

No. 15-2056

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

G.G., by his next friend and mother, DEIRDRE GRIMM

Plaintiff-Appellant,

v.

GLOUCESTER COUNTY SCHOOL BOARD,

Defendant-Appellee.

Appeal from the United States District Court for the Eastern District of Virginia
The Honorable Robert G. Doumar, No. 4:15-CV-54

**MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE THE
NATIONAL WOMEN'S LAW CENTER, LEGAL MOMENTUM, THE
ASSOCIATION OF TITLE IX ADMINISTRATORS, EQUAL RIGHTS
ADVOCATES, GENDER JUSTICE, THE WOMEN'S LAW PROJECT,
LEGAL VOICE, LEGAL AID SOCIETY-EMPLOYMENT LAW CENTER,
SOUTHWEST WOMEN'S LAW CENTER, AND CALIFORNIA WOMEN'S
LAW CENTER ON BEHALF OF PLAINTIFF-APPELLANT AND IN
SUPPORT OF REVERSAL**

Suzanne B. Goldberg, Esq.
Sexuality and Gender Law Clinic
Columbia Law School
435 West 116th Street
New York, New York 10027
Telephone: 212.854.4111

Erin E. Buzuvis, Esq.
Western New England
University School of Law
1215 Wilbraham Road
Springfield, MA 01119
Telephone: 413.782.1405

Counsel for Amici Curiae

1. Pursuant to Fed. R. App. P. 29, the National Women's Law Center (NWLC), Legal Momentum, the Association of Title IX Administrators (ATIXA), Equal Rights Advocates (ERA), Gender Justice, the Women's Law Project (WLP), Legal Voice, Legal Aid Society-Employment Law Center (LAS-ELC), Southwest Women's Law Center, and California Women's Law Center respectfully seek leave to file the attached *amici curiae* brief in support of Plaintiff-Appellant in this matter.

2. Proposed *amici curiae* are non-profit legal and advocacy groups with expertise in both Title IX and sex discrimination issues more broadly, and the leading professional organization for school and college Title IX Coordinators and other administrators charged with enforcing Title IX compliance. All *amici* have a strong, vested interest in ensuring that courts correctly interpret Title IX and that schools do not enact discriminatory policies that perpetuate the same sex-based stereotypes and expectations that drive discrimination against women and girls and limit their equal educational and employment opportunities.

3. Proposed *amicus* the National Women's Law Center is a non-profit legal advocacy organization dedicated to the advancement and protection of women's rights and the elimination of sex discrimination from all facets of American life. Since 1972, the Center has worked to secure equal opportunity for women in education, the workplace, and other settings, including through litigation of cases

brought under federal anti-discrimination laws. The Center has long sought to ensure that rights and opportunities are not restricted for women or men on the basis of gender stereotypes and that all individuals enjoy the protection against such discrimination promised by the Constitution and federal law. The Center has prepared or participated in numerous *amicus* briefs filed with the Supreme Court and the Courts of Appeals in anti-discrimination cases.

4. Proposed *amicus* Legal Momentum (formerly NOW Legal Defense and Education Fund) has worked to advance women's rights for more than forty years. Legal Momentum advocates through the legal system and in cooperation with government agencies and policymakers to combat all aspects of gender discrimination, including in education. One significant area of Legal Momentum's advocacy and expertise is Title IX.

5. Proposed *amicus* the Association of Title IX Administrators (ATIXA) is a professional organization for school and college Title IX Coordinators and other administrators whose job duties include Title IX compliance. ATIXA supports its members' efforts to secure the benefits of Title IX in their schools and campuses, including the promotion of equitable academic and athletics programs, prevention of and response to sexual harassment and sexual violence, protection against retaliation, and the elimination of all forms of gender-based discrimination. As part of this effort, ATIXA recognizes that Title IX prohibits discrimination on the basis

of gender nonconformity, gender identity, gender expression, transitioning and transgender status. In particular, ATIXA promotes gender-inclusive restroom access as a matter of compliance as well as the cultivation of inclusive and effective educational environments. This position is publically available on ATIXA's website and in other ATIXA publications.

6. Proposed *amicus* 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. Since its founding in 1974, ERA has pursued this mission through engaging in high-impact litigation, legislative advocacy, and other efforts aimed at eliminating gender discrimination in education and employment. ERA attorneys have served as counsel and participated as *amicus curiae* in numerous class and individual cases involving the interpretation and enforcement of Title IX of the Education Amendments of 1972, including matters focused on ensuring equal access to education for transgender students. Through its Advice & Counseling program, ERA also provides free legal information and direct legal services to hundreds of individuals each year.

7. Proposed *amicus* Gender Justice is a nonprofit advocacy organization whose mission is to eliminate gender barriers, whether linked to sex, sexual orientation, gender identity, or gender expression. Gender Justice makes use of three integrated program areas – impact litigation, policy advocacy, and education – to

target the root causes of gender discrimination and highlight the central role that cognitive bias plays in producing and maintaining inequality. Gender Justice acts as counsel in cases involving gender equality in the Midwest region, including providing direct representation of transgender individuals facing gender barriers in education, housing, healthcare, or employment.

8. Proposed *amicus* the Women's Law Project (WLP), founded in 1974, is a non-profit women's 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. For nearly forty years, WLP has engaged in high-impact litigation, public policy advocacy and education challenging sex discrimination, gender stereotyping, and discrimination against LGBTQIA+ individuals. WLP represented the plaintiffs in *Planned Parenthood v. Casey*, 505 U.S. 833, 898 (1992), striking down the Pennsylvania Abortion Control Act's husband notification provision as "repugnant to this Court's present understanding of marriage and the nature of the rights secured by the Constitution." WLP served as counsel to *amici curiae* in *T.B. v. L.R.M.*, 786 A.2d 913 (Pa. 2001), which conferred third-party standing on parents in same-sex relationships to sue for partial custody or visitation of the children they have raised; and *In re Adoption of R.B.F.*, 803 A.2d 1195 (Pa. 2002), which recognized that the Pennsylvania Adoption Act permits second-parent adoption in families headed by

same-sex couples. WLP also represented women in non-traditional employment as *amicus curiae* in *Prowel v. Wise Business Forms, Inc.*, 579 F.3d 285 (3d Cir. 2009), in which the Court of Appeals reinstated a Title VII sex discrimination claim involving concurrent evidence of sexual-orientation discrimination. WLP currently represents Rainbow Alliance, the University of Pittsburgh's LGBTQIA+ student group, in an action against the University for maintaining policies and practices that discriminate against transgender students. Because harmful gender stereotypes and sex discrimination underlie bigotry against transgender students, it is imperative that Title IX and the Equal Protection Clause of the United States Constitution operate to prohibit such discrimination.

9. Proposed *amicus* Legal Voice is a regional non-profit public interest organization that works to advance the legal rights of all women and girls in the Pacific Northwest. Since its founding in 1978 (as the Northwest Women's Law Center), Legal Voice has engaged in impact litigation and legislative advocacy, and produces publications with information about legal rights. Legal Voice's work to end all forms of discrimination based on gender includes advancing gender equality in education. Legal Voice is a regional expert on gender issues in education, including campus sexual violence, bullying, and discrimination in athletics, as well as on issues affecting LGBTQ populations. Legal Voice has participated as counsel and as *amicus curiae* in cases throughout the Northwest and the country to address

discrimination based on gender, and its current work includes litigation to protect transgender persons from discrimination in public accommodations and in health care.

10. Proposed *amicus* the Legal Aid Society-Employment Law Center (LAS-ELC) 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. LAS-ELC 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. LAS-ELC 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. The LAS-ELC has appeared in discrimination cases on numerous occasions both as counsel for plaintiffs, *see, e.g.*, *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101 (2002); *U.S. Airways, Inc. v. Barnett*, 535 U.S. 391 (2002); and *California Federal Savings & Loan Ass'n v. Guerra*, 479 U.S. 272 (1987) (counsel for real party in interest), as well as in an *amicus curiae* capacity. *See, e.g.*, *U.S. v. Virginia*, 518 U.S. 515 (1996); *Harris v. Forklift Systems*, 510 U.S. 17 (1993); *International Union, UAW v. Johnson Controls*, 499 U.S. 187 (1991); *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989); *Meritor Savings Bank v. Vinson*, 477 U.S. 57

(1986). The LAS-ELC's interest in preserving the protections afforded to employees and students by this country's antidiscrimination laws is longstanding.

11. Proposed *amicus* the Southwest Women's Law Center is a policy and advocacy Law Center focused on advancing opportunities for girls and women in the areas of health care, equal pay, advocating against domestic violence, advancing access to sports and athletic programs under Title IX, and supporting women's access to reproductive justice and information. The Law Center uses the power of law, research and creative collaborations to advance its mission and goals.

12. Proposed *amicus* the California Women's Law Center (CWLC) is a private, nonprofit public interest law center established in 1989 that is dedicated to addressing the comprehensive and unique legal needs of women and girls. CWLC breaks down gender discrimination barriers in all its forms with a focus on Title IX work. CWLC is concerned by the district court's narrow interpretation of the law and recognizes the importance of correcting this to ensure equal access to facilities, regardless of gender.

13. Proposed *amici* have particular interest in this case because the district court's conclusion that Title IX permits a school to bar a transgender boy from using the same restroom facilities as other boys cannot be reconciled with controlling U.S. Supreme Court case law on the broad meaning of the term "sex" in federal anti-discrimination laws, or Title IX's broad prohibition of discrimination based on sex.

The issues involved thus have broad implications for Title IX and equal protection jurisprudence as well as other laws that prohibit discrimination based on sex.

14. Given the proposed *amici*'s expertise in Title IX specifically and sex discrimination issues more broadly, proposed *amici* believe that their written submission would assist the Court in the resolution of the issues in this case. Specifically, the accompanying brief (1) discusses how courts and regulatory agencies have recognized with near unanimity over the past two decades that federal laws prohibiting sex discrimination, including Title IX, prohibit discrimination against transgender persons; (2) explains the various ways that the school's policy at issue in this case constitutes sex discrimination against transgender students, and (3) explains why the Department of Education regulation permitting separate bathrooms for boys and girls, upon which the district court relied, does not authorize or justify discriminatory treatment of transgender students.

15. Counsel for Plaintiff-Appellant, Rebecca K. Glenberg and Gail Deady from the American Civil Liberties Union of Virginia Foundation, Inc., and Joshua A. Block and Leslie Cooper from the American Civil Liberties Union Foundation consent to the filing of this motion. Counsel for Defendant-Appellee, David Corrigan, has indicated that Defendant-Appellee does not object to the filing of this motion.

WHEREFORE, the National Women's Law Center (NWLC), Legal Momentum, the Association of Title IX Administrators (ATIXA), Equal Rights Advocates (ERA), Gender Justice, the Women's Law Project (WLP), Legal Voice, Legal Aid Society-Employment Law Center (LAS-ELC), Southwest Women's Law Center, and California Women's Law Center respectfully seek the Court's leave to appear as *amici curiae* in the above-captioned matter and to submit the brief accompanying this motion.

Dated: October 28, 2015

Respectfully submitted,

By: /s/ Suzanne B. Goldberg
Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system on October 28, 2015.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: October 28, 2015

By: /s/ Suzanne B. Goldberg
Counsel for Amici Curiae