



Patricia S. Connor, Clerk
United States Court of Appeals for the Fourth Circuit
Lewis F. Powell, Jr. United States Courthouse Annex
1100 East Main Street, Suite 501
Richmond, VA 23219-3517

November 1, 2016

Re: Plaintiffs' Response to Defendants' Rule 28(j) Supplemental Authority
Letter in *Carcaño v. McCrory* (4th Cir. No. 16-1989) Regarding Certiorari
Grant in *Gloucester County School Board v. G.G.* (U.S. No. 16-273)

Dear Ms. Connor,

Plaintiffs-Appellants (“Plaintiffs”) hereby respond to the supplemental authority letter filed on October 28, 2016 by Defendants-Appellees (“Defendants”) regarding the Supreme Court’s grant of certiorari in *Gloucester County School Board v. G.G.*

First, a grant of Defendants’ request to hold this appeal in abeyance would effectively preclude Plaintiffs from receiving the full preliminary injunctive relief they have sought. That *de facto* denial of appellate review would, in the interim, cause tens of thousands of transgender North Carolinians to suffer what the district court found was “clearly” irreparable harm caused by their exclusion from sex-separated facilities corresponding to their gender identity. JA981. Whatever the outcome of the Supreme Court’s ruling in *G.G.*, these individuals deserve prompt adjudication of their equal protection rights by this Court.

Second, Defendants previously argued that resolution of the *G.G.* appeal has only minimal import on Plaintiffs’ equal protection claim—which is the *only* claim at issue in the instant appeal—because the *G.G.* appeal concerns Title IX and deference to administrative agency action. Defendant McCrory argued below that reliance on this Court’s *G.G.* decision would be “misplaced because the Court there addressed only administrative interpretation of Title IX regulations, not the Fourteenth Amendment’s Equal Protection Clause.” Dist. Ct. ECF No. 55 at 9. Similarly, Intervenor-Defendants emphasized that “*G.G.*, of course, expressly

declined to address the Equal Protection Clause.” Dist. Ct. ECF No. 61 at 11. In light of these arguments, Defendants cannot now credibly assert that this appeal must be frozen until *G.G.* is decided.

Finally, Defendants have not filed a motion to stay this appeal based on the grant of certiorari in *G.G.* If that is the relief they seek, they must file an appropriate motion, to which Plaintiffs would have an opportunity to respond in full. Defendants cannot use their motion to dismiss (ECF No. 44-1)—filed on the entirely distinct grounds that this Court supposedly lacks appellate jurisdiction—to shortcut that process. Nor can they do so through Plaintiffs’ motion to expedite oral argument (ECF No. 53-1), which has already prompted this case to be tentatively scheduled for argument during January 24-27, 2017.

Respectfully submitted,

/s/ Jon W. Davidson

Counsel for Plaintiffs-Appellants

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system on November 1, 2016. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

/s/ Jon W. Davidson

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