

No. 18-13592-EE

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

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DREW ADAMS, a minor, by and through his  
next friend and mother, Erica Adams Kasper,  
*Plaintiff-Appellee,*

v.

SCHOOL BOARD OF ST. JOHNS COUNTY, FLORIDA,  
*Defendant-Appellant,*  
TIM FORSON, et al.,  
*Defendants.*

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On appeal from the United States District Court  
for the Middle District of Florida, Jacksonville Division  
Case No. 3:17-cv-00739-TJC-JBT  
The Honorable Timothy J. Corrigan

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**BRIEF OF *AMICI CURIAE*  
NATIONAL WOMEN'S LAW CENTER, ET AL.,  
IN SUPPORT OF PLAINTIFF-APPELLEE**

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**ADDITIONAL *AMICI CURIAE***

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**CERTIFICATE OF INTERESTED PARTIES AND CORPORATE  
DISCLOSURE STATEMENT**

Pursuant to Circuit Rules 26.1-1 through 26.1-3 and 28-1(b), *amici curiae* listed below certify that the name of each person, attorney, association of persons, firm, law firm, partnership, and corporation that has or may have an interest in the outcome of this action—including subsidiaries, conglomerates, affiliates, parent corporations, publicly traded companies that own 10% or more of a party’s stock, and all other identifiable legal entities related to any party in the case—is limited to the following:

**CERTIFICATE OF INTERESTED PARTIES**

1. A Better Balance: *amicus curiae*
2. Adams, Drew (by and through his next friend and mother, Adams Kasper, Erica): Plaintiff-Appellee
3. ADL: *amicus curiae*
4. Advocates for Youth: *amicus curiae*
5. American Association of University Women (AAUW): *amicus curiae*
6. Atlanta Women for Equality: *amicus curiae*
7. Beth Chayim Chadashim (BCC): *amicus curiae*
8. California Women Lawyers: *amicus curiae*

9. California Women's Law Center: *amicus curiae*
10. Center for Constitutional Rights: *amicus curiae*
11. Center for Reproductive Rights: *amicus curiae*
12. Champion Women: *amicus curiae*
13. Chandy, Sunu P. (National Women's Law Center): counsel for *amici curiae*
14. Chaudhry, Neena (National Women's Law Center): counsel for *amici curiae*
15. Coalition of Black Trade Unionists: *amicus curiae*
16. Disability Rights Education and Defense Fund (DREDF): *amicus curiae*
17. Equal Rights Advocates: *amicus curiae*
18. Equality California: *amicus curiae*
19. Family Values @ Work: *amicus curiae*
20. FORGE, Inc.: *amicus curiae*
21. Gender Justice: *amicus curiae*
22. Girls for Gender Equity: *amicus curiae*
23. Girls Inc.: *amicus curiae*
24. Goss Graves, Fatima (National Women's Law Center): counsel for *amici curiae*

25. Honorable Corrigan, Timothy J.: trial judge
26. Hughes, Paul W. (Mayer Brown): counsel for *amici curiae*
27. In Our Own Voice: National Black Women's Reproductive Justice Agenda: *amicus curiae*
28. Kimberly, Michael B. (Mayer Brown LLP): counsel for *amici curiae*
29. LatinoJustice PRLDEF: *amicus curiae*
30. Lawyers Club of San Diego: *amicus curiae*
31. Legal Aid At Work: *amicus curiae*
32. Legal Momentum, the Women's Legal Defense and Education Fund: *amicus curiae*
33. Legal Voice: *amicus curiae*
34. Martin, Emily (National Women's Law Center): counsel for *amici curiae*
35. Mayer Brown LLP: counsel for *amici curiae*
36. National Asian Pacific American Women's Forum: *amicus curiae*
37. National Association of Social Workers (NASW): *amicus curiae*
38. National Association of Women Lawyers: *amicus curiae*
39. National Center for Law and Economic Justice: *amicus curiae*

40. National Center for Transgender Equality: *amicus curiae*
41. National Council of Jewish Women: *amicus curiae*
42. National Crittenton: *amicus curiae*
43. National LGBTQ Task Force: *amicus curiae*
44. National Organization for Women Foundation: *amicus curiae*
45. National Women's Law Center: *amicus curiae*, counsel for *amici curiae*
46. Pincus, Andrew J. (Mayer Brown LLP): counsel for *amici curiae*
47. Planned Parenthood Federation of America, Inc.: parent company of Planned Parenthood of South, East and North Florida and Planned Parenthood of Southwest and Central Florida
48. Planned Parenthood of South, East and North Florida: *amicus curiae*
49. Planned Parenthood of Southwest and Central Florida: *amicus curiae*
50. Rothfeld, Charles A. (Mayer Brown LLP): counsel for *amici curiae*
51. School Board of St. Johns County, Florida: Defendant-Appellant
52. SisterReach: *amicus curiae*

53. Stop Sexual Assault in Schools (SSAIS.org): *amicus curiae*
54. SurvJustice: *amicus curiae*
55. The Impact Fund: *amicus curiae*
56. The Southwest Women’s Law Center: *amicus curiae*
57. The Women’s Law Center of Maryland: *amicus curiae*
58. Union for Reform Judaism: *amicus curiae*
59. Central Conference of American Rabbis: *amicus curiae*
60. Women of Reform Judaism, and Men of Reform Judaism:  
*amicus curiae*
61. UniteWomen.org: *amicus curiae*
62. Women Lawyers On Guard Inc. (“WLG”): *amicus curiae*
63. Women’s Bar Association of the District of Columbia: *amicus  
curiae*
64. Women’s Bar Association of the State of New York: *amicus  
curiae*
65. Women’s Law Project: *amicus curiae*
66. Young Women United: *amicus curiae*

**CERTIFICATE OF INTERESTED PARTIES**

1. A Better Balance is not a publicly held corporation and has no parent company. No publicly held corporation owns 10% or more of its stock.
2. ADL is not a publicly held corporation and has no parent company. No publicly held corporation owns 10% or more of its stock.
3. Advocates for Youth is not a publicly held corporation and has no parent company. No publicly held corporation owns 10% or more of its stock.
4. American Association of University Women (AAUW) is not a publicly held corporation and has no parent company. No publicly held corporation owns 10% or more of its stock.
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9. Center for Constitutional Rights is not a publicly held corporation and has no parent company. No publicly held corporation owns 10% or more of its stock.
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11. Champion Women is not a publicly held corporation and has no parent company. No publicly held corporation owns 10% or more of its stock.
12. Coalition of Black Trade Unionists is not a publicly held corporation and has no parent company. No publicly held corporation owns 10% or more of its stock.

13. Disability Rights Education and Defense Fund (DREDF) is not a publicly held corporation and has no parent company. No publicly held corporation owns 10% or more of its stock.
14. Equal Rights Advocates is not a publicly held corporation and has no parent company. No publicly held corporation owns 10% or more of its stock.
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16. Family Values @ Work is not a publicly held corporation and has no parent company. No publicly held corporation owns 10% or more of its stock.
17. FORGE, Inc. is not a publicly held corporation and has no parent company. No publicly held corporation owns 10% or more of its stock.
18. Gender Justice is not a publicly held corporation and has no parent company. No publicly held corporation owns 10% or more of its stock.

19. Girls for Gender Equity is not a publicly held corporation and has no parent company. No publicly held corporation owns 10% or more of its stock.
20. Girls Inc. is not a publicly held corporation and has no parent company. No publicly held corporation owns 10% or more of its stock.
21. In Our Own Voice: National Black Women's Reproductive Justice Agenda is not a publicly held corporation and has no parent company. No publicly held corporation owns 10% or more of its stock.
22. LatinoJustice PRLDEF is not a publicly held corporation and has no parent company. No publicly held corporation owns 10% or more of its stock.
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26. Legal Voice is not a publicly held corporation and has no parent company. No publicly held corporation owns 10% or more of its stock.
27. Mayer Brown LLP is not a publicly held corporation and has no parent company. No publicly held corporation owns 10% or more of its stock.
28. National Asian Pacific American Women's Forum is not a publicly held corporation and has no parent company. No publicly held corporation owns 10% or more of its stock.
29. National Association of Social Workers (NASW) is not a publicly held corporation and has no parent company. No publicly held corporation owns 10% or more of its stock.
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36. National Organization for Women Foundation is not a publicly held corporation and has no parent company. No publicly held corporation owns 10% or more of its stock.

37. National Women's Law Center is not a publicly held corporation and has no parent company. No publicly held corporation owns 10% or more of its stock.
38. Planned Parenthood Federation of America, Inc. is not a publicly held corporation and has no parent company. No publicly held corporation owns 10% or more of its stock.
39. Planned Parenthood of South, East and North Florida is not a publicly held corporation, and its parent company is Planned Parenthood Federation of America, Inc. No publicly held corporation owns 10% or more of its stock.
40. Planned Parenthood of Southwest and Central Florida is not a publicly held corporation, and its parent company is Planned Parenthood Federation of America, Inc. No publicly held corporation owns 10% or more of its stock.
41. SisterReach is not a publicly held corporation and has no parent company. No publicly held corporation owns 10% or more of its stock.
42. Stop Sexual Assault in Schools (SSAIS.org) is not a publicly held corporation and has no parent company. No publicly held corporation owns 10% or more of its stock.

43. SurvJustice is not a publicly held corporation and has no parent company. No publicly held corporation owns 10% or more of its stock.
44. The Impact Fund is not a publicly held corporation and has no parent company. No publicly held corporation owns 10% or more of its stock.
45. The Southwest Women's Law Center is not a publicly held corporation and has no parent company. No publicly held corporation owns 10% or more of its stock.
46. The Women's Law Center of Maryland is not a publicly held corporation and has no parent company. No publicly held corporation owns 10% or more of its stock.
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52. Women’s Bar Association of the District of Columbia is not a publicly held corporation and has no parent company. No publicly held corporation owns 10% or more of its stock.
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54. Women’s Law Project is not a publicly held corporation and has no parent company. No publicly held corporation owns 10% or more of its stock.

55. Young Women United is not a publicly held corporation and has no parent company. No publicly held corporation owns 10% or more of its stock.

The undersigned will enter this information into the web-based CIP contemporaneous with the filing of this Certificate of Interested Parties and Corporate Disclosure Statement.

Respectfully submitted,

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February 28, 2019

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**Cases—continued**

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<i>United States v. Se. Okla. State Univ.</i> , 2015 WL 4606079 (W.D. Okla. 2015) .....	8

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<i>United States v. Virginia</i> , 518 U.S. 515 (1996) .....	26
<i>Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.</i> , 858 F.3d 1034 (7th Cir. 2017) .....	6, 7, 8
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**Other Authorities**

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Louise M. Antony, <i>Back to Androgyny: What Bathrooms Can Teach Us About Equality</i> , 9 J. Contemp. Legal Issues 1 (1998) .....	22
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David Cantor et al., <i>Report on the AAU Campus Climate Survey on Sexual Assault and Sexual Misconduct</i> , Westat (Sept. 21, 2015), <a href="http://perma.cc/ZY4T-F5LE">perma.cc/ZY4T-F5LE</a> .....	19
Christina Cauterucci, <i>Hidden Figures Is a Powerful Statement Against Bathroom Discrimination</i> , Slate (Jan. 18, 2017), <a href="http://perma.cc/HW98-E6F3">perma.cc/HW98-E6F3</a> .....	23
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**Other Authorities—continued**

Sandy E. James et al., *The Report of the 2015 U.S. Transgender Survey*, Nat’l Ctr. for Transgender Equality (Dec. 2016), perma.cc/M7MQ-ZQ52 ..... 17, 19

Michelle M. Johns et al., *Transgender Identity and Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High School Students—19 States and Large Urban School Districts, 2017*, Ctrs. for Disease Control & Prevention (Jan. 25, 2019), perma.cc/R2PX-ZXLH..... 18

Terry S. Kogan, *Sex-Separation in Public Restrooms: Law, Architecture, and Gender*, 14 Mich. J. Gender & L. 1 (2007) ..... 21, 22

Serena Mayeri, *The Strange Career of Jane Crow: Sex Segregation and the Transformation of Anti-Discrimination Discourse*, 18 Yale J.L. & Human. 187 (2006) ..... 22

Melanie Springer Mock, *I’m a Woman Who Got Kicked Out of Women’s Bathrooms*, Christianity Today Int’l (June 7, 2016), perma.cc/2XHV-ZPHQ ..... 18

Rachel E. Moffitt, *Keeping the John Open to Jane: How California’s Bathroom Bill Brings Transgender Rights Out of the Water Closet*, 16 Geo. J. Gender & L. 475 (2015) ..... 28

Reginald Oh, *Interracial Marriage in the Shadows of Jim Crow: Racial Segregation as a System of Racial and Gender Subordination*, 39 U.C. Davis L. Rev. 1321 (2006) ..... 22

Deborah L. Rhode, *The “No-Problem” Problem: Feminist Challenges and Cultural Change*, 100 Yale L.J. 1731 (1991)..... 21

Richard A. Wasserstrom, *Racism, Sexism, and Preferential Treatment: An Approach to the Topics*, 24 UCLA L. Rev. 581 (1977) ..... 22

## INTEREST OF *AMICI CURIAE*

The National Women’s Law Center (NWLC) is a nonprofit legal organization that is dedicated to the advancement and protection of women’s legal rights and the rights of all people to be free from sex discrimination. Since 1972, the Center has worked to secure equal opportunity in education for girls and women through full enforcement of the Constitution, Title IX, and other laws prohibiting sex discrimination. To that end, the Center has long sought to ensure that rights and opportunities are not restricted based on gender stereotypes and that all individuals enjoy the protection against sex discrimination that is promised by federal law. The Center has participated as counsel or *amicus curiae* in a range of cases before the Supreme Court and the federal courts of appeals. Descriptions of the other *amici* are included in an appendix to this brief.<sup>1</sup>

Defendant-Appellant’s (“Defendant”) policy at issue in this matter—which bars Drew Adams from using the same restrooms as other boys (the “Policy”) simply because he is transgender—discriminates based on sex and thus violates both the Constitution’s Equal Protection Clause and Title IX,

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<sup>1</sup> Pursuant to Fed. R. App. P. 29, *amici* state that no counsel for a party authored this brief in whole or in part and that no person other than *amici* or their counsel made a monetary contribution to its preparation or submission. The parties have consented to the filing of this brief.

as the district court correctly held. In fact, the Policy, and Defendant’s arguments supporting it, relies on the very same discriminatory sex stereotyping that *amici* have combatted for decades—*i.e.*, assumptions about what it means to be “male” or “female” that are used to justify discrimination against individuals who do not conform to those stereotypes. Accordingly, *amici*’s perspective and experience as entities that have long been dedicated to addressing and preventing sex-based discrimination—including that against transgender individuals—may assist the Court in its resolution of this case. *Amici* also submit this brief in support of Drew Adams, and transgender individuals more generally, to refute Defendant’s arguments that the Policy at issue here is justified because it allegedly protects the privacy or safety of nontransgender (or “cisgender”) women and girls.

NWLC and 50 additional *amicus* groups dedicated to women’s rights and equality demonstrate that this Policy does not address actual harm, or credible fear of harm, to cisgender women and girls; it instead promotes sex-based discrimination against and harms transgender students. Additionally, the signatories reject a framework that pits the rights of cisgender and transgender individuals against each other; *amici* maintain that persons of all genders and sexual orientations should find common cause in addressing

the actual harms created by sex discrimination through the protections contained in our federal civil rights laws and the U.S. Constitution.

## **INTRODUCTION AND SUMMARY OF ARGUMENT**

In this case, the district court held that Defendant's Policy violates both the Constitution's Equal Protection Clause and Title IX, 20 U.S.C. § 1681 *et seq.* We concur, and submit this brief to highlight that the protections against sex discrimination based on the U.S. Constitution and contained in Title IX include protections against sex discrimination against transgender individuals. This Court, along with numerous other federal courts, has concluded (1) that such sex-based discrimination is forbidden by the U.S. Constitution's Equal Protection Clause and (2) that the same analysis applies equally to the scope of sex discrimination prohibited by Title IX and the legally analogous Title VII, 42 U.S.C. § 2000e *et seq.* Federal courts routinely recognize that, under applicable federal laws, discrimination based on "sex" thus encompasses gender identity and may not turn solely on one's sex as assigned at birth. An interpretation of sex discrimination that includes protections against discrimination based on sex-stereotyping is also necessary to fulfill the purpose of Title IX, which Congress enacted with the broad goal of preventing sex-based discrimination in education.

As highlighted below, both the record in this case and broader data make clear that, while cisgender students face no harm from transgender students' use of restrooms that conform to their gender identity, transgender students like Drew *are* harmed when excluded from those restrooms. That injury compounds the high rates of sex-based harassment faced by transgender students.

Allegedly protective concerns like those asserted by Defendant have long been touted in defense of rules that kept women out of many jobs and racial minorities out of public facilities. Courts now approach such “protective” rules with the skepticism they deserve and routinely strike them down. Moreover, Defendant's contention that the discriminatory restroom Policy is necessary to protect students, and particularly the privacy and safety of cisgender women and girls, is unavailing. As the district court noted, there is *no* evidence that use by transgender students of the restroom corresponding to their gender causes *any* injury to *any* student.

In sum, Defendant's argument—that transgender students must be excluded from bathrooms consistent with their gender identity to protect cisgender women and girls—is based on unfounded fears and stereotypes and violates the Constitution's Equal Protection Clause and Title IX. Consequently, *amici* urge this Court to affirm the district court's decision: the

evidence is clear that Drew Adams “poses no threat to the privacy or safety of any of his fellow students” and, “[w]hen it comes to his use of the bathroom, the law requires that he be treated like any other boy.” Doc. 192, at 2-3.

## ARGUMENT

### I. TITLE IX AND THE U.S. CONSTITUTION’S EQUAL PROTECTION CLAUSE PROHIBIT SEX DISCRIMINATION AGAINST TRANSGENDER INDIVIDUALS.

Defendant argues that its Policy is not discrimination “on the basis of sex” because the Policy simply recognizes anatomical differences between men and women. Appellants’ Br. 35, 43. But categorically hinging an individual’s adverse treatment on the person’s sex, as assigned at birth, both violates Title IX’s plain terms and rests on sex stereotyping that violates federal law and the U.S. Constitution. As this Court recognized several years ago, “[t]he very acts that define transgender people as transgender are those that contradict stereotypes of gender-appropriate appearance and behavior.” *Glenn v. Brumby*, 663 F.3d 1312, 1316 (11th Cir. 2011) (quotation omitted) (finding Equal Protection Clause violation); *see also Chavez v. Credit Nation Auto Sales, LLC*, 641 F. App’x 883, 884 (11th Cir. 2016) (per

curiam) (holding in Title VII context that “[s]ex discrimination includes discrimination against a transgender person for gender nonconformity”).<sup>2</sup>

**A. Discrimination Against Transgender Individuals Is Inherently Discrimination On The Basis Of Sex.**

Defendant’s Policy denies Drew access to the common boys’ restrooms because of his anatomy—or, more specifically, based on genital configuration. Thus, this discrimination is “related to sex or ha[ving] something to do with sex.” *Fabian v. Hosp. of Cent. Conn.*, 172 F. Supp. 3d 509, 527 (D. Conn. 2016) (quotation omitted); *M.A.B. v. Bd. of Educ. of Talbot Cty.*, 286 F. Supp. 3d 704, 712, 715 (D. Md. 2018) (denying access of a transgender boy to boys’ locker room based on transgender status is a Title IX sex-discrimination claim as well as a gender-stereotyping claim). Under such a policy, transgender people are treated differently simply because their gender identity and sex identified at birth no longer match. *See Evancho v. Pine-Richland Sch. Dist.*, 237 F. Supp. 3d 267, 285 (W.D. Pa. 2017) (reasonable likelihood of equal protection violation where public school’s restroom policy singled out transgender students as “the only students who are not allowed

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<sup>2</sup> Whether under the Constitution’s Equal Protection Clause, Title IX, or Title VII, federal courts’ analysis proceeds in similar fashion as to how the prohibition of sex discrimination includes protections against discrimination for transgender individuals. *See, e.g., Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1047-51 (7th Cir. 2017). Thus, the arguments here should inform the Court’s analysis of both the Title IX and the equal protection claims at issue.

to use the common restrooms consistent with their gender identities”). That is the situation here: Drew is excluded from the boys’ restroom because Defendant insists on treating him based solely on the sex assigned to him at birth.

Contrary to Defendant’s argument, the Policy cannot be placed outside Title IX’s language on the theory that it is not specifically directed at disfavoring women or men as a group. As the court in *Schroer v. Billington* explained:

Imagine that an employee is fired because she converts from Christianity to Judaism. Imagine too that her employer testifies that he harbors no bias toward either Christians or Jews but only “converts.” That would be a clear case of discrimination “because of religion.” No court would take seriously the notion that “converts” are not covered by the statute. Discrimination “because of religion” easily encompasses discrimination because of a *change* of religion.

577 F. Supp. 2d 293, 306 (D.D.C. 2008). Necessarily, then, discrimination “because of . . . sex” encompasses discrimination because of a *change* of sex.

It therefore is not surprising that federal courts have repeatedly concluded that treating transgender persons adversely is sex discrimination. *See EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.*, 884 F.3d 560, 575 (6th Cir. 2018) (it is “analytically impossible to fire an employee based on that employee’s status as a transgender person without being motivated, at least in part, by the employee’s sex”); *see also Whitaker*, 858 F.3d at 1048;

*Rosa v. Park W. Bank & Tr. Co.*, 214 F.3d 213, 214-15 (1st Cir. 2000); *Smith v. City of Salem*, 378 F.3d 566, 575 (6th Cir. 2004); *Schwenk v. Hartford*, 204 F.3d 1187, 1202 (9th Cir. 2000). Precisely the same reasoning applies here.

**B. Discrimination Against Transgender Individuals Based On Nonconformity To Sex Stereotypes Constitutes Sex Discrimination.**

Discrimination against transgender individuals for failure to conform to sex stereotypes is also a form of sex discrimination. *Glenn*, 663 F.3d at 1316-17; *Harris Funeral Homes*, 884 F.3d at 574-77; *Whitaker*, 858 F.3d at 1048; *Dodds v. U.S. Dep't of Educ.*, 845 F.3d 217 (6th Cir. 2016); *Grimm v. Gloucester Cty. Sch. Bd.*, 302 F. Supp. 3d 730, 745-46 (E.D. Va. 2018); *A.H. v. Minersville Area Sch. Dist.*, 290 F. Supp. 3d 321, 324 (M.D. Pa. 2017); *Evancho*, 237 F. Supp. 3d at 295; *Bd. of Educ. of Highland Sch. Dist. v. U.S. Dep't of Educ.*, 208 F. Supp. 3d 850, 865, 869, 871 (S.D. Ohio 2016); *see also R.M.A. by Appleberry v. Blue Springs R-IV Sch. Dist.*, 2019 WL 925511, at \*4-\*5 (Mo. 2019) (refusing transgender boy access to the boys' restrooms and locker rooms discriminated based on his sex under federal and state law).

In reaching this conclusion, courts interpreting Title IX routinely draw from the settled interpretation of Title VII in analyzing the scope of

sex discrimination prohibited by federal law.<sup>3</sup> As the Supreme Court explained in *Price Waterhouse v. Hopkins*:

[W]e are beyond the day when an employer could evaluate employees by assuming or insisting that they matched the stereotype associated with their group, for [i]n forbidding employers to discriminate against individuals because of their sex, Congress intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes. An employer who objects to aggressiveness in women but whose positions require this trait places women in an intolerable and impermissible catch 22: out of a job if they behave aggressively and out of a job if they do not.

490 U.S. 228, 251 (1989) (quotation and citation omitted); *see also id.* at 272-73 (O'Connor, J., concurring in the judgment); *cf. United States v. Se. Okla. State Univ.*, 2015 WL 4606079, at \*2 (W.D. Okla. 2015) (holding that employer's regarding transgender woman as male instead of female is sex discrimination under Title VII). *See also Zarda v. Altitude Express, Inc.*, 883 F.3d 100, 131 (2d Cir. 2018) ("Sexual orientation discrimination is also based on assumptions or stereotypes about how members of a particular

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<sup>3</sup> *See Franklin v. Gwinnett Cty. Pub. Sch.*, 503 U.S. 60, 75 (1992) (interpreting discrimination under Title IX in accordance with earlier Title VII decision); *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 616 n.1 (1999) (Thomas, J., dissenting). This Court recently affirmed that Title VII's disparate-treatment analysis is applicable in the Title IX context. *See GP ex rel. JP v. Lee Cty. Sch. Bd.*, 737 F. App'x 910, 916 n.5 (11th Cir. 2018) (per curiam) (citing *Bowers v. Bd. of Regents of Univ. Sys. of Ga.*, 509 F. App'x 906, 910 (11th Cir. 2013) (per curiam)).

gender should be, including to whom they should be attracted.”); *Hively v. Ivy Tech Cmty. Coll. of Ind.*, 853 F.3d 339 (7th Cir. 2017) (en banc) (discrimination based on sexual orientation is sex-based discrimination under Title VII); *Lampley v. Mo. Comm'n on Human Rights*, 2019 WL 925557, at \*5, \*7 (Mo. 2019) (finding claim of sex discrimination based on sex stereotyping under state law, following *Price Waterhouse*).

Discrimination against transgender individuals rests largely on this sort of stereotyping—here, that a transgender student like Drew is not a “real” boy because he does not conform to conventional understandings of maleness. In arguing to the contrary, Defendant insists that Drew is treated differently from other boys not “because of his failure to act in conformance with his sex” but because “[t]he unrefuted evidence is that [he] is structurally, biologically, and physically a female.” Appellant’s Br. 43. But that argument assumes away the problem: although the district court found as a fact that Drew “consistently, persistently, and insistently’ identifies as a boy,” that “medical science says he is a boy,” and that “the State of Florida says so” (Doc. 192, at 1-2), in Defendant’s view Drew is not a boy—and therefore should not be treated as male—because Defendant does not expect a person with Drew’s anatomy to act as a boy.

Courts—including this one—have consistently recognized this view to constitute sex discrimination. As noted above, “[t]he very acts that define transgender people as transgender are those that contradict stereotypes of gender-appropriate appearance and behavior.” *Glenn*, 663 F.3d at 1316 (quotation omitted); *see, e.g., Barnes v. City of Cincinnati*, 401 F.3d 729, 737 (6th Cir. 2005) (“By alleging that his failure to conform to sex stereotypes concerning how a man should look and behave was the driving force behind defendant’s actions, [the plaintiff] stated a claim for relief pursuant to Title VII[].”); *City of Salem*, 378 F.3d at 572 (sex-stereotyping and gender-discrimination claims adequately pleaded “based on [the plaintiff’s] failure to conform to sex stereotypes by expressing less masculine, and more feminine mannerisms and appearance”); *Schwenk*, 204 F.3d at 1201 (discrimination against “anatomical male[] whose outward behavior and inward identity did not meet social definitions of masculinity” is sex discrimination).

By the same token, the Supreme Court has long recognized that anti-discrimination statutes like Title VII and Title IX are designed to ensure that reproductive anatomy does not determine an individual’s role in society. In *International Union, United Automobile, Aerospace & Agricultural Implement Workers v. Johnson Controls, Inc.*, 499 U.S. 187, 206 (1991), the Court held that employees’ pregnancies or capacity to become pregnant in

the future were not bases for excluding them from factory work that might pose a risk to a fetus. *See also Phillips v. Martin Marietta Corp.*, 400 U.S. 542, 544 (1971) (per curiam) (employers prohibited from assuming that employees who have recently given birth will be too consumed by their parenting duties to make good workers); *Kocak v. Cmty. Health Partners of Ohio, Inc.*, 400 F.3d 466, 470 (6th Cir. 2005) (applicant “cannot be refused employment on the basis of her potential pregnancy”); *Maldonado v. U.S. Bank*, 186 F.3d 759, 768 (7th Cir. 1999) (employer may not conclude, without evidence, that a pregnant employee will be unable to manage the physical demands of pregnancy or delivery while fulfilling all job responsibilities); *Deneen v. Nw. Airlines, Inc.*, 132 F.3d 431, 435-36 (8th Cir. 1998) (same).

These decisions share an incontrovertible principle: a person’s reproductive anatomy at birth does not support conclusory judgments about one’s essential nature. This insight has significant implications here. As the district court noted, “[t]he school bathroom policy does not depend on something innately different between the bodies of boys and girls or what they do in the bathroom.” Doc. 192, at 48. And just as the social expectations following from the female employee’s reproductive capacity could not support discriminatory treatment in *Johnson Controls*, a transgender boy’s anatomy at birth may not be used to exclude him from opportunities offered

to all other boys. *Cf. Roberts v. Clark Cty. Sch. Dist.*, 215 F. Supp. 3d 1001, 1015 (D. Nev. 2016) (employer’s claim that discrimination is premised on transgender person’s “genitalia, not his status as a transgender person” is “a distinction without a difference”).

**C. Protecting Transgender Students Is Required To Fulfill Title IX’s Broad Goal Of Eradicating Discrimination Based On Gender In Educational Programs.**

Against this background, Defendant is wrong in contending that Title IX was designed simply to “address discrimination plaguing biological women in education.” Appellant’s Br. 39. In fact, the statute—which uses expansive language—had the broad purpose of eradicating *all* forms of insidious gender discrimination in educational programs.

The Supreme Court has consistently recognized Title IX’s breadth and the need to interpret it expansively to effectuate its purpose. More than 30 years ago, in *North Haven Board of Education v. Bell*, the Court recognized that, to “give [Title IX] the scope that its origins dictate, we must accord it a sweep as broad as its language.” 456 U.S. 512, 521 (1982) (quotation omitted); *see also Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 175 (2005) (“Congress gave the statute a broad reach.”). Accordingly, Title IX’s language “demonstrates breadth,” and even in “situations not expressly anticipated by Congress” its provisions may not be narrowed judicially. *Pa. Dep’t*

of *Corr. v. Yeskey*, 524 U.S. 206, 212 (1998) (quoting *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 499 (1985)).

In introducing Title IX, Senator Birch Bayh, its principal sponsor,<sup>4</sup> articulated that the “impact of this amendment” was meant to be “far-reaching” (118 Cong. Rec. 5808 (1972)), as it was “designed to root out, as thoroughly as possible at the present time, the social evil of sex discrimination in education.” *Id.* at 5804. Of particular relevance here, Congress was concerned with eradicating pernicious sex stereotyping. In introducing Title IX, Senator Bayh expressly recognized that sex discrimination in education is based on “stereotyped notions,” like that of “women as pretty things who go to college to find a husband, . . . marry, have children, and never work again.” *Id.* Title IX was therefore necessary to “change [these] operating assumptions” and to combat the “vicious and reinforcing pattern of discrimination” based on these “myths.” *Id.*<sup>5</sup>

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<sup>4</sup> The Supreme Court has noted that “Senator Bayh’s remarks, as those of the sponsor of the language ultimately enacted, are an authoritative guide to the statute’s construction.” *N. Haven Bd. of Educ.*, 456 U.S. at 526-27.

<sup>5</sup> As Defendant notes, Congress allowed for separate restrooms by students of different sexes. *See* Appellant’s Br. 35; *see also* 118 Cong. Rec. 5807 (1972) (statement of Sen. Bayh); 117 Cong. Rec. 30,407 (1971) (statement of Sen. Bayh). But recognizing that Congress allowed for separate restroom facilities by male and female students says nothing about *which* of those restrooms may be used by transgender students.

Courts have also held specifically that harassment of male students based on their non-conformity to male stereotypes is sex-based discrimination and thus prohibited by Title IX. *E.g.*, *Patterson v. Hudson Area Sch.*, 551 F.3d 438, 442 (6th Cir. 2009); *Wolfe v. Fayetteville, Ark. Sch. Dist.*, 648 F.3d 860, 867 (8th Cir. 2011); *see also Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 79 (1998) (Title VII prohibits sexual harassment of male employees by male employees).

Nothing places transgender students outside the scope of Title IX's protections against sex-based discrimination. Despite Defendant's arguments regarding the original legislative intent to safeguard cisgender female students (*see* Appellant's Br. 39-40), the Supreme Court has advised that "statutory prohibitions often go beyond the principal evil [that prompted their enactment] to cover reasonably comparable evils, and it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed." *Oncale*, 523 U.S. at 79. As Justice Scalia wrote for a unanimous Court in *Oncale*, even though "[m]ale-on-male sexual harassment in the workplace was assuredly not the principal evil Congress was concerned with when it enacted Title VII," Title VII's broad language extended to that "reasonably comparable evil[]." *Id.* Here, discrim-

ination against transgender students is comparable to the sex discrimination (including sex stereotyping) specifically discussed by Congress at the time of Title IX’s passage—and thus is covered by the statute’s sweeping language.

## **II. TRANSGENDER STUDENTS EXCLUDED FROM RESTROOMS THAT MATCH THEIR GENDER IDENTITY FACE PHYSICAL AND EMOTIONAL HARM.**

There is compelling evidence both in this case’s record and more broadly that Title IX’s bar on sex-based discrimination is needed to protect the privacy, health, and safety of transgender students. Drew “testified that he feels alienated and humiliated, and it causes him anxiety and depression to walk past the boys’ restroom on his way to a [separate] bathroom, knowing every other boy is permitted to use it but him. . . . [Drew] thinks it also sends a message to other students who see him use a ‘special bathroom’ that he is different, when all he wants is to fit in.” Doc. 192, at 27. Additionally, such exclusion may be physically harmful: Drew “monitors his fluid intake to minimize his need to use the restroom and he now uses the school bathroom only once or twice a day.” *Id.* at 26.

As Drew’s example illustrates, transgender students excluded from restrooms corresponding to their gender identity face physical and emotional harms. Some simply avoid urinating while they are at school, leading

to serious health risks, including kidney damage and urinary tract infections. Sandy E. James et al., *The Report of the 2015 U.S. Transgender Survey*, Nat'l Ctr. for Transgender Equality, 14-15 (Dec. 2016), [perma.cc/M7MQ-ZQ52](https://perma.cc/M7MQ-ZQ52) (“NCTE Survey”). Exclusion from the proper restroom may also lead to severe mental distress, including risk of suicide. *See Bd. of Educ. of Highland Local Sch. Dist.*, 208 F. Supp. 3d at 871; *cf. Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483, 494 (1954) (racial segregation causes early isolation and “generates a feeling of inferiority as to [students’] status in the community that may affect their hearts and minds in a way unlikely ever to be undone”).

In addition, “[w]hen schools require transgender girls to use the men’s room or force transgender boys to use the women’s room, they put them at risk of physical, verbal, or sexual assault from other students or adults.” Human Rights Watch, *Shut Out: Restrictions on Bathroom and Locker Room Access for Transgender Youth in US Schools* (Sept. 14, 2016), [perma.cc/Y3MQ-9YTF](https://perma.cc/Y3MQ-9YTF). This increased danger compounds the already-high

risk of violence that transgender students face at school—violence that renders them in particular need of Title IX’s protections against sex-based harassment.<sup>6</sup>

This is a substantial and disturbing problem: transgender students face harassment and violence at far higher rates than their cisgender peers. Confirming earlier studies, data recently released by the CDC shows that 27% of U.S. transgender high school students feel unsafe at school or traveling to or from campus, that 35% are bullied at school, and that 35% attempt suicide. Michelle M. Johns et al., *Transgender Identity and Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High School Students—19 States and Large Urban School Districts, 2017*, Ctrs. for Disease Control & Prevention (Jan. 25, 2019), [perma.cc/R2PX-ZXLH](https://perma.cc/R2PX-ZXLH).

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<sup>6</sup> Notably, this sort of gender policing in restrooms is also harmful for cisgender women who do not comport with traditional gender norms, and there is ample evidence of gender nonconforming women who are ejected from women’s restrooms. See, e.g., Matthew Van Atta, *Lesbian Sues NYC Restaurant Over Bathroom Incident*, *The Advocate* (Oct. 10, 2007), [perma.cc/VWR5-W22D](https://perma.cc/VWR5-W22D); Melanie Springer Mock, *I’m a Woman Who Got Kicked Out of Women’s Bathrooms*, *Christianity Today Int’l* (June 7, 2016), [perma.cc/2XHV-ZPHQ](https://perma.cc/2XHV-ZPHQ).

Similarly, a survey conducted by the National Center for Transgender Equality found that “[t]he majority of respondents who were out or perceived as transgender while in school (K–12) experienced some form of mistreatment, including being verbally harassed (54%), physically attacked (24%), and sexually assaulted (13%) because they were transgender.” NCTE Survey at 2. Startlingly, 17% of respondents “experienced such severe mistreatment that they left a school as a result.” *Id.* Respondents who did not complete high school were more than twice as likely to have attempted suicide as the overall sample. *Id.* at 113. And, according to a survey conducted by the American Association of Universities, nearly one in four transgender students experience sexual violence in college—a higher rate of victimization than that experienced by cisgender college women. David Cantor et al., *Report on the AAU Campus Climate Survey on Sexual Assault and Sexual Misconduct*, Westat, 10 (Sept. 21, 2015), [perma.cc/ZY4T-F5LE](https://perma.cc/ZY4T-F5LE). Congress designed Title IX to address sex discrimination of just this sort, no matter the gender identity or sexual orientation of the student.

**III. COURTS HAVE RECOGNIZED THAT DEFENSES OF EXCLUSIONARY POLICIES BASED ON ASSERTED CONCERNS FOR THE SAFETY OF WOMEN AND GIRLS ARE OFTEN PRETEXTUAL.**

Defendant nevertheless maintains that its Policy—which interferes with Drew’s ability to obtain the benefits of a public education—is justified

because allowing transgender students to use restrooms corresponding with their gender identity “would violate the bodily privacy rights of students and risk their safety and welfare.” Appellant’s Br. 9. Although Defendant’s brief to this Court articulates its protective goal in terms that encompass all cisgender students, Defendant’s arguments before the district court focused on the need to protect the privacy and safety of cisgender girls. *See* page 20, *infra*.

This argument that transgender students must be excluded from appropriate bathrooms to protect the safety of cisgender women and girls is based on unfounded fears and stereotypes. These sorts of “protective rationales”—grounded on the harmful stereotypes that civil rights laws are designed to overcome—have long been used to justify discriminatory rules. Specifically, restrooms and other sex-segregated environments long have been a focus of requirements grounded on protective pretexts. Defendant’s Policy falls squarely within this long and pernicious tradition. In its modern decisions, the Supreme Court has repeatedly, and correctly, rejected these pretextual justifications. This Court should do likewise.

**A. Discriminatory Rules Ostensibly Designed To Protect Women Have Long Reflected Both Stereotype And Pretext.**

In the nineteenth and earlier part of the twentieth centuries, laws that barred women from certain professions were frequently justified by their stated intent to protect women’s health and welfare. *See Muller v. Oregon*, 208 U.S. 412 (1908) (holding State had a valid interest in women-protective laws). Laws based on this sort of protective rationale, which served to exclude women from employment opportunities, continued to be enforced for more than half a century thereafter. *See, e.g., Goesaert v. Cleary*, 335 U.S. 464, 466 (1948) (finding law’s justification—“that the oversight assured through ownership of a bar by a barmaid’s husband or father minimizes hazards that may confront a barmaid without such protecting oversight”—was “entertainable”).

In the development of rules ostensibly designed to protect women in the workplace, restrooms and similar sex-segregated environments played a central role in the arguments to limit women’s economic opportunities. *See, e.g.,* Deborah L. Rhode, *The “No-Problem” Problem: Feminist Challenges and Cultural Change*, 100 *Yale L.J.* 1731, 1782-83 (1991); Terry S. Kogan, *Sex-Separation in Public Restrooms: Law, Architecture, and Gender*, 14 *Mich. J. Gender & L.* 1, 16 (2007). Scholars have understood these rules

largely as an expression of woman-protective safety and modesty concerns, rooted in the idea that women were “especially vulnerable” in the “public realm.” Kogan, *supra*, at 54; *see also* Louise M. Antony, *Back to Androgyny: What Bathrooms Can Teach Us About Equality*, 9 J. Contemp. Legal Issues 1, 4-5 (1998); Richard A. Wasserstrom, *Racism, Sexism, and Preferential Treatment: An Approach to the Topics*, 24 UCLA L. Rev. 581, 593-94 (1977).

This stated goal of protecting women—specifically, white women—similarly served as justification for segregationist policies, many of which were rooted in anti-miscegenation sentiment. *See generally* Reginald Oh, *Interracial Marriage in the Shadows of Jim Crow: Racial Segregation as a System of Racial and Gender Subordination*, 39 U.C. Davis L. Rev. 1321, 1348 (2006) (“racial segregation . . . sought to ‘protect’ white women”). For example, schools forced to integrate racially after *Brown* started to consider sex-segregated schooling to avoid interracial interactions between the sexes. *See* Serena Mayeri, *The Strange Career of Jane Crow: Sex Segregation and the Transformation of Anti-Discrimination Discourse*, 18 Yale J.L. & Human. 187, 192-93, 270 (2006) (“If anything, the psychological stigma of sex segregation particularly affected black boys, whose alleged propensity to prey upon white girls animated the policy.”).

Thus, restrooms and similar spaces were at the center of the effort to entrench racial segregation. Even after *Brown*, States continued to assert protective purposes in support of the continued racial segregation of public restrooms, pointing, for example, to supposedly heightened rates of venereal disease among black communities. Desegregated restrooms were framed as a public health threat, particularly for girls in school. See, e.g., Phoebe Godfrey, *Bayonets, Brainwashing, and Bathrooms: The Discourse of Race, Gender, and Sexuality in the Desegregation of Little Rock's Central High*, 62 Ark. Hist. Q. 42, 64 (2003) (“White daughters . . . needed to be protected from the sexualized presence of the black girls.”). The impact of such restrictions is dramatized in *Hidden Figures*, a film that depicts the need for a Black female physicist working at NASA to leave her building every time she needed a bathroom break. See Christina Cauterucci, *Hidden Figures Is a Powerful Statement Against Bathroom Discrimination*, Slate (Jan. 18, 2017), [perma.cc/HW98-E6F3](https://perma.cc/HW98-E6F3).

This attitude extended to other public facilities. For example, the City of Jackson, Mississippi, preferred to close its public swimming pools rather than desegregate them. See *Palmer v. Thompson*, 403 U.S. 217, 227 (1971) (finding no discriminatory effect in this action). But see *City of St. Petersburg v. Alsup*, 238 F.2d 830, 830, 832 (5th Cir. 1956).

In this respect, Defendant’s Policy has much in common with the protective and discriminatory policies of the past. Although the Policy purports to advance interests of privacy and safety, its rationale is aimed at the protection of women: “[w]hen a girl goes into a girls’ restroom, she feels that she has the privacy to change clothes in there, to go to the bathroom, to refresh her makeup. They talk to other girls.” Doc. 192, at 20 (quoting Doc. 161, at 213); *see also id.* (“[A] student may want privacy to undress or clean up a stain on her clothing.”); *id.* (“[A]llowing a transgender student to use a restroom that conformed to his or her gender identity could create opportunities for students ‘with untoward intentions to do things they ought not to do.’”) (quoting Doc. 162, at 112-13); *id.* at 21 (“[T]he School Board seeks to assure that members of the opposite sex are not in an unsupervised bathroom together, citing as an example the risks of danger posed to a female freshman student who might find herself alone in the restroom with an 18-year[-]old male student.”) (citing Doc. 162, at 69, 111, 115). The rationale that a girl needs a private space to “refresh her makeup” and “talk to other girls” rests on stereotypes regarding who needs protection, and from whom—stereotypes that, like racially discriminatory rules, exclude the disfavored class: here, transgender students.

**B. The Supreme Court Has Recognized That “Protecting Women” Generally Does Not Justify Sex Discrimination.**

The Supreme Court has come to recognize that the stated rationale of “protecting women” does not justify implementation of discriminatory laws, grounded on stereotypes, that actually deny women opportunities. In *Frontiero v. Richardson*, the Court addressed these protective pretexts: “[t]raditionally, such discrimination was rationalized by an attitude of ‘romantic paternalism’ which, in practical effect, put women, not on a pedestal, but in a cage.” 411 U.S. 677, 684 (1973) (plurality opinion). The Court held that such “gross, stereotyped distinctions between the sexes” are insupportable as a basis for public policy. *Id.* at 685.

The Court has since made clear that exclusionary policies designed to “protect women” often do not serve that purpose—and instead disadvantage those groups. In *Johnson Controls*, the Court addressed an employer’s self-described “fetal-protection policy” that excluded “fertile female employee[s] from certain jobs” based on an expressed “concern for the health of the fetus.” 499 U.S. at 190. Noting that the effect of this policy was the blanket exclusion of women, the Court found the employer’s policy both discriminatory against women (*see id.* at 197-200) and unrelated to “job-related skills and aptitudes.” *Id.* at 201; *see also id.* at 205. Given the purpose of Title VII to achieve equal opportunities for women, the employer’s “professed moral

and ethical concerns about the welfare of the next generation” did not justify disparate treatment, as Title VII was intended to ensure that such decisions were left to women themselves. *Id.* at 206.

Notably, in reaching this conclusion, the Court harkened back to its decision in *Mueller*, observing that “[c]oncern for a woman’s existing or potential offspring historically has been the excuse for denying women equal employment opportunities.” *Johnson Controls*, 499 U.S. at 211. But pointing to Title VII and the Pregnancy Discrimination Act, 42 U.S.C. § 2000e(k), the Court held that “[i]t is no more appropriate for the courts than it is for individual employers to decide whether a woman’s reproductive role is more important to herself and her family than her economic role.” *Id.*; see *Dothard v. Rawlinson*, 433 U.S. 321, 335 (1977) (“[T]he argument that a particular job is too dangerous for women may appropriately be met by the rejoinder that it is the purpose of Title VII to allow the individual woman to make that choice for herself.”); see also *United States v. Virginia*, 518 U.S. 515, 542-43 (1996) (“generalizations about ‘the way women are,’” including those based on assertedly protective rationales, “no longer justify denying opportunity to women as a group”; rules creating such bans violate the Constitution’s equal protection guarantee).

Courts have also recently rejected laws that use a pretextual interest in women’s health and well-being to limit their reproductive decisions. *See, e.g., Whole Woman’s Health v. Hellerstedt*, 136 S. Ct. 2292, 2316 (2016) (abortion laws justified as protections for women’s “health and safety” violated women’s liberty).

Similarly, this Court should reject Defendant’s alleged safety and privacy arguments put forth in defense of its discriminatory Policy.

#### **IV. DEFENDANT’S POLICY DOES NOT ADVANCE ACTUAL SAFETY OR PRIVACY INTERESTS OF CISGENDER WOMEN AND GIRLS.**

Under the U.S. Constitution, and Titles VII and IX, a rule that discriminates on the basis of sex may not rest on gender stereotypes and assumptions—the sort of rationales often offered in the past to support exclusionary rules that limited opportunity and use of public facilities. Defendant’s discriminatory Policy fails this test. For the reasons explained by Plaintiff and detailed by the district court, the Policy at issue does not advance any real interest in safety or privacy. And beyond the record in this case, research has confirmed the unsurprising conclusion that alleged safety and privacy concerns regarding the use of public restrooms by transgender individuals are wholly unsubstantiated: “there is no evidence that allowing

transgender students to choose bathroom or locker room facilities that correspond to their gender identity puts other students at risk.” Human Rights Watch, *supra*; see also Rachel E. Moffitt, *Keeping the John Open to Jane: How California’s Bathroom Bill Brings Transgender Rights Out of the Water Closet*, 16 *Geo. J. Gender & L.* 475, 500 (2015).

Federal courts have also consistently rejected claims that transgender-inclusive policies violate others’ rights. *Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518 (3rd Cir. 2018) (rejecting arguments that a school policy protecting transgender students violated other students’ rights), rehearing en banc denied, 897 F.3d 515 (3d Cir. 2018); *Cruzan v. Special Sch. Dist. No. 1.*, 294 F.3d 981, 983 (8th Cir. 2002) (rejecting arguments that a school policy protecting transgender employees with respect to restroom use violated another employee’s rights under Title VII); *Parents for Privacy v. Dallas Sch. Dist. No. 2*, 326 F. Supp. 3d 1075, 1099 (D. Or. 2018) (rejecting arguments that a school policy protecting transgender students violated other students’ rights); *Students & Parents for Privacy v. U.S. Dep’t of Educ.*, 2016 WL 6134121 (N.D. Ill. 2016), report and recommendation adopted, 2017 WL 6629520 (N.D. Ill. 2017) (same).

Similarly, in this case, Defendant can offer no factual basis for its purported concern that cisgender boys will claim transgender status as a pretext to obtain access to girls' restrooms, and it is absurd to suggest that individuals would dishonestly identify as transgender.<sup>7</sup> As the district court found, and Defendant does not dispute, gender dysphoria is a diagnosable medical condition in which individuals “consistently, persistently, and insistently’ identif[y]” with the other sex, and it can be addressed medically, for example, through hormone therapy or surgery. Doc 192, at 1-2, 7-10. As an example, Drew himself underwent significant surgery. It is not credible to posit that anyone would identify as transgender for the opportunity to ogle members of the opposite sex in a bathroom—and there is no evidence of any such incidents.<sup>8</sup>

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<sup>7</sup> A witness for Defendant claimed she was concerned about students who identify as gender-fluid, suggesting this might allow a “football quarterback” to “come in and say I feel like a girl today and so I want to be able to use the girls’ room.” Doc. 161, at 213:10-18; *see also id.* 214:1-4; *id.* 216:15-17; Doc. 162, 70:6-14.

<sup>8</sup> Arguments submitted by Defendant’s *amicus*, the so-called “Women’s Liberation Front,” largely align with those presented by Defendant, but emphasize the assertion that according protection to transgender women would disadvantage and injure cisgender women. These arguments are both offensive and unsupported by factual evidence or federal law. Accordingly, the signatories to this brief reject a framework that pits the rights of cisgender women and girls against those of transgender individuals; *amici* assert that persons of all genders and sexual orientations should find common

Moreover, Defendant assumes all that matters, in classifying by gender, is sex at birth based on anatomy, and so a transgender man like Drew is “actually” a woman. Necessarily, this argument denies that there *is* such a thing as being transgender. Such a conclusion disregards the lived reality of countless trans people throughout history, medical science (*see, e.g.*, Doc. 192, at 5-10), and the extensive body of court decisions according protection to transgender individuals under Title VII, Title IX, and the U.S. Constitution’s equal protection provisions, including this Court’s decision in *Glenn*. The district court properly held that Defendant’s Policy, like other pretextual policies designed to perpetuate discriminatory rules, violates federal law.

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cause in addressing sex discrimination through the protections of federal law.

## CONCLUSION

The district court's order should be affirmed.

Respectfully submitted,

/s/ Charles A. Rothfeld

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February 28, 2019

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### **CERTIFICATE OF COMPLIANCE**

This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and 32(a)(7)(B) because it contains 6,489 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in size 14 Century Schoolbook font.

Dated: February 28, 2019

/s/ Andrew J. Pincus

### **CERTIFICATE OF SERVICE**

I certify that on February 28, 2019, I filed the foregoing via the CM/ECF system and the foregoing document was served on all parties or their counsel of record through the CM/ECF system.

Dated: February 28, 2019

/s/ Andrew J. Pincus

## APPENDIX A

### DESCRIPTION OF *AMICI CURIAE*

#### **A Better Balance**

A Better Balance is a national legal advocacy organization dedicated to promoting fairness in the workplace and helping employees meet the conflicting demands of work and family. Through its legal clinic, A Better Balance provides direct services to low-income workers on a range of issues, including employment discrimination based on pregnancy and/or caregiver status. A Better Balance is also working to combat LGBTQ discrimination—including bathroom access rights for transgender people—through its national LGBTQ Work-Family project. A Better Balance is committed to ensuring the health, safety, and security of all LGBTQ individuals and families.

#### **ADL**

Founded in 1913 in response to an escalating climate of anti-Semitism and bigotry, ADL is a leading anti-hate organization with the timeless mission to protect the Jewish people and to secure justice and fair treatment for all. Today, we continue to fight all forms of hate with the same vigor and

passion. A global leader in exposing extremism, delivering anti-bias education, and fighting hate online, ADL's ultimate goal is a world in which no group or individual suffers from bias, discrimination, or hate.

### **Advocates for Youth**

Advocates for Youth works alongside thousands of young people here in the U.S. and around the globe as they fight for sexual health, rights, and justice. Advocates for Youth partners with youth leaders, adult allies, and youth-serving organizations to advocate for policies and champion programs that recognize young people's rights to honest sexual health information; accessible, confidential, and affordable sexual health services; and the resources and opportunities necessary to create safe and supportive environments for all youth. Advocates prioritizes issues that impact the young people we serve and work alongside, who are majority LGBTQ-identified and youth of color.

### **American Association of University Women (AAUW)**

In 1881, the American Association of University Women (AAUW) was founded by like-minded women who had defied society's conventions by earning college degrees. Since then, it has worked to increase women's access to higher education and equal employment opportunities. Today, AAUW has more than 170,000 members and supporters, 1,000 branches,

and 800 college and university partners nationwide. AAUW plays a major role in mobilizing advocates nationwide on AAUW's priority issues to advance gender equity. In adherence with its member-adopted Public Policy Priorities, AAUW supports equitable educational climates free of harassment, bullying, and sexual assault, and vigorous enforcement of Title IX and all other civil rights laws pertaining to education. AAUW also supports civil rights for LGBTQ Americans.

### **Atlanta Women for Equality**

Atlanta Women for Equality (AWE) is a 501(c)(3) nonprofit legal aid organization dedicated to shaping our schools according to true standards of equality and to empowering women and girls to assert their rights to equal treatment. We accomplish this mission by providing free legal advocacy for individuals facing gender discrimination at school and by protecting and expanding educational opportunities through policy advocacy. AWE strongly opposes the tragically widespread discrimination in schools against transgender individuals. Such discrimination is clearly prohibited under, *inter alia*, Title IX and the Equal Protection Clause of the U.S. Constitution, causes severe and often indelible harm to the lives of transgender individuals and to surrounding communities, and profoundly undermines our nation's commitment to providing equal educational opportunities for all.

### **Beth Chayim Chadashim (BCC)**

Beth Chayim Chadashim, or BCC, is a Reform Jewish synagogue in Los Angeles. BCC was the world's first LGBTQ synagogue and has been and seeks to expand its commitment to full inclusion for transgender and gender non-conforming people and their families, including our members. BCC embraces the gender identity of each individual in our communities.

### **California Women Lawyers**

California Women Lawyers (CWL) is a non-profit organization that was chartered in 1974. CWL is the only statewide bar association for women in California and maintains a primary focus on advancing women in the legal profession. Since its founding, CWL has worked to improve the administration of justice, to better the position of women in society, and to eliminate all inequities based on gender. CWL participates as *amicus curiae* in a wide range of cases to secure the equal treatment of women and other classes of persons under the law.

### **California Women's Law Center**

The California Women's Law Center (CWLC) is a statewide, non-profit law and policy center dedicated to breaking down barriers and advancing the potential of women and girls through transformative litigation,

policy advocacy, and education. CWLC's issue priorities include gender discrimination, economic justice, violence against women, and women's health. CWLC places particular emphasis on eliminating all forms of gender discrimination on school campuses, including discrimination based on sexual orientation and sexual identity. CWLC remains committed to supporting equal rights for transgender folks and to eradicating invidious discrimination in all forms.

### **Center for Constitutional Rights**

The Center for Constitutional Rights ("CCR") is a national, not-for-profit legal, educational, and advocacy organization dedicated to protecting and advancing rights guaranteed by the United States Constitution and international law. Founded in 1966 to represent civil rights activists in the South, CCR has litigated numerous landmark civil and human rights cases on behalf of individuals impacted by arbitrary and discriminatory state policies, including policies that disproportionately impact LGBTQI communities of color.

### **Center for Reproductive Rights**

The Center for Reproductive Rights is a global advocacy organization that uses the law to advance reproductive freedom as a fundamental right that all governments are legally obligated to respect, protect, and fulfill. In

the U.S., the Center's work focuses on ensuring that all people have access to a full range of high-quality reproductive health care. Since its founding in 1992, the Center has been actively involved in nearly all major litigation in the U.S. concerning reproductive rights, in both state and federal courts, including serving as lead counsel for the plaintiffs in *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016), in which the U.S. Supreme Court reaffirmed the constitutional right to access legal abortion. As a rights-based organization, the Center has a vital interest in protecting individuals endeavoring to exercise their fundamental rights free from restrictions based on gender stereotypes. Using its expertise in U.S. constitutional law, the Center seeks to highlight that discrimination against transgender people is rooted in the same gender stereotypes and false pretenses that have historically been used to justify discrimination against women.

### **Champion Women**

Champion Women is a non-profit providing legal advocacy for girls and women in sports. Focus areas include equal play, such as traditional Title IX compliance in athletic departments, sexual harassment, abuse and assault, as well as employment, pregnancy, and LGBT discrimination.

### **Coalition of Black Trade Unionists**

The CBTU represents the interests of people of color and the underprivileged within the workforce and our overall society. We believe all should have the right to dignity and respect.

### **Disability Rights Education and Defense Fund (DREDF)**

The Disability Rights Education and Defense Fund, Inc. (DREDF), based in Berkeley, California, is the nation's premier law and policy center dedicated to protecting and advancing the civil rights of people with disabilities. Founded in 1979, DREDF pursues its mission through education, advocacy, and law reform efforts, and is nationally recognized for its expertise in the interpretation of federal disability civil rights laws. We broadly support interpretations of civil rights laws that ensure equal educational opportunity for all students, regardless of race, ethnicity, disability, immigration status, or sexual orientation and gender identity.

### **Equal Rights Advocates**

Equal Rights Advocates (ERA) is a national non-profit legal organization dedicated to protecting and expanding economic and educational access and opportunities for women and girls. In service of its mission, ERA litigates class actions and other high-impact cases on issues of gender discrim-

ination in employment and education. Through its legal advocacy, ERA represents members of the LGBTQI community, including individuals who identify as transgender and gender non-conforming. ERA believes that defending the rights and dignity of the transgender community is essential to advancing gender equity for all persons. In service of its mission, ERA litigates class actions and other high-impact cases on issues of gender discrimination in employment and education. ERA has a long history of pursuing equality and justice for women and girls under Title IX through advocacy, legislative efforts, and litigation. ERA has served as counsel in numerous class and individual cases involving the interpretation of Title IX in the athletics and sexual harassment contexts. ERA also provides advice and counseling to hundreds of individuals each year through a telephone advice and counseling hotline, and has participated as *amicus curiae* in scores of state and federal cases involving the interpretation and application of procedural and substantive laws affecting the ability of students to obtain and enforce their equal rights under the law.

### **Equality California**

Equality California is an LGBTQ civil rights organization, representing 800,000 members.

## **Family Values @ Work**

FV@W is a network of 26 statewide coalitions anchored by 28 in-state lead organizations working at the intersection of economic, racial, and gender justice. We are guided and supported by a staff of 11, headquartered in Washington, D.C. and working in locations across the country. We are governed by a Board of Directors predominately consisting of state and local leaders from within our network.

We are women and queer/trans people, low-income people, people of color, those living at the intersection of those identities, and those that ally with us. We are most impacted by the lack of workplace leave policies, and together we will win change.

## **FORGE, Inc.**

FORGE is a national transgender anti-violence organization, federally funded to provide services to transgender and non-binary survivors of violence and crime. We believe trans people are far safer from attack when they are permitted to choose the restroom they feel best aligns with their gender expression.

## **Gender Justice**

Gender Justice is a nonprofit legal and policy advocacy organization based in the Midwest that is committed to the eradication of gender barriers

through impact litigation, policy advocacy, and education. As part of its litigation program, Gender Justice represents individuals and provides legal advocacy as *amicus curiae* in cases involving issues of gender discrimination. Gender Justice has an interest in ensuring that transgender individuals have access to the restrooms and other gendered facilities that match their gender identity.

### **Girls for Gender Equity**

Girls for Gender Equity (GGE) is a youth development and policy advocacy organization committed to the well-being of transgender and cisgender girls and gender non-conforming youth of color. Through education, organizing, policy advocacy, and physical fitness, GGE encourages communities to remove barriers and create opportunities for girls and women to live self-determined lives. People of trans, and especially transgender children of color, face considerable discrimination in their schools, workplaces, and communities. Being denied access to restrooms and changing areas is a profound source of humiliation and ostracism for trans youth, and can have detrimental effects on their education, which in turn pushes them out of school. GGE supports this *amicus* and the urgent need for schools to make every effort to create safe, affirming, and inclusive academic environments.

## **Girls Inc.**

Girls Inc. is the national organization dedicated to inspiring all girls to be strong, smart, and bold, through direct service and advocacy. Our 81 local affiliates in the U.S. and Canada serve girls ages 5-18, primarily through afterschool and summer programs. We reach over 156,000 girls annually and provide them with strong mentoring relationships, a safe, pro-girl environment, and research-based programming. We also advocate, with our girls, for policies and practices that break down barriers so that all girls and young women can have the chance to grow up healthy, educated, and independent. Central to the mission of Girls Inc. is our belief that girls have the right to be themselves and resist gender stereotypes. Both Title IX and the Equal Protection Clause protect students' civil right to an education free from gender identity discrimination, including the right to use restrooms at school that match their gender identity.

## **In Our Own Voice: National Black Women's Reproductive Justice Agenda**

In Our Own Voice: National Black Women's Reproductive Justice Agenda is a national-state partnership with eight Black women's Reproductive Justice organizations: The Afiya Center, Black Women for Wellness, Black Women's Health Imperative, New Voices for Reproductive Justice,

SisterLove, Inc., SisterReach, SPARK Reproductive Justice NOW, and Women with a Vision. In Our Own Voice is a national Reproductive Justice organization focused on lifting up the voices of Black women leaders on national, regional, and state policies that impact the lives of Black women and girls.

Reproductive Justice is a framework rooted in the human right to control our bodies, our sexuality, our gender, and our reproduction. Reproductive Justice will be achieved when all people, of all immigration statuses, have the economic, social, and political power and resources to define and make decisions about our bodies, health, sexuality, families, and communities in all areas of our lives with dignity and self-determination. Access to safe educational facilities that are consistent with students' gender identities and that align with Title IX protections is essential to ensuring this right.

### **LatinoJustice PRLDEF**

LatinoJustice PRLDEF, formerly known as the Puerto Rican Legal Defense & Education Fund, is a national non-profit civil rights legal defense fund that, since 1972, has advocated for and defended the constitutional rights of all Latinos as part of our continuing mission to protect and advance the civil rights of the greater pan-Latinx community in the United States

and Puerto Rico. LatinoJustice has engaged in and supported law reform litigation across the country combatting discriminatory policies and practices in various areas, including criminal justice, education, employment, fair housing, immigrants' rights, language rights, LGBTQ rights, redistricting, and voting rights.

LatinoJustice PRLDEF is a not-for-profit corporation with no parent corporation. No publicly held corporation owns 10 or more percent of its stock.

### **Lawyers Club of San Diego**

Lawyers Club of San Diego is a 1,300+ member legal association established in 1972 with the mission “to advance the status of women in the law and society.” In addition to presenting educational programs and engaging in advocacy, Lawyers Club participates in litigation as *amicus curiae* where the issues concern the advancement of status of women in the law and society. Lawyers Club joins this *amicus* brief because children must have equal access to school facilities without discrimination based on gender or gender identity, and sexist “women protective” policies that have been disingenuously used to hurt the rights of oppressed groups directly impacts the ability of women to advance their status in law in society.

## **Legal Aid At Work**

Legal Aid at Work (LAAW) is a non-profit public interest law firm whose mission is to protect, preserve, and advance the employment and education rights of individuals from traditionally under-represented communities. LAAW has represented plaintiffs in cases of special import to communities of color, women, recent immigrants, individuals with disabilities, the LGBT community, and the working poor. LAAW has litigated a number of cases under Title IX of the Education Amendments of 1972, as well as Title VII of the Civil Rights Act of 1964. LAAW's interest in preserving the protections afforded to employees and students by this country's antidiscrimination laws is longstanding.

## **Legal Momentum, the Women's Legal Defense and Education Fund**

Legal Momentum, the Women's Legal Defense and Education Fund, is a leading national non-profit civil rights organization that for nearly 50 years has used the power of the law to define and defend the rights of girls and women. Legal Momentum has consistently supported the rights of the LGBT community to be free from discrimination on the basis of sexual orientation and gender identity. Legal Momentum has developed numerous resources and appeared before courts in many cases concerning the right to be free from sex discrimination and gender stereotypes, including appearing

as counsel in *Nguyen v. INS*, 533 U.S. 53 (2001), and *Miller v. Albright*, 523 U.S. 420 (1998), and as *amicus curiae* in *United States v. Virginia*, 518 U.S. 515 (1996), *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989), and *Mississippi University for Women v. Hogan*, 458 U.S. 718 (1982).

### **Legal Voice**

Legal Voice is a non-profit public interest organization based in Seattle that is dedicated to protecting the rights of women through litigation, legislative advocacy, and education about legal rights. Legal Voice's work includes decades of advocacy to advance the rights of lesbian, gay, bisexual, and transgender (LGBT) people and to ensure that all people are free from discrimination based on their sex, sexual orientation, and gender identity or expression. Legal Voice has participated as counsel and as *amicus curiae* in cases throughout the Northwest and the country. Legal Voice has a strong interest in this case because it raises important issues concerning the rights of transgender people to use facilities that are consistent with their gender identity.

### **National Asian Pacific American Women's Forum**

The National Asian Pacific American Women's Forum (NAPAWF) is the only national, multi-issue Asian American and Pacific Islander (AAPI)

women's organization in the country. NAPAWF's mission is to build the collective power of all AAPI women and girls to gain full agency over our lives, our families, and our communities. NAPAWF's work is centered in a reproductive justice framework that acknowledges the diversity within our community and ensures that different aspects of our identity—such as ethnicity, immigration status, education, sexual orientation, gender identity, and access to health—are considered in tandem when addressing our social, economic, and health needs.

### **National Association of Social Workers (NASW)**

The National Association of Social Workers (NASW), founded in 1955, is the largest association of professional social workers in the United States with over 120,000 members in 55 chapters. NASW recognizes the considerable diversity in gender expression and identity among our population groups. The NASW National Committee on LGBT Issues develops, reviews, and monitors programs of the Association that significantly affect LGBT individuals. The NASW Code of Ethics for professional social workers requires that all people—including those who are transgender—should be afforded the same respect and rights regardless of gender identification. NASW supports safe and secure educational environments at all levels of education, in which children, youth, and adults may obtain an education

free from discrimination, harassment, violence, and abuse. NASW asserts that discrimination and prejudice directed against any individual on the basis of gender identity or gender expression, can be damaging to the social, emotional, psychological, physical, and economic well-being of the affected individual, as well as to society as a whole.\*

### **National Association of Women Lawyers**

The mission of the National Association of Women Lawyers (NAWL) is to provide leadership, a collective voice, and essential resources to advance women in the legal profession and advocate for the equality of women under the law. Since 1899, NAWL has been empowering women in the legal profession, cultivating a diverse membership dedicated to equality, mutual support, and collective success. As part of its mission, NAWL works to protect both adults and children from discrimination based on sexual orientation or gender identity.

### **National Center for Law and Economic Justice**

The National Center for Law and Economic Justice (NCLEJ), exists to protect the legal rights of low-income people, especially those who are

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\* *NASW Policy Statements: Transgender and Gender—Antidiscrimination and Public Awareness and Advocacy*, in *Social Work Speaks* 305, 306 (10th ed. 2015).

members of marginalized communities. This includes trans people, who face higher than average poverty rates as a result of widespread discrimination. NCLEJ focuses on impact litigation that will establish important principles for the protection of such individuals and is committed to ensuring that all people have fair access to government resources. It has been involved, as counsel or *amicus curiae*, in many significant cases involving the rights of low-income individuals over the more than 50 years since it was founded in 1965.

### **National Center for Transgender Equality**

The National Center for Transgender Equality (NCTE) is a national social justice organization founded in 2003 and devoted to advancing justice, opportunity, and well-being for transgender people and their families through education, advocacy, and research. NCTE works with policymakers and communities around the country to develop fair and effective public policies, and has helped many state and local education agencies develop and implement effective equal opportunity policies to support their students.

### **National Council of Jewish Women**

The National Council of Jewish Women (NCJW) is a grassroots organization of 90,000 volunteers and advocates who turn progressive ideals into

action. Inspired by Jewish values, NCJW strives for social justice by improving the quality of life for women, children, and families and by safeguarding individual rights and freedoms. NCJW's Resolutions state that NCJW resolves to work for "[l]aws, policies, programs, and services that protect every child from abuse, neglect, exploitation, bullying, and violence" and "laws and policies that provide equal rights for all regardless of race, gender, national origin, ethnicity, religion, age, disability, marital status, sexual orientation, gender identity and expression, economic status, immigration status, parenthood status, or medical condition." Consistent with our Principles and Resolutions, NCJW joins this brief.

### **National Crittenton**

National Crittenton is honored to join in this *amicus* brief in the case, *Adams v. St. John's County School Board*.

### **National LGBTQ Task Force**

Since 1973, the National LGBTQ Task Force has worked to build power, take action, and create change to achieve freedom and justice for lesbian, gay, bisexual, transgender, and queer ("LGBTQ") people and our families. As a progressive social justice organization, the Task Force works toward a society that values and respects the diversity of human expression and identity and achieves equity for all.

### **National Organization for Women Foundation**

The National Organization for Women Foundation (“NOW Foundation”) is a 501(c)(3) entity affiliated with the National Organization for Women, the largest grassroots feminist activist organization in the United States with chapters in every state and the District of Columbia. NOW Foundation is committed to advancing equal opportunity, among other objectives, and works to assure that women and LGBTQIA persons are treated fairly and equally under the law. As an education and litigation organization, NOW Foundation is also dedicated to eradicating sex-based discrimination—which we believe pertains to discrimination against LGBTQIA persons.

### **Planned Parenthood of South, East and North Florida**

Planned Parenthood of South, East and North Florida’s mission is to provide comprehensive sexual health care through the provision of clinical services, education, and advocacy to all individuals throughout northern, eastern, and southern Florida—especially individuals with low incomes, those in medically underserved areas, communities of color, and transgender individuals. We do so by understanding and responding to the needs of those seeking our services, and by protecting and respecting the essential

privacy rights, dignity, and culture of each individual. Our goal is to create the healthiest generation ever.

### **Planned Parenthood of Southwest and Central Florida**

Planned Parenthood of Southwest and Central Florida provides vital sexual health services and comprehensive sexuality education to all, regardless of gender identity, throughout central and southwest Florida. We are at the forefront of providing high-quality sexual health care to individuals and communities facing serious barriers to obtaining such care, including the provision of transgender care in our health centers. Our commonsense approach to health and well-being is based on respect for each individual's right to make informed, independent decisions about health, sex, and family planning. It is our goal to empower individuals to make informed decisions and lead healthy lives.

### **SisterReach**

SisterReach, founded October 2011, is a Memphis, TN based grassroots 501(c)(3) non-profit supporting the reproductive autonomy of women and teens of color, poor and rural women, LGBT+ and gender non-conforming people, and their families through the framework of Reproductive Justice. Our mission is to empower our base to lead healthy lives, raise healthy families, and live in healthy communities.

### **Stop Sexual Assault in Schools (SSAIS.org)**

The mission of SSAIS is to ensure that all K-12 students receive an education free from sex discrimination.

### **SurvJustice**

SurvJustice is a national non-profit organization offering legal assistance in campus hearings to sexual violence survivors regardless of their sex, gender, gender identity, or sexual orientation. Since 2014, SurvJustice has provided students with safe and equitable access to education, protecting their rights under Title IX.

### **The Impact Fund**

The Impact Fund is a nonprofit legal foundation that provides strategic leadership and support for impact litigation to achieve economic and social justice. It provides funding, innovative training and support, and representation in impact litigation across the country. The Impact Fund has served as counsel in a number of major civil rights cases to achieve social justice for all communities, including cases challenging employment discrimination, lack of access for those with disabilities, and violations of fair housing laws.

### **The Southwest Women's Law Center**

The Southwest Women's Law Center (SWLC) was founded in 2005. Our mission is to create opportunities for women to realize their full economic and personal potential by: eliminating gender bias, discrimination, and harassment; lifting women and their families out of poverty; and ensuring that all women have full control over their reproductive lives through access to comprehensive reproductive health services and information. Our primary services include providing legal and policy advocacy to advance opportunities for girls and women in New Mexico in the areas of health care, reproductive justice, equal pay, ensuring economic security for survivors of domestic violence, and ensuring that girls have equal access to athletics or sports programs without discrimination. Our geographic focus is the State of New Mexico.

### **The Women's Law Center of Maryland**

The Women's Law Center of Maryland, Inc. (WLC) is a non-profit, membership organization established in 1971 with a mission of improving and protecting the legal rights of women, particularly regarding gender discrimination, employment law, family law and reproductive rights. Through its direct services and advocacy, the Women's Law Center seeks to protect

women's legal rights and ensure equal access to resources and remedies under the law. The Women's Law Center is participating as an *amicus* in *Adams v. St. John's County School District* because it agrees with the proposition that sex, gender, and sexual orientation are intrinsically intertwined, particularly in the realm of discrimination and education. The concerns and struggles of the transgender community impact all women, regardless of sexual orientation.

**Union for Reform Judaism, Central Conference of American Rabbis, Women of Reform Judaism, and Men of Reform Judaism**

The Union for Reform Judaism, whose 900 congregations across North America include 1.5 million Reform Jews; the Central Conference of American Rabbis, whose membership includes more than 2,000 Reform rabbis; Women of Reform Judaism, which represents more than 65,000 women in nearly 500 women's groups in North America and around the world; and Men of Reform Judaism come to this issue out of our deep commitment to ensuring equality for all of God's children. We oppose discrimination against all individuals and are committed to the full equality, inclusion, and protection of people of all gender identities and gender expressions, for the stamp of the Divine is present in each and every human being.

### **UniteWomen.org**

UniteWomen.org's mission is to end inequality for self-identified women that stems from prejudice and discrimination and to defend and advance the human and civil rights of self-identified women and girls. Transgender students should have access to a restroom consistent with their gender identity.

### **Women Lawyers On Guard Inc. ("WLG")**

Women Lawyers On Guard Inc. ("WLG") is a national non-partisan non-profit organization harnessing the power of lawyers and the law in coordination with other organizations to preserve, protect, and defend the democratic values of equality, justice, and opportunity for all.

### **Women's Bar Association of the District of Columbia**

Founded in 1917, the Women's Bar Association of the District of Columbia (WBA) is one of the oldest and largest voluntary bar associations in metropolitan Washington, D.C. Today, as in 1917, we continue to pursue our mission of maintaining the honor and integrity of the profession, promoting the administration of justice, advancing and protecting the interests of women lawyers, promoting their mutual improvement, and encouraging a spirit of friendship among our members. The WBA believes that discrim-

ination against transgender people constitutes unconstitutional discrimination on the basis of sex and, further, that reinforcing the notion that there are “biological differences” between men and women leads to disparate treatment based on outdated stereotypes of women.

### **Women’s Bar Association of the State of New York**

The Women’s Bar Association of the State of New York (“WBASNY”) is the second largest statewide bar association in New York and one of the largest women’s bar associations in the United States. Its earliest chapter was founded in 1918, a year before women’s right to vote was ratified in the United States. WBASNY’s more 4,200 members in its now-20 chapters across New York State<sup>†</sup> include esteemed jurists, academics, and attorneys

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<sup>†</sup> WBASNY is incorporated in New York. Its affiliated organizations consist of 20 regional chapters, some of which are separately incorporated, plus nine IRC 501(c)(3) charitable corporations that are foundations and/or legal clinics. Neither WBASNY nor any of its affiliates issue stock to the public. WBASNY’s current affiliates are: Chapters – Adirondack Women’s Bar Association; The Bronx Women’s Bar Association, Inc.; Brooklyn Women’s Bar Association, Inc.; Capital District Women’s Bar Association; Central New York Women’s Bar Association; Del-Chen-O Women’s Bar Association, Finger Lakes Women’s Bar Association; Greater Rochester Association for Women Attorneys; Mid-Hudson Women’s Bar Association; Mid-York Women’s Bar Association; Nassau County Women’s Bar Association; New York Women’s Bar Association; Queens County Women’s Bar Association; Rockland County Women’s Bar Association; Staten Island Women’s Bar Association; The Suffolk County Women’s Bar Association; Thousand Islands Women’s Bar Association; Westchester Women’s Bar Association; Western

who practice in every area of the law, including appellate, litigation, education, commercial, labor and employment, ERISA, matrimonial, access to justice, ethics, health, reproductive rights, constitutional, criminal, and civil rights. WBASNY is dedicated to the fair and equal administration of justice. WBASNY has participated as an *amicus curiae* in state and federal cases at every level, including those involving civil rights, sex and gender discrimination, sexual assault and harassment, rights under federal and state constitutions, and the right to fair and equal treatment under the law. It stands as a vanguard for the equal rights of women, minorities, LGBT individuals, and all persons.

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New York Women's Bar Association; and Women's Bar Association of Orange and Sullivan Counties. Charitable Foundations & Legal Clinic – Women's Bar Association of the State of New York Foundation, Inc.; Brooklyn Women's Bar Foundation, Inc.; Capital District Women's Bar Association Legal Project Inc.; Nassau County Women's Bar Association Foundation, Inc.; New York Women's Bar Association Foundation, Inc.; Queens County Women's Bar Foundation; Westchester Women's Bar Association Foundation, Inc.; and The Women's Bar Association of Orange and Sullivan Counties Foundation, Inc. (Note: No members of WBASNY or its affiliates who are judges or court personnel participated in WBASNY's *amicus curiae* vote in this matter.)

## Women's Law Project

The Women's Law Project (WLP) is a non-profit legal advocacy organization with offices in Philadelphia and Pittsburgh, Pennsylvania. Its mission is to create a more just and equitable society by advancing the rights and status of all women throughout their lives. Since 1974, WLP has engaged in high-impact litigation, public policy advocacy, and education challenging discrimination rooted in gender stereotypes. WLP represented *amici curiae* in *Doe v. Boyertown Area School District*, 897 F.3d 515 (3d Cir. 2018), to ensure that Title IX was not misused to deny transgender students use of school bathrooms and locker rooms aligning with their gender identity. WLP also represented *amici curiae* in *Prowel v. Wise Business Forms*, 579 F.3d 285 (3d Cir. 2009), to ensure full enforcement of Title VII's protection against sex discrimination in the workplace for a litigant who suffered harassment based on gender stereotyping, and represented Rainbow Alliance, an LGBTQA-student group, in litigation filed under Pittsburgh's Fair Practices Ordinance challenging the University of Pittsburgh's gendered facilities policies from 2012 to 2016. WLP was also instrumental in passage of the Allegheny County Human Relations Ordinance, which prohibits discrimination in employment, public accommodations, and housing based on sex, gender identity, and gender expression. Discriminatory policies that

deny transgender people access to facilities appropriate for their gender endanger their lives while reinforcing gender stereotypes historically used to discriminate against women within and outside the workplace.

### **Young Women United**

Young Women United (YWU) leads policy change, research, place-based community organizing, and culture shift by and for women and people of color in New Mexico. We work to build communities where all people have access to the information, education, and resources needed to make real decisions about our own bodies and lives. Our change-making strategies come from deeply rooted reproductive justice values that recognize the intersections of people's lives. We build our work at the intersection of those identities, while centering the expertise of those most impacted by an issue. We work to improve access to reproductive health care people may need in their lives, including contraception and abortion.