No. 16-273

IN THE
Supreme Court of the United States

GLOUCESTER COUNTY SCHOOL BOARD,
Petitioner,

v.

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

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF OF AMICI CURIAE ANTI-DEFAMATION LEAGUE IN SUPPORT OF RESPONDENT

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INTEREST OF *AMICI*[1]

Amicus curiae **Anti-Defamation League ("ADL")** was founded in 1913 to combat anti-Semitism and other forms of prejudice, and to secure justice and fair treatment to all. Today, ADL is one of the world's leading civil rights organizations. As part of its commitment to protecting the civil rights of all persons, ADL has filed *amicus* briefs in numerous cases urging the unconstitutionality or illegality of discriminatory practices or laws.[2] ADL has a substantial interest in this case. At issue are core questions about equality and constitutional rights. And the justifications offered by the Petitioner and Petitioner's *amici*—if embraced by this Court—would invite government-sanctioned prejudice of the strain that ADL has long fought.

The American Humanist Association ("AHA") is a national nonprofit membership organization, with approximately 200 chapters and affiliates

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[1] No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund its preparation or submission. No person other than amici and their counsel made a monetary contribution to the preparation or submission of this brief. All parties have consented to the filing of this brief.

[2] *See, e.g.*, *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015); *United States v. Windsor*, 133 S. Ct. 2675 (2013); *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171 (2012); *Christian Legal Soc'y Chapter of the Univ. of Cal. v. Martinez*, 561 U.S. 661 (2010); *Lawrence v. Texas*, 539 U.S. 558 (2003); *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002); *Alexander v. Sandoval*, 532 U.S. 275 (2001); *Boy Scouts of Am. v. Dale*, 530 U.S. 640 (2000); *Mitchell v. Helms*, 530 U.S. 793 (2000); *Romer v. Evans*, 517 U.S. 620 (1996).

across the United States, committed to advocating for progressive values and equality for humanists, atheists, and freethinkers. The specific aspects of humanism that are relevant in this litigation are its commitment to the separation of church and state; the development of law based on reason and science, not theological claims grounded in supernatural belief; and the personal freedom of individuals with regard to their own gender identity. Humanists recognize and support the notion of religious freedom while also believing that laws and policy must be guided by reason, empiricism, and a respect for personal autonomy, not by the religious beliefs of any particular segment of the population.

Bend the Arc: A Jewish Partnership for Justice is a national organization inspired by Jewish values and the steadfast belief that Jewish Americans, regardless of religious or institutional affiliations, are compelled to create justice and opportunity for Americans.

Hadassah, the Women's Zionist Organization of America, Inc., founded in 1912, is the largest Jewish and women's membership organization in the United States, with over 330,000 Members, Associates, and supporters nationwide. While traditionally known for its role in developing and supporting health care and other initiatives in Israel, Hadassah has a proud history of protecting the rights of women and the Jewish community in the United States. Hadassah vigorously condemns discrimination of any kind and, as a pillar of the Jewish community, understands the dangers of bigotry. Hadassah strongly supports the

constitutional guarantees of religious liberty and equal protection, and rejects discrimination on the basis of gender identity.

Interfaith Alliance Foundation is a 501(c)(3) nonprofit organization that celebrates religious freedom by championing individual rights, promoting policies to protect both religion and democracy, and uniting diverse voices to challenge extremism. Founded in 1994, Interfaith Alliance Foundation's members belong to 75 different faith traditions as well as no faith tradition. Interfaith Alliance Foundation has a long history of working to ensure that religious freedom is a means of safeguarding the rights of all Americans and is not misused to favor the rights of some over others.

The Jewish Community Relations Council of Greater Washington ("JCRC") is the public affairs and community relations arm of the local Jewish community and the Jewish Federation of Greater Washington, serving over 225,000 Jewish residents and 100 Jewish agencies and synagogues throughout Northern Virginia, Washington, DC, and Maryland. The JCRC endeavors to foster a society based on freedom, justice, and democratic pluralism, and a Commonwealth that is safe and welcoming to all residents. The JCRC believes in fair treatment for all under the law and unequivocally opposes discrimination based on race, religion, national origin, age, ability, gender, gender identity, or sexual orientation.

Muslim Advocates, a national legal advocacy and educational organization formed in 2005, works

on the frontlines of civil rights to guarantee freedom, justice and equality for Americans of all faiths. Muslim Advocates advances these objectives through litigation and other legal advocacy, policy engagement, and civic education, and by serving as a legal resource for the American Muslim community, promoting the full and meaningful participation of Muslims in American public life. The issues at stake in this case directly relate to Muslim Advocates' work fighting institutional discrimination against Americans of all faiths.

People For the American Way Foundation ("PFAWF") is a nonpartisan civic organization established to promote and protect civil and constitutional rights, including equality for all and religious liberty. Founded in 1981 by a group of civic, educational, and religious leaders, PFAWF now has hundreds of thousands of members nationwide. Over its history, PFAWF has conducted extensive education, outreach, litigation, and other activities to promote these values. PFAWF strongly supports the principles that both the Free Exercise Clause and Establishment Clause of the First Amendment to the Constitution work to truly protect religious liberty for all Americans, and that it is improper for government to violate anti-discrimination laws and deny equal rights to individuals such as the plaintiff in this case based on beliefs about religion or morality, and accordingly joins this brief.

T'ruah: The Rabbinic Call for Human Rights is an organization led by rabbis from all denominations of Judaism that acts on the Jewish imperative to respect and to protect the human rights of all people. Grounded in Torah and its Jewish historical experience and guided by the Universal Declaration of Human Rights, it seeks to protect and advocate for human rights in Congress, federal agencies, state legislatures, and in the courts.

The **Union for Reform Judaism**, whose 900 congregations across North America includes 1.8 million Reform Jews, the **Central Conference of American Rabbis ("CCAR")**, whose membership includes more than 2000 Reform rabbis, and the **Women of Reform Judaism**, which represents more than 65,000 women in nearly 500 women's groups in North America and around the world, are committed to ensuring equality for all of God's children, regardless of sexual orientation or gender identity.

As Jews, we are taught in the very beginning of the Torah that God created humans *B'tselem Elohim*, in the Divine Image, and therefore the diversity of creation represents the vastness of the Eternal (*Genesis* 1:27). We oppose discrimination against all individuals for the stamp of the Divine is present in each and every human being.

SUMMARY OF ARGUMENT

Gavin Grimm ("Gavin") is a 17-year-old boy who attends the public Gloucester High School in Virginia. He is transgender and, with his school administration's approval, had been using the boys' restrooms for seven weeks. Some parents and members of the community, however, complained that Gavin's sharing a restroom with other boys was contrary to their religious beliefs and sense of morality. They shared these complaints with the Gloucester County School Board (the "Board"). Subsequently, the Board adopted a policy to ban Gavin from the boys' restrooms.[3]

History shows us that some of this nation's most abhorrent laws and practices—laws and practices that are now considered anachronistic blemishes on our history—were grounded in and defended by religious and moral justifications. For three-quarters of a century, this Court has refused to uphold laws disadvantaging politically unpopular groups based on religious or moral disapproval

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[3] Parents issued their religious/moral-based complaints primarily during two public meetings held by the Board regarding a potential resolution to ban Gavin and transgender students generally from using the restrooms that match their gender identity. *See* Cert. Pet. 6, Video: Nov. 11, 2014 School Board Meeting (Gloucester County School Board 2014), goo.gl/jiKY1U; Video: Dec. 9, 2014 School Board Meeting (Gloucester County School Board 2014), goo.gl/RH1iAj; Br. of Americans United for Separation of Church and State as *Amicus Curiae* in Support of Respondent at 5-7, *Gloucester Cty. Sch. Bd. v. G.G.,* No. 16-273 (U.S. Mar. 2, 2017) (summarizing parents' religious/moral-based complaints during the two public meetings).

alone—with the one, now-discredited exception of *Bowers v. Hardwick*, 478 U.S. 186 (1986). Numerous *amici* supporting Petitioner now argue that the Court should rewind decades of constitutional precedent and uphold a public school board's discriminatory policy simply because of their religious-based disapproval of transgender people. *Amici* urge the Court to reject this argument.

Title IX (Education Amendments of 1972, 20 U.S.C. §§ 1681-1688) and the Equal Protection Clause of the Fourteenth Amendment (U.S. Const. amend. XIV, § 1) protect Gavin's right to equal treatment and equal educational opportunities, including the right to use the restroom congruent with his gender identity. Religious disapproval, whether espoused by Petitioner's *amici* or by parents at the school, cannot be an excuse for a public school board to discriminate against and ostracize a student because of his gender identity. Moreover, were a student at Gloucester High School to raise a religious/moral-based objection to sharing a restroom with a transgender student, there would be no conflict because a reasonable accommodation for that student's religious beliefs or desire for privacy that does not deny transgender students equal treatment and opportunities is available: that student is free to use the school's unisex, single-stall restrooms. That student is not entitled, however, to discriminate against transgender students.

Regardless of whether religious-based arguments are asserted under the guise of privacy or modesty, or are explicitly premised on religious belief, this Court should exercise extraordinary

caution to ensure that religious liberty serves as a shield, not as a sword that curtails the rights of others and thwarts federal civil rights and antidiscrimination laws. This concern is particularly substantial where, as here, Petitioner and various *amici* seek enforcement of their religious beliefs through the exercise of authority of a government-controlled public school system, and where that enforcement would allow discrimination against a class of people who historically have been the target of prejudice, disapproval, and violence, including within the specific context of public restrooms.[4] Just as the United States Constitution does not allow the religious beliefs of some to be used to discriminate against same-sex couples seeking to marry, *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), so too does it prohibit Petitioner from using religion as a sword to deny the protections of Title IX to a transgender student who seeks only to use a restroom that comports with his gender identity.

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[4] Almost 60 percent of transgender Americans surveyed in 2015 reported that they had avoided using public restrooms in the past year, while nearly one-third stated that they restricted their eating and drinking to avoid having to use a restroom. Sandy James, Jody Herman, Susan Rankin, Mara Keisling, Lisa Mottet, Ma'ayan Anafi, THE REPORT OF THE 2015 U.S. TRANSGENDER SURVEY, NAT'L CTR. FOR TRANSGENDER EQUALITY, 225 (2017). goo.gl/V1cxg2 The survey received responses from 27,715 transgender adults and found "a pattern of psychological distress, discrimination, physical abuse and harassment." Daniel Trotta, *Massive, Landmark Survey Finds 60% of Transgender Americans have Avoided Public Bathrooms for Fear of Being Harassed*, Business Insider, Science (Dec. 8, 2016, 9:08 AM), http://www.businessinsider.com/r-us-transgender-people-harrassed-in-public-restrooms-landmark-survey-2016-12 [https://perma.cc/PS2V-D5XH].

ARGUMENT

I. THE GLOUCESTER COUNTY SCHOOL BOARD CANNOT RELY UPON RELIGIOUS DOCTRINE TO JUSTIFY DISCRIMINATION AGAINST ITS TRANSGENDER STUDENTS.

A. Petitioner's *amici* wrongly assert that religious views should be accepted as an appropriate basis for government-sanctioned discrimination.

Despite precedent from the Supreme Court of the United States holding religious disapproval to be a constitutionally insufficient state interest, many of Petitioner's *amici* make arguments and requests for the Court to uphold a discriminatory policy against transgender high school students explicitly on the grounds of religious disapproval. They present arguments such as, "the contradictions between the Department's interpretation of Title IX and religious beliefs shared by millions of Americans offer an additional reason to reverse,"[5] and, "a conflict between the free exercise of religion as granted by God and guaranteed by the First Amendment and the asserted right to present oneself as the opposite sex . . . must be resolved in favor of religious

[5] Br. of Major Religious Orgs. as *Amici Curiae* in Support of Petitioner at 2, *Gloucester Cty. Sch. Bd. v. G.G.*, No. 16-273 (U.S. Jan. 9, 2017).

liberty."[6] The Christian Educators Association International ("CEAI")[7] would deny transgender students the use of restrooms that comport with their gender identity because, in their religious view, such discretion promotes an "immoral agenda" that "ignores the true meaning of sex, substituting the scientific and Biblical definition with its own arbitrary and unsupported meaning." Br. of Christian Educators Ass'n Int'l, et al. as *Amici Curiae* in Support of Petitioner at 1, *Gloucester Cty. Sch. Bd. v. G.G.,* No. 16-273 (U.S. Jan. 9, 2017). The CEAI "rejects the legitimacy" of gender identity and of transgender people themselves as "unfounded in science and reason." *Id.* at 5 n.2. The CEAI's objection is based explicitly on its religious beliefs:

> The [Department of Education's] interpretation of Title IX endangers the freedoms of Christian Americans who cannot support or promote "transgenderism" based upon their sincerely held religious beliefs.
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> * * *

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[6] Br. of Found. for Moral Law as *Amicus Curiae* in Support of Petitioner at 16-17, *Gloucester Cty. Sch. Bd. v. G.G.,* No. 16-273 (U.S. Jan. 9, 2017).

[7] CEAI identifies itself as "an international organization that encourages, equips, and empowers educators to be faithful to their Christian beliefs in all aspects of their lives[.]" Br. of Christian Educators Ass'n Int'l, et al., as *Amici Curiae* in Support of Petitioner at 1, *Gloucester Cty. Sch. Bd. v. G.G.*, No. 16-273 (U.S. Jan. 9, 2017).

> Certainly, no compelling governmental interest exists which would allow a governmental regime to impose immorality into schools by promoting conduct (selecting a "gender identity") contrary to Biblical, biological and other scientific teachings.

Id. at 10, 18.

Major Religious Organizations similarly reveal their sharp moral disapproval for transgender people through their claim that "sharp clashes with religious belief and practice . . . will arise if the Court interprets the term 'sex' in Title IX to include gender identity." Br. of Major Religious Orgs. as *Amici Curiae* in Support of Petitioner at 1, *Gloucester Cty. Sch. Bd. v. G.G.*, No. 16-273 (U.S. Jan. 9, 2017). Major Religious Organizations wrongly seek reversal of the Fourth Circuit opinion because it is in purported conflict with their religious beliefs:

> [O]ne thing is perfectly clear: sacred writings and official statements from several major religions—including those of *amici*—demonstrate remarkable unanimity on the origin and purpose of gender as immutable and divinely ordained.

* * *

> From the religious perspective, humans are created by God. Personal identity as male or female is an immutable aspect of human nature that reflects divine design.

Id. at 6, 27-28.

The religious-based hostility towards transgender people in some of these arguments is palpable. According to CEAI, "[I]f a boy says he is a girl, he is not 'transgender'; he is . . . pretending to be a sex other than his own." Br. of Christian Educators Ass'n Int'l at 5 n.2. The Foundation for Moral Law[8] argues,

> A right as basic as free exercise of religion should not be subordinated to a so-called right to gender preference. This Court has never recognized a "right" to choose one's gender, probably because it is not possible to do so. . . . Sex-change activists have created this "right" out of thin air.

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[8] The Foundation for Moral Law "is a national public-interest organization based in Montgomery, Alabama, dedicated to the defense of religious liberty and the strict interpretation of the Constitution as written and intended by its Framers." Br. of Found. for Moral Law at 1.

* * *

> The monotheistic faiths teach that sexual identity is fixed by God at conception ("male and female created he them," Genesis 5:2) and cannot be changed by surgery, hormones, or a decision to identify with the opposite sex.

Br. of Found. for Moral Law as *Amicus Curiae* in Support of Petitioner at 14, 15, *Gloucester Cty. Sch. Bd. v. G.G.*, No. 16-273 (U.S. Jan. 9, 2017).

Amici do not question that these and other organizations hold sincere religious positions regarding gender identity. As discussed below, however, this Court's consistent precedent strongly counsels that such exclusionary religious beliefs should have no place in the constitutional assessment of whether transgender students can be denied the use of restrooms in accordance with their gender identity under Title IX.

B. Religious disapproval historically has been an unsustainable basis for discrimination.

A pattern has repeated itself throughout American history: Pervasive discriminatory practices that now seem preposterous were defended—and, in many cases, extolled—in their day on grounds of religious disapproval. Indeed, religious disapproval

was relied on to support a legal and moral basis for slavery, segregation, anti-miscegenation laws, policies that discriminate against women, and laws that target LGBT people. Time and again, however, society has come to see these laws as a stain on the nation's history and to view the religious and moral justifications offered for them as wrong, both spiritually and philosophically. Consequently, religious and moral justifications for discrimination have been abandoned and judicial opinions upholding them have been repudiated.

The Supreme Court of the United States has repudiated opinions upholding discriminatory laws driven by religious disapproval. *See, e.g.*, *South Carolina v. Regan*, 465 U.S. 367, 412 n.10 (1984) (*quoting* C. Hughes, *The Supreme Court of the United States* 50 (1928)) (referring to *Dred Scott* as one of "three notable instances [in which] the Court has suffered severely from self-inflicted wounds"). The Court rejected anti-miscegenation laws in *Loving v. Virginia*, 388 U.S. 1 (1967). The Court rejected segregation in *Brown v. Board of Education.*, 347 U.S. 483 (1954). And the Court has, during the past four decades, rejected earlier, religion-driven views regarding the place of women in society. In *Mississippi University for Women v. Hogan*, 458 U.S. 718 (1982), for example, the Court held that any test for determining the validity of a gender-based classification "must be applied free of fixed notions concerning the roles and abilities of males and females." *Id.* at 724-25. And, as the Court recently found in *Obergefell v. Hodges*, it is unacceptable for discriminatory religious beliefs to

become the foundation of public policy and thus receive the "imprimatur of the State":

> Many who deem same-sex marriage to be wrong reach that conclusion based on decent and honorable religious or philosophical premises, and neither they nor their beliefs are disparaged here. But when that sincere, personal opposition becomes enacted law and public policy, the necessary consequence is to put the imprimatur of the State itself on an exclusion that soon demeans or stigmatizes those whose own liberty is then denied.

135 S. Ct. at 2602.

The United States Supreme Court's rejection of religious/moral-based discrimination was, perhaps, explained most directly by Justice O'Connor in her concurrence in *Lawrence v. Texas*, 539 U.S. 558, 580-83 (2003) (citations omitted), striking down an anti-sodomy statute targeting gay people:

> We have consistently held, however, that some objectives, such as "a bare . . .desire to harm a politically unpopular

group," are not legitimate state interests.

* * *

Texas attempts to justify its law, and the effects of the law, by arguing that the statute satisfies rational basis review because it furthers the legitimate governmental interest of the promotion of morality.

* * *

Moral disapproval of this group, like a bare desire to harm the group, is an interest that is insufficient to satisfy rational basis review under the Equal Protection Clause. Indeed, we have never held that moral disapproval, without any other asserted state interest, is a sufficient rationale under the Equal Protection Clause to justify a law that discriminates among groups of persons.

Moral disapproval of a group cannot be a legitimate governmental interest under the Equal Protection Clause because legal classifications must not be "drawn for the

> purpose of disadvantaging the group burdened by the law."[9]

Further, the Court has repeatedly affirmed the principle that "[p]rivate biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect." *Palmore v. Sidoti*, 466 U.S. 429, 433 (1984).[10]

The Court's clear instructions over many years emphasize the dangers of allowing religious or moral views to be used as a basis for a discriminatory policy targeting a class of people, particularly where, as here, the "[status-based] classification of persons [is] undertaken for its own sake, something the Equal Protection Clause does not permit." *Romer v. Evans*, 517 U.S. 620, 635 (1996).

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[9] Under the Establishment Clause, Petitioner clearly could not set restroom policies for the purpose of favoring the religious beliefs of certain constituents and their children. *See Sante Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000); *Edwards v. Aguillard*, 482 U.S. 578 (1987); *Larson v. Valente*, 456 U.S. 228 (1982).

[10] One case affirming this principle, *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432 (1985), also clarified that the proportion of people favoring a discriminatory policy is of no consequence under the Constitution: "It is plain that the electorate as a whole, whether by referendum or otherwise, could not order city action violative of the Equal Protection Clause, and the City may not avoid the strictures of that Clause by deferring to the wishes or objections of some fraction of the body politic." *Id.* at 448 (internal citations omitted).

II. PETITIONER'S *AMICI* CANNOT PLAUSIBLY CLAIM THAT ALLOWING GAVIN TO USE THE RESTROOMS CONGRUENT WITH HIS GENDER IDENTITY IMPOSES A BURDEN ON OTHERS' EXERCISE OF RELIGION.

The argument submitted by many of Petitioner's *amici* that it would infringe on the religious rights of others to allow transgender students to use the restroom congruent with their gender identity is based on a simple but invidious premise: Gender identity does not exist, and thus transgender girls are not "real" girls and transgender boys are not "real" boys.[11] They argue, for instance, that a transgender boy is actually a girl who is "pretending," and that, while "'sex' [is] an immutable characteristic dependent on one's chromosomal make-up and anatomical characteristics[,]" "'gender identity' and 'transgender' are merely recent fabrications of a small group of unelected activists designed to legitimize and promote a political agenda." Br. of Christian Educators Ass'n Int'l at 5 n.2, 13-14; *see also* Part I.A, *supra*. The law cannot give effect to private bias,

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[11] As stated by Janet Mock, a prominent advocate on transgender issues, "The most harmful is the myth that trans women are not 'real' women or trans people are inauthentic and therefore our identities, experiences and bodies must be investigated and interrogated. . . .[I]t's harmful because it undermines trans people's experiences and teaches others that they too should be skeptical about trans people's lives – until trans people 'prove' their realness." Jessica Valenti, *Transgender People Want to Exist Without Having to Prove They Are "Real,"* GUARDIAN, June 20, 2014, *available at* goo.gl/n5tqFP (interviewing Janet Mock).

particularly one with the pernicious effect of dehumanizing and endangering a vulnerable class of young people in one of the most important places for them to feel safe.[12] *See Palmore*, 466 U.S. at 433.

Amici acknowledge, and fervently agree, that the Constitution does not require the government to "show a callous indifference to religious groups." *Zorach v. Clauson*, 343 U.S. 306, 314 (1952). Further, *amici* agree that "the government may (and sometimes must) accommodate religious practices . . . without violating the Establishment Clause." *Corp. of Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327, 334 (1987) (*quoting Hobbie* v. *Unemployment Appeals Comm'n of Fla.*, 480 U.S. 136, 144-145 (1987)). Religious accommodation, however, has its limitations. In a pluralistic society, religious accommodation cannot be used to trample the rights of others. *See, e.g.*, *Holt* v. *Hobbs*, 135 S. Ct. 853, 867 (2015) (Ginsburg, J., concurring) ("[A]ccommodating petitioner's religious belief in this case would not detrimentally affect others who do not share petitioner's belief."). This is especially true when the religious accommodation sought would result in government-enforced discrimination against a historically targeted and disfavored class of people. The

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[12] For many transgender students, school is not a safe and welcoming place. In response to a 2015 survey of transgender people in the United States, 77 percent of K-12 students reported negative experiences at school because they were transgender or were perceived to be, with 54 percent saying they were verbally harassed and 24 percent saying they were physically attacked. NAT'L CTR. FOR TRANSGENDER EQUALITY, *supra* note 4, at 132.

religious-based arguments raised by Petitioner's *amici* reflect a profound misunderstanding of the purpose and meaning of religious liberty: Religious liberty must operate as a shield, not as a sword to attack the rights of others and thwart the purpose of civil rights and antidiscrimination laws.

Further, it cannot plausibly be argued that allowing Gavin to use the boys' restroom burdens others' exercise of religion given that the school makes unisex, single-stall restrooms available to all students. Thus, if a student asserts that using the same restroom as Gavin impedes his ability to practice his religion, that student's religious beliefs would be accommodated by the availability of the unisex restrooms. On this issue, Judge Davis of the Court of Appeals for the Fourth Circuit stated in his concurrence:

> To the extent that a student simply objects to using the restroom in the presence of a transgender student even where there is no possibility that either student's genitals will be exposed, all students have access to the single-stall restrooms. For other students, using the single-stall restrooms carries no stigma whatsoever, whereas for G.G., using those same restrooms is tantamount to humiliation and a continuing mark of difference among his fellow students. The minimal or

> non-existent hardship to other students of using the single-stall restrooms if they object to G.G.'s presence in the communal restroom thus does not tip the scale in the Board's favor.

G.G. v. Gloucester Cty. Sch. Bd., 822 F.3d 709, 729 (4th Cir. 2016) (Davis, J., concurring).

A religious accommodation is not appropriate where it would harm third parties, give private bias legal effect, or have the predominant purpose of advancing religion. Here, an appropriate accommodation exists that would impose "minimal or non-existent hardship" on a student who raised a religious-based objection. *Id.* Thus, the availability of unisex, single-stall restrooms for all students makes it even less plausible that the school's discriminatory policy is necessary for some students to freely exercise their religion.

Because there is no plausible allegation of a current or future conflict between other students' religious rights and Gavin's rights, Petitioner's *amici* are left with one position: religious-based disapproval of transgender people. "[I]f the constitutional conception of 'equal protection of the laws' means anything, it must at the very least mean that a bare . . . desire to harm a politically unpopular group cannot constitute a *legitimate* government interest" upon which to support a discriminatory policy. *Romer*, 517 U.S. at 635 (*quoting Dep't of Agric. v. Moreno*, 413 U.S. 528, 534 (1973)). No

Gloucester High School student's religious liberty is or will be threatened by allowing Gavin to use the boys' restrooms, and the only rights at stake are those of Gavin. Therefore, the arguments submitted by Petitioner's *amici* should be rejected.

CONCLUSION

For the foregoing reasons, *amici* respectfully request that the Court affirm the judgment of the Court of Appeals for the Fourth Circuit.

Respectfully submitted

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