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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Newport News Division

- - - - -		
G.G., by his next friend and	)	
mother, Deirdre Grimm,	)	
	)	
Plaintiff,	)	CIVIL CASE NO.
	)	4:15cv00054
v.	)	
	)	
GLOUCESTER COUNTY SCHOOL	)	
BOARD,	)	
	)	
Defendant,	)	
	)	
THE UNITED STATES,	)	
	)	
Interested Party.	)	
- - - - -		

TRANSCRIPT OF PROCEEDINGS  
Norfolk, Virginia  
July 27, 2015

BEFORE: THE HONORABLE ROBERT G. DOUMAR,  
United States District Judge

APPEARANCES:

AMERICAN CIVIL LIBERTIES UNION  
By: Joshua A. Block  
and  
ACLU OF VIRGINIA  
By: Rebecca K. Glenberg  
Counsel for the Plaintiff

HARMAN, CLAYTOR, CORRIGAN & WELLMAN  
By: David P. Corrigan  
Jeremy D. Capps  
Counsel for the Defendant

U.S. DEPARTMENT OF JUSTICE  
By: Victoria Lill  
and  
U.S. ATTORNEY'S OFFICE  
By: Clare P. Wuerker  
Counsel for the United States

1 (The hearing commenced at 10:58 a.m.)

2 THE CLERK: Civil Action No. 4:15cv54, Plaintiff,  
3 G.G., by his next friend and mother, Deirdre Grimm v.  
4 Defendant, Gloucester County School Board and interested  
5 party, the United States.

6 For the plaintiff, Ms. Glenberg, Mr. Block, are you  
7 ready to proceed?

8 MR. BLOCK: Yes, Your Honor.

9 THE CLERK: For the defendant, Mr. Corrigan,  
10 Mr. Capps, are you ready to proceed?

11 MR. CORRIGAN: Yes, we are.

12 THE CLERK: And for the interested parties, the  
13 United States, Ms. Wuerker, Ms. Lill, are you ready?

14 MS. WUERKER: Yes, Your Honor.

15 THE COURT: Well, first we want to take up the  
16 motion to dismiss, and who is going to argue the case for the  
17 plaintiff?

18 MR. BLOCK: I am, Your Honor.

19 THE COURT: What is your name?

20 MR. BLOCK: Well, for the plaintiff, Joshua Block,  
21 but I didn't know if you wanted defense --

22 THE COURT: Well, first, for the plaintiff who is  
23 going to be arguing?

24 MR. BLOCK: Joshua Block, on behalf of the  
25 plaintiff.

1 THE COURT: All right, Mr. Block. And who is going  
2 to be arguing on behalf of the defendant?

3 MR. CORRIGAN: I am, Your Honor. My name is David  
4 Corrigan.

5 THE COURT: All right, Mr. Corrigan. And who is  
6 going to say anything on behalf of the government?

7 MS. LILL: My name is Victoria Lill, Your Honor.

8 THE COURT: You're going to have to speak louder. I  
9 have trouble hearing.

10 MS. LILL: I'm Victoria Lill, and I'll be speaking  
11 on behalf of the United States.

12 THE COURT: All right, Ms. Lill.

13 This is on the motion to dismiss. Now, I spent  
14 yesterday reading this material. It took all day, Mr. --

15 MR. CORRIGAN: Corrigan.

16 THE COURT: Mr. Corrigan, it took all day.

17 MR. CORRIGAN: Yes, sir.

18 THE COURT: A beautiful Sunday that I could have  
19 played golf, and instead I read. So I just want you to know  
20 that. So try not to be too repetitive.

21 MR. CORRIGAN: I promise not to be repetitive, Your  
22 Honor.

23 THE COURT: All right. This is on the motion to  
24 dismiss. How much time do you want?

25 MR. CORRIGAN: I think my presentation right now

1 will take less than ten minutes.

2 THE COURT: All right.

3 MR. CORRIGAN: Your Honor, David Corrigan. I  
4 represent the Gloucester County School Board.

5 THE COURT: Just a minute. Counsel for the  
6 plaintiff in this case, Mr. Block, how much time do you want  
7 to take?

8 MR. BLOCK: On the motion to dismiss I'll take  
9 15 minutes.

10 THE COURT: That's all right. I'm not limiting you.  
11 And I assume, Ms. Lill, you want to spend some time or --

12 MS. LILL: Your Honor, we filed a statement of  
13 interest related to the preliminary injunction, and so I  
14 would be happy to answer questions and to speak on the issues  
15 that we --

16 THE COURT: I don't think I'd be too happy to answer  
17 questions if I were you, but, in any event, since you're  
18 happy to answer them, I may ask you some. Since you've  
19 invited the questions, you may get them.

20 All right. Go ahead.

21 MR. CORRIGAN: Yes, sir. Thank you, Your Honor.  
22 David Corrigan, representing the Gloucester County School  
23 Board.

24 I'm here today, of course, as you've mentioned, on  
25 the School Board's motion to dismiss the complaint filed by

1 the plaintiff. And the Court has the benefit of the  
2 plaintiff's complaint, the School Board's memorandum in  
3 support of motion to dismiss, as well as our reply brief and  
4 the opposition of the plaintiff, as well as the briefs in the  
5 preliminary injunction matter, both of which we've said we're  
6 going to feel free to argue those as well, not for purposes  
7 of turning this into a summary judgment motion, but just on  
8 the motion to dismiss.

9 Because the issues have been addressed and the  
10 arguments of the two sides pretty well laid out --

11 THE COURT: Almost invariably, both of these motions  
12 are involved in this matter. In fact, I've never seen a  
13 plaintiff's motion so thorough. I was wondering if they were  
14 going to tell me about his birth. They didn't miss anything.

15 MR. CORRIGAN: Your Honor, I intend to address the  
16 reasons the School Board --

17 THE COURT: They didn't miss anything.

18 MR. CORRIGAN: No, sir.

19 -- should prevail on this motion without --

20 THE COURT: One thing you're going to be prepared  
21 for while we're waiting, Mr. --

22 MR. CORRIGAN: Corrigan.

23 THE COURT: I've got to find out -- I keep -- Mr. --

24 MR. BLOCK: Block.

25 THE COURT: Mr. Block, in your complaint you

1   interchanged "sophomore," "freshman," some times, so that  
2   nobody -- I could never figure out how old anyone was at any  
3   particular time.

4           I want you to go through your complaint. I want you  
5   to list every age at any time you talk about "sophomore,"  
6   "freshman," or anything else, so that I can get some idea of  
7   the continuity. It was jumping around from one to -- I'm not  
8   criticizing you, I'm merely saying you jumped around. It  
9   makes it difficult to determine at what age what happened,  
10   and, therefore, to find any logical sequence.

11           Other than that, everything else was in the  
12   complaint that I could see and a heck of a lot more than was  
13   necessary. But, nonetheless, it's there.

14           Okay. Let's go along.

15           MR. CORRIGAN: Yes, sir, Your Honor. What I intend  
16   to argue is the reasons that the defense wins the motion to  
17   dismiss the complaint.

18           On December 9th, 2014, the Gloucester County School  
19   Board passed a resolution. And I'm going to read the  
20   resolution because it is so important.

21           "Whereas, the GCPS recognizes that some students  
22   question their gender identities; and, whereas, the GCPS  
23   encourages such students to seek support, advice, and  
24   guidance from parents, professionals, and other trusted  
25   adults; and, whereas, the GCPS seeks to provide a safe

1 learning environment for all students and to protect the  
2 privacy of all students; therefore, it shall be the practice  
3 of the GCPS to provide male and female restroom and locker  
4 room facilities at its schools, and the use of said  
5 facilities shall be limited to the corresponding biological  
6 genders, and students with gender identity issues shall be  
7 provided an alternative appropriate private facility."

8           And all the Court needs to decide today is whether  
9 this plaintiff has alleged facts sufficient to survive a  
10 motion to dismiss the equal protection in Title IX claims.  
11 In the end, Your Honor, what the school board resolution did  
12 was to provide each student in the school with two choices.  
13 The first choice was use the restroom associated with your  
14 biological sex, and the second choice is use, to quote the  
15 resolution, an alternative appropriate facility.

16           As it applies to this plaintiff, there are three  
17 single-stall restrooms available for use by this child or by  
18 any other child at Gloucester County High School to use if  
19 the child does not want to use the restroom associated with  
20 the child's biological sex, and that accommodation is not  
21 unconstitutional or a violation of Title IX.

22           And the reason it's not unconstitutional or a  
23 violation of Title IX is this: The plaintiff is not being  
24 treated differently from others similarly situated. All  
25 students have two choices; go to a bathroom of their

1 biological sex or go to a private bathroom. No student is  
2 permitted to use the restroom of the opposite sex.

3 We don't even get into whether transgender is a  
4 protected class. It is not. No case says it is, and even  
5 the plaintiff agrees that they're attempting to bring this  
6 claim based simply on transgender status.

7 We don't get into the rational basis test or the  
8 intermediate test; although, the policy passes under either  
9 standard because the School Board has a legitimate interest  
10 in providing safe and appropriate facilities consistent with  
11 society's long-held tradition of sex-segregated spaces based  
12 on biological sex. And that's the argument put forth and the  
13 holding of the *Johnston* case from Pennsylvania that we rely  
14 on so heavily. The School Board balanced the needs,  
15 interests and rights of children in kindergarten through 12th  
16 grade in passing its resolution. We don't get into the  
17 Title IX debate. All students have equal, comparable  
18 bathroom opportunities; their biological sex bathroom or the  
19 private bathroom.

20 And, finally, there is no *Pricewaterhouse* analysis  
21 because that line of cases is based on sex stereotyping.  
22 *Pricewaterhouse* does not say that males and females must be  
23 required to use the same restrooms together. It says that  
24 effeminate men or macho women are not to be discriminated  
25 against because their behavior does not conform to a sex



1 stereotype. That line of cases has no bearing on this  
2 situation where the School Board has given all students,  
3 including the plaintiff, two choices; use the bathroom of  
4 your biological sex or use an alternative private restroom.

5 There's no discrimination against the plaintiff  
6 except in the use of restroom. That's it. The plaintiff was  
7 treated with respect, called by the name he requested. His  
8 classroom attendance is not affected. He was not told what  
9 to wear or how to look. This is not a sexual stereotyping  
10 case where the plaintiff is being told to stop acting like a  
11 boy. The plaintiff is free to behave in the way he has  
12 chosen. The only limitation is in the use of a restroom, and  
13 there he can go to the girls' restroom, which the School  
14 Board understands he no longer wants to do and is sympathetic  
15 to that, or, like every other student who does not want to  
16 utilize the restroom of his biological sex, he can use the  
17 separate, private, single-stall restrooms.

18 This scheme may not be what the plaintiff or the  
19 Department of Justice or the Department of Education and  
20 Office of Civil Rights would prefer, but it does not violate  
21 the Equal Protection Clause or Title IX, and the School Board  
22 asks the Court to dismiss the case in its entirety.

23 Thank you.

24 THE COURT: Well, that's short and sweet. Thank  
25 you, Mr. Corrigan.

1 MR. CORRIGAN: Yes, sir.

2 MR. BLOCK: Good morning, Your Honor.

3 THE COURT: Good morning, Mr. Block.

4 MR. BLOCK: I think the defense began this argument  
5 with a factual assertion that is not in the complaint and  
6 contradicts the allegations in the complaint. The defendant  
7 said that under the policy any student, including a  
8 transgender student --

9 THE COURT: Well, it's the policy you're seeking to  
10 have set aside. Isn't that correct? It doesn't say so in  
11 your complaint, but you're suing the School Board.

12 MR. BLOCK: Yes, Your Honor.

13 THE COURT: And you're suing them because of action  
14 taken at a particular time in announcing a particular policy.  
15 Is that correct?

16 MR. BLOCK: Yes, Your Honor.

17 THE COURT: And you seek to have that policy  
18 rejected, correct?

19 MR. BLOCK: As it applies to plaintiff, yes.

20 THE COURT: As it applies to anyone.

21 MR. BLOCK: No, no, no, not as it applies to anyone,  
22 Your Honor.

23 THE COURT: Oh, you want your client treated  
24 differently than anyone else?

25 MR. BLOCK: Well, I mean, we --

1 THE COURT: Either you want the policy out or you  
2 don't.

3 MR. BLOCK: Well, I think it depends on what we're  
4 talking about the policy is, Your Honor.

5 THE COURT: Because that's what the School Board  
6 did, was enact the policy.

7 MR. BLOCK: Yes, Your Honor. I think --

8 THE COURT: And you don't want that policy changed,  
9 correct?

10 MR. BLOCK: Correct, but I think the policy that  
11 they passed --

12 THE COURT: In that case, you don't want a case.  
13 Who else is a defendant here besides the School Board?

14 MR. BLOCK: Your Honor, I guess I'm not sure what  
15 you're saying. It's a case on behalf of an individual  
16 plaintiff, it's not a class action.

17 THE COURT: I understand that, but you're seeking to  
18 obtain an injunction to prevent the School Board from  
19 providing certain action that affects your plaintiff in a  
20 different manner. Isn't that correct?

21 MR. BLOCK: Yes, and it's --

22 THE COURT: In that case, let's get to it. Don't  
23 play games. That complaint has got so much in it. It's the  
24 longest complaint I've read in years.

25 MR. BLOCK: Well, Your Honor, I'm not trying to play

1 games.

2 THE COURT: All you did is you put so much stuff in  
3 it, most of which may have to do with what I would generally  
4 call evidence, but, nonetheless, you put it in there.

5 So the question really boils down to the action of  
6 the School Board taken on December 9th. Isn't that correct?

7 MR. BLOCK: Yes, Your Honor. And there's a factual  
8 disagreement about what that policy does.

9 The defendants have said here that the policy allows  
10 every student to use the restroom based on their sex assigned  
11 at birth. I think --

12 THE COURT: Well, isn't that what Title IX says?

13 MR. BLOCK: Well --

14 THE COURT: Title IX is explicit.

15 MR. BLOCK: No, no, no, Your Honor. I'm saying  
16 that --

17 THE COURT: It says, "A recipient may provide  
18 separate toilet, locker rooms and shower facilities on the  
19 basis of sex, but such facilities provided for students of  
20 one sex shall be comparable to such facilities provided for  
21 students of the other sex."

22 MR. BLOCK: Exactly.

23 THE COURT: Isn't that Title IX?

24 MR. BLOCK: It exactly is, and I think there's an  
25 ambiguity.

1 THE COURT: Is "gender" different from "sex"?

2 MR. BLOCK: No, Your Honor.

3 THE COURT: It is not?

4 MR. BLOCK: No. The Supreme Court used --

5 THE COURT: So "gender" and "sex," you say, are one  
6 and the same.

7 MR. BLOCK: I'm saying --

8 THE COURT: Is there any definition of "gender"  
9 which you have said it doesn't mean biological sex? Or does  
10 it?

11 MR. BLOCK: Your Honor --

12 THE COURT: "Gender" doesn't mean biological sex?  
13 "Gender" wasn't utilized, I understand, according to  
14 Wikipedia, which, unfortunately, is an easy consult now,  
15 since the Encyclopedia Britannica has gone by way of all  
16 flesh.

17 In any event, Wikipedia indicates that it started --  
18 the word "gender" was used first in about 1955. Is that  
19 correct?

20 MR. BLOCK: I don't know whether that's correct or  
21 not.

22 THE COURT: Well, you're defining "gender" and "sex"  
23 as the same.

24 MR. BLOCK: The Supreme Court -- all the Supreme  
25 Court sex discrimination cases use "gender" and "sex"

1 interchangeably.

2 THE COURT: So "gender" and "sex" aren't the same.  
3 "Gender" is what the person believes themselves to be;  
4 whereas, "sex" is what they are biologically.

5 MR. BLOCK: Your Honor, no, I don't think that's  
6 correct. The Supreme Court has never said that. Justice  
7 Scalia, in dissent, said that the Supreme Court should stop  
8 using the word "gender" because it means something else, and  
9 the majority refused to do that. All the Supreme Court sex  
10 discrimination cases say "gender." They don't say "sex" in  
11 the modern cases.

12 But before we get into the legal merits, they are  
13 contradicting a key factual allegation in the complaint.  
14 There's a contested fact about whether plaintiff, in fact,  
15 would be allowed to use the girls' restroom, if they wanted  
16 to, and that's because the notion that a School Board,  
17 ostensibly concerned with privacy, would think it is  
18 perfectly acceptable for a transgender boy, who has facial  
19 hair, who has a male driver's license --

20 THE COURT: Well, at the time this was done he  
21 didn't have that. That's why I was trying to figure out the  
22 time. He started getting hormone shots after this incident  
23 was created.

24 MR. BLOCK: That's true, Your Honor, but it's an  
25 ongoing --

1 THE COURT: Well, so after the incident arises you  
2 give him hormone shots, and then you start talking about  
3 facial hair.

4 Don't do that to me. That's one of the reasons that  
5 I wanted dates, and that's one of the reasons, if you expect  
6 me to read everything you've gotten, that you present it in a  
7 fashion that doesn't contradict itself.

8 MR. BLOCK: Well, Your Honor, for the entire  
9 sophomore year the plaintiff -- his birthday is in May.

10 THE COURT: How old was he?

11 MR. BLOCK: He was 15 when these events took place.

12 THE COURT: All right. When he was 15 years old --  
13 go ahead. He was a sophomore. When is his birthday?

14 MR. BLOCK: [REDACTED].

15 THE COURT: [REDACTED] of what?

16 MR. BLOCK: '99, so he just turned 16 [REDACTED]  
17 ago.

18 THE COURT: So he turned 16 [REDACTED] ago. Okay.

19 You see, what I'm trying to do is to find out when  
20 certain things were done and at what portion of time they  
21 were done, because I think that's important.

22 MR. BLOCK: Your Honor, this is a continuing policy.  
23 It didn't just --

24 THE COURT: I understand the policy is one that was  
25 adopted on December 9th, you're objecting to.

1 MR. BLOCK: But it's still in place, and it's going  
2 to be in place for the rest of the --

3 THE COURT: It's in place now, correct, but we'll  
4 deal with that policy. And it's that policy you're seeking  
5 to have an injunction to prevent its utilization insofar as  
6 this young man is concerned.

7 And you say he's a young man. I don't mind calling  
8 him a young man, because that's what he believes himself to  
9 be, correct?

10 MR. BLOCK: Well, yes, he --

11 THE COURT: Whatever you believe yourself to be.  
12 Isn't that correct? That's gender.

13 MR. BLOCK: No, Your Honor, I don't think that's  
14 correct. Gender identity is -- there are medical protocols  
15 for what constitutes gender dysphoria and what doesn't.

16 THE COURT: Oh, no, that's a psychiatrist or a  
17 psychologist. In here you have had a psychologist say that  
18 he suffers from gender dysphoria. Dysphoria?

19 MR. BLOCK: Yes, Your Honor.

20 THE COURT: Is that what you call it?

21 MR. BLOCK: Yes, Your Honor, that's what the DSM  
22 calls it.

23 THE COURT: And it's in -- let me see one of  
24 these -- gosh, I wish I made...

25 (There was a pause in the proceedings.)



1 THE COURT: Matt, would you do me a favor? On my  
2 desk is a pad. Would you get it for me? It has some  
3 references.

4 In any event, this gender dysphoria -- you maintain  
5 "gender" and "sex" are one and the same. Correct or  
6 incorrect? Tell me.

7 MR. BLOCK: I think as a legal matter the term "sex"  
8 and the term "gender" are the same thing.

9 THE COURT: You know what? This is what I call  
10 avoiding the answer to the question.

11 You will learn something about me. I ask questions;  
12 I want answers. You give me a lot of who-struck-John and  
13 start explaining things -- you better be able to tell me  
14 "yes" or "no." Isn't it capable of being answered "yes" or  
15 "no"?

16 MR. BLOCK: I was just trying to understand the  
17 question, Your Honor.

18 THE COURT: I'll bet there's nobody in this audience  
19 that didn't understand the question, and you say you didn't  
20 understand what the question was?

21 MR. BLOCK: The term "sex" and "gender" -- I was  
22 unclear if you were asking as a medical matter or as a legal  
23 matter.

24 THE COURT: So you have different definitions if  
25 some doctor is saying it rather than if some lawyer is saying

1 it? Is that what you're saying now?

2 MR. BLOCK: Yes, I --

3 THE COURT: That "gender" doesn't have a universal  
4 meaning, it has meaning for -- when we bring a lawsuit, it  
5 has this meaning and when we see a doctor it has this  
6 meaning?

7 MR. BLOCK: Yes, Your Honor, I think the way doctors  
8 use the term "gender" is different than the way other people  
9 use the term "gender."

10 THE COURT: So -- I know what "gender" is, according  
11 to most of the people today, when we're talking about  
12 transgender. I have no problem with "transgender." I have a  
13 lot of problem with "sex." So "biological sex" and  
14 "transgender" are one and the same?

15 MR. BLOCK: No, Your Honor. That's not -- no.

16 THE COURT: Thank you for answering. I thought  
17 maybe you were contending they were.

18 MR. BLOCK: Your Honor, "sex" includes -- so "sex"  
19 includes several biological things, which includes anatomy  
20 externally. It also includes things like hormones.

21 THE COURT: So in order to understand this case you  
22 have to take an anatomy course. Is that correct?

23 MR. BLOCK: Well, Your Honor, I think --

24 THE COURT: I thought I read everything you could  
25 possibly get on this matter.

1 MR. BLOCK: Well, Your Honor, I think, regardless of  
2 what the definition of "sex" or "gender" is, there is -- I  
3 would just like to highlight two factual disputes that their  
4 entire defense rests on that --

5 THE COURT: Well, the factual disputes don't have  
6 anything to do with the motion to dismiss, do they?

7 MR. BLOCK: Well, exactly. They want you to accept  
8 their facts that contradict the complaint, and I'm trying to  
9 explain why -- what they have told you --

10 THE COURT: I'm not asking to accept any facts. I'm  
11 taking the complaint on its face. I'm asking you if it is  
12 that you desire that the resolution adopted December the 9th,  
13 2014, by the School Board of Gloucester County is  
14 unconstitutional.

15 MR. BLOCK: Yes, Your Honor.

16 THE COURT: It's that simple.

17 MR. BLOCK: I said, yes, Your Honor.

18 I'm just trying to say that --

19 THE COURT: Is that what you're seeking?

20 MR. BLOCK: Yes, Your Honor.

21 THE COURT: Oh, finally. Okay. That's what I want  
22 to know, what you're seeking. That is unconstitutional.

23 MR. BLOCK: And I'm trying to explain why the  
24 policy --

25 THE COURT: Well, you can explain. I don't have

1 that -- I'm just trying to get -- I'm trying to find out  
2 where you're going, Mr. Block, not what it is. I know what  
3 the law is, Mr. Block.

4 MR. BLOCK: I'm not trying to explain the law, I'm  
5 trying to say that they are contradicting facts in the  
6 complaint, and the facts in the complaint they're  
7 contradicting is the complaint does not say that he's  
8 entitled to use the restroom -- the girls' room. That  
9 allegation is not in the complaint. They have asserted that.  
10 That contradicts the complaint.

11 If you look at footnote 9 on page 11 of their motion  
12 to dismiss they say, "Plaintiff alleges that the School  
13 Board" --

14 THE COURT: What I'm concerned with is not what they  
15 say, what we're concerned with is what you say. Stop "what  
16 they say."

17 Their motion is that they want to get a thing  
18 dismissed. I'm trying to figure out why it should not be  
19 dismissed. So, consequently, I'm looking at your complaint,  
20 not their answer.

21 MR. BLOCK: Okay, Your Honor. So our complaint is  
22 that he's not treated the same as every other student. He  
23 does not have a choice --

24 THE COURT: He certainly isn't treated the same as  
25 every other student, because he's not like every other

1 student, correct?

2 MR. BLOCK: Correct, Your Honor.

3 THE COURT: All right.

4 MR. BLOCK: Therefore, I don't think he has a  
5 choice, under the School Board's policy, between using the  
6 girls' room or a separate room. I think --

7 THE COURT: So what you want him to do is to be able  
8 to go into the girls' room?

9 MR. BLOCK: No, that's what defendants want him to  
10 be able to do.

11 THE COURT: Oh. You want him to use the boys' room.

12 MR. BLOCK: Yes.

13 THE COURT: All right. Let me ask you a question.  
14 Here is a resolution passed by the Board, correct?

15 MR. BLOCK: Correct.

16 THE COURT: You seek and you've admitted that you  
17 seek to have that resolution declared unconstitutional,  
18 correct?

19 MR. BLOCK: Yes, Your Honor.

20 THE COURT: All right. Now, as I understand, in  
21 your complaint you put forward that your client won't go into  
22 the boys' locker room. Is that correct?

23 MR. BLOCK: He is exempt from gym class entirely, so  
24 that is correct.

25 THE COURT: So he volunteers not to follow that

1 which he seeks to obtain, correct?

2 MR. BLOCK: No, Your Honor. He's exempt from gym  
3 entirely for --

4 THE COURT: There's a bathroom -- I shouldn't say  
5 "bathroom." That dates me.

6 There's a restroom in the locker room, correct.

7 MR. BLOCK: I don't know if there's a restroom in  
8 the locker room. I don't know anything about --

9 THE COURT: You don't know anything about the locker  
10 rooms.

11 MR. BLOCK: He does not participate --

12 THE COURT: Just because he says he's not going to  
13 do it, but what does that have to do with the resolution?

14 MR. BLOCK: It doesn't have anything to do with the  
15 resolution, it has to do with his case.

16 THE COURT: Well, the resolution said he couldn't  
17 use that. Isn't that correct?

18 MR. BLOCK: Yes, Your Honor. I mean, I -- if the  
19 two -- it's possible to have it struck down as applied to  
20 restrooms.

21 THE COURT: So what you're saying...

22 MR. BLOCK: And, Your Honor, if I could just  
23 illustrate something.

24 For a transgender student, it is impossible to put  
25 them in a restroom that matches both their sex assigned at

1 birth and their gender identity, the sex that they appear as  
2 to everyone else.

3 THE COURT: Well, let me ask you a question that the  
4 United States may be better able to answer. I don't know.

5 Do the people who use the restroom have any  
6 constitutional rights to privacy?

7 MR. BLOCK: Yes, Your Honor, they do. The School  
8 Board is not protecting those rights --

9 THE COURT: All I'm asking you is do they have a  
10 constitutional right of privacy.

11 MR. BLOCK: Well, yes, Your Honor.

12 THE COURT: Can a young man take down his pants in a  
13 restroom?

14 MR. BLOCK: I -- when they're in a stall, using the  
15 restroom in the stall.

16 THE COURT: Only if they're in a stall?

17 MR. BLOCK: Your Honor, I don't think people use  
18 the restroom with their -- I don't know what you mean by  
19 taking down your pants, Your Honor.

20 THE COURT: Have you ever been in the Army?

21 MR. BLOCK: I haven't been in the Army, Your Honor,  
22 but the Army is about to lift its ban on transgender  
23 soldiers. You know, the Army can figure this out. It's not  
24 something that's beyond the competence of --

25 THE COURT: No, they have separate restrooms, also.

1 But --

2 MR. BLOCK: Yeah, Your Honor, but the question is  
3 whose interest does it serve to have a plaintiff, a  
4 transgender boy, in the restroom with the girls, which is  
5 what the school says it prefers.

6 The school says it has no problem whatsoever taking  
7 someone who looks to everyone else in the restroom like a boy  
8 and having him be in the girls' room. I think it's fair to  
9 say that many girls would be uncomfortable with that  
10 situation, but the School Board is standing up before you and  
11 saying it has no objection whatsoever to plaintiff going into  
12 the restroom that matches his sex assigned at birth, and  
13 that's what that would mean.

14 THE COURT: So do you think that the parents who are  
15 raising the issue on behalf of their children who are going  
16 to use the particular bathroom have a point?

17 MR. BLOCK: No, Your Honor. I guess --

18 THE COURT: Oh, they don't have any point at all?

19 MR. BLOCK: I think it's understandable --

20 THE COURT: So if you have a student -- the problem  
21 is that we have -- let's get really down to it.

22 You're talking about medicine. There are only two  
23 instincts -- two. Everything else is acquired -- everything.  
24 That is, the brain only has two instincts. One is called  
25 self-preservation, and the other is procreation. And



1 procreation is the highest instinct in individuals who are in  
2 the latter part of their teen-age years. All of that is  
3 accepted by all medical science, as far as I can determine in  
4 reading information.

5 So there is a problem with the mating of sex, isn't  
6 there?

7 MR. BLOCK: Well, Your Honor, I think you're  
8 assuming the sexual orientation of the people in these  
9 restrooms. People who are -- there are gay men in the boys'  
10 room. There's no evidence in the record of, like, the sexual  
11 orientation of anyone. You know, there can be transgender  
12 men in women's rooms that are sexually attracted to women.

13 So the point is you need to find someplace for a  
14 transgender person to use the bathroom, and we have three  
15 options. One is having a transgender boy in the restroom  
16 with other boys. The other is having a transgender boy in a  
17 restroom with girls, no matter how uncomfortable those girls  
18 are. And the third option is to segregate the transgender  
19 person in a separate restroom from everyone else.

20 The School Board is saying that it's following  
21 option two, and I think that is extremely difficult to  
22 credit; that the School Board is actually okay with people  
23 who look to everyone else like boys walking into the women's  
24 restroom. The only reason that they're standing up here and  
25 saying that is because they know there's no chance the

1 plaintiff is ever going to take them up on the offer.

2           So I don't think we can accept their assertion that  
3 he's treated differently than every other person who is  
4 biologically --

5           THE COURT: Let's discuss *Pricewaterhouse*.  
6 *Pricewaterhouse* concerns what the defendants perceived.  
7 Isn't that correct?

8           MR. BLOCK: I think that is a big part of it, yes,  
9 Your Honor.

10          THE COURT: Here what we're concerned with is what  
11 the plaintiff perceives. Isn't that correct?

12          MR. BLOCK: Well, it --

13          THE COURT: He perceives himself to be a male.

14          MR. BLOCK: Your Honor, yes, that's true, but we  
15 don't know what defendant --

16          THE COURT: So there's not a big difference between  
17 the perceptions in this case.

18          MR. BLOCK: Well, Your Honor, I think -- I think --

19          THE COURT: So that the discrimination in  
20 *Pricewaterhouse* comes from the top down; whereas, here the  
21 discrimination comes from the bottom up.

22          MR. BLOCK: Well, I disagree with the last thing you  
23 said, because I think that is a question of fact. There is  
24 no evidence --

25          THE COURT: Otherwise, you wouldn't have any case at

1 all, would you?

2 MR. BLOCK: Well, Your Honor, they have asserted --  
3 we don't know what their motivations were. We don't know how  
4 they perceive plaintiff. They have --

5 THE COURT: Let me ask you a question. In reading  
6 your complaint I came across Statistical Manual of Mental  
7 Disorders.

8 MR. BLOCK: Yes, Your Honor.

9 THE COURT: So what they're saying is this is a  
10 mental disorder.

11 MR. BLOCK: Your Honor, it's not --

12 THE COURT: That's what the -- I'm only looking at  
13 your complaint, not somebody else's.

14 MR. BLOCK: Right, it is a serious medical condition  
15 that, if untreated, is a disorder.

16 THE COURT: So we now have what the doctors seem to  
17 say under the gender dysphoria is a -- is under the manual of  
18 mental disorders, isn't it?

19 MR. BLOCK: If untreated. If it's treated, it's not  
20 viewed as a mental disorder, if it's not causing any  
21 distress.

22 THE COURT: So if you get a pill it disappears,  
23 correct?

24 MR. BLOCK: Yes, the --

25 THE COURT: It's no longer a mental disorder?

1 MR. BLOCK: The disorder is the feeling of dysphoria  
2 from being in a body that does not match your gender  
3 identity. If you're no longer feeling dysphoric --

4 THE COURT: Where did you get your medical degree?

5 MR. BLOCK: Your Honor, this is the evidence in the  
6 record.

7 THE COURT: Is that in the case?

8 MR. BLOCK: Your Honor --

9 THE COURT: Where in the complaint does it say that?

10 MR. BLOCK: It's the DSM.

11 THE COURT: Just point it out in the complaint.

12 MR. BLOCK: It's what the DSM says.

13 THE COURT: I'm only referring to the complaint.  
14 Just tell me what's in the complaint.

15 MR. BLOCK: The complaint cites to the DSM, the  
16 Diagnostic Statistical Manual. It used to be called "gender  
17 identity disorder." They removed the "disorder" term to make  
18 clear that it's not a disorder if it's treated. I didn't  
19 write the DSM; that's what the DSM says.

20 THE COURT: Let me read it. Would you read that  
21 portion to me that says it's not a disorder?

22 MR. BLOCK: It doesn't say that. The complaint  
23 cites to the DSM.

24 THE COURT: Just read what the complaint says.

25 MR. BLOCK: The complaint says that it is --

1 THE COURT: What paragraph?

2 MR. BLOCK: I'm pulling it up, Your Honor.

3 THE COURT: I may have missed it. What paragraph?  
4 I'm not perfect. That's for sure.

5 MR. BLOCK: Your Honor, what I said was --

6 THE COURT: Just read from the complaint. Don't  
7 tell me your interpretation, read from the complaint.

8 MR. BLOCK: Your Honor, I'm trying to find the  
9 reference in the complaint to the DSM, and that's what I'm  
10 trying to locate.

11 THE COURT: Good.

12 MR. BLOCK: And, so --

13 THE COURT: Take your time. I'll give you ample  
14 time.

15 (There was a pause in the proceedings.)

16 MR. BLOCK: The complaint does cite to the WPATH  
17 standards of care at page 5.

18 THE COURT: Page 5. Let's take a look at page 5 of  
19 the complaint. And what paragraph number?

20 MR. BLOCK: So paragraph 22 simply says, "Mental  
21 health and medical professionals worldwide recognize and  
22 follow the evidence-based standards for care for the  
23 treatment of gender dysphoria developed by the World  
24 Professional Association for Transgender Health."

25 THE COURT: All right. I'm still looking for what

1 you said it said.

2 MR. BLOCK: Well, that's what I'm trying to clarify.

3 The complaint doesn't say it; it cites documents.

4 THE COURT: You know, the problem is it may not be  
5 in the complaint. I don't mind that. But, Mr. Block, you've  
6 got to -- when I ask a question -- my problem is I looked at  
7 the complaint. I tried to read it thoroughly. It took me  
8 one hour to read this complaint -- one hour -- and it's a  
9 simple situation.

10 MR. BLOCK: Your Honor --

11 THE COURT: It's a very simple situation, and it  
12 took an hour to read the complaint? You know, what it is  
13 is -- were you more interested in obtaining publicity or in  
14 obtaining a judgment?

15 MR. BLOCK: Your Honor, we're interested in  
16 obtaining a judgment. This matter was handled entirely  
17 confidentially until it was placed on the School Board  
18 agenda.

19 THE COURT: It was so confidential that I had to  
20 order you to take the plaintiff's name off the suit. You  
21 filed with the plaintiff's name.

22 MR. BLOCK: Yes, Your Honor.

23 THE COURT: You know, and you're saying, "Oh, we  
24 want to protect the plaintiff." That immediately said to me  
25 something. The rules of this court protect minors.

1 MR. BLOCK: Your Honor, this matter became public  
2 when it was placed on the School Board agenda in front of the  
3 press, in front of everyone. It was --

4 THE COURT: I had nothing to do with what the School  
5 Board did. I have something to do with what this court does,  
6 and I'm telling you you violated the orders of this court.

7 MR. BLOCK: Well, I respectfully disagree, Your  
8 Honor, but I --

9 THE COURT: And what worried me is, with this length  
10 of a complaint, was it designed to convince the Court or to  
11 convince the media?

12 MR. BLOCK: It's designed to humanize transgender  
13 people, Your Honor. There are a lot of misperceptions, and  
14 not everyone has met a transgender person.

15 THE COURT: Well, as far as I'm concerned, it was  
16 not beneficial to this plaintiff. It was not.

17 MR. BLOCK: Well, I'm sorry about that. I think the  
18 problem is that --

19 THE COURT: Well, you should be sorry, because you  
20 violated the rules of this court that are designed to protect  
21 people.

22 MR. BLOCK: I respectfully disagree with the  
23 Court's --

24 THE COURT: And, somehow or another, I don't like it  
25 when I see it, because I begin to assume that there are other

1 reasons why something is done.

2 MR. BLOCK: Your Honor, it's very difficult to  
3 humanize someone for courts when you can't use their name.  
4 It makes them --

5 THE COURT: You know, one thing I notice is when  
6 people have done something wrong they don't want to admit it,  
7 do they?

8 MR. BLOCK: Well, I respectfully disagree with the  
9 Court's ruling on how the local rule applies to the waiver of  
10 Rule --

11 THE COURT: So you don't agree with how we apply the  
12 rules here. Is that correct? I'm sorry you don't. You're  
13 going to have to pay attention to them. And you will have  
14 to.

15 MR. BLOCK: I can --

16 THE COURT: And we sent the complaint back to you to  
17 re-file without the name of the individual, didn't we?

18 MR. BLOCK: Yes, Your Honor, and we respectfully  
19 disagree with that decision.

20 THE COURT: And you disagree with what the rules  
21 say?

22 MR. BLOCK: I agree with what the rule says. I  
23 respectfully think the Court misinterpreted the rule.

24 But I'm not here to litigate that in front of Your  
25 Honor. We --



1 THE COURT: Well, you want to make sure that you  
2 don't admit that you ever did anything wrong. Is that  
3 correct?

4 MR. BLOCK: No, Your Honor, we --

5 THE COURT: That's not affecting your plaintiff.  
6 Don't misunderstand me. Right now we're talking about you,  
7 not your client. Unfortunately, they're different.

8 MR. BLOCK: Your Honor, we intend to appeal the  
9 Court's decision, if it comes to that point, so, Your  
10 Honor --

11 THE COURT: So you want to disclose his name?

12 MR. BLOCK: Your Honor, his name is already  
13 disclosed to everyone. I think in order for --

14 THE COURT: So where is the embarrassment, then?

15 MR. BLOCK: It's already been done. It's already  
16 been done to him.

17 THE COURT: So if it's already been done, where are  
18 we going with the injunction?

19 MR. BLOCK: We want him to have the same right that  
20 anyone else has to be able to use a bathroom --

21 THE COURT: I'm not denying that he may have that  
22 right. I haven't made any decision on that point. But the  
23 question in my mind is where are we going?

24 You're saying that there's a stigma, and you  
25 broadcast it to the world?

1 MR. BLOCK: The stigma is having to go to a separate  
2 bathroom than everyone else.

3 THE COURT: Let me tell you something. You're  
4 supposed to be representing this young man.

5 MR. BLOCK: Your Honor, we respectfully don't think  
6 that the fact of being transgender is something that someone  
7 should feel stigmatized about.

8 THE COURT: Well, what you just did was to say it  
9 doesn't make any difference about the stigma, and that's the  
10 reason why he can't use the unisex bathrooms, correct?

11 MR. BLOCK: The stigma is not --

12 THE COURT: And the stigma that you've given to him  
13 is the reason that he can't use the unisex bathroom?

14 MR. BLOCK: The stigma is not being transgendered,  
15 it's being told that you have to use a different bathroom  
16 from everyone else. That's the stigma. I wanted to be clear  
17 about that.

18 THE COURT: How is anybody going to know?

19 MR. BLOCK: Because he's already been broadcast on  
20 the news in front of the School Board. That happened --

21 THE COURT: So there's nothing that's important  
22 right this moment, then.

23 MR. BLOCK: If he has to go to a separate bathroom  
24 than everyone else, that is stigmatizing, even if everyone  
25 else knows that he's transgender. It's not to hide that he's

1 transgender, it's stigmatizing to be told that your very  
2 presence in a bathroom is something that is unacceptable to  
3 other people. That's what's stigmatizing.

4 THE COURT: It's only unacceptable if they have an  
5 idea why, isn't it?

6 MR. BLOCK: No, Your Honor. I think it's  
7 unacceptable --

8 THE COURT: Or if they have no idea why -- I use  
9 unisex bathrooms every time they have a facility down here on  
10 the Festevents, which is right in downtown Norfolk. They  
11 have nothing but unisex portable bathrooms, so to speak, or  
12 restrooms. I keep using the word "bathroom." There's no  
13 bath in there.

14 But they're unisex, aren't they?

15 MR. BLOCK: I don't know. I assume so.

16 THE COURT: Well, let me ask you, have you ever been  
17 to a golf course?

18 MR. BLOCK: I have, when I was much younger.

19 THE COURT: Oh, you have played golf before? Did  
20 you use a bathroom at some of them?

21 MR. BLOCK: I'm sure I did; I was a child.

22 THE COURT: You know, some of them don't have any  
23 markings on "Men" or "Women," do they?

24 MR. BLOCK: No, Your Honor. It's not the fact of  
25 using a unisex bathroom, it's being told that you have to use

1 it because your very presence of using it with other people  
2 is unacceptable.

3 THE COURT: Let me ask you a question.

4 Could the school eliminate restrooms altogether?

5 MR. BLOCK: You mean have no restroom facilities at  
6 all?

7 THE COURT: None.

8 MR. BLOCK: I assume so.

9 THE COURT: Any constitutional requirement that you  
10 have a restroom?

11 MR. BLOCK: I'm not aware of one.

12 THE COURT: So they could eliminate restrooms  
13 entirely, and nobody would suffer, correct?

14 MR. BLOCK: Well, I think people would suffer, but  
15 it wouldn't be -- people would want to use the bathroom, but  
16 I don't think it would create any stigma for anyone.

17 THE COURT: It wouldn't create a stigma for him.

18 MR. BLOCK: Right, because he would be treated like  
19 everyone else.

20 THE COURT: So that is one solution, correct, have  
21 no bathroom?

22 MR. BLOCK: I don't think it's a solution.

23 THE COURT: Well, he couldn't get any stigma, could  
24 he?

25 What I'm really going into is where we're going. I

1 don't mind saying that, certainly, if he feels like he's  
2 being discriminated against -- and he's alleged that. It may  
3 be a good complaint.

4 I'm concerned, too, about whether there's any reason  
5 to grant a preliminary injunction, and I'm having a lot of  
6 trouble because your complaint indicates that there isn't.

7 MR. BLOCK: Well, I'm happy to argue the preliminary  
8 injunction separately. I thought we were --

9 THE COURT: Well, start arguing it, because if you  
10 don't -- in the first place, I want to make sure you  
11 understand I'm interrupting another trial to have this  
12 hearing today, and the other trial -- I've interrupted it to  
13 have this hearing, and I'm going to have some other hearings  
14 because I interrupted the trial.

15 But you've got until -- what is it, 2:00?

16 THE CLERK: 2:30, yes, sir.

17 THE COURT: You've got until 2:30 to argue that, so  
18 maybe we better start arguing the preliminary injunction.

19 MR. BLOCK: Sure. Well, so --

20 THE COURT: You'll probably get by the question of  
21 the complaint. You've got so much in there that I may just  
22 let you go ahead.

23 But I want to know what irreparable injury he's  
24 suffering.

25 MR. BLOCK: Thank you, Your Honor.

1           According to the expert declaration of Dr. Ettner,  
2 which has not been disputed at all as a matter of fact by the  
3 defendant, so the uncontested --

4           THE COURT: Well, have they answered the suit?

5           MR. BLOCK: In their opposition to the preliminary  
6 injunction.

7           THE COURT: What did they say?

8           MR. BLOCK: They submitted a declaration on behalf  
9 of a School Board member, but they didn't submit any -- they  
10 didn't dispute the --

11          THE COURT: All I'm asking you is what did they say.

12          MR. BLOCK: All right. Well, they said almost what  
13 they said in their motion to dismiss. They didn't say  
14 anything about whether or not the expert's diagnosis of him  
15 was correct.

16          THE COURT: You know, I probably have heard, I'd  
17 estimate, maybe close to a thousand physicians testify, maybe  
18 even 2,000, and, boy, I find that there's huge disagreement  
19 between physicians. Psychiatrists -- my gracious. In  
20 defending criminal cases, numerous psychiatrists disagree,  
21 you know, and you're saying, "You've got to accept the  
22 testimony of a psychologist." Is that it? You proffered  
23 some information from a psychiatrist, but that's your hired  
24 expert. He says you hired him. He wasn't seeing the  
25 defendant as a treating physician, he was hired by the

1 defendant to testify in this case.

2 MR. BLOCK: Yes, she was hired by us, but it's still  
3 an adversarial system. If there was another psychiatrist or  
4 psychologist, then of course the Court would have to  
5 determine who to credit. But they haven't presented --

6 THE COURT: Oh, so it also allows the Court to hire  
7 a psychiatrist, doesn't it?

8 MR. BLOCK: The Court, obviously, can appoint its  
9 own expert, if it wants.

10 THE COURT: So the question really is -- that's a  
11 question of fact, isn't it?

12 MR. BLOCK: Yes, it is, and for preliminary  
13 injunction --

14 THE COURT: So what you're saying is anything you  
15 say is taken for true, absolutely, huh? But what somebody  
16 else may disagree with you -- if they do, they're wrong?

17 MR. BLOCK: No, Your Honor, I'm saying that we  
18 presented evidence, and if they're going to oppose it they  
19 should either contest the evidence or --

20 THE COURT: All right, then, I'll be hearing  
21 evidence. Have a seat.

22 Right now I'm going to hold any ruling on the motion  
23 to dismiss in abeyance. I'm going to allow the case to  
24 proceed on the question of the preliminary injunction. If  
25 you want a preliminary injunction, you can present what you

1 have to present.

2 MR. BLOCK: Currently, or at a future date?

3 THE COURT: I'm here, I'm listening.

4 MR. BLOCK: Okay, Your Honor. Well, we --

5 THE COURT: I'll be glad to hear anything you want  
6 to present.

7 MR. BLOCK: So we have the declaration, Your Honor,  
8 of -- our expert declaration which says -- you know, this is  
9 a nationally recognized expert on the issue of transgender --

10 THE COURT: That this is a mental disorder.

11 MR. BLOCK: No, Your Honor. I don't want to repeat  
12 our conversation about the semantics of if it's a disorder or  
13 not. I'm saying that the expert cites to the DSM. The DSM,  
14 which I didn't write --

15 THE COURT: All right. First, you're saying based  
16 on a declaration you're entitled to an injunction.

17 MR. BLOCK: I'm saying that based on the undisputed  
18 declaration --

19 THE COURT: What do you say is in the declaration  
20 that entitles you to an injunction?

21 MR. BLOCK: I'm saying based on an undisputed  
22 declaration that --

23 THE COURT: What is in it that makes this case so  
24 strong? Tell me.

25 MR. BLOCK: Your Honor, because -- half of all



1 transgender students attempt suicide before they turn 20.  
2 This is an extremely at-risk population that is already at  
3 much more extreme rates of clinically significant depression,  
4 anxiety, and suicide attempts. The --

5 THE COURT: I don't have any doubts that transgender  
6 is a problem. Don't misunderstand me. I have no doubts  
7 about it being a problem.

8 The question in my mind is it's such a problem that  
9 I have to declare a resolution by the School Board -- you  
10 see, so often people don't understand what precedent is. For  
11 instance, in this courtroom some years ago the government, at  
12 that time a very conservative government, presented a person  
13 whom they said was, and I quote, an "enemy combatant." It's  
14 the first time I had ever heard that term, and they said they  
15 weren't entitled to a writ of habeas corpus. Anyhow, it was  
16 rejected. We needn't go into it. It had to go to the  
17 Supreme Court to finally get rejected.

18 But what is important is now they've picked up that  
19 term and tied it to another citizen. And they said they  
20 could kill him without a hearing, without anything, because  
21 it's a precedent. They even took the school boy, who was the  
22 son of that man, who happened to make a mistake in going to  
23 Yemen, and killed him, too. Was there ever any hearing? It  
24 was interesting, because the Justice Department wrote a  
25 45-page memorandum that mentioned all kinds of laws except

1 the Constitution itself.

2 MR. BLOCK: But we --

3 THE COURT: It was a precedent. Oh, we've got a  
4 precedent, enemy combatant. I don't know what the boy was.

5 MR. BLOCK: We absolutely agree with Your Honor on  
6 that. You know, we --

7 THE COURT: So what happens here is the same thing.  
8 It's a question of precedent. Where are we going, and what  
9 is happening?

10 So if we cut out this resolution, if we say, this  
11 resolution is unconstitutional, does it mean that anyone who  
12 genuinely believes that they should be of the opposite sex  
13 can use any restroom?

14 MR. BLOCK: Absolutely not, Your Honor. And I'm  
15 happy to explain why.

16 THE COURT: Well, you better.

17 MR. BLOCK: Yes. So, there are accepted diagnostic  
18 criteria for being diagnosed with gender dysphoria. What we  
19 have here is someone -- there is no allegation that this is  
20 some sort of passing phase here. This is someone who has  
21 changed his name, changed his official gender marker on his  
22 photo ID from the State of Virginia, someone --

23 THE COURT: I'm not disputing the fact that he  
24 genuinely is convinced that he wants to be a boy and not a  
25 female, okay? I also am convinced that he is biologically a

1 female. And he wants to be a male, correct?

2 MR. BLOCK: I disagree, but I understand you're  
3 convinced.

4 THE COURT: It's his mind. It's not physical that  
5 causes that, it's what he believes.

6 MR. BLOCK: Your Honor, I disagree. There's  
7 neurological issues that control it which are very much  
8 physical, so I --

9 THE COURT: What physical thing is it, other than  
10 what the doctors have just started doing, and that is  
11 supplying him with hormones?

12 MR. BLOCK: The neurology of the brain for  
13 transgender people is different, so I don't want to --

14 THE COURT: I didn't see anything in the complaint  
15 about his brain. Did they do any testing of his brain?

16 MR. BLOCK: No, Your Honor. I'm responding to your  
17 question about the science in general.

18 THE COURT: Okay. So what you're saying is there's  
19 a difference in the brain.

20 MR. BLOCK: I'm saying that there are physical  
21 components that lead to someone having a particular gender  
22 identity.

23 THE COURT: Well, I think that is true, that certain  
24 people -- there are genetic differences that occur by virtue  
25 of people wanting to obtain a different status. I'm not

1 questioning that at all. My biggest problem is with the  
2 remainder of the population, and that is with the other  
3 children.

4           The other thing that worries me are the cases of  
5 assault that have occurred in some of the young men's  
6 bathrooms. Not necessarily in Gloucester. I'm talking about  
7 here in Southside Virginia that have happened before. I'm  
8 very concerned about the overall effects of what occurs, not  
9 only for the utilization but for the safety of the individual  
10 concerned. You know, it isn't as easy as one thinks.

11           MR. BLOCK: Well, Your Honor, there's a seven-week  
12 record here in which nothing like that occurred. There was  
13 no risk of anything like that occurring.

14           THE COURT: It hasn't said anything occurred.  
15 Unfortunately, I wasn't born yesterday. Unfortunately, this  
16 isn't the only case I've ever tried, and it certainly won't  
17 be the only case I've ever tried.

18           There's the other side of the fence, and it -- maybe  
19 that's wrong. Maybe I shouldn't consider what may occur and  
20 the problems associated therewith.

21           MR. BLOCK: Well, Your Honor, a lot of people,  
22 unfortunately, have been victims of assault in the boys'  
23 room. There are a lot of gay kids that have been victims of  
24 assault in the boys' room, but we don't have a policy saying  
25 that all gay kids have to use a separate bathroom from

1 everyone else, even though --

2 THE COURT: I'm only looking at it in regard to the  
3 protection of G.G. in this case.

4 MR. BLOCK: Well, I'm speaking to that, too.

5 THE COURT: I really am. My -- there is a stigma  
6 attached to those who adopt a different gender by many  
7 portions of society, unfortunately. I've been involved in  
8 cases in which they do bad things to some of the people, and  
9 I've seen that. Not here, but in the state courts often.

10 The question in my mind is that what occurs to --  
11 what may be one person's rights has to be weighed against  
12 other people's rights. You have to consider the rights and  
13 the constitutional rights of others.

14 Ever since *Roe v. Wade* we've come down with a  
15 litany -- and I needn't go into those cases -- concerning the  
16 rights of privacy, and these are very strong rights. And  
17 right now I'm concerned about the rights of privacy, because  
18 that is an indication of something that occurred which seems  
19 to say, well, there shouldn't be considerations.

20 MR. BLOCK: Well, Your Honor, I think concern for  
21 the rights of privacy for everyone does include the rights of  
22 privacy for girls in the girls' room that, under this policy,  
23 are going to have transgender boys there.

24 THE COURT: Well, I tell you, it really creates a  
25 monstrous problem, then, doesn't it?

1 MR. BLOCK: Well, no. I think that someone is going  
2 to be uncomfortable; that a transgender person needs to go  
3 to the bathroom, and unless they're going to have to go to  
4 the bathroom by themselves separate from everyone, someone is  
5 going to be uncomfortable. So we're trying to find --

6 THE COURT: So the question is you're saying the  
7 fact that someone is uncomfortable is -- your client is  
8 uncomfortable with this present situation, correct?

9 MR. BLOCK: Yes, Your Honor, because it's  
10 unconstitutionally stigmatizing to tell someone -- the school  
11 isn't saying that their policy is he uses a separate bathroom  
12 from everyone. They're not defending that policy.

13 THE COURT: You're pretty good. I can understand  
14 why the ACLU wants you. But answer my questions, and then  
15 you can make your explanation.

16 But it's all right. Go ahead.

17 MR. BLOCK: So, Your Honor, if the school was  
18 standing up here and saying, yes, our policy is that  
19 transgender students use a separate bathroom from everyone  
20 else, then we'd be having that conversation, but that's not  
21 what they're saying.

22 THE COURT: No, they're not saying use a separate  
23 bathroom from everyone else. That's what you say. It's a  
24 unisex bathroom. Anyone can use it. They're private. There  
25 are three of them in this case. Anybody can use them,

1 anyone.

2 MR. BLOCK: Right, but he's the only one --

3 THE COURT: So you keep saying my client is forced  
4 to use it. He's not. Anyone can use those bathrooms.

5 MR. BLOCK: Your Honor, that's like having two  
6 separate seatings in a restaurant where white people can use  
7 one part and anyone can use the second part.

8 THE COURT: Well, that's entirely different, because  
9 you're treating the same people differently. You're saying,  
10 "My client is not the same."

11 MR. BLOCK: No, but I'm saying in the example I gave  
12 everyone can use the second part, but it's still treating  
13 people differently, based on their race there. G.G. is the  
14 only person who can't --

15 THE COURT: You're treating people differently based  
16 on the mental situation. Isn't that correct?

17 MR. BLOCK: Well, under this hypothetical, yes.  
18 That's not what the school is saying their policy is.  
19 They're disputing that their policy -- we're not having -- in  
20 the briefs the school doesn't say, "Look, because of  
21 Plaintiff's medical situation we need to have him in a  
22 separate restroom."

23 THE COURT: Well, the irreparable harm is what?

24 He can't use the locker room. Is that irreparable  
25 harm?

1 MR. BLOCK: He's not taking gym class, so, no,  
2 he's not --

3 THE COURT: So if I outlaw the resolution of  
4 December the 9th he can use the locker room, correct?

5 MR. BLOCK: Well, I think -- it's severable, so I  
6 don't think the Court has to address that in order to resolve  
7 this case.

8 THE COURT: I don't think you have to do anything to  
9 resolve any case, but the action that's wrong is the action  
10 taken on December the 9th, and that's what I'm concerned  
11 with. That's the action that's claimed to have been  
12 unconstitutional. If I declare it unconstitutional, then  
13 every single school in Gloucester County has to allow any  
14 person with transgender, if they -- and I don't know how you  
15 establish that.

16 MR. BLOCK: Your Honor, the --

17 THE COURT: So a person comes in and says, "I don't  
18 want to be of the other sex. I want to be different."

19 MR. BLOCK: You establish it with a medical  
20 diagnosis and a transition plan with the school. So we're  
21 only talking about people --

22 THE COURT: So I have to make an injunction saying,  
23 "Abolish this, but you've got to make everything here" --  
24 shouldn't that be the result of an extended case with  
25 evidence?



1 MR. BLOCK: This is just a preliminary injunction on  
2 behalf of one person, so the Court's ultimate decision --

3 THE COURT: No, it isn't a preliminary injunction  
4 for one person, it's a preliminary injunction -- let's  
5 understand what this case is about.

6 The case is about a resolution passed on  
7 December the 9th, 2014, by the Gloucester County School  
8 Board, and that it affects this particular individual. And  
9 the only way we can get it is to say you can't enforce that  
10 resolution.

11 MR. BLOCK: Well, I think that's the final judgment  
12 in the case, Your Honor, but on a preliminary injunction the  
13 Court is just forecasting likelihood of success, and the  
14 Court is free to --

15 THE COURT: The question is not whether there's  
16 success on the merits, it's a question of what is the  
17 irreparable harm that will occur.

18 You already have said everybody knows the fact that  
19 we have a transgender situation, and if they didn't you made  
20 sure they did because of the publicity that you obtained  
21 doing it.

22 MR. BLOCK: Irreparable harm is the stigma caused  
23 from having been forced to use a separate restroom from  
24 everyone else every time you need to use the bathroom.

25 Plaintiff has urinary tract infections from trying

1 to hold it as much as possible during the school day so he  
2 won't have to go into one of those bathrooms that no one else  
3 has to go into.

4 THE COURT: It says that in the complaint?

5 MR. BLOCK: Yes.

6 THE COURT: Read me that.

7 MR. BLOCK: Well, it definitely says it in the  
8 preliminary injunction.

9 THE COURT: You know, you keep making these  
10 statements. I like to hear it.

11 MR. BLOCK: Paragraph 49 of the complaint.

12 THE COURT: Read it.

13 MR. BLOCK: "Instead of using a separate restroom,  
14 G.G. tries to avoid the restrooms entirely while at school,  
15 and if that's not possible he uses the nurse's restroom. As  
16 a result of trying to avoid using the restroom, G.G. has  
17 repeatedly developed painful urinary tract infections. He  
18 limits his beverage intake to try to reduce the discomfort  
19 and distraction caused by holding it as he tries to focus in  
20 class."

21 THE COURT: So holding in your urine causes  
22 infection?

23 MR. BLOCK: Yes, Your Honor.

24 THE COURT: And what doctor said that?

25 MR. BLOCK: I think it's --

1 THE COURT: I never heard of it before. This is  
2 some new thing, but what doctor said that?

3 MR. BLOCK: Your Honor, I think it's --

4 THE COURT: What doctor said it?

5 MR. BLOCK: This was from -- the expert declaration,  
6 said that --

7 THE COURT: Oh, the doctor said it, then; that this  
8 is -- by holding your urine you make for infection?

9 MR. BLOCK: Yes. If you hold your urine too long,  
10 you can get a urinary tract infection from it.

11 THE COURT: Isn't that interesting? That's a new  
12 theory, but perhaps it's true. I don't know. I'd like to  
13 hear the doctor who said that.

14 But I have doubts about that because of -- I can  
15 understand you can get urinary tract infections, but not by  
16 virtue of that. You may get a burst bladder, if you have it  
17 strong enough you can hold it. I've heard of that, but I've  
18 never heard of a urinary tract infection.

19 Anyhow, what else have you got that's irreparable  
20 harm?

21 MR. BLOCK: Irreparable --

22 THE COURT: So if he chooses not to use a unisex  
23 bathroom then he can get a urinary tract infection. Is that  
24 correct?

25 MR. BLOCK: Yes, if he holds --

1 THE COURT: And that's his choice, correct?

2 MR. BLOCK: It is his choice to avoid the  
3 stigmatizing treatment, yes, Your Honor.

4 THE COURT: What stigma? Everybody knows it now.

5 MR. BLOCK: The stigma isn't the fact that --

6 THE COURT: And you made sure that if they didn't,  
7 they would.

8 MR. BLOCK: Your Honor, the stigma isn't the fact  
9 that he's transgender, just like being African-American isn't  
10 stigmatizing by itself.

11 THE COURT: So every person who has transgender,  
12 without regard to what the stigma is, should not be required  
13 to use a unisex bathroom, correct?

14 MR. BLOCK: They should have the same requirement as  
15 anyone else. If all they are is using --

16 THE COURT: You're saying now that they should have  
17 the right not to have unisex bathrooms and that they should  
18 use the bathroom of the male, correct, if they believe  
19 themselves to be male and they are a female?

20 MR. BLOCK: Yes, I'm saying that if other students  
21 are allowed to use the communal restroom, a transgender  
22 person should be able to use the communal restroom, too.

23 THE COURT: Stop a minute. Let's just -- every  
24 transgender person constitutionally has a right to use the  
25 bathroom or the -- I should say "restroom," not "bathroom" --

1 the restroom of the sex in which he wants to be, correct?

2 MR. BLOCK: Sure.

3 THE COURT: And that's your position.

4 MR. BLOCK: My position is as long as you have  
5 sex-segregated restrooms -- I'm not saying the school is  
6 obligated to have communal --

7 THE COURT: Well, Title IX gives you the right to  
8 have separate restrooms, and it tells you that, doesn't it?

9 MR. BLOCK: Well, Your Honor, it says -- yes, but  
10 here's the issue --

11 THE COURT: So your case in Title IX is gone, by the  
12 way.

13 MR. BLOCK: I completely -- Your --

14 THE COURT: Isn't any question about that. I would  
15 throw that out --

16 MR. BLOCK: But, Your Honor, let me --

17 THE COURT: -- but I'm not going to --

18 MR. BLOCK: I'd like to just --

19 THE COURT: -- throw out the rest of it.

20 Title IX is gone. It's specific and exact, and it  
21 allows it.

22 MR. BLOCK: Well, Your Honor, I just want to  
23 illustrate the ambiguity here, because --

24 THE COURT: I'm not worried about the ambiguity. I  
25 just ruled, so we end that as far as your complaint is

1 concerned.

2           Because of Title IX itself -- I'm only dealing with  
3 Title IX now; that is, the fact that you cannot utilize what  
4 the government has already put out in Title IX and say what  
5 they put out is unconstitutional.

6           MR. BLOCK: Your Honor, I disagree about what that  
7 regulation means. I think it's finding --

8           THE COURT: I don't have any problem with it  
9 whatsoever. I understand that you cannot agree to it and  
10 represent this client's position in so far as Title IX is  
11 concerned. I appreciate that, and I can understand it. I'm  
12 merely telling you that I have no problem understanding  
13 exactly what Title IX says.

14           MR. BLOCK: Your Honor, I -- can I just make one  
15 statement, Your Honor? I just want to illustrate the  
16 ambiguity here.

17           THE COURT: I just ruled. Please, Mr. Block. Move  
18 on to something else, will you, please?

19           And just learn this: If I make a statement to say  
20 I'm ruling, that's the end of that. You'll understand me. I  
21 don't try to hide anything. I tell you exactly like it is.

22           I have no problem understanding Title IX. There is  
23 a specific grant in Title IX, and that grant I'm following.  
24 Now, I understand you disagree with it because you interpret  
25 it in a different fashion entirely, okay? Now we move on.

1 What else have you got?

2 The Title IX case is gone. I'm going to grant the  
3 motion to dismiss the allegations concerning Title IX. I  
4 thought I better tell you that. I decided that long before  
5 we started because of the memoranda. If you don't -- and I  
6 think I've read every case I could get through. I didn't  
7 read them with a fine-tooth comb because I only had one day  
8 to read them all.

9 MR. BLOCK: So I --

10 THE COURT: I'm not worried about Title IX. Now I'm  
11 worried about the constitutional situation whereby you want  
12 an injunction to prohibit the utilization of the resolution  
13 enacted on December 9th, 2014, by the Gloucester County  
14 School Board, okay?

15 Now, you want a preliminary injunction, correct?

16 MR. BLOCK: Yes, Your Honor.

17 THE COURT: Because of what you perceive to be the  
18 stigma attached if the person uses the unisex bathroom.

19 MR. BLOCK: If they are forced to use it when  
20 everyone else isn't. It's the unequal treatment that's the  
21 stigma.

22 THE COURT: I understand what you're saying.

23 Now, is there a stigma attached if some woman were  
24 to use the unisex bathroom? I keep calling it a "bathroom."  
25 Forgive me. That's because that's what we used to call them

1 60 years ago.

2 MR. BLOCK: There's only a stigma if it's unequal  
3 treatment.

4 THE COURT: The only stigma is what?

5 MR. BLOCK: Is if the person has to use the unisex  
6 restroom and it's optional for everyone else. It's the  
7 unequal treatment that creates the stigma.

8 THE COURT: So any male can use that bathroom, any  
9 female can use that restroom --

10 MR. BLOCK: But G.G. --

11 THE COURT: -- but he does not want to use that  
12 restroom to the extent that -- evidently he's been treated by  
13 a physician for urinary tract infection brought about by  
14 withholding his urine.

15 Is that my understanding?

16 MR. BLOCK: Your Honor, I'm not sure the details of  
17 his treatment from the -- from urinary tract infections, but  
18 it's the exclusion from the communal restroom that's the  
19 stigma.

20 THE COURT: I would assume that it hadn't occurred,  
21 but maybe -- you're saying he might possibly get it from  
22 that?

23 MR. BLOCK: No, it has occurred. I just don't  
24 know --

25 THE COURT: Oh, it has occurred.



1 MR. BLOCK: I just don't know what the treatments  
2 it --

3 THE COURT: So you must have some physician  
4 testifying to that. He must have had some treatment.

5 MR. BLOCK: Your Honor -- yes.

6 THE COURT: And he has had treatment, and the  
7 physician says it was caused by withholding urine?

8 MR. BLOCK: Your Honor, I don't know the answer to  
9 that, Your Honor. I know that as a general matter it can  
10 cause it. I know as a general matter.

11 THE COURT: As a general matter, I've never heard of  
12 it, but that may be just me. There are a lot of things I've  
13 never heard of.

14 MR. BLOCK: The more serious risk, Your Honor, is  
15 extreme risk of emotional distress that, in extreme  
16 situations, can lead to self-harm.

17 THE COURT: I'm having problems with that inasmuch  
18 as he's saying -- irreparable harm comes about by being  
19 forced to use things, but certain things he's saying he isn't  
20 going to use.

21 MR. BLOCK: Well, Your Honor --

22 THE COURT: It just confuses me. He's not going to  
23 use the locker room.

24 MR. BLOCK: Your Honor, he's not in gym class, so  
25 there's no occasion to use the locker room. It's not like

1 he's in gym class but using a different locker room.

2 THE COURT: Well, you don't have to be in the gym  
3 class to use the locker room facility, do you? Is that what  
4 you're telling me, only people in the gym class can use the  
5 locker room facility?

6 MR. BLOCK: I think that's the only reason people  
7 use it. I don't have --

8 THE COURT: Apparently that's what's happening, but  
9 I don't think there's any limitation on it. You know, you  
10 can invent one.

11 MR. BLOCK: Well, I don't think he engages in  
12 sports. I don't think there's a reason that --

13 THE COURT: Mr. Block, you have an uphill battle.  
14 Let me hear what they say about this.

15 We're talking about the preliminary injunction now.

16 MR. CORRIGAN: Yes, sir, Your Honor.

17 THE COURT: This young man says he cannot use the  
18 unisex bathroom because if he uses it there's a stigma  
19 attached because people know that he is a transgender  
20 situation.

21 MR. CORRIGAN: As the Court has pointed out, it's  
22 already known that he's transgender, so it's not -- my  
23 understanding of their argument is it's not just that he's  
24 transgender but that he's transgender and has to use that  
25 bathroom. That's what I understand them to be saying is the

1 irreparable harm.

2 Our position at this stage, Your Honor, with respect  
3 to even the likelihood of success on the merits, which is the  
4 first element of the preliminary injunction, is it's not the  
5 same as the motion to dismiss.

6 THE COURT: I understand that. It's a stronger  
7 test.

8 MR. CORRIGAN: Yes, sir, it must clearly establish  
9 the burden of persuasion to an extraordinary remedy involving  
10 the exercise of far-reaching power to be applied in limited  
11 circumstances --

12 THE COURT: He has to show irreparable injury.

13 MR. CORRIGAN: Yes, sir. But even on the likelihood  
14 of success on the merits, Your Honor, I think where the  
15 plaintiff's argument breaks down, that they're not going to  
16 win on the merits, is -- you asked the question, "So a  
17 transgender has the right to use the restroom he identifies  
18 with?" That was the question, and his answer was, "Yes."  
19 And the problem is under the Equal Protection Clause that's  
20 not so. That is not so. It is not a protected class to be  
21 transgender. That's not a protected class.

22 And, so, that's not a way to explain --

23 THE COURT: Why do you say it's not a protected  
24 class? It's a class that now exists.

25 MR. CORRIGAN: Because all the cases say so.

1 There's no case that says transgender status alone -- and  
2 that's why they go to the Title VII cases and start talking  
3 about the *Pricewaterhouse* analysis and all that.

4 Because the situation normally would be it's the  
5 behavior; it's the acting like you're the other gender, and  
6 the people don't like, and you can't act like that. None of  
7 that is true here. The only thing is the bathroom. No one  
8 has said he can't act exactly the way he wants to act or  
9 behave the way he wants to behave. All they've said is,  
10 weighing the circumstances, that the other people do have  
11 rights, and under these circumstances it's the School  
12 Board's -- it's a Solomonic result that comes up with,  
13 "Here's the opportunity: Anyone can use these other three  
14 bathrooms. Anyone can use them, including you."

15 The argument started with Counsel talking about the  
16 School Board saying -- you know, putting him in the --

17 THE COURT: I'm not worried about the School Board  
18 anything, I'm worried about the resolution adopted  
19 December 9th, 2014, by the School Board. That is the  
20 resolution that is the foment of this case. That is the  
21 important resolution. Is that resolution constitutional?

22 MR. CORRIGAN: Yes, sir.

23 THE COURT: All right. Tell me why you think it's  
24 constitutional.

25 MR. CORRIGAN: It is constitutional because, in the

1 first instance, it does not treat the plaintiff differently  
2 than others similarly situated. What it does is it sets up  
3 all biological females, all biological males, and says, all  
4 biological females go to this bathroom, all biological males  
5 go to that bathroom, and everyone else, and anyone, can use  
6 this alternative restroom. That includes the plaintiff, but  
7 it also includes anyone else who, for whatever reason, wants  
8 to use another restroom. That, by itself, means it's not  
9 unconstitutional. He's not being treated differently.  
10 That's number one.

11 THE COURT: Well, he says he gets stigma by virtue  
12 of the fact that they're saying, you can use this bathroom,  
13 and that stigma causes him to withhold his urine, which  
14 causes him injury.

15 MR. CORRIGAN: And I understand he says that, and,  
16 again, there is no medical testimony about that.

17 THE COURT: No, there isn't any.

18 MR. CORRIGAN: It's a psychologist, and it's his  
19 statement. There is nobody here who has said, I'm a -- I  
20 guess it would be a urologist or someone who would explain  
21 that, or maybe a family doctor, somebody who deals with that.

22 THE COURT: I don't know. It's something I hadn't  
23 heard before, but it may be true. I don't know.

24 MR. CORRIGAN: And it may be true, Your Honor, but I  
25 don't think that makes this a question of whether it's

1 constitutional or not. Whether that happens or not does not  
2 affect whether it's constitutional or not.

3 THE COURT: Well, that's his choice.

4 MR. CORRIGAN: Yes, sir.

5 THE COURT: He chooses to become infected, he says,  
6 rather than to use the bathroom.

7 MR. CORRIGAN: Yes, sir, that is his choice.

8 THE COURT: And the reason he doesn't use the  
9 bathroom is because there's a stigma attached to it, which I  
10 haven't understood yet. That's the problem. I'm having a  
11 huge problem with everybody knowing that he desires to be a  
12 male and, in fact, his attorney advertising that to the  
13 world.

14 MR. CORRIGAN: Yes, Your Honor, I agree.

15 THE COURT: And that really set me off when I read  
16 this case. Why did they do that? The only thing I could  
17 figure out is if they didn't they wouldn't get any publicity.

18 MR. CORRIGAN: The way this breaks down is that all  
19 students have two choices --

20 THE COURT: I call it like I see it. Excuse me.

21 MR. CORRIGAN: Yes, sir.

22 THE COURT: But that doesn't have anything to do  
23 with the constitutional rights of the plaintiff in this case,  
24 it just has to do with the actions taken.

25 MR. CORRIGAN: And, Your Honor, again, the case that

1 we rely on is that *Johnston* case from Pittsburgh, the  
2 University of Pittsburgh, and the student in that case was a  
3 college student. So the interests weren't the same on behalf  
4 of the school as they are here. We're talking about high  
5 school students. We're talking about someone who is less  
6 than the age of majority, and we're talking about all the  
7 peers being age 14, 15, 16, 17, 18. So it's different  
8 concerns that the School Board has than in that case, but  
9 even in that case, in a college situation -- and the judge  
10 there held that transgender is not a protected class, is not  
11 a protected status.

12 THE COURT: That's what he held, yes.

13 MR. CORRIGAN: And I think that there's no case that  
14 they've cited where --

15 THE COURT: Well, that's why this case is so  
16 important --

17 MR. CORRIGAN: Yes, sir.

18 THE COURT: -- to them, and it's probably why the  
19 United States is participating. And we haven't heard from  
20 them.

21 I always like to hear from the Department of  
22 Justice. They always have some good ideas. The Constitution  
23 itself doesn't have to be considered under certain  
24 circumstances, merely the Amendments to the Constitution, and  
25 you don't have to worry about it if the American citizen is

1 outside of the country, and the law doesn't apply in one  
2 state that does in another.

3           You know, it really excites me. Because if a guy is  
4 smoking marijuana on the Key Bridge, is he guilty of a crime  
5 or not? You know, I thought, isn't that interesting.

6           MR. CORRIGAN: That's a good question, Your Honor.

7           THE COURT: Well, I know one thing: He won't be  
8 prosecuted by the federal government. But the question  
9 really is we are -- I'm confused, because every day I'm  
10 getting problems with people smoking marijuana who are on  
11 supervised release, and because they're not supposed to be  
12 using drugs, you have to send them to jail. How can I send  
13 somebody to jail for using marijuana if in another area the  
14 Department of Justice says, oh, no, it's perfectly all right?

15           In fact, the state can tax it. In fact, now one  
16 state is suing another state to try to stop them from  
17 allowing them to do something. I assume the Department of  
18 Justice is going to be involved in that. It's got to be the  
19 interest of the United States.

20           I'm sorry for the Department of Justice, but isn't  
21 it strange? Or does anybody else besides me find it  
22 strange --

23           MR. CORRIGAN: I agree with you.

24           THE COURT: -- that a state has to sue another state  
25 about the utilization of what were laws? I don't know.



1 Sanctuary cities? The whole thing is -- what's happening?  
2 Where are we going?

3 So let me hear from the Department of Justice. I  
4 understand your argument.

5 MR. CORRIGAN: Thank you, Your Honor.

6 THE COURT: I've read the case. It does say what  
7 you say it says.

8 Okay, Ms. Lill. Now, you represent the Department  
9 of Justice. This time it wants to protect whom?

10 MS. LILL: Well, Your Honor, our statement of  
11 interest addressed the Title IX claim here and the Department  
12 of Education's interpretation of its sex-segregated restroom  
13 regulations. And because Your Honor has ruled on that claim,  
14 unless you wish to revisit Title IX, unfortunately, we have  
15 nothing more to add here today.

16 THE COURT: So the only reason to interfere was  
17 Title IX.

18 MS. LILL: Yes, Your Honor. We entered our --

19 THE COURT: So you don't have any interest in the  
20 case any more except to appeal it, correct?

21 MS. LILL: Yes, if Your Honor has ruled on Title IX,  
22 that's correct.

23 THE COURT: Well, that's all right. I'm rather  
24 upset with where we're going in the United States, because I  
25 used to think that the laws applied universally. I used to

1 think. Old man "Used To" is dead and gone, isn't he?

2 I used to believe that -- you know, there was only  
3 one crime defined in the Constitution, only one. Can you  
4 imagine? If you read the initial Constitution of the United  
5 States, only one crime is defined. It tells you what you  
6 must do to utilize it, everything. Yet the Department of  
7 Justice wrote a 45-page memorandum and never discussed --  
8 never discussed it. Oh, they discussed all the amendments,  
9 discussed all the statutes -- never discussed it.

10 I get perplexed. I get very perplexed. I believe  
11 in the Constitution. I also believe in its amendments, but  
12 they're not the only things in the Constitution. That crime  
13 was totally ignored, even though it was defined as to how you  
14 could prove it and that a jury trial was absolutely  
15 essential. Huh.

16 Well, I've already ruled that the very regulation  
17 itself modifies Title IX, so it's no problem, Ms. Lill. I  
18 don't mean to be giving you heck, I'm just wondering where  
19 we're going. Maybe it's my being old fashioned.

20 MS. LILL: I'm happy to address the Title IX claim,  
21 Your Honor. I'm happy to answer questions that you have on  
22 Title IX, if you have any questions.

23 THE COURT: I don't have any questions on Title IX.  
24 Thank you, Ms. Lill. Don't pay any attention to me giving  
25 the Department of Justice heck. It's just that I'm worried

1 about where we are going.

2 MS. LILL: I understand, Your Honor.

3 THE COURT: I believe in the Constitution. I  
4 believe in jury trials. I believe in the rights of  
5 individuals to have a hearing. I believe in due process and  
6 equal protection of the laws. I also believe corruption of  
7 the blood was something that died with the Middle Ages. Now  
8 it's been extended; you can kill the son. Where the United  
9 States is going scares me. It really scares me. Precedent  
10 is an awful thing.

11 Okay. Thank you, ma'am.

12 MS. LILL: Thank you, Your Honor.

13 THE COURT: All right, Mr. Block. You're fighting  
14 an uphill battle on irreparable harm.

15 MR. BLOCK: Yes, Your Honor. And I don't want to  
16 beat a dead horse, but I just want to make sure that our  
17 position is clear that the harm isn't people knowing that  
18 he's transgender. That's not the stigma, knowing that he's  
19 transgender. The stigma is having to use a separate  
20 restroom. So an African-American person having to use a  
21 separate restroom, the stigma isn't people knowing that he's  
22 African-American, the stigma is the unequal treatment.

23 THE COURT: Well, I think that can be developed very  
24 well in our case, when we hear all of the evidence and handle  
25 the case in that fashion.

1 I'm inclined not to dismiss the case. I will hear  
2 evidence, especially in view of the fact that there are a lot  
3 of statements made about medicals that I find a little  
4 unusual.

5 At this time I'm going to go back, read all the  
6 cases, and issue an opinion. And it will be a written  
7 opinion.

8 It's highly unlikely that I would award an  
9 injunction unless I found that it was absolutely essential to  
10 protect the constitutional rights of an individual. I don't  
11 have any problem protecting the rights of individuals. I do  
12 have a problem with being too fast in doing it, especially  
13 where there are many things that have to be discussed and  
14 where there are unusual circumstances. The unusual  
15 circumstances are that if I declared the actions of the  
16 School Board unconstitutional, then, as far as I could  
17 determine, it would set a precedent for every school in  
18 Gloucester County. It might set a precedent for every school  
19 in the Eastern District of Virginia, which is really tough.

20 And I'm not -- I worry about precedent. A lot of  
21 people don't worry about precedent. I could give you a  
22 lecture on the necessity to study history and precedents,  
23 because they keep repeating themselves. I'm not about to go  
24 too far. I can tell you that.

25 The question of what is medically necessary may be

1 paramount; it may not. Right now, I don't see anything  
2 that's irreparable harm at this moment. However, I'm going  
3 to look at it closer. I'm going to issue a written opinion.  
4 I'm probably going to allow the case to proceed. I'm not  
5 going to dismiss the complaint.

6 I'm not sure about what transgender entitles people  
7 to do yet. It certainly in some instances is not a  
8 comparable term. It may not be a protected term, but I'm not  
9 ready to say that, either. It may be protected. In some  
10 instances it is.

11 I don't have any problem distinguishing  
12 *Pricewaterhouse* from these cases. I couldn't distinguish  
13 *Johnston*, that case in Pennsylvania. I can't distinguish  
14 that. And that would seem to say that your position is not  
15 good, but I'm going to look into it. I will look into it.

16 MR. BLOCK: I would just --

17 THE COURT: The question is I think I'm going to  
18 have to have a trial in this case. If I do, I would think  
19 the trial is going to have to take place in Newport News,  
20 where the witnesses might be from. I'm not going to make  
21 them take a chance on coming through the tunnel. So probably  
22 we'll get a date set for that, and we'll do that right now so  
23 you don't have to meet again.

24 Ms. Baxter, what dates have we got available? I'm  
25 loaded, I know, but --

1 THE CLERK: For a hearing?

2 THE COURT: For a trial.

3 THE CLERK: They haven't filed an answer yet, have  
4 they?

5 THE COURT: Have they filed an answer?

6 MR. CORRIGAN: No, sir, we haven't filed an answer.

7 THE COURT: How long will it take you to file an  
8 answer?

9 MR. CORRIGAN: I would like the benefit of the  
10 Court's opinion before I file an answer.

11 THE COURT: You're getting as bad as Mr. Block.

12 MR. CORRIGAN: Yes, sir. I learned from him here  
13 today.

14 THE COURT: All right. I'll get an opinion out, and  
15 when I file an opinion you'll have 21 days within which to  
16 file an answer.

17 MR. CORRIGAN: Thank you, Your Honor.

18 THE COURT: Then we'll set it down. I'll wait and  
19 see.

20 I'm probably going to allow the case to proceed. I  
21 realize, Mr. Corrigan, you don't want it to proceed at all,  
22 but there are too many facts alleged in this 45-paragraph  
23 thing, and it's a situation that's got too much in there for  
24 me to let it go like this, as if it's uncontestable. So,  
25 consequently, I'm going to probably allow it.

1 I'll get an opinion out, and then you'll have 21  
2 days within which to answer after the opinion, and then we'll  
3 set it. I'm just trying to save time. But we'll get it out.  
4 I don't know when I can get an opinion out. As I said, I'm  
5 loaded right now.

6 MR. CORRIGAN: Yes, sir.

7 THE COURT: And, like so many people, I'm going to  
8 be taking a vacation next month, so...

9 I wish this were like the old days. You know, they  
10 didn't used to hold court, when I first started practicing  
11 law, in August, ever, not even in the state courts, except  
12 police and traffic court. They don't have police and traffic  
13 court anymore, they have general district court. But you  
14 didn't used to find anybody in August. The lawyers never  
15 were around.

16 Of course, the fees were a lot smaller then and more  
17 reasonable. Now they're anything but reasonable. That's why  
18 people have to resort to the ACLU to get their rights  
19 protected. I don't mind that. Unfortunately, the School  
20 Board has to pay, but that's just unfortunate. Not for  
21 Mr. Corrigan, it's just unfortunate for the School Board.

22 So we'll see. I do thank you. The memorandums in  
23 this case, I must say, exhausted every possibility. I  
24 couldn't imagine any more thorough memorandums. I couldn't.  
25 I do take offense at the fact that the complaint did not stay

1 with the dates of when things occurred, because saying, I did  
2 this when I was such-and-such an age, and this when I was a  
3 sophomore, or this when I was a freshman, not knowing what  
4 dates we are so that you could follow it logically -- other  
5 than that, I don't have any complaints on that. But it  
6 worries me, because you can't put things together timely, and  
7 that's very important.

8 In any event, I thank you gentlemen. And, Ms. Lill,  
9 I didn't mean to take you on or the Justice Department on,  
10 but I feel strongly about what's happening in the Justice  
11 Department. They may not feel so strongly. I just feel  
12 strongly about it. I feel strongly about memoranda. Now  
13 it's perfectly all right, you know?

14 It used to be an ethical rule that you had to recite  
15 not only the cases in your favor but the cases against you,  
16 but since the American Bar Association has been taken over by  
17 those who practice a lot, they say, don't do that, don't cite  
18 the cases against you, make the Judge go look them up. I'm  
19 lazy. I don't want to have to look them up. It's a good  
20 thing I've got good law clerks. That's all I can say.

21 MR. CORRIGAN: I think between us we cited an awful  
22 lot of cases, too, Your Honor.

23 THE COURT: Oh, you cited everything you could name.  
24 I didn't say that, I said the memorandum just exhausted  
25 everything. And if you don't believe it, here (indicating).



1 MR. CORRIGAN: I credit my partner, Mr. Capps, with  
2 all that work.

3 THE COURT: Oh, you do? I'm glad you've got a  
4 writing partner. It always helps. And that's why we have to  
5 have law clerks.

6 I told somebody the other day when I went to law  
7 school the Code of Federal Regulations weren't bigger than an  
8 inch -- not bigger than an inch.

9 MR. CORRIGAN: Unbelievable.

10 THE COURT: There's no way -- if we stacked them up  
11 in this room, you wouldn't see this wall. I'm not sure you'd  
12 see that one, either.

13 So there's no cost-benefit analysis, nothing to stop  
14 you from making laws. The State of Virginia will make about  
15 2,000 bills pending. I used to say, maybe we could get a  
16 constitutional amendment that said you had to eliminate one  
17 for every one you got. Wouldn't that be something? Somebody  
18 would have to figure out should they make this law, until the  
19 point is -- and I don't think anybody can exist a day without  
20 transgressing some regulation of some kind. That's a sad  
21 state of affairs.

22 You know, the French philosophers Rousseau and  
23 Voltaire, they talked about laws a lot, and one of the things  
24 they said is you should never change a law except under  
25 exceptional circumstances. I was thinking about getting one

1 of those books and sending it to Congress. Maybe they would  
2 understand then. Otherwise, people lose respect for the law.  
3 And I can truthfully say that people have. There's no way --  
4 they say the law says you've got to know the law. Well, I  
5 guess maybe now that almost everyone can carry around a  
6 computer they may be able to punch enough buttons in to find  
7 what the law might be. Anyhow, things are changing.

8 We'll recess until 2:30.

9 (The hearing adjourned at 12:35 p.m.)

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CERTIFICATION

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s

Heidi L. Jeffreys

July 29, 2015

Date