

No. 15-2056

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

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

*Plaintiffs-Appellants,*

v.

GLOUCESTER COUNTY SCHOOL BOARD,

*Defendant-Appellee.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

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**MOTION BY 50 GLOUCESTER STUDENTS, PARENTS, AND  
GRANDPARENTS, ET AL. FOR LEAVE TO FILE AN *AMICI CURIAE*  
BRIEF IN SUPPORT OF DEFENDANT-APPELLEE'S PETITION FOR  
REHEARING EN BANC**

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Pursuant to Rule 29(a), 50 Gloucester Students, Parents, Grandparents, and Community Members and The Family Foundation of Virginia respectfully move this Court for leave to file the accompanying *amici curiae* brief in the above-captioned matter in support of Defendant-Appellee's request for rehearing *en banc*. All parties consented to the *amici curiae* brief's filing.

### **IDENTIFICATION AND INTEREST OF AMICI CURIAE**

50 Gloucester Students, Parents, Grandparents, and Community Members are students who attend school in Gloucester County, Virginia, and whose interests in bodily privacy are at issue in this case, or their parents, grandparents, or fellow community members who are concerned about maintaining students' right to bodily privacy. The Addendum to the attached *amici curiae* brief lists their names in full. It is this constitutional right to bodily privacy that is negatively impacted by the panel majority's decision.

The Family Foundation of Virginia (FFV) is a non-partisan, non-profit organization that exists to strengthen families in Virginia through citizen advocacy and education. FFV focuses its efforts on public-policy issues involving the family, including students' constitutional rights at school. As a citizen advocacy organization, Amicus Curiae's interest in this case derives directly from its members throughout Virginia, including members in Gloucester County, with children in public schools whose rights to bodily privacy are harmed by the panel

majority's decision.

### **DESIRABILITY OF AMICI CURIAE'S BRIEF**

“Since an *amicus* does not represent the parties but participates only for the benefit of the court, it is solely within the discretion of the court to determine the fact, extent, and manner of [its] participation.” *Newark Branch of NAACP v. Town of Harriston*, 940 F.2d 792, 808 (3d Cir. 1991) (emphasis added and quotation omitted). But courts are “usually delighted to hear additional judgments from able *amici* that will help the court toward right answers.” *Mass. Food Ass’n v. Mass. Alcoholic Beverages Control Comm’n*, 197 F.3d 560, 567 (1st Cir. 1999). As Justice Alito explained while he was a judge on the United States Court of Appeals for the Third Circuit, an *amicus* brief should be accepted when “*amici* have stated an ‘interest in the case,’ and it appears that their brief is ‘relevant’ and ‘desirable’ since it alerts the merits panel to possible implications of the appeal.” *Neonatology Associates v. Comm’r of Internal Revenue*, 293 F.3d 128, 133 (3d Cir. 2002).

50 Gloucester Students, Parents, Grandparents, and Community Members and The Family Foundation of Virginia are able *Amici* that are well-suited to help this Court toward right answers in a case involving significant concerns for students and their parents. *Amici* would show the Court that the plain language of Title IX and its legislative history indicate Congress’ intent to allow schools to maintain separate restrooms and locker rooms for boys and girls based on

biological sex. They would also show this Court that because the term “sex” in Title IX is unambiguous that the Department of Education’s re-definition of “sex” to include “gender identity” in a nonbinding guidance document is not entitled to deference.

### **CONCLUSION**

The direct stake that 50 Gloucester Students, Parents, Grandparents, and Community Members and The Family Foundation of Virginia have in preserving the constitutional right of bodily privacy in Virginia’s schools justifies their filing of an *amicus curiae* brief in this case. Consequently, they respectfully request that this Court grant their unopposed motion to file a timely *amici curiae* brief under Federal Rule of Appellate Procedure 29.

Respectfully submitted this 11th day of May, 2016.

/s/ J. Matthew Sharp

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## CERTIFICATE OF SERVICE

I hereby certify that on May 11, 2016, I electronically filed the foregoing *amicus* brief with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system. The following participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system:

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