



January 19, 2017

Denise McNerney
Office of the Clerk
Supreme Court of the United States
1 First Street, N.E.
Washington, DC 20543

Via UPS and email

RE: Gloucester County School Board v G.G., No. 16-273

Dear Ms. McNerney,

Respondent respectfully submits this reply in further support of its request to lodge copies of (a) September 9, 2016, order from the Gloucester County Circuit Court directing the State Registrar to issue an amended birth certificate listing Mr. Grimm's sex as "male," and (b) the amended birth certificate issued to Mr. Grimm on October 27, 2016.

I write to address three points:

First, in opposing the request, Petitioner relies on cases decided on summary judgment or based on factual findings by the trial court. *See, e.g., FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 221 (1990) (cross-motions for summary judgment); *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 272 (1986) (plurality) (cross-motions for summary judgment); *Witters v. State, Comm'n for the Blind*, 689 P.2d 53, 55 (Wash. 1984) (findings of fact by trial court), *rev'd sub nom. Witters v. Wash. Dep't of Servs. for the Blind*, 474 U.S. 481 (1986).

In contrast, this case comes to the Court on the School Board's motion to dismiss. With respect to that claim, there have been no factual findings and this Court must accept all factual allegations as true and draw all reasonable inferences in Respondent's favor. *See Papasan v. Allain*, 478 U.S. 265, 268 n.1 (1986); *Wright & Miller, et al.*, 5B Fed. Prac. & Proc. Civ. § 1357 (3d ed.).

Second, despite Petitioner's suggestion to the contrary, Respondent specifically advised the Court in its brief in opposition to certiorari that Gavin has undergone chest surgery and that the Board's assertion that he "had not had a sex change operation" was no longer correct. Cert. Opp. 5-6 n.5. In its merits brief, Petitioner acknowledged this disclosure and also acknowledged that Gavin has received a new birth certificate. Pet'r Br. 11 n.5.

Third, the documents are relevant in assessing the legality of Respondent's "biological gender" policy because, even though Gavin has now obtained a birth certificate reflecting his sex as male, Respondent continues to exclude him from men's facilities. In contrast, even the controversial North Carolina statute challenged in *Carcaño v. McCrory*, No. 1:16CV236, 2016 WL 4508192 (M.D.N.C. Aug. 26, 2016), defines "biological sex" as the sex "stated on a person's birth certificate." N.C. Gen. Stat. Ann. § 143-760.

If there is any other information I can provide, please let me know.

Respectfully submitted,

Joshua A. Block



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