

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JULIET EVANCHO, <i>et al.</i> ,)	
)	
)	
Plaintiffs,)	Civil Action No. 2:16-cv-01537-MRH
)	
v.)	Honorable Mark R. Hornak
)	
PINE-RICHLAND SCHOOL DISTRICT, <i>et al.</i> ,)	Electronically Filed
)	
Defendants.)	

**MOTION FOR LEAVE TO FILE AMICI CURIAE BRIEF IN
SUPPORT OF PLAINTIFFS’ MOTION FOR PRELIMINARY INJUNCTION
AND IN OPPOSITION TO DEFENDANTS’ MOTION TO DISMISS**

Amici curiae, The Pennsylvania Youth Congress (“PYC”) and THRIVE of Southwest Pennsylvania (“THRIVE,” and together with PYC, “Amici”), on their own account and on behalf of their client and member transgender students, respectfully move pursuant to Federal Rule of Civil Procedure 7(b)(1) for leave to file a brief as *amici curiae* in support of Plaintiffs’ Motion for Preliminary Injunction and in opposition to Defendants’ Motion to Dismiss in the above-captioned matter. A copy of the brief which Amici seek leave to file is attached to this motion as Exhibit A.

On November 21, 2016, counsel for Amici notified counsel for the parties of their intention to file this brief and sought consent. Counsel for Plaintiffs have consented to the filing of this amicus brief. Counsel for Defendants responded as follows: “As we have advised other counsel, Defendants neither specifically oppose nor consent to any motion filed with the Court to request leave to file an amici brief in the above-referenced Evancho matter, but will simply leave it within the discretion of the Court to make a decision concerning the same.”

Interests of Potential Amici

Founded in 2011, PYC is Pennsylvania's first statewide LGBTQ youth advocacy organization. PYC works to support an inclusive and affirming youth community in schools and organizations around Pennsylvania, and engages in collaborative efforts and partnerships to fulfill its mission. PYC is a leader in advocating for safe schools and anti-bullying laws and policies, including the Pennsylvania Safe Schools Act, and supports LGBTQ students in schools throughout the state. PYC's clients include, among others, transgender students across the state. PYC maintains connections with current and former transgender students in schools throughout Pennsylvania and has a direct and deep-seated interest in this litigation, which coincides with its mission.

THRIVE was founded in 2015 and is dedicated to nurturing and empowering educational communities where students, educators, and families can create and sustain LGBTQ-inclusive environments. THRIVE advocates for inclusive schools and policies that embrace all students and respect their gender identity, expression, and sexual orientation. THRIVE believes that education is vital to the development of young people and, as such, everyone deserves to pursue their education in a safe and inclusive environment where all students feel supported and respected for who they are. THRIVE maintains connections to current and former transgender students who attend or graduated from schools in southwestern Pennsylvania and also has a direct and deep-seated interest in this litigation, which coincides with THRIVE's mission.

Amici have no financial interest in any party or in the outcome of the case.

The Proposed Amici Curiae Brief Is Useful to the Court Because It Illuminates Matters Relevant to the Disposition of the Issues Before the Court

The *amici curiae* brief relates the personal experiences of Amici and their clients, who describe their experiences as transgender students and former students from schools across

Pennsylvania. Their unique perspectives will greatly aid the Court in understanding the very real impact that school policies, such as the one at issue in this case, have on transgender students' day-to-day lives in school, and add such useful perspectives that are not similarly available from the parties. Amici's breadth of experience is consistent with the stories related by Amici's clients in the brief, and sheds light on the practical implications the issues in this case have on transgender students. Indeed, numerous schools across Pennsylvania have embraced and accepted their transgender students with inclusionary policies; this brief demonstrates that when schools treat their transgender students consistently with their gender identity in all respects – including using gender specific facilities such as bathrooms and locker rooms – they have much better outcomes. Under such circumstances, the student body is often swift to embrace diversity and expand the possibilities for all students. The brief also shows that, on the other hand, when schools are unsupportive and exclusionary, transgender students struggle socially, medically, psychologically, and educationally.

Amici's experience and those of their clients, as related in the brief, will provide the Court with a concrete understanding of the very real impact that school policies have on transgender students and will therefore be beneficial to the Court's consideration of the issues in this case.

* * * * *

Based upon the foregoing, Amici respectfully request the Court grant leave to file the *amici curiae* brief attached hereto as Exhibit A.

Date: November 23, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 23, 2016, a true and correct copy of the foregoing Motion for Leave to File Amici Curiae Brief in Support of Plaintiffs' Motion for Preliminary Injunction and in Opposition to Defendants' Motion to Dismiss was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following counsel for the parties:

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Exhibit A

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PINE-RICHLAND SCHOOL DISTRICT, <i>et al.</i> ,)	Electronically Filed
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**BRIEF OF AMICI CURIAE THE PENNSYLVANIA YOUTH CONGRESS
AND THRIVE OF SOUTHWEST PENNSYLVANIA IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND
IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS**

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The Pennsylvania Youth Congress (“PYC”) and THRIVE of Southwest Pennsylvania (“THRIVE”), on their own account and on behalf of their client and member transgender students, respectfully file this brief as *Amici Curiae* in support of Plaintiffs’ Motion for Preliminary Injunction and in opposition to Defendants’ Motion to Dismiss.¹

INTEREST OF AMICI CURIAE

Founded in 2011, PYC is Pennsylvania’s first statewide LGBTQ youth advocacy organization. PYC works to support an inclusive and affirming youth community in schools and organizations around Pennsylvania, and engages in collaborative efforts and partnerships to fulfill its mission. PYC is a leader in advocating for safe schools, anti-bullying laws and policies, including the Pennsylvania Safe Schools Act, and supports LGBTQ students throughout the state. PYC’s clients include, among others, transgender students across the state. PYC maintains connections with current and former transgender students throughout Pennsylvania and has a direct and deep-seated interest in this litigation, which coincides with its mission.

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¹ *Amici Curiae* state that no counsel for a party has authored this brief, in whole or in part, and no person, other than *Amici Curiae* or their counsel, has made a monetary contribution to the preparation or submission of this brief.

who attend or graduated from schools in southwestern Pennsylvania and also has a direct and deep-seated interest in this litigation, which coincides with THRIVE's mission.

SUMMARY OF ARGUMENT

Transgender youth in Pennsylvania and elsewhere routinely experience harassment and discrimination in their everyday lives. One manifestation of the discrimination transgender students face is policies that prohibit them from using restrooms and other sex-segregated facilities that match their gender identity and gender presentation. The medical and scientific consensus is that such exclusionary restroom policies cause stigma and social and psychological distress in transgender people. The accounts of the transgender students and former students relayed in this brief bear this out.

Several of the students whose stories are recounted in this brief generally had positive experiences after transitioning and coming out as transgender: their administrations and teachers supported them and adopted inclusive policies including allowing them to use facilities consistent with their gender identity. For some of the students, however, their schools forbade them from using facilities consistent with their gender, allowing at most that they use an inferior single-user nurse bathroom segregated from the rest of their peers. Their schools also failed to support these transgender students in other respects, such as failing to address bullying incidents and refusing to refer to the students using their preferred names. This disparity in treatment resulted in starkly different outcomes. By allowing transgender students to live their lives consistent with their gender identity and supporting them in their transition, schools that fostered an inclusive and supportive environment permitted these students to excel and succeed. But students who were forced to use facilities that did not match their gender identity felt stigmatized and ostracized, and suffered significant social, medical, and educational setbacks.

Courts have increasingly recognized that transgender people are harmed when the government refuses to treat transgender people consistent with their gender identity in all aspects of their lives, and that this disparate treatment is prohibited under federal law prohibiting sex discrimination. *Amici* urge this Court to follow suit. The accounts of students given in this brief confirm that the resolution passed by the Pine-Richland School District challenged by Plaintiffs in this litigation, which requires transgender students to use restrooms that are inconsistent with their gender identity or else segregated single-stall restrooms, causes significant harm, stigmatizes, and forcibly “outs” transgender students, potentially exposing them to additional harassment, violence, and discrimination. The resolution violates transgender students’ right to be treated equally and to be free from sex discrimination, and should be enjoined.

ARGUMENT

I. SEX, GENDER IDENTITY, AND TRANSGENDER STATUS

The scientific and medical consensus is that one’s “sex” is not simply a matter of what is written down on a birth certificate based on a doctor’s evaluation of one’s appearance at birth. *See* Declaration of Diane Ehrensaft ¶17, *Evancho v. Pine-Richland Sch. Dist.*, No. 2:16-cv-01537-MRH (W.D. Pa. Oct. 20, 2016) [hereinafter “Ehrensaft Decl.”] (Dkt. No. 28-4); National Center for Transgender Equality, *Frequently Asked Questions About Transgender People* at 1 (July 2016), *available at* http://www.transequality.org/sites/default/files/docs/resources/Understanding-Trans-Full-July-2016_0.pdf [hereinafter “NCTE FAQs”]. Rather, sex is “not determined by any single criterion” and several factors are relevant in determining sex, including “[h]ormonal sex,” “secondary sex characteristics,” “[p]ersonal sexual identity,” and “gender,” which “may be, or possibly may become, other than what is recorded on the person’s birth certificate.” *In re Heilig*, 816 A.2d 68, 73, 79 (Md. 2003); *see also Schroer v. Billington*, 577 F. Supp. 2d 293, 306-07 (D.D.C. 2008) (crediting testimony “accepted in the relevant scientific

community” that there are multiple “factors that constitute a person’s sex”); *In re Lovo-Lara*, 23 I&N Dec. 746, 753 (BIA 2005) (“reliance on the sex designation provided on an individual’s original birth certificate is not an accurate way to determine a person’s gender”); *Rentos v. Oce-Office Sys.*, No. 95-cv-7908, 1996 WL 737215, at *6 (S.D.N.Y. Dec. 24, 1996) (recognizing the “multitude of factors that the medical community has deemed to be relevant in identifying an individual’s gender”). The medical community now understands that gender identity has a biological basis and is fixed at a young age; in other words, it is an innate and immutable component of a person’s identity. Ehrensaft Decl. ¶¶21-22. There is also a consensus that one’s gender identity is the primary factor in determining a person’s “sex.” *Id.* ¶¶18-19.

The gender identity of transgender individuals does not correspond to the sex assigned to them at birth. *Id.*; NCTE FAQs at 1-2. There are an estimated 1.4 million transgender adults in the United States. NCTE FAQs at 1. Transgender individuals sometimes suffer from gender dysphoria, a medical condition characterized by clinically significant distress “that may accompany the incongruence between one’s experienced or expressed gender and one’s assigned gender.” Am. Psychiatric Ass’n, *Diagnostic and Statistical Manual of Mental Disorders: Gender Dysphoria* (5th ed. 2013) [hereinafter “DSM-V”]; *see also* World Prof’l Ass’n for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People* at 5 (7th ed. 2012) [hereinafter “WPATH”].

Treatment options for gender dysphoria vary from person to person, but often include a social transition where a transgender person begins to live his or her life in accordance with his or her gender identity. *See* WPATH at 9-10. Significantly, this transition process includes using gender-specific spaces such as restrooms and other facilities based on one’s gender identity, as well as acceptance and recognition by peers, teachers, colleagues, friends, family, and the community, in accordance with their gender identity. *Id.* In fact, prior to accessing certain

surgical components of their medical care, transgender individuals must live fully in the gender role congruent with their gender identity, including accessing appropriate facilities. WPATH at 58. The transition process minimizes or eliminates the psychological distress often associated with gender dysphoria. *Id.* at 4-5, 9-10.

II. POLICIES THAT PROHIBIT TREATING TRANSGENDER INDIVIDUALS IN ACCORDANCE WITH THEIR GENDER IDENTITY CONSTITUTE SEX DISCRIMINATION AND CAUSE SERIOUS HARM

A. Federal Law Protects Transgender Students from Discrimination

Plaintiffs' submissions set out the legal framework for their discrimination claims and are not repeated here. It is worth emphasizing, however, that federal anti-discrimination laws, including Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments Act of 1972, and the Equal Protection Clause of the U.S. Constitution flatly prohibit discrimination against transgender individuals based on their gender identity.

Courts have long rejected a narrow definition of "sex" when addressing claims of sex discrimination. In *Oncale v. Sundower Offshore Services, Inc.*, 523 U.S. 75 (1998), for instance, the Supreme Court held same-sex sexual harassment constituted "sex discrimination" under Title VII because "statutory prohibitions often go beyond the principal evil to cover reasonably comparable evils," regardless of whether it was a "principal concern[]" of the law. *Id.* at 79. The following year, the Supreme Court held in *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989), that sex discrimination includes not just discrimination based on one's biological sex, but also based on one's failure to conform to sex stereotypes. *Id.* at 250-52.

In rejecting a narrow definition of "sex" under the laws prohibiting sex discrimination, courts have held that transgender plaintiffs may state claims for sex discrimination based on their transgender status. For instance, in *Glenn v. Brumby*, the Eleventh Circuit recognized that "[a] person is defined as transgender *precisely because* of the perception that his or her behavior

transgresses gender stereotypes” and “discrimination against a transgender individual because of her gender-nonconformity is sex discrimination, whether it’s described as being on the basis of sex or gender.” 663 F.3d 1312, 1316-17 (11th Cir. 2011). Likewise, the Sixth Circuit held in *Smith v. City of Salem* that “discrimination against a plaintiff who is transsexual . . . is no different from the discrimination directed against Ann Hopkins in *Price Waterhouse*.” 378 F.3d 566, 575 (6th Cir. 2004); *see also U.S. Equal Empl’t Opportunity Comm’n v. Scott Med. Health Ctr., P.C.*, No. 16-cv-225, 2016 WL 6569233, at *5 (W.D. Pa. Nov. 4, 2016) (noting that “sex” is accorded a “broad interpretation” under federal civil rights statutes and citing cases applying sex discrimination protections to “harassment of a transgender individual”).²

**B. The Medical Community Recognizes the Serious Harms
Caused by Discrimination Against Transgender Individuals**

The exclusionary restroom policy adopted by the Pine-Richland School District prohibits transgender students from living their lives consistently with their gender, stigmatizes them, and potentially “outs” them to their classmates and will cause real and lasting psychological harm.

As discussed above in Section I, some, but not all, transgender people “experience gender dysphoria at *some* point in their lives,” which is the medical diagnosis describing clinically significant distress or anxiety arising out of one’s gender identity. WPATH at 5; *see also* DSM-V (“not all individuals will experience distress”). Recent medical and psychological research has found that it is not the fact that a person is transgender, or even that they may have gender dysphoria, that causes the psychological distress for which those individuals pursue treatment;

² *See also Schwenk v. Hartford*, 204 F.3d 1187, 1202 (9th Cir. 2000) (same); *Norsworthy v. Beard*, 87 F. Supp. 3d 1104, 1119 (N.D. Cal. 2015) (same); *Rumble v. Fairview Health Servs.*, No. 14-CV-2037, 2015 WL 1197415, at *2 (D. Minn. Mar. 16, 2015) (same); *Finkle v. Howard County*, 12 F. Supp. 3d 780, 788 (D. Md. 2014) (same), *aff’d* 640 F. App’x 245 (4th Cir. 2016); *Mitchell v. Axcan Scandipharm, Inc.*, No. Civ. A. 05-243, 2006 WL 456173, at *2 (W.D. Pa. Feb. 17, 2006) (same).

rather, the distress is caused by living in a society or community that is hostile to transgender people because they are transgender. See Rebecca Robles et al., *Removing transgender identity from the classification of mental disorders: a Mexican field study for ICD-11*, 3(9) *Lancet Psychiatry* 850, 857 (Sept. 2016) (distress is “more strongly predicted by experiences of social rejection and violence than by gender incongruence, consistent with the perspective that these reflect the result of stigmatization and maltreatment rather than integral aspects of transgender identity”); see also WPATH at 4 (stigmatization can make transgender individuals “more vulnerable to developing mental health concerns such as anxiety and depression . . . [and] can contribute to abuse and neglect in one’s relationships with peers and family members,” but “these symptoms are socially induced and are not inherent” to a person’s transgender identity).

An affirming and supportive environment is therefore of paramount importance to transgender children, particularly adolescents in secondary education environments—a frequent point of social transition for transgender youth who “start[] living in their desired gender role upon entering high school.” WPATH at 11-12. A predictor for success in transitioning is whether the administrators, teachers, and students accept transgender students for who they are, including letting them access gender-specific facilities consistent with their gender identities.³

³ See Jaime M. Grant et al., *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, National Center for Transgender Equality, at 46 (2011), available at http://www.transequality.org/sites/default/files/docs/resources/NTDS_Report.pdf (“mistreatment in school had a lasting effect . . . and correlated with a number of negative outcomes including higher rates of sex work, incarcerations, homelessness, smoking, drug and alcohol abuse, HIV and attempted suicide”); Jenifer K. McGuire, et al., *School Climate for Transgender Youth: A Mixed Method Investigation of Student Experiences and School Responses*, 39 *J. of Youth & Adolescence* 1175, 1177, 1186 (2010) (recognizing the need for “a variety of strategies to increase comfort specifically for transgender youth, including gender neutral bathrooms, accommodation of gender identity in dances, sports, physical education, locker room environments, and acknowledgement of name and pronoun preferences by faculty and on school records and

Footnote continued

Moreover, a policy that prohibits students who are not “out” to their fellow students from using facilities that do not reflect their gender identity may forcibly “out” them to their classmates, potentially exposing them to harassment or physical violence. *See Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, No. 16-CV-943, 2016 WL 5239829, at *2 (E.D. Wis. Sept. 22, 2016) (bathrooms “re-purposed . . . as private bathrooms for the plaintiff” were unhelpful because “they were far from his classes and because using them would draw questions from other students”); Amici Curiae Brief of School Administrators at 17, *Bd. of Educ. of the Highland Local Sch. Dist. v. U.S. Dep’t of Educ.*, No. 16-cv-00524 (S.D. Ohio Sept. 27, 2016) (Dkt. No. 100) [hereinafter “*Highland Amicus*”] (“[S]uch a discriminatory policy singles out [transgender] students [] and creates a serious dilemma for them—requiring them to either use a separate restroom or locker room simply because they are transgender, or put themselves at risk of harassment or bullying by forcing them to use facilities that are patently inconsistent with their gender.”).

Numerous schools, educators, and administrators have adopted or urged the adoption of transgender-inclusive policies. Earlier this year, the National Education Association found that it is “essential to the health and well-being of transgender people for them to be able to live in accordance with their internal gender identity in all aspects of life and restroom usage is a necessary part of that experience. When transgender students seek to use private separate facilities, schools should grant access to such private facilities but transgender students should not be required to use these separate facilities.” Nat’l Educ. Ass’n, *Legal Guidance on Transgender Students’ Rights*, at 24 (June 2016), available at <https://www.nea.org/assets/>

Footnote continued from previous page

identification” and finding “important associations between the actions schools take and the well-being of transgender youth.”).

docs/20184_Transgender%20Guide_v4.pdf [hereinafter “NEA Guide”]. Likewise, the National Association of Secondary School Principals found that “[u]nless the student has a preference for another option, transgender students have the right to use the restroom and locker room consistent with their gender identity or gender expression.” Nat’l Ass’n of Secondary School Principals, *Position Statement: Transgender Students*, <https://www.nassp.org/who-we-are/board-of-directors/position-statements/transgender-students?SSO=true> (last visited Nov. 22, 2016). Therefore, school leaders should “do their best to address the needs of their school community and should provide a private facility, such as a single-occupancy restroom or changing station, or privacy curtains for any student who feels uncomfortable in the restroom or locker room.” *Id.*

C. Courts Have Long Recognized The Serious Harms Caused by Stigmatizing And Discriminating Against A Class Of Persons

The U.S. Constitution prohibits minority groups from being discriminated against based on an innate characteristic or inherent classification. The Supreme Court has recognized for decades that the stigma and mental harms associated with discrimination can be devastating. In *Brown v. Board of Education*, the Supreme Court held that segregating students from their peers “has a detrimental effect upon the [segregated] children . . . [and] [t]he impact is greater when it has the sanction of the law; for the policy . . . is usually interpreted as denoting the inferiority of the [segregated] group.” 347 U.S. 483, 494 (1954) (citation and quotations omitted); *see also Heckler v. Mathews*, 465 U.S. 728, 739–40 (1984) (“[D]iscrimination itself, by perpetuating ‘archaic and stereotypic notions’ or by stigmatizing members of the disfavored group as ‘innately inferior’ and therefore as less worthy participants in the political community . . . can cause serious non-economic injuries to those persons who are personally denied equal treatment solely because of their membership in a disfavored group.”) (citations omitted).

Courts have also expressed concerns about “stigmatizing” when a minority group is singled out for differential treatment without justification, whether on the basis of race, age, national origin, gender, familial status, or any number of other classifications. *See, e.g., Hassan v. City of N.Y.*, 804 F.3d 277, 304 (3d Cir. 2015) (warning of the “danger of stigma and stirred animosities” caused by religious classifications) (citations omitted); *Mardell v. Harleysville Life Ins. Co.*, 65 F.3d 1072, 1074 (3d Cir. 1995) (per curiam) (“a victim of [age and gender] discrimination suffers a dehumanizing injury as real as, and often of far more severe and lasting harm than, a blow to the jaw”); *see also Obergefell v. Hodges*, 135 S. Ct. 2584, 2602 (2015) (“excluding same-sex couples from the marriage right impose[s] stigma and injury of the kind prohibited by our basic charter”); *Hamad v. Woodcrest Condo. Ass’n*, 328 F.3d 224, 232 (6th Cir. 2003) (stating, with respect to familial status discrimination, that excluded persons “suffered the stigmatic harm of living in a community whose members were segregated on the basis of” familial status) (citation omitted); *Sandberg v. KPMG Peat Marwick, L.L.P.*, 111 F.3d 331, 335 (2d Cir. 1997) (“The fundamental concern of discrimination law is to redress the dignitary affront that decisions based on group characteristics represent.”) (citation omitted).

Courts “have looked with particular suspicion on discrimination based on ‘immutable human attributes.’” *Hassan*, 804 F.3d at 301 (citation omitted). Like other forms of discrimination based on an innate, immutable characteristic, discrimination against transgender persons based on their gender identity and transgender status causes significant harm. *See Ehrensaft Decl.* ¶¶21-22; *see also G.G. v. Gloucester Cnty. Sch. Bd.*, 822 F.3d 709, 728 (4th Cir. 2016), *cert. granted in part*, 2016 WL 4565643 (U.S. Oct. 28, 2016) (No. 16-273) (crediting expert testimony that “put[ting] [transgender student] in the humiliating position of having to use a separate facility, thereby accentuating his ‘otherness’” and contributing to the “shame of being singled out and stigmatized in his daily life . . . is a devastating blow . . . and places him at

extreme risk for immediate and long-term psychological harm”). In particular, discriminatory restroom access policies like the resolution passed by the Pine-Richland School District are held to cause significant harm to transgender students. *See, e.g., Bd. of Educ. of Highland Local Sch. Dist. v. U.S. Dep’t of Educ.*, No. 16-cv-524, 2016 WL 5372349, at *14, 19 (S.D. Ohio Sept. 26, 2016) (granting preliminary injunction allowing transgender girl to use facilities consistent with her gender identity: the “stigma and isolation Jane feels when she is singled out and forced to use a separate bathroom contribute to and exacerbate her mental-health challenges” and “clearly impair her ability to focus on learning”); *Highland Amicus* at 17 (“Having to navigate this problem daily seriously interferes with transgender students’ education, impairs their ability to learn and socialize, and results in real physical and emotional harm.”); *Whitaker*, 2016 WL 5239829, at *5-6 (granting preliminary injunction allowing transgender boy to use facilities consistent with his gender identity: “the court has no question that the plaintiff’s inability to use the boys’ restroom has caused him to suffer harm” including “emotional distress”).

Moreover, courts have rejected privacy-based concerns, such as the claim that the government should “protect” non-transgender students from having to share public spaces with transgender people, as an insufficient basis to justify discrimination. *See Dep’t of Fair Empl’t & Housing v. Am. Pac. Corp.*, No. 34-2013-00151153, 2014 WL 2178570, at *4 (Cal. Super. Ct. Mar. 13, 2014) (“hypothetical assertions of emotional discomfort” from sharing a facility with a transgender individual were “no different than similar claims of discomfort in the presence of a minority group, which formed the basis for decades of racial segregation in housing, education, and access to public facilities like restrooms . . .”) (citation omitted); *see also Highland Local*, 2016 WL 5372349, at *19 (rejecting privacy justifications for excluding transgender students, ruling that such concerns rested on “mere negative attitudes [and] fear,” which are not “permissible bases for” differential treatment); *Students v. U.S. Dep’t of Educ.*, No. 16-CV-4945,

2016 WL 6134121, at *30 (N.D. Ill. Oct. 18, 2016) (“offering appropriate restroom access would not infringe on the privacy of other students because the privacy protections and alternatives sufficiently protected all students’ privacy in the restrooms”); *Whitaker*, 2016 WL 5239829, at *5-6 (same); *California Education Committee, LLC v. O’Connell*, No. 34-2008-00026507-CU-CR-GDS, slip op. at 3 (Cal. Super. Ct. June 1, 2009) (same).

III. STORIES FROM TRANSGENDER YOUTH REGARDING THE EFFECTS OF DISCRIMINATORY POLICIES AND PRACTICES ON THEIR LIVES

Amici’s clients are transgender current and former students in school systems across Pennsylvania. Their experiences reflect that transgender students’ academic potential and psychological and social health are dramatically improved when schools adopt inclusive policies that treat transgender students consistently with their gender identity in all respects. By contrast, when transgender students are faced with exclusionary policies — like the policy challenged here — they suffer real harm that hampers their education and damages their mental, emotional, and social health. As educators and courts have come to understand, “[i]t is essential to the health and well-being of transgender people for them to be able to live in accordance with their internal gender identity in all aspects of life” and that access to facilities consistent with their gender identity “is a necessary part of that experience.” NEA Guide at 24 (emphasis added); *see also Highland Local*, 2016 WL 5372349, at *14, 19 (noting that “stigma and isolation” of transgender students “contribute to and exacerbate [their] mental-health challenges” and “clearly impair [their] ability to focus on learning.”). The experiences of transgender youth described below bear this out.

A. Exclusionary Policies Significantly Impair Transgender Students' Educational Experiences and Mental and Social Health

Several students were faced with school policies that prohibited them from living in accordance with their gender identity while at school. Their experiences are recounted below.

Cooper Toothman, Southeast of Harrisburg, Pennsylvania

Cooper is a 15 year-old, ninth grade transgender girl in a high school southwest of Harrisburg who is unsupported by her school. A recent picture of Cooper is below.



Cooper has presented as female for several years but she only came out as transgender in April 2016, in eighth grade. Cooper came out because it was too stressful for her to continue living as a boy in school but as a girl in all other places, including at home and with her friends and family in public. The stress was overwhelming, and psychologically harmful: Cooper failed eighth grade, begun cutting herself, and suffered from suicidal ideation. With the help of her doctors and family, Cooper realized it was essential for her to live authentically as a girl in all places she went, including school.

When she first came out to the school administration in April 2016, Cooper agreed to use a single-user, unisex bathroom at the suggestion of the school because Cooper's continued use of

the boys' bathroom was not an option due to her obvious female appearance and gender identity, and because she faced harassment for using the boys' bathroom. When, one month later, Cooper's mother asked that Cooper be allowed to use the female bathrooms and facilities, the superintendent told her that "we need more time." Cooper and her family agreed at first to wait for the administration to change its policy, primarily for her own safety. Cooper nonetheless felt stigmatized and isolated as a result of being forced to use a single-user bathroom, and she also felt that being denied the use of girls' bathrooms caused her to be unwillingly "outed" to students who may not be aware of her transgender status. The single-user bathroom that the school initially offered Cooper to use was inconveniently located; Cooper was not even able to access it during lunch break, when students could not leave the cafeteria area. Only after Cooper's mother contacted the school about the issue did the administration give Cooper access to a different single-user bathroom near the cafeteria.

To date, the administration not only has failed to change its policy, it suspended Cooper for using a girls' bathroom after hours to change for a track workout, even though Cooper and her family had understood the administration's policy to apply only during school hours. This happened at the start of ninth grade in August 2016. Cooper was required to change for her track workout after school. Since it was after school hours, all of the other students were gone, and the single-user restroom was far away, Cooper decided to change in a stall in the girls' bathroom next to her track coach's office. Two teachers saw her enter that bathroom, reported it to the administration, and Cooper was suspended from school. Cooper explained that she always tries to be respectful of the administration but she was "devastated" and "felt totally ambushed" by this decision. When Cooper first came out, she was "excited, like they [the administration] had my back, but now feel like they are watching me and waiting for me to slip up. I try to watch what I wear, how I act and how I do in school [be]cause I feel like if I mess up they will point a

finger at me and say that I am not a good role model. It is sometimes a lot since I just want to focus on my work and not all the extra that comes with being trans.”

Cooper describes access to the girls’ bathroom as a “big priority” because it is crucial to her expression of her gender and identity. Cooper says her school’s policy has caused depression and “tells me I can’t be myself.” Cooper also explained that she “does not want to be separated, and a lot of my friends will say ‘come help me do my hair’ or talk in the bathroom, and I have to make excuses because they do not know I am not allowed in there. Eventually, your friends leave you out. I am a girl, and do not want to be separated. I just want to be a student.” Cooper is forced to “live a lie at school making excuses and reasons to look, dress and live as a girl but then not able to go pee or go to the locker rooms.”

Cooper continues to have high hopes for her future despite the lack of support from her administration, but she says “there are days that I am at my breaking point.” She does not expect the school’s treatment to improve, and is considering changing schools or looking into a foreign exchange program. For Cooper, “school is the biggest challenge in my life right now.”⁴

Kasey Caron, Johnstown, Pennsylvania

Kasey is a 20 year-old transgender male who graduated in 2014 from a high school in Johnstown, Pennsylvania, approximately 75 miles east of Pittsburgh. Kasey has “always been more comfortable in boys’ clothes” and for as long as he remembers kept his hair and appearance more stereotypically male. When Kasey finally came out as transgender in his junior year of high school, he was nervous that his rural community would not accept him and “did not want to start anything or have angry parents.” Therefore, Kasey decided to request access to a unisex, single stall bathroom rather than request permission to use the boys’ bathroom.

⁴ Sources: November 18, 2016 Telephone Interview and November 19, 2016 Email. Photograph included with permission.

Kasey says he was able to “fly under the radar” and the school generally allowed Kasey to go about his day-to-day life. His classmates nominated him for homecoming court his senior year and his name was placed on the ballot for homecoming king, but Kasey’s school adamantly refused to allow Kasey to be eligible for homecoming “king” because, the school said, Kasey’s driver’s license still listed him as female. Yet when Kasey changed his driver’s license to reflect his male gender identity, the administration refused to budge and instead demanded an amended birth certificate. Some members of the administration grew belligerent at public meetings, making inappropriate comments about Kasey’s genitalia in a public forum — which embarrassed and stigmatized Kasey, and “outed” his transgender status and personal details about his life to all those attending the public meetings.

The administration was unsupportive in other ways. Kasey noted that his school “never enforced their anti-bullying policy,” that he began hearing “negative things behind my back,” and some teachers even said Kasey “had given the school a bad name” simply by asking to be treated consistently with his male gender. Kasey felt marginalized and shamed for his gender identity by adults and administrators.

Kasey now lives in Florida. He left Pennsylvania in part because the publicity he received in his dispute with his former high school was overwhelming and he “needed to move somewhere where no one knew me” in order to move on with his life. Kasey plans to begin college in North Carolina next year to study psychology and sociology “in hopes to one day help LGBT+ youth like myself.”⁵

⁵ Source: November 11, 2016 Telephone Interview and November 21, 2016 Email.

Issak Wolfe, Southeast of Harrisburg, Pennsylvania

Issak is a 21-year old transgender male college student who graduated from high school in a small town southeast of Harrisburg, Pennsylvania. A recent picture of Issak is below.



Issak “always knew” he was different and “started to come out and really become myself” during his sophomore year of high school. Issak was the only transgender student at his high school. He encountered pervasive harassment and an unsupportive administration and teachers while in high school. Some of his teachers refused to refer to him using his preferred male name or male pronouns; one of them told Issak she was “not comfortable with it.” Issak also suffered from bullying in high school. Students made derogatory comments: “stupid,” “weird,” and “fag” were words frequently hurled at him. Some students referred to him as “it” and refused to accept him, telling him “that’s not real” or “that’s not natural.” Issak stated that “only a small handful of teachers were supportive.”

Using the bathroom was a particularly painful part of Issak’s high school experience. Issak was afraid to use the men’s bathroom in high school because of bullying and the lack of support from the administration. Issak would usually just “hold it in” for the entire school day

and wait until he returned home to use the bathroom. If he could not wait, Issak would use the girls' bathroom when it would be likely to be empty, and if anyone came in when he was using it, he would "hide" to "avoid being seen." He explained that this was because he thought "people would look at me weird."

Issak's experiences demonstrate that it is simply not an option for transgender students to be forced to use the restroom based on their "birth sex": One day during his senior year at a store near where he lived, Issak used a women's restroom and a man blocked the door to other women and told them "don't go in there." That was the last time Issak ever used a women's restroom.

Issak's life improved after high school. He now studies resident carpentry at Thaddeus Stevens in Lancaster, Pennsylvania, which he says has been "incredibly tolerant" and has ensured that he is provided access to facilities consistent with his male gender.⁶

B. Supportive Policies and Administrations Dramatically Improve Transgender Students' Lives and Educational Experiences

In stark contrast to the accounts of Cooper, Kasey, and Isaak, other clients of *amici* reported that their school administrations and teachers were fully supportive. Administrations, among other things, adopted inclusive policies and worked with the students as they navigated their social and medical transitions, including allowing students' names to be changed on school records to reflect their new names. Interviews with these students demonstrate that the support of their schools fostered an environment that enabled them to succeed in their education and promoted their social and mental well-being.

⁶ Source: November 12, 2016 Telephone Interview with Issak Wolfe. Photograph included with permission.

A.B., Lehigh Valley, Pennsylvania

A.B. is a 12 year old transgender male student in seventh grade. A.B. used the girls' bathroom until third grade, then used the teacher's bathroom until sixth grade. Starting in sixth grade, he was permitted to use the boy's bathroom. Until then, A.B. would avoid drinking water to avoid having to use the bathroom altogether because of the discomfort this caused him. By fifth grade, A.B. could not concentrate in math, his last subject of the day, even though he was a talented student.

For A.B., using the teacher's bathroom "made me feel like the other; like I was out of place . . . [o]ther students see you using the teacher's restroom and you have to answer the same question multiple times on a topic you're not comfortable with in the first place." When A.B. tried using the girls' room, he was kicked out by other students due to his obvious male appearance. A.B. says this "made me feel kind of excluded. Think about if you walked into the restroom one day and someone told you that you weren't allowed in there."

When A.B. started middle school, he and his mother asked the administration to allow him to use the boys' bathroom. The administration agreed and urged him to report any harassment. In this tolerant climate, A.B.'s classmates helped him deal with an online bullying incident by calling the bully and convincing him to take down a hateful online comment. A.B. gave a speech to the school board to persuade it to formally change the school's facilities access policy for transgender students; the vice principal slipped A.B. a note that read, "You're my hero," the district superintendent shook his hand and told him he was proud of him, and the school district tweeted its support.

Unsurprisingly, this support has allowed A.B. to excel. A.B. attends mostly all honors classes, he is a top 10 contestant in the school's spelling bee, plays viola, kung fu, and soccer, and participates in school plays. His mother says that "if he was still using a separate bathroom,

a lot of this would not be the case.” The support A.B. has received from his school reflects just how important such support is in fostering an environment promoting physical, emotional, and intellectual development.⁷

A.D., South of Allentown, PA

A.D. is an 18 year-old transgender male senior in high school south of Allentown, Pennsylvania. A.D. had already begun transitioning by the time he started high school. He felt very uncomfortable using girls’ restrooms and facilities, explaining that “it was just weird” to use the female bathroom because of “the stares I would get” and because other “[g]irls who didn’t know me would [ask] why is there a boy in here.” A.D. began using a unisex bathroom to avoid this discomfort. Finally, in twelfth grade, A.D. met with his guidance counselor and the school administration to ask to use facilities consistent with his male gender identity and physical appearance. The administration was unequivocally supportive: they told A.D. that he could use all facilities consistent with his gender identity. During his senior year, A.D. began using the male restrooms and used the male locker rooms to change for gym class. The administration also made it clear that it would not tolerate any bullying of A.D. or other students. A.D. has experienced only one incident of verbal harassment — a student who, using crude language, said that transgender students did not belong in the men’s locker room — A.D.’s administration told the student that the administration unequivocally supported the rights of its transgender students, and A.D. has not otherwise encountered harassment or bullying.

The support A.D. has received has enabled him to continue his transition and succeed at school. A.D. has been receiving hormonal therapy for over a year and, five months ago, he underwent a surgical procedure as part of his gender transition. Consistent with the WPATH

⁷ Sources: November 10, 2016 Telephone Interview and November 15 and 20, 2016 Emails with A.B. and his mother.

standards of care discussed above, A.D.'s progress is due in large part to the freedom he enjoys in being able to live his life authentically as a male, both at home and in school. Far from being socially ostracized, A.D. is well-liked by parents, faculty, and his peers: he was the first transgender student to be elected to homecoming court in his school. A.D. explained: "It is great to know that my school district has my back!" Moreover, A.D. stated that "my life is easier because the [school] is supportive. They have always said if there is ever a problem, come talk to us." After high school, A.D. may attend community college but, for now, "is really into helping others" and is exploring ways to be a force for good in his community.⁸

Jace White, Indiana, PA

Jace is an 18-year old, male transgender recent graduate of North Pocono High School in Moscow, Pennsylvania, southeast of Scranton. He currently studies culinary arts in Pennsylvania. Jace succeeded as a student in high school in part because of the support he received for his gender transition from the school administration, teachers, and classmates. Jace began his gender transition halfway through his junior year, including changing his appearance to reflect his male gender. He first came out as transgender to his close friends. He continued using female restrooms at first but grew increasingly uncomfortable doing so. Jace eventually "tended to avoid bathrooms at all because of the stress and nervousness that using the bathroom caused." When necessary, Jace "tried to use the bathroom at odd times," such as during class, to avoid running into other students.

Just prior to the start of his senior year, Jace contacted his school principal informing them of his transition and requesting the administration's assistance. The administration was "very supportive" and met with Jace on multiple occasions to discuss his transition and what

⁸ Source: November 16, 2016 Telephone Interview and November 20, 2016 Email.

support he would need. The principal and superintendent told him that “they wanted to keep my safety a priority” at all times. At the time, the administration did not have a non-discrimination policy that included gender identity and therefore it temporarily asked Jace to use the nurse’s bathroom while it worked to add gender identity to the policy. As he explained to the administration, Jace was nervous about being “segregated by using the nurse’s bathroom,” but agreed to the temporary solution. The administration quickly amended the non-discrimination policy successfully by November of Jace’s senior year and told Jace that he was free to use all facilities consistent with this gender identity.

Jace faced one bullying incident after his transition: a classmate who Jace had known to make homophobic comments threw a ball at his head. The school immediately questioned the boy and addressed the problem, and Jace faced no further incidents of harassment. According to Jace, the support he received “has moved me forward in the goals that I have and the future that I want to live,” and the “support and love helped me push through high school and all the other challenges I faced.”

Jace recently graduated from high school and was honored, along with four other classmates, for his scholastic achievements and outstanding character and leadership qualities. Jace now studies culinary arts at Indiana University of Pennsylvania, which also treats him in accordance with his male gender identity. After completing his college program and a post-graduation externship, Jace is considering getting a bachelor’s degree in hospitality management or nutrition.⁹

⁹ Source: November 18, 2016 Telephone Interview.

Sage Warren, Lower Burrell, Pennsylvania

Sage's experience demonstrates that a change in school policy can improve a student's educational and psychological experience. Sage is a male transgender recent graduate of a high school near Pittsburgh. A recent picture of Sage is below.



Sage came out as transgender with a Facebook status update in fifth grade and immediately changed his appearance to reflect his male gender. The first few years were painful for him; his guidance counselor told him in sixth grade that he “should not wear that type of clothing” and should wear “feminine clothing,” but Sage, not knowing how to respond, simply brushed it off and went back to class. Sage's classmates, too, were unsupportive. Until around tenth grade, many of them “misgendered” him by using female pronouns when referring to him. Sage used girls' restrooms and had to enroll in girls' gym classes; the resulting discomfort aggravated Sage's gender dysphoria. There were many days when Sage would skip school to avoid the discomfort of having to go to the wrong gym class. But at the beginning of Sage's senior year, after researching his rights as a transgender student, Sage consulted his guidance counselor and, with her assistance, convinced the superintendent and school board to change the

school's policy and permit him to use the boys' restrooms and attend gym class for boys, consistent with his male gender. Sage's grades improved, he stopped skipping class, and he graduated high school. He is now working and volunteering for LGBT support organizations in the Pittsburgh area.¹⁰

CONCLUSION

The accounts provided above of *amici*'s clients demonstrate the very real impact that school policies have on transgender students. When schools are unsupportive and exclusionary, transgender students struggle socially, medically, psychologically, and educationally. But when schools treat their transgender students consistently with their gender identity in all respects — including using gender specific facilities such as bathrooms and locker rooms — they have much better outcomes and, as *amici* demonstrate, the schools fostered an environment that enabled their students to succeed in their education and facilitated their social and mental well-being.

For these reasons, *amici* respectfully urge the Court to grant Plaintiffs' motion for a preliminary injunction and deny Defendants' motion to dismiss.

¹⁰ Source: November 18, 2016 Telephone Interview. Photograph included with permission.

Date: November 23, 2016

Respectfully submitted,

/s/ Jesse Ryan Loffler

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** Not admitted to practice in the Western
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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

_____)	
JULIET EVANCHO, <i>et al.</i> ,)	
)	
)	
Plaintiffs,)	Civil Action No. 2:16-cv-01537-MRH
)	
v.)	Honorable Mark R. Hornak
)	
PINE-RICHLAND SCHOOL DISTRICT, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

[PROPOSED] ORDER

AND NOW, this ____ day of _____, 2016, it is hereby ORDERED that the Motion by The Pennsylvania Youth Congress and THRIVE of Southwest Pennsylvania for Leave to File Amici Curiae Brief in Support of Plaintiffs’ Motion for Preliminary Injunction and in Opposition to Defendants’ Motion to Dismiss is GRANTED and, therefore, such *amici curiae*’s brief attached to the motion will be entered into the record in the above-captioned matter.

Hon. Mark R. Hornak
U.S. District Court Judge