).

America.⁴ Like other transgender individuals, G.G. has a gender identity—an internal sense of being male, female, both, or neither—that differs from the gender assigned to him at birth. National Association of School Psychologists, Position Statement, *Safe Schools for Transgender and Gender Diverse Students* (2014). Transgender students like G.G. live in all fifty states and U.S. territories; come from different racial, ethnic, and religious backgrounds; are represented in every socioeconomic level; and attend all variety of K-12 schools.

Listen to transgender student Corey Maison:

We are just like any other kids. We only want people to accept and love us for who we are.

Nicole Pelletiere, ‘We’re Not a Threat’: *Transgender Teen Shares Powerful Message on Bullying*, ABC News (Feb. 8, 2017), <http://abcnews.go.com/Lifestyle/threat-transgender-teen-shares-powerful-message-bullying/story?id=39752422>.

Instead,

Corey was bullied for being transgender when she was younger. The first incident was when a child pushed her down a hill covered in

4. Transgender students comprise an estimated 0.6% of the adult United States population (approximately 1.4 million adults 18 or older) and 0.7% of youth ages 13 to 17 (approximately 150,000 youth). Jody L. Herman, Andrew R. Flores, Taylor N.T. Brown, Bianca D.M. Wilson, and Kerith J. Conron, *Age of Individuals who Identify as Transgender in the United States*, The Williams Institute (2017).

frozen ice, causing injuries to Corey's face. Eventually, Corey was moved to another school as a result of the bullying... "I might look happy now, but I haven't always been...I've known I was different all my life. When I was little I loved to play with dolls and play dress up. I loved painting my nails too. Wearing my mom's high heels was my favorite! But only in the house. Never outside...because I was born a boy. I never had many friends. I didn't fit in with girls, and the boys made fun of me. In 5th grade I was bullied so bad. Almost every day I came home from school crying.... One of the kids told me I should kill myself because no one liked me anyway. He told me no one would miss me if I was dead."

Id.

Corey Maison's experience is all too common. At school, transgender students often suffer a variety of consequential harms—emotional and physical—not because they *are* transgender but as a result of *how they are treated because they are transgender*. These students are particularly vulnerable in elementary and secondary school settings, where harms inflicted by peers and adults—due to the students' *actual* or *perceived* gender identity—significantly impede their education and their prospects for leading fulfilling and productive lives. When a school commits or endorses these acts and omissions, it compounds the harms suffered by transgender students, leading often to tragic consequences.

A. Transgender students suffer a variety of harms at school due to mistreatment by others.

As described by Katharine Prescott, who lost her transgender son Kyler to suicide at age 14:

Kyler struggled to be respected and understood at school because of his gender identity. Administrators and teachers clearly were not supportive of his gender identity, and he was misgendered in front of other students on a number of occasions. Because of this, I pulled him out of the traditional classroom and put him in independent study so that he would not be humiliated in this way. Kyler had always loved school, so it was tragic that this basic right to education was infringed upon. Kyler felt stabbed in the heart every time someone would say 'she.' It's really traumatic to keep getting called something you truly feel you're not.

Statement from Katharine Prescott to GLSEN (Feb. 27, 2017) (document on file with undersigned counsel); see also GLSEN, *Mother of Trans Student Lost to Suicide and Advocate for Title IX Guidance Release Statement*, GLSEN, <http://www.glsen.org/article/glsen-mother-trans-student-lost-suicide-and-advocate-title-ix-guidance-release-statement> (last visited Feb. 22, 2017); Avianne Tan, *California Mother Appeals for Support for Transgender Teens After Losing Son to Suicide*, ABC News (May 27, 2015), <http://abcnews.go.com/US/california-mother-appeals-support-transgender-teens-losing-son/story?id=31338159>. Kyler's story is by no

means unique. “[D]isturbing patterns of mistreatment and discrimination” relating to transgender individuals are well documented. *See, e.g.*, Sandy James *et al.*, The Report of the 2015 U.S. Transgender Survey, National Center for Transgender Equality (Dec. 2016), <http://www.ustranssurvey.org/report> (hereinafter, “USTS”).

Transgender students too often encounter school experiences that breed life-long mental, emotional, and socio-economic consequences. In elementary and secondary education, transgender students are susceptible to bullying and harassment at alarmingly high rates. *See, e.g.*, Joseph Kosciw, Emily Greytak, Neal Palmer, and Madelyn Bosen, *The 2013 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth in Our Nation’s Schools*, GLSEN (2014); Joseph Kosciw, Neal Palmer, Ryan Kull, and Emily Greytak, *The Effect of Negative School Climate for LGBT Youth and The Role of In-School Supports*, 12 *Journal of School Violence* 45-63 (2012).⁵ School climates that

5. The negative effects on bullied or harassed students’ well-being and academic achievement are clear and well-documented and have served as an impetus for federal and state anti-harassment and bullying laws. Ryan Kull, Joseph Kosciw, and Emily Greytak, *From Statehouse to Schoolhouse: Anti-Bullying Policy Efforts in U.S. States and School Districts*, GLSEN 23, n.12 (2015). *See generally* Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, 66 Fed. Reg. No. 13 (Jan. 19, 2001), <https://ed.gov/about/offices/list/ocr/docs/shguide.pdf>; Racial Incidents and Harassment Against Students at Educational Institutions; Racial Incidents and Harassment Against Students at Educational Institutions; Investigative Guidance, 59 Fed. Reg. No. 47 (March 10, 1994), <https://www2.ed.gov/about/offices/list/ocr/docs/race394.html>; Dear Colleague Letter, Reminder of Responsibilities under

are unwelcoming or threatening have a direct bearing on students' well-being and safety. *Journal of School Violence*, 12(1), 45–63. Of the 40% of USTS respondents who were out as transgender during their K-12 education or believed classmates, teachers, or school staff thought they were transgender: 54% were verbally harassed; 24% were physically attacked; 13% were sexually assaulted; 36% were disciplined for fighting back against bullies; 17% left a school because the mistreatment was so bad; and 6% were expelled from school. USTS at 132.

Compared to transgender students who did not suffer these negative experiences, transgender students who did were more likely to have attempted suicide (52% compared to 37%), more likely to be in serious psychological distress (47% compared to 37%), and more likely to have been homeless (40% compared to 22%). One common and harmful form of discrimination is the refusal to use preferred names or pronouns as part of transgender students' social transition. 50.9% of transgender students report that their schools do not allow them to use their preferred name or pronouns, and many transgender students find that staff or other students intentionally refuse to use a student's preferred name or pronouns. 2015 NCSC at 38. This practice, known as "deadnaming," also causes transgender students psychological harm. See Singh *et al.*, *Growing Up LGBTQI+: The Importance of Developmental Conceptualizations*, in *Affirmative Counselling with LGBTQI+ People* (Misty M. Ginicola et

Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act (U.S. Department of Education Office for Civil Rights and Office of Special Education and Rehabilitative Services, July 25, 2000), <https://www2.ed.gov/about/offices/list/ocr/docs/disabharassltr.html>.

al. eds., 2017). One consequence of adopting Petitioner’s interpretation that “sex” discrimination does not include discrimination against transgender students is that Title IX would *allow* “deadnaming” by teachers and school officials.

B. The harms suffered by transgender students directly and negatively affect their educational experiences and learning outcomes.

There is a direct link between the negative experiences transgender students suffer and their ability to learn and fully participate in school. For example, surveys have found that 32% of transgender students report missing at least one school day in the previous month because they felt unsafe at school. *See* 2015 NSCS at 13. Without safe and supportive school environments, transgender students also frequently avoid attending school functions (71.5% report doing so) and participating in extracurricular activities (65.7%). *Id.*

The disruption to education is even worse for those transgender students who are frequently harassed during the school day: 68% of such students reported having missed school because of concerns for their safety. Emily Greytak, Joseph Kosciw, & Elizabeth Diaz, *Harsh Realities: The Experiences of Transgender Youth in Our Nation’s Schools*, GLSEN (2009), <https://www.glsen.org/sites/default/files/Harsh%20Realities.pdf>. These more frequently targeted students also have lower grades, are less likely to plan to attend college, and have lower educational outcomes than transgender students who attend safer schools. *Id.* at 25.

C. Transgender students suffer harms when they are denied access to restrooms that align with their gender identity.

Transgender students suffer particular harms when they attend schools that force them to use *separate* restrooms or to use restrooms that *do not align* with their gender identity. These harms include stigmatization, loss of educational experiences, and increased risk of harassment and assault.

Transgender students who are denied access to restrooms that align with how they live their lives are frequently singled out for unwanted and harmful attention. In some instances, for example, members of the school community only find out that fellow students are transgender once they are forced to use separate or unaligned facilities. The stigmatization that results from this separate treatment can have powerfully negative impacts on transgender students' well-being. Evidence suggests that denying transgender individuals appropriate access to restrooms causes severe psychological distress often leading to attempted suicide. Max Kutner, *Denying Transgender People Bathroom Access Is Linked To Suicide*, Newsweek (Dec. 16, 2016), <http://www.newsweek.com/transgender-bathroom-law-study-suicide-454185>; Kirsten Clements-Nolle, Rani Marx, & Mitchell Katz, *Attempted suicide among transgender persons: The influence of gender-based discrimination and victimization*, 51 *Journal of Homosexuality*, 53–69; see also, Hayley Sutton, *Transgender college students are also more at risk for suicide when denied access to bathrooms aligned with their gender*, 13(2) *Campus Security Report*, 9 (2016).

Requiring transgender students to use separate restrooms commonly imposes significant practical burdens not experienced by their classmates. These separate restrooms often are further away from classrooms than regular student restrooms, which causes transgender students to be late for class, resulting in penalties for tardiness and reduced instructional time. 2015 NSCS. Routinely arriving late to class as a result of using the restroom draws unwanted attention, further stigmatizing the transgender student.

Because separate or un-aligned facilities lead to these kinds of harms, nearly 40% of transgender students at times avoid the situation altogether by fasting, dehydrating, or forcing themselves not to use the restroom throughout the school day even if they need to. 2015 NSCS at 12-13 (39.4% avoid restrooms). Such behavior can lead to medical problems and makes it harder to focus on academic learning in school. Jody L. Herman, *Gendered Restrooms and Minority Stress: The Public Regulation of Gender and its Impact on Transgender People's Lives*, 19 *Journal of Public Management and Social Policy* 74-75 (2013) (survey respondents reported that “accessing and using restrooms was disruptive to their daily life at school,” and 54% of survey respondents “reported having some sort of physical problem from trying to avoid using public restrooms”). Forcing students to use separate restrooms impairs their ability to develop a healthy sense of self, peer relationships, and the cognitive skills necessary to succeed in adult life. See Katherine Szczerbinski, *Education Connection: The importance of allowing students to use bathrooms and locker rooms reflecting their gender identity*, 36 *Child. Legal Rts. J.* 153 (2016) (“having separate facilities deprives and further stigmatizes students who want to be in the same facilities

as their classmates, ultimately leading to their isolation from peers”). Transgender student Drew Adams describes the effects of his experience:

Forcing me to use a gender-neutral bathroom was an insult to my identity. It was absolutely humiliating to walk halfway across the school, passing several men’s rooms, to find one of the gender-neutral bathrooms to use. I practically hid from administrators who would have thought I was skipping class if I had said I was going to the bathroom while walking past one. My school had decided to alienate me, along with every other transgender student at my school.

Drew Adams, *My School Failed to Protect Trans Students Like Me, So I Did Something About It*, GLSEN (Feb. 22, 2017), <http://www.glsen.org/blog/my-school-failed-protect-trans-students-me-so-i-did-something-about-it>.

II. MANY SCHOOLS ACROSS THE NATION ALREADY INCLUDE AND PROTECT ALL STUDENTS, INCLUDING THOSE WHO ARE TRANSGENDER.

In recognition of the powerful force of education in the lives of students, this Court has consistently affirmed that the obligation of educators in the American public school system is to serve *all* students—black and white, *Brown v. Board of Education of Topeka, Kansas*, 347 U.S. 483 (1954), male and female, *U.S. v. Virginia*, 518 U.S. 515 (1996), and citizen and immigrant, *Plyler v. Doe*, 457 U.S. 202 (1982). Consistent with that legal history, many schools and districts throughout America have

taken practical steps to develop and implement policies to ensure that transgender students—like all other students—are given full and equal access to a welcoming and supportive educational environment in which they have an opportunity to thrive.

The experience of Janice Adams, superintendent of the Benicia Unified school district in California, provides an example of how administrators with no prior experiences with transgender students can successfully implement inclusive, Title IX-compliant policies:

One day about eight years ago, a mother came to me and asked what I could do to support her child who would be starting kindergarten in the fall. . . . Toni was assigned male at birth, but her parents were considering letting her start school as a girl, which is how she had been identifying for some time.

[. . .]

By far the easiest part of the process was the acceptance by Toni's classmates, who embraced her and affirmed her identity. As we worked to balance the need to educate and inform parents while protecting Toni's right to privacy, I met with a small number of concerned parents individually and attended a parent night facilitated by Gender Spectrum. We provided education regarding transgender children to the school's staff, our administrative team and the governing board. For the most part there was a compassionate response to do the right thing. There were people who struggled with

changes we put in place, but we continually focused on supporting Toni and doing what was right.

Janice Adams, *Foreword* to Asaf Orr and Joel Baum, *Schools in Transition: A Guide for Supporting Transgender Students in K-12 Schools* (2015), <http://hrc-assets.s3-website-us-east-1.amazonaws.com//files/assets/resources/Schools-In-Transition.pdf>.

Typically, inclusive school policies address the following topics: (i) bullying, harassment, and discrimination; (ii) privacy/confidentiality; (iii) media and community communication; (iv) names, pronouns, and school records; (v) access to gender-segregated activities and facilities, including restrooms; (vi) dress code; (vii) student transitions; (viii) training and professional development; and (ix) publication of the policy. GLSEN Model District Policy on Transgender and Gender Nonconforming Students (2016). Optimally, comprehensive policies and practices also include establishing supportive student clubs (e.g., Gay/Straight Alliance Clubs); training supportive educators; implementing inclusive curricula; and adopting, communicating clearly, and enforcing inclusive policies as well. 2015 NSCS at 53-77. These approaches are informed by decades of research, collaboration with education and mental health professionals, and implementation in schools across the nation. Notably, similar inclusive approaches to policy and practice have been endorsed by the Amici organizations and other national educational and medical organizations.⁶

6. *See:*

- ◆ The American Academy of Pediatrics at <https://www.aap.org/en-us/about-the-aap/aap-press-room/Pages/AAPOpposesLegislationAgainstTransgenderChildren.aspx>;

The inclusive policies being responsibly implemented in many schools across the nation have been designed by state governments, local municipalities, school districts, and/or schools. *See, e.g.*, Boulder Valley School District (CO), <https://www.bvsd.org/policies/Policies/AC-E3.pdf> (“[T]he goal is to ensure the safety, comfort, and healthy development of the students who are transgender or gender nonconforming while maximizing the students’ social integration and minimizing stigmatization of the students.”).

Non-discrimination policies grant transgender students equal access to restrooms that are consistent with their gender identity. *See, e.g.*, Charlotte-Mecklenberg

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- ◆ The American Psychological Association at <http://www.apa.org/pi/lgbt/programs/transgender/>;
 - ◆ American School Counselor Association at <https://www.schoolcounselor.org/magazine/blogs/may-june-2016/transgender-student-support>;
 - ◆ The Association for Supervision and Curriculum Development at <http://www.ascd.org/publications/newsletters/education-update/jan16/vol58/num01/Charting-a-Course-to-Transgender-Inclusion.aspx>;
 - ◆ National Education Association at https://www.nea.org/assets/docs/20184_Transgender%20Guide_v4.pdf; The American Federation of Teachers at <http://www.aft.org/node/11195>; and
 - ◆ The National Association of School Psychologists at https://www.nasponline.org/assets/Documents/Research%20and%20Policy/Position%20Statements/Transgender_PositionStatement.pdf.
 - ◆ National PTA at <http://www.pta.org/newsevents/newsdetail.cfm?ItemNumber=4838>

Schools (NC), http://dig.abclocal.go.com/wtvd/docs/CMS-supporting-transgender-students-training-final_5599792.pdf; El Rancho Unified School District (CA), http://www.erusd.org/pdf/board_policies/5145_3.pdf. Some also provide transgender students with an *option* to use a private facility (*e.g.*, a school nurse’s restroom), but such policies make clear that transgender students are not *required* to use those alternatives. *See, e.g.*, Washoe County School District (NV), http://washoecountyschools.net/csi/pdf_files/5161%20Reg%20-%20Gender%20Identity%20v1.pdf (“The use of such accommodations shall be a matter of choice for a student”).

Many policies include provisions stating that any students who are uncomfortable using a shared restroom or other facility—because of concern over unwanted exposure to nudity, religious objections, or other reasons—can choose to use alternative options, such as using a privacy partition or curtain or accessing a single-use restroom.⁷ *See, e.g.*, Shorewood School District (WI), http://www.shorewood.k12.wi.us/uploaded/Board_Documents/Policies/411_Guidelines_and_Exhibit.pdf?1393865642372 (“Any student who has a need or desire for increased privacy, regardless of the underlying reason, may be provided with access to a single-access restroom where such a facility is reasonable available”); *see also*, Atherton High School, Jefferson County (KY), <http://schools.jefferson.kyschools.us/High/Atherton/PDFs/SBDM.pdf> (“If a student desires increased privacy,

7. We note that the present case concerns only restrooms, not locker rooms, and that Gloucester High School has no functional showers, making exposure to nudity at the school exceedingly unlikely.

regardless of the underlying reason, the administrator shall make every effort to provide the student with reasonable access to an alternative restroom such as a single-stall restroom.”). *See, e.g.*, District of Columbia Public Schools (DC), <https://dcps.dc.gov/sites/default/files/dc/sites/dcps/publication/attachments/DCPS%20Transgender%20Gender%20Non%20Conforming%20Policy%20Guidance.pdf> (“Any student, transgender or otherwise, who has a need or desire for increased privacy, regardless of underlying reasons, also has the right to access a single-use bathroom, such as a staff restroom or the bathroom in the nurse’s office.”).

Thus, to the extent privacy, religious, or other objections have any bearing here, the fact is that schools already implementing supportive policies have obviated those concerns by offering alternative accommodations to any student who objects to or is uncomfortable with sharing restrooms or other facilities with transgender students. *See, e.g.*, Atherton High School, Jefferson County (KY), <http://schools.jefferson.kyschools.us/High/Atherton/PDFs/SBDM.pdf> (privacy within the shared facility); District of Columbia Public Schools (DC), <https://dcps.dc.gov/sites/default/files/dc/sites/dcps/publication/attachments/DCPS%20Transgender%20Gender%20Non%20Conforming%20Policy%20Guidance.pdf> (option of using a private facility). What schools must not do, though, is bootstrap one student’s discomfort or objection into a reason to segregate and stigmatize a transgender student or whole class of students, especially given the well-documented harms that flow from such differential treatment.

Districts and schools that adopt and implement all-inclusive policies and practices—including restroom policies—are *effective* in establishing physically and psychologically safe schools, resulting in better health and educational outcomes for transgender students. All LGBT students benefit from these approaches, but transgender students benefit even more significantly. Emily A. Greytak, Joseph G. Kosciw, and Madelyn J. Boesen, *Putting the “T” in “Resource”: The Benefits of LGBT-Related School Resources for Transgender Youth*, 10 *Journal Of LGBT Youth* 1-2 (2013). In the end, the data is “helping to validate what we know as clinicians, which is that people who are validated and supported in their selfhood are happier, have [fewer] mental health challenges and are more successful. We need to stop making people be who we think they should be and start letting them be who they are.” Interview with Johanna Olson-Kennedy, Medical Director of the Center for Transyouth Health and Development, Children’s Hospital in Los Angeles on NPR, South Carolina Public Radio (March 23, 2016). This link between LGBT-inclusive school policy and improved mental health outcomes is supported by recent research showing that granting the marriage right to same-sex couples has been associated with reduced suicide rates among adolescent sexual minorities. See Julia Raifman *et al.*, *Difference-in-Differences Analysis of the Association Between State Same-Sex Marriage Policies and Adolescent Suicide Attempts*, *JAMA Pediatrics* (Feb. 20, 2017), <http://jamanetwork.com/journals/jamapediatrics/fullarticle/2604258>.

Corey Maison’s school experience was transformed as a result of the implementation of similar inclusive, Title IX-compliant policies.

“[S]chool now is wonderful,” Maison[‘s mother] said. “The staff and students are very accepting. She’s treated just like any of the other girls. She’s allowed to use the girls’ bathroom and locker room, and play on the girls’ sports team and cheer team if she wants to.”



Corey Maison (pictured).

Nicole Pelletiere, *‘We’re Not a Threat’: Transgender Teen Shares Powerful Message on Bullying*, ABC News (Feb. 8, 2017), <http://abcnews.go.com/Lifestyle/threat-transgender-teen-shares-powerful-message-bullying/story?id=39752422>.

While some argue that protecting and supporting transgender students would lead to dire consequences, those arguments are not supported by the research and are completely at odds with the empirical evidence. To the contrary, the widespread, successful, and non-disruptive implementation of these exact policies in schools every day belies these hypothetical arguments.

First, as shown above, securing equal bathroom access for transgender students is not a new, untested practice; schools and districts around the country already do so, and some have done so for years. *Second*, the experience of these schools and districts contradicts the unsupported claim of several *amici curiae* that transgender-inclusive policies, including restroom policies, necessarily disrupt the school environment and prove unworkable. To the point, a 2015 survey of the seventeen largest school districts in the twelve states (plus Washington, DC)⁸ that, at that time, had enacted statewide rules prohibiting discrimination on the basis of gender identity found that “[y]ears after implementing their own anti-discrimination policies, none of the schools have experienced any problems.” Rachel Percelay, Media Matters, *17 School Districts Debunk Right-Wing Lies About Protections For Transgender Students* (June 3, 2015), <https://mediamatters.org/research/2015/06/03/17-school-districts-debunk-right-wing-lies-abou/203867>. Schools implementing all-inclusive restroom policies also have not experienced any problems as a result. See Curtis Tate, *et al.*, *These schools let transgender students use the bathroom, and here’s what happened*, Kansas City Star (June 20, 2016), <http://www.kansascity.com/news/politics-government/article84811367.html>, (“Schools in Missouri and across the nation have quietly made change with little trouble.”). Petitioner’s claim, that giving transgender students access to restrooms that align with their gender identity contradicts longstanding policies and practices

8. The survey included the District of Columbia and the following states: California, Colorado, Connecticut, Illinois, Iowa, Maine, Massachusetts, Minnesota, New Jersey, Oregon, Washington, and Vermont.

of nearly all U.S. schools, see Br. of Petitioner at 20, *Gloucester County School Bd. v. G.G. ex rel. Grimm*, No. 16-273 (Jan. 3, 2017), is simply false.

Third, some make the fanciful claim that all-inclusive restroom policies will be exploited by some students who would pretend to be transgender in their schools in order to convince their principal, counselor, and teachers that they should be allowed to use the opposite gender's restroom. They would then violate school conduct policies and even commit crimes such as voyeurism, sexual assault, or rape. *See, e.g.*, Bennett at 19-22. This claim—otherwise known as the “restroom predator myth”—is nothing more than a scare tactic. As a coalition of over 200 organizations that work with sexual assault and domestic violence victims noted in a joint statement: “Over 200 municipalities and 18 states have nondiscrimination laws protecting transgender people’s access to facilities consistent with the gender they live every day. In some cases, these protections have been in place for decades. These laws have protected people from discrimination without creating harm. *None of those jurisdictions have seen a rise in sexual violence or other public safety issues due to nondiscrimination laws.* Assaulting another person in a restroom or changing room remains against the law in every single state.” National Consensus Statement of Anti-Sexual Assault and Domestic Violence Organizations in Support of Full and Equal Access for the Transgender, NSVRC (Feb. 8, 2017), <http://www.nsvrc.org/news/news-field/national-consensus-statement-anti-sexual-assault-and-domestic-violence-organizations> (emphasis added).

The “restroom predator myth” is especially unfounded in the context of schools where students attend every day

and are known to school staff. Most inclusive policies include clear procedures for working with transgender students who seek to transition and begin using different restrooms. One common element of such policies is that students “consistently assert” their gender. States, districts, and schools that have adopted these policies have already resolved the question posed by the School District in this case: “how is a school to determine a student’s gender identity for purposes of managing access to sex-separated restrooms” and other facilities? Br. of Petitioner at 37, *Gloucester County School Bd. v. G.G. ex rel. Grimm*, No. 16-273 (Jan. 3, 2017). The answer is clear: Recognize those students who have consistently asserted a gender identity that does not conform to the gender assigned to them at birth. In other words, the mythical predator-student would have to pretend to be transgender consistently over time and meet with his or her school counselors and other staff to work through the variety of applicable policies and supports. In our considered professional experience and judgment, this is simply not a realistic scenario in our schools and with our students.

Petitioners raise the specter of imagined and prospective harms to non-transgender students that are belied by experience and fully addressed by existing policies and practices. The only real and serious risks here are those posed by forcing transgender students to use restrooms that do not align with their gender identity. This isolates them from their peers by forcing them to use a separate and inherently unequal facility, often with dire consequences for the marginalized transgender students.

CONCLUSION

The judgment below should be affirmed.

Respectfully submitted,

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APPENDIX

APPENDIX — *AMICI CURIAE*

National PTA is a nationwide network of four million families, students, teachers, administrators, and business and community leaders devoted to making a difference for the education, health, safety and well-being of every child and making every child's potential a reality. National PTA is comprised of 54 state congresses, comprising 50 states, the District of Columbia, U.S. Virgin Islands, Puerto Rico and the Department of Defense Schools in Europe. Additionally, there are more than 24,000 local PTA units nationwide. PTA serves 16.5 million students across the country.

The overall purpose of PTA is to bring together families, educators and business and community leaders to solve the toughest challenges facing schools and communities and engage and empower families and communities to speak up and take action for every child. For more than 100 years, PTA has been a powerful voice for all children, a relevant resource for families and communities, and a strong advocate for public education.

GLSEN is a non-profit education organization that works with students, parents, and educators across the country and around the world to make all schools safe and affirming for all students, regardless of sexual orientation, gender identity, or gender expression. Since 1990, GLSEN has partnered with educators, schools, and districts across the United States to develop, evaluate, and promulgate LGBT-supportive policies, programs, and practices for K-12 schools. GLSEN's work has contributed to measurable improvements in the school experience of

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lesbian, gay, bisexual, and transgender students in all fifty states, and is now recognized globally as a key contribution to educational access and opportunity for at-risk youth.

GLSEN's expertise and experience informs the work of UN agencies on the Sustainable Development Goals in Education, legislators and policymakers at all levels in the U.S., and individual schools and districts via our chapter network of 40 local chapters in 27 states. GLSEN also conducts quantitative and qualitative research on the experience of LGBTQ students in K-12 schools, and engagement and advocacy in support of a research-based public policy agenda. In addition, GLSEN's student leadership development and student organizing programs have reached hundreds of thousands of students in all fifty states, mobilized via events like GLSEN's Day of Silence and Ally Week, or through GLSEN youth summits or student club support programs. Thousands of alumni of GLSEN's student programs have gone on to lives of service, including work as public and elected officials, business leaders and entrepreneurs, and principals, counselors, and teachers.

The **American School Counselor Association (ASCA)** supports school counselors' efforts to help students focus on academic, career and social/emotional development so they can achieve success in school and are prepared to lead fulfilling lives as responsible members of society. ASCA provides professional development, publications and other resources, research and advocacy to more than 32,000 school counselors around the globe.

Appendix

School counselors promote affirmation, respect and equal opportunity for all individuals regardless of gender identity or gender expression. School counselors encourage a safe and affirming school environment and promote awareness of and education on issues related to transgender and gender-nonconforming students.

The **National Association of School Psychologists (NASP)** is the world’s largest organization of school psychologists, representing more than 25,000 school psychologists throughout the United States and 25 other countries, with members in every state, the District of Columbia, and Puerto Rico. NASP’s vision is that all children and youth thrive in school, at home, and throughout life. To that end, NASP empowers school psychologists by advancing effective practices to improve students’ learning, behavior, and mental health. NASP supports that all youth have equal opportunities to participate in and benefit from educational and mental health services within schools regardless of sexual orientation, gender identity, or gender expression. Critical to this effort is fostering positive, safe, and affirming school environments.

The **National Association of Independent Schools (“NAIS”)** is a voluntary membership organization that represents more than 1,800 private, independent elementary and secondary schools and associations of schools throughout the United States and abroad. NAIS member schools are nonprofit, tax-exempt, and accredited by approved state or regional accrediting organizations. Independent schools are governed by independent boards

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of trustees and are funded primarily through tuition, endowment income, and charitable contributions.

Through its *Principles of Good Practice*, NAIS encourages schools to...

“value the representation and full engagement of individuals within our communities whose differences include — but are not limited to — age, ethnicity, family makeup, gender identity and expression, learning ability, physical ability, race, religion, sexual orientation, and socioeconomic status.... [W]e expect member schools to create and sustain diverse, inclusive, equitable, and just communities that are safe and welcoming for all; we recognize to do so requires commitment, reflection, deliberate planning and action, and ongoing accountability.”

Further, NAIS asks its schools to go beyond compliance by making “the law the floor, not the ceiling, for establishing itself as a diverse, inclusive, safe, and welcoming community for all students, staff, and families.” All NAIS member schools are asked to adhere in spirit to these and other *Principles of Good Practice* in an effort to make independent schools the best schools they can be for all students.

The Colorado Association of School Executives (“CASE”) is a member organization representing approximately 2,200 public school administrators from school districts across the state. CASE has members in about 95% of Colorado’s 178 school districts, and

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membership is structured into seven departments based on job-alike position, including superintendents and senior administrators, principals and assistant principals, assessment and curriculum specialists, CFOs and business managers, education technology leaders, human resources professionals, and more. CASE membership is diverse and includes administrators serving in districts with less than 100 students and urban districts with more 90,000 students.

CASE serves its members by providing legislative and advocacy representation, professional learning opportunities, timely communications, and the chance to access a strong statewide professional network. It is through these primary areas of focus that the association fulfills its mission of empowering education leaders to deliver on the promise of public education.

The Massachusetts Association of School Committees, Inc. (“MASC”), a Massachusetts Corporation incorporated under G.L. c. 180, is located at One McKinley Square, Boston, MA 02109. MASC’s members consist of approximately three hundred and twenty Massachusetts school committees comprising cities, towns and regional school districts. MASC represents the interests of its members in supporting and enhancing public elementary and secondary education in the Commonwealth. MASC’s general interest in this case concerns the importance of providing equal protection for students in our public schools accessing a public education and assuring equal access to school facilities, resources, and services. The issue presented to the Court has substantial implications for our membership.