

IN THE  
**United States Court of Appeals**  
FOR THE ELEVENTH CIRCUIT

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DREW ADAMS,

*Plaintiff-Appellee,*

—v.—

SCHOOL BOARD OF ST. JOHNS COUNTY, FLORIDA,

*Defendant-Appellant.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA, JACKSONVILLE DIVISION  
DISTRICT COURT CASE NO. 3:17-CV-00739-TJC-JBT

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**MOTION FOR LEAVE TO FILE BRIEF FOR *AMICI CURIAE* AIRBNB, INC., APPLE, ASANA, INC., CREDO MOBILE INC., DEUTSCHE BANK AG, EBAY INC., GENERAL ASSEMBLY SPACE, INC., GITHUB, INC., GLASSDOOR, INC., GLAXOSMITHKLINE LLC, GOOGLE LLC, IBM CORPORATION, INDIEGOGO INC., KAISER PERMANENTE, KNOTEL INC., LEVI STRAUSS & CO., LINDEN RESEARCH, INC. (D/B/A LINDEN LAB), LYFT, INC., MAPBOX INC., MARIN SOFTWARE INCORPORATED, MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY (“MASSMUTUAL”), MICROSOFT CORPORATION, NIO USA, INC., PATREON, INC., POSTMATES INC., REPLACEMENTS, LTD., SHUTTERSTOCK, INC., SPOTIFY USA INC., TUMBLR, INC., TWITTER INC., XEROX CORPORATION, AND YELP INC.,  
IN SUPPORT OF PLAINTIFF-APPELLEE**

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*Attorneys for Amici Curiae*

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**UNOPPOSED MOTION FOR LEAVE TO FILE *AMICUS* BRIEF OF  
PROPOSED *AMICI CURIAE***

Pursuant to Federal Rule of Appellate Procedure 29 and Eleventh Circuit Rule 29-1, Proposed *Amici Curiae* Airbnb, Inc., Apple, Asana, Inc., CREDO Mobile, Inc., Deutsche Bank AG, eBay Inc., General Assembly Space, Inc., GitHub, Inc., Glassdoor, Inc., GlaxoSmithKline LLC, Google LLC, IBM Corporation, Indiegogo, Inc., Kaiser Permanente, Knotel, Inc., Levi Strauss & Co., Linden Research, Inc. (d/b/a Linden Lab), Lyft, Inc., Mapbox, Inc., Marin Software Incorporated, Massachusetts Mutual Life Insurance Company (“MassMutual”), Microsoft Corporation, NIO USA, Inc., Patreon, Inc., Postmates Inc., Replacements, Ltd., Shutterstock, Inc., Spotify USA Inc., Tumblr, Inc., Twitter Inc., Xerox Corporation, and Yelp Inc., respectfully move this Court for leave to file the *amicus* brief attached to this motion as Exhibit A. In accordance with Federal Rule of Appellate Procedure 29 and Eleventh Circuit Rule 29-1, counsel for Proposed *Amici* certifies that the parties in this action were consulted regarding this motion. Appellee’s counsel consented to the filing of the brief; Appellant’s counsel advised that it did not oppose the filing.

**INTERESTS OF PROPOSED *AMICI***

Proposed *Amici* are some of the largest and most well-known companies in the United States. Proposed *Amici* share core values of equality, respect, and dignity for all people, regardless of their gender identity. Proposed *Amici* have an interest

in supporting and defending public policies that protect civil rights and foster acceptance and equal treatment for all their employees, their customers, and the families of both. Because of the breadth and diversity of the companies represented, the experiences of Proposed *Amici* are widely applicable. As companies, Proposed *Amici* are interested in the well-being and educational progress of all persons but have no particular interest in this case which might present a conflict of interest.

All Proposed *Amici* are concerned about the stigmatizing and degrading effects of policies such as the one adopted by the St. Johns County School Board, which restricts transgender youth's access to public school restrooms. Proposed *Amici* submit this brief as interested parties with experience in implementing, applying, and in some cases creating inclusive and respectful policies toward transgender persons. Proposed *Amici* relate that in their experience, such inclusive policies result in better workplace environments not just for transgender persons, but for all employees.

**WHY AN AMICUS BRIEF IS DESIRABLE AND WHY THE MATTERS ASSERTED ARE RELEVANT TO THE DISPOSITION OF THE CASE**

One of the benefits of permitting *amicus* briefs, applicable here, is to aid the court by showing the range of support for a particular viewpoint by groups other than the parties. *See Grutter v. Bollinger*, 123 S. Ct. 2325 (2003) (citing *amicus* filings as evidence of the importance of diversity in today's global marketplace).

Proposed *Amici*, in their brief, discuss how diversity and inclusion are essential aspects of Proposed *Amici*'s business, and how a decision on the policy of the St. Johns County School Board (the "Policy") will have effects that extend far beyond the immediate school district. The brief discusses how the Policy, if sustained, and any similar statutes or government policies that may follow, would further stigmatize and degrade transgender individuals. As Proposed *Amici* have employees, stakeholders, and community members who identify as transgender or who have children who identify as transgender, this Policy will have an adverse effect on Proposed *Amici*'s business, employees, and stakeholders. Proposed *Amici* continue to work to build and maintain diverse and inclusive spaces for employees, stakeholders, and community members. The Policy of St. Johns County School Board undermines Proposed *Amici*'s ability to build and maintain diverse and inclusive workplaces.

**RULE 29(A)(4)(E) DISCLOSURES**

Proposed *Amici* provide the following disclosures to meet the disclosure requirements under Federal Rule of Appellate Procedure 29(a)(4)(E):

1. No party's counsel authored this brief in whole or in part.
2. No party or party's counsel have contributed any money to fund the preparation or submittal of this brief.

3. No person, other than Proposed *Amici's* counsel, have contributed money for the preparation or submittal of this brief.

WHEREFORE, Proposed *Amici* move this Court for leave to file an *amicus* brief in support of Drew Adams so that it can provide the Court with the voice of some of the largest and most well-known companies in the United States on the importance of this issue and how it impacts not just the students, but communities and businesses around the United States.

Proposed *Amici* respectfully request that the Court grant leave to file the attached *amicus* brief.

**CERTIFICATE OF INTERESTED PARTIES AND  
CORPORATE DISCLOSURE STATEMENT**

Pursuant to this Court's Local Rules 26.1-1 through 26.1-3 and 28-1(b), Proposed *Amici Curiae* listed below certify that the name of each person, attorney, association of persons, firm, law firm, partnership, and corporation that has or may have an interest in the outcome of this action – including subsidiaries, conglomerates, affiliates, parent corporations, publicly-traded companies that own 10% or more of a party's stock, and all other identifiable legal entities related to any party in the case is limited to the following:

**CERTIFICATE OF INTERESTED PARTIES**

1. Adecco Group AG: Parent company for Proposed *Amicus Curiae* General Assembly Space, Inc.

2. Adecco, Inc.: Parent company for Proposed *Amicus Curiae* General Assembly Space, Inc.

3. Airbnb, Inc.: Proposed *Amicus Curiae*

4. Alphabet, Inc. (GOOG): Parent company for Proposed *Amicus Curiae* Google LLC

5. Apple (APPL): Proposed *Amicus Curiae*

6. Asana, Inc.: Proposed *Amicus Curiae*

7. Baker & Hostetler LLP: Counsel for Proposed *Amici Curiae*

8. BlackRock, Inc. (BLK): Beneficial owner of Proposed *Amicus Curiae* Yelp Inc.

9. CREDO Mobile, Inc.: Proposed *Amicus Curiae*

10. Deutsche Bank AG (DBK): Proposed *Amicus Curiae*

11. eBay Inc. (EBAY): Proposed *Amicus Curiae*

12. General Assembly Space, Inc.: Proposed *Amicus Curiae*

13. GitHub, Inc.: Proposed *Amicus Curiae*

14. Glassdoor, Inc.: Proposed *Amicus Curiae*

15. GlaxoSmithKline LLC: Proposed *Amicus Curiae*

16. GlaxoSmithKline PLC: Parent company for Proposed *Amicus Curiae* GlaxoSmithKline LLC

17. Google LLC: Proposed *Amicus Curiae*

18. IBM Corporation (IBM): Proposed *Amicus Curiae*
19. Indiegogo, Inc.: Proposed *Amicus Curiae*
20. Jacobs, Edward J. (Baker & Hostetler LLP): Counsel for Proposed *Amici Curiae*
21. Kaiser Foundation Health Plan, Inc. (“Kaiser Permanente”): Proposed *Amicus Curiae*
22. Knotel, Inc.: Proposed *Amicus Curiae*
23. Levi Strauss & Co.: Proposed *Amicus Curiae*
24. Linden Research, Inc. (d/b/a Linden Lab): Proposed *Amicus Curiae*
25. Lyft, Inc.: Proposed *Amicus Curiae*
26. Mapbox, Inc.: Proposed *Amicus Curiae*
27. Marin Software Incorporated (MRIN): Proposed *Amicus Curiae*
28. Massachusetts Mutual Life Insurance Company (“MassMutual”):  
Proposed *Amicus Curiae*
29. Microsoft Corporation (MSFT): Proposed *Amicus Curiae* and parent company for Proposed *Amicus Curiae* GitHub, Inc.
30. NIO Inc. (NIO): Parent company for Proposed *Amicus Curiae* NIO USA, Inc.
31. NIO NextEV Ltd.: Parent company for Proposed *Amicus Curiae* NIO USA, Inc.

32. NIO USA, Inc.: Proposed *Amicus Curiae*
33. Oath Inc.: Parent company for Proposed *Amicus Curiae* Tumblr, Inc.
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37. Recruit Holdings Co., Ltd. (TYO 6098): Parent company for Proposed *Amicus Curiae* Glassdoor Inc.
38. Replacements, Ltd.: Proposed *Amicus Curiae*
39. RGF OHR USA, Inc.: Parent company for Proposed *Amicus Curiae* Glassdoor Inc.
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51. Xerox Corporation (XRX): Proposed *Amicus Curiae*
52. Yelp Inc. (YELP): Proposed *Amicus Curiae*

**CORPORATE DISCLOSURE STATEMENT**

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3. Asana, Inc. is not a publicly held corporation. Asana, Inc. states that it has no parent corporation and that no publicly held corporation directly owns 10% or more of its stock.

4. CREDO Mobile, Inc. is not a publicly held corporation. CREDO Mobile, Inc. states that its parent corporation is Working Assets, Inc. and that no publicly held corporation directly owns 10% or more of its stock.

5. Deutsche Bank AG (DBK) is a publicly held corporation. Deutsche Bank AG states that it has no parent corporation and that no publicly held corporation directly owns 10% or more of its stock.

6. eBay Inc. (EBAY) is a publicly held corporation. eBay Inc. states that it has no parent corporation and that no publicly held corporation directly owns 10% or more of its stock.

7. General Assembly Space, Inc. is not a publicly held corporation. General Assembly Space, Inc. is a wholly owned subsidiary of Adecco, Inc., which in turn is a wholly-owned subsidiary of Adecco Group AG.

8. GitHub, Inc. is not a publicly held corporation. GitHub, Inc. is a wholly-owned subsidiary of Microsoft Corporation (MSFT), a publicly held corporation.

9. Glassdoor, Inc. is not a publicly held corporation. Glassdoor, Inc. states that it is wholly-owned by RGF OHR USA, Inc., a privately held Delaware Corporation. RGF OHR USA, Inc. is wholly-owned by Recruit Holdings, Co., Ltd., a Japanese publicly traded company TYO: 6098.

10. GlaxoSmithKline LLC is an indirect, wholly owned subsidiary of GlaxoSmithKline PLC, a publicly held English limited liability company. GlaxoSmithKline PLC is the only publicly held entity that has any beneficial interest in GlaxoSmithKline LLC.

11. Google LLC is not a publicly held corporation. Google LLC states that it is a wholly owned subsidiary of Alphabet, Inc. (GOOG), which is publicly owned.

12. IBM Corporation (IBM) is a publicly held corporation. IBM Corporation states that it has no parent corporation and that no publicly held corporation directly owns 10% or more of its stock.

13. Indiegogo, Inc. is not a publicly held corporation. Indiegogo, Inc. states that it has no parent corporation and that no publicly held corporation directly owns 10% or more of its stock.

14. Kaiser Foundation Health Plan, Inc. (“Kaiser Permanente”) is not a publicly held corporation. Kaiser Permanente states that it has no parent corporation and that no publicly held corporation directly owns 10% or more of its stock.

15. Knotel, Inc. is not a publicly held corporation. Knotel, Inc. states that it has no parent corporation and that no publicly held corporation directly owns 10% or more of its stock.

16. Levi Strauss & Co. is a privately held Delaware corporation. Levi Strauss & Co. is primarily owned by descendants of the family of Levi Strauss and

their relatives. Shares of Levi Strauss & Co.'s common stock are not publicly held or traded and as such no public company holds 10% or more of its stock.

17. Linden Research, Inc. (d/b/a Linden Lab) is not a publicly held corporation. Linden Research, Inc. (d/b/a Linden Lab) states that it has no parent corporation and that no publicly held corporation directly owns 10% or more of its stock.

18. Lyft, Inc. is not a publicly held corporation. Lyft, Inc. states that Rakuten, Inc., a publicly held corporation traded on the Tokyo Stock Exchange, owns more than 10% of Lyft's outstanding stock through a subsidiary.

19. Mapbox, Inc. is not a publicly held corporation. Mapbox, Inc. states that it has no parent corporation and that no publicly held corporation directly owns 10% or more of its stock.

20. Marin Software Incorporated (MRIN) is a publicly held corporation. Marin Software Incorporated states that it has no parent corporation and that no publicly held corporation directly owns 10% or more of its stock.

21. Massachusetts Mutual Life Insurance Company ("MassMutual") is not a publicly held corporation. MassMutual states that it has no parent corporation and that no publicly held corporation directly owns 10% or more of its stock.

22. Microsoft Corporation (MSFT) is a publicly held corporation. Microsoft Corporation states that it has no parent corporation and that no publicly held corporation directly owns 10% or more of its stock.

23. NIO USA, Inc. is not a publicly held corporation. NIO USA, Inc. states that its parent corporations are NIO Inc. (NIO), a publicly held corporation that owns 10% or more of its stock, and NIO NextEV Ltd. which is not a publicly held corporation.

24. Patreon, Inc. is not a publicly held corporation. Patreon, Inc. states that it has no parent corporation and that no publicly held corporation directly owns 10% or more of its stock.

25. Postmates Inc. is not a publicly held corporation. Postmates Inc. states that it has no parent corporation and that no publicly held corporation directly owns 10% or more of its stock.

26. Replacements, Ltd. is not a publicly held corporation. Replacements, Ltd. states that it has no parent corporation and that no publicly held corporation directly owns 10% or more of its stock.

27. Shutterstock, Inc. (SSTK) is a publicly held corporation. Shutterstock, Inc. states that it has no parent corporation and that no publicly held corporation directly owns 10% or more of its stock.

28. Spotify USA Inc. is a wholly-owned subsidiary of Spotify AB, a company organized under the laws of Sweden. Spotify AB is a wholly-owned subsidiary of Spotify Technology S.A., a publicly-traded company organized under the laws of the Grand Duchy of Luxembourg. Spotify Technology S.A. does not have a parent corporation, and no publicly held corporation owns 10% or more of its stock.

29. Tumblr, Inc. is not a publicly held corporation. Tumblr, Inc. states that its parent corporation is Oath Inc., a subsidiary of Verizon Communications, Inc. (VZ).

30. Twitter Inc. (TWTR) is a publicly held corporation. Twitter Inc. states that it has no parent corporation and that no publicly held corporation owns 10% or more of its stock.

31. Xerox Corporation (XRX) is a publicly held corporation. Xerox states that it has no parent corporation and that no publicly held corporation owns 10% or more of its stock.

32. Yelp Inc. (YELP) is a publicly held corporation, BlackRock, Inc. (BLK), a publicly held corporation, owns 10% or more of Yelp Inc.'s stock.

The undersigned will enter this information into the web-based CIP contemporaneous with the filing of this Certificate of Interested Persons and Corporate Disclosure Statement.

Dated: February 28, 2019

Respectfully submitted,

/s/ Edward J. Jacobs

Edward J. Jacobs

Joanna F. Wasick

Nicholas M. Rose

Victoria L. Stork

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Attorneys for Proposed *Amici Curiae*

## CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because this brief contains 2,447 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in Times New Roman 14-point font.

Dated: February 28, 2019

Respectfully submitted,

/s/ Edward J. Jacobs

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## 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 Eleventh Circuit by using the appellate CM/ECF system on February 28, 2019.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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**EXHIBIT A**

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INDIEGOGO INC., KAISER PERMANENTE, KNOTEL INC., LEVI  
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MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY  
("MASSMUTUAL"), MICROSOFT CORPORATION, NIO USA, INC.,  
PATREON, INC., POSTMATES INC., REPLACEMENTS, LTD.,  
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13. GitHub, Inc.: *Amicus Curiae*
14. Glassdoor, Inc.: *Amicus Curiae*
15. GlaxoSmithKline LLC: *Amicus Curiae*
16. GlaxoSmithKline PLC: Parent company for *Amicus Curiae*

GlaxoSmithKline LLC

17. Google LLC: *Amicus Curiae*
  18. IBM Corporation (IBM): *Amicus Curiae*
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22. Knotel, Inc.: *Amicus Curiae*
  23. Levi Strauss & Co.: *Amicus Curiae*
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  26. Mapbox, Inc.: *Amicus Curiae*

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Corporation. RGF OHR USA, Inc. is wholly-owned by Recruit Holdings, Co., Ltd., a Japanese publicly traded company TYO: 6098.

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16. Levi Strauss & Co. is a privately held Delaware corporation. Levi Strauss & Co. is primarily owned by descendants of the family of Levi Strauss and their relatives. Shares of Levi Strauss & Co.'s common stock are not publicly held or traded and as such no public company holds 10% or more of its stock.

17. Linden Research, Inc. (d/b/a Linden Lab) is not a publicly held corporation. Linden Research, Inc. (d/b/a Linden Lab) states that it has no parent corporation and that no publicly held corporation directly owns 10% or more of its stock.

18. Lyft, Inc. is not a publicly held corporation. Lyft, Inc. states that Rakuten, Inc., a publicly held corporation traded on the Tokyo Stock Exchange, owns more than 10% of Lyft's outstanding stock through a subsidiary.

19. Mapbox, Inc. is not a publicly held corporation. Mapbox, Inc. states that it has no parent corporation and that no publicly held corporation directly owns 10% or more of its stock.

20. Marin Software Incorporated (MRIN) is a publicly held corporation. Marin Software Incorporated states that it has no parent corporation and that no publicly held corporation directly owns 10% or more of its stock.

21. Massachusetts Mutual Life Insurance Company ("MassMutual") is not a publicly held corporation. MassMutual states that it has no parent corporation and that no publicly held corporation directly owns 10% or more of its stock.

22. Microsoft Corporation (MSFT) is a publicly held corporation. Microsoft Corporation states that it has no parent corporation and that no publicly held corporation directly owns 10% or more of its stock.

23. NIO USA, Inc. is not a publicly held corporation. NIO USA, Inc. states that its parent corporations are NIO Inc. (NIO), a publicly held corporation that owns 10% or more of its stock, and NIO NextEV Ltd. which is not a publicly held corporation.

24. Patreon, Inc. is not a publicly held corporation. Patreon, Inc. states that it has no parent corporation and that no publicly held corporation directly owns 10% or more of its stock.

25. Postmates Inc. is not a publicly held corporation. Postmates Inc. states that it has no parent corporation and that no publicly held corporation directly owns 10% or more of its stock.

26. Replacements, Ltd. is not a publicly held corporation. Replacements, Ltd. states that it has no parent corporation and that no publicly held corporation directly owns 10% or more of its stock.

27. Shutterstock, Inc. (SSTK) is a publicly held corporation. Shutterstock, Inc. states that it has no parent corporation and that no publicly held corporation directly owns 10% or more of its stock.

28. Spotify USA Inc. is a wholly-owned subsidiary of Spotify AB, a company organized under the laws of Sweden. Spotify AB is a wholly-owned subsidiary of Spotify Technology S.A., a publicly-traded company organized under the laws of the Grand Duchy of Luxembourg. Spotify Technology S.A. does not have a parent corporation, and no publicly held corporation owns 10% or more of its stock.

29. Tumblr, Inc. is not a publicly held corporation. Tumblr, Inc. states that its parent corporation is Oath Inc., a subsidiary of Verizon Communications, Inc. (VZ).

30. Twitter Inc. (TWTR) is a publicly held corporation. Twitter Inc. states that it has no parent corporation and that no publicly held corporation owns 10% or more of its stock.

31. Xerox Corporation (XRX) is a publicly held corporation. Xerox states that it has no parent corporation and that no publicly held corporation owns 10% or more of its stock.

32. Yelp Inc. (YELP) is a publicly held corporation, BlackRock, Inc. (BLK), a publicly held corporation, owns 10% or more of Yelp Inc.'s stock.

The undersigned will enter this information into the web-based CIP contemporaneous with the filing of this Certificate of Interested Persons and Corporate Disclosure Statement.

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**STATEMENT REGARDING AUTHORSHIP AND  
MONETARY CONTRIBUTIONS**

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

**STATEMENT OF IDENTITY AND  
INTEREST OF *AMICI CURIAE***

This *amicus* brief is submitted on behalf of some of the largest and most well-known companies in the United States to address the rights of transgender students under Title IX of the Education Amendments of 1972 and the Equal Protection Clause. A complete listing of *Amici* has been provided to the Court. *Amici* share core values of equality, respect, and dignity for all people, regardless of their gender identity. *Amici* support and defend public policies that protect civil rights and foster acceptance and equal treatment for all of their employees, their customers, and the families of both. *Amici* recognize that diversity and inclusion are good for business. Discrimination in any form against transgender, gender non-binary, and intersex people imposes enormous productivity costs on *Amici* and their employees and undermines their ability to attract, retain, and remain competitive with the best talent.

Many *Amici* employ and/or serve transgender people, and all *Amici* are concerned about the stigmatizing and degrading effects of the policy adopted by the St. Johns County School Board (the “Board” and the “Policy,” respectively), which restricts access to public school restrooms for transgender youth. The Policy, and the policies and statutes of other government entities that would be permitted if the Policy is sustained, adversely affects *Amici*’s businesses, employees, and customers, and undermines *Amici*’s ability to build and maintain the diverse and inclusive workplaces that are essential to the success of their companies.

Gender identity discrimination is a form of sex discrimination. *Amici* respectfully request that the Court consider the business consequences of such discrimination when rendering a decision in this case.

### **SUMMARY OF THE ARGUMENT**

The judiciary has historically played a crucial role in ensuring equality across all lines, including those drawn according to race, gender, and sexual orientation. *Amici* believe that transgender individuals deserve the same treatment and protections as all other members of our society. The Policy undermines *Amici*'s policies promoting fairness and equality for their employees and customers and their families, and thus directly threatens *Amici*'s business interests. *Amici* therefore urge this Court to affirm the decision of the District Court.

### **ARGUMENT**

#### **I. Diversity and Inclusion Are Essential Aspects of *Amici*'s Businesses.**

Diversity and inclusion are essential features of *Amici*'s businesses, and recruiting and retaining the best employees—including those in or allied with the transgender community—is a crucial component of *Amici*'s corporate mission. *Amici*'s commitment to diversity and inclusion is widely reflected among many of the largest businesses in the United States. Indeed, hundreds of businesses prohibit discrimination based on gender identity: a full 83% of the Fortune 500, and 99% of the companies that participated in a survey conducted by the Human Rights Campaign in the United States in 2016 (“Participating Companies”), include gender

identity in their U.S. Non-Discrimination Policies. *See* Human Rights Campaign Found., *Corporate Equality Index 2018*, at 6 (2018), <https://tinyurl.com/hcml551> (“*CEI*”). Over half of the Fortune 500 offer transgender-inclusive health care benefits, including surgical procedures, as do 81% of Participating Companies. *Id.* Major businesses nationwide are openly taking a stance on transgender restroom policies and are permitting employees and customers to use the restroom of the gender with which they identify. *See, e.g.*, Hadley Malcolm, *How Other Stores are Handling Transgender Bathroom Policies*, USA Today (Apr. 27, 2016), <https://tinyurl.com/hvfc561>.

*Amici* recognize that LGBT equality also makes them stronger in the global economy. More than 90 percent of *CEI*-rated businesses have embraced gender identity employment protections globally, which is an increase from prior years. *CEI*, at 2, 7. There is a growing shift toward inclusion and acceptance of transgender workers here in the United States and abroad. *Compare CEI*, at 7, with Human Rights Campaign Found., *Corporate Equality Index 2016*, at 7, (2016) <http://tinyurl.com/p2mfq9m>.

*Amici* have adopted and implemented policies and practices that foster equality because they are good for their employees, customers, and communities, and also because they benefit their bottom lines. *Amici* know firsthand the

advantages inclusive policies confer, and empirical studies confirm that LGBT-friendly policies are tied to increased firm value, productivity, and profitability.<sup>1</sup>

The correlation between LGBT-friendly policies and financial success is significant. Undermining those policies through discriminatory school policies is bad for business.

## **II. The Policy Will Adversely Affect *Amici*, and Its Effects Will Extend Far Beyond the St. Johns County School District.**

Enforcement of the Policy will allow individual school districts, and indeed any other government entity, to do what the Board has done here—design and implement policies that discriminate against and stigmatize transgender children.<sup>2</sup> Further, enforcement could embolden other local and state governments to enact legislation that also contravenes federal law and restricts transgender people’s access

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<sup>1</sup> See Catalyst Info. Ctr., *Why Diversity Matters* 6 (2013), <http://tinyurl.com/o2hqrsd>. One recent study by Credit Suisse, for example, demonstrated that a set of 270 companies that openly support and embrace LGBT employees outperformed a Morgan Stanley-operated market capitalization weighted index known as “MSCI ACWI” by 3.0% per year between 2010 and 2016, with returns on equity and cash flow returns that were 10% to 21% higher. See Credit Suisse, *Credit Suisse ESG Research, LGBT: The Value of Diversity* (2016), <http://tinyurl.com/h4fdnz3>. In another study, The Williams Institute at the UCLA School of Law reviewed thirty-six research studies and found that “the more robust a company’s LGBT-friendly policies, the better its stock performed over the course of four years (2002–2006), compared to other companies in the same industry over the same period of time.” M.V. Lee Badgett et al., The Williams Institute, *The Business Impact of LGBT-Supportive Workplace Policies* 23 (2013), <http://tinyurl.com/kz6774e>.

<sup>2</sup> *Amici* adopt the facts as set forth in the Plaintiff-Appellee’s brief.

to restrooms that comport with their gender identity, both in the public sphere and in the workplace. This piecemeal approach would result in a geographic patchwork, the borders of which will be defined by the treatment of the transgender community. Such a result will have very real, adverse effects on *Amici*'s businesses.

**A. The Policy Harms Employees with Transgender Children and Employees Who Themselves are Transgender.**

*Amici*'s employees are their most valuable assets and *Amici* have a strong interest in their productivity and morale. Divisive and discriminatory measures like the Policy make life harder for *Amici*'s employees with transgender children, and for employees who are themselves transgender.

**1. The Policy Harms Employees with Transgender Children.**

*Amici* recognize that employees cannot work as effectively when they are worried about how their children are being treated at school. Similarly, *Amici* are harmed when parents miss work because they have to tend to a sick or hurt child. Unfortunately, employees with transgender children living in areas with discriminatory policies like the Policy would suffer the same hardships as the Adams family.

The factual details of this case underscore why this issue matters to *Amici*'s employees: Drew Adams is a student at Allen D. Nease High School in Florida's St. Johns County School District. He is transgender, meaning he "consistently, persistently, and insisently" identifies as a boy, a gender that is different than the

sex he was assigned at birth (female). For Adams's first six weeks of high school, he used the boys' restrooms without incident. *Adams by & through Kasper v. Sch. Bd. of St. Johns Cty., Fla.*, 318 F. Supp. 3d 1293, 1307 (M.D. Fla. 2018). But following a report by two female students that they had seen Adams use a boys' restroom, Adams was pulled from his classroom and told that he could only use the gender-neutral or the girls' restrooms. *Id.* Adams was confused, shocked, and angered by the school's enforcement of the Policy and testified that he felt alienated and humiliated by it. *Id.* at 1308. Once subjected to the Policy, Adams began monitoring his fluid intake to minimize his need to use the restroom, and he testified that walking past the boys' restroom on his way to a gender-neutral bathroom causes him anxiety and depression because he knows that every other boy is permitted to use it but him. *Id.*; *see also Students and Parents for Privacy v. U.S. Dept. of Educ.*, No. 16-cv-4945, 2016 WL 6134121, at \*30 (N.D. Ill. Oct. 18, 2016) (recognizing that isolating transgender students against their will could and did negatively impact their experience in school). Because Adams is restricted to using the few gender-neutral restrooms on campus, his trek to the restroom can take as long as twenty minutes to complete, forcing Adams to miss class time in order to relieve himself. These daily humiliations have resulted in lower self-esteem, embarrassment, social isolation, and stigma for Adams—which in turn heightened his symptoms of gender dysphoria, including depression and anxiety.

The Policy's impact on Adams is hardly unique. Transgender children subjected to similar school restroom policies in Ohio, Virginia, Indiana, Pennsylvania, and Wisconsin suffered the same sort of harm inflicted on Adams here. *Board of Educ. of the Highland Local Sch. Dist. v. U.S. Dep't of Educ.*, for example, involved a child who identified as transgender since she was four years old. 208 F. Supp. 3d 850, 855–59 (S.D. Ohio 2016). Before starting the first grade, she changed her name to a female one and socially transitioned genders. *Id.* at 855–56. While the school changed records accordingly, it required the girl to use a unisex restroom in the teacher's lounge. *Id.* This caused her extensive anguish but, despite her repeated requests to change the policy, the school continued to ban her from using the girls' restroom. *Id.* at 856–57. She tried to refrain from drinking fluids, refused to use any restroom, and became anxious and depressed. Before starting the fourth grade, she attempted suicide. *Id.*

Likewise, in *G.G. ex rel. Grimm v. Gloucester Cty. Sch. Bd.*, a transgender boy who was prohibited from using the boys' restroom at school reported feeling stigmatized and experiencing “severe and persistent emotional and social harms.” 822 F.3d 709, 716–17 (4th Cir. 2016), *cert. granted in part*, 137 S. Ct. 369, 196 L. Ed. 2d 283 (2016), *and vacated and remanded*, 137 S. Ct. 1239, 197 L. Ed. 2d 460 (2017). As a result of his school's restroom policy, the boy “avoid[ed] using the restroom while at school and [, as a result] developed multiple urinary tract

infections.” *Id.* On remand, the District Court in *Grimm* denied the school board’s motion to dismiss, upholding the student’s Title IX claim. *Grimm v. Gloucester Cty. Sch. Bd.*, 302 F. Supp. 3d 730, 748 (E.D. Va. 2018) (“The location of the bathrooms, coupled with the stigmatization and physical and mental anguish inflicted upon Mr. Grimm, caused harm. ... [T]he Court concludes that Mr. Grimm has sufficiently pled a Title IX claim of sex discrimination under a gender stereotyping theory”).<sup>3</sup>

The Policy makes going to school that much harder for transgender youth and their families, a population already particularly susceptible to harm. Even compared to lesbian, gay, or bisexual students, transgender students face the most hostile school climates.<sup>4</sup> In schools where students’ rights to gender expression are

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<sup>3</sup> See also *J.A.W. v. Evansville Vanderburgh Sch. Corp.*, 323 F. Supp. 3d 1030, 1039 (S.D. Ind. 2018) (recognizing transgender students’ discomfort, distress, and anxiety forced to use restroom inconsistent with gender identity); *Whitaker By Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1045 (7th Cir. 2017), *cert. dismissed sub nom. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ. v. Whitaker ex rel. Whitaker*, 138 S. Ct. 1260, 200 L. Ed. 2d 415 (2018) (“[T]he School District’s actions, including its bathroom policy, which identified Ash as transgender and therefore, ‘different,’ were ‘directly causing significant psychological distress and place [Ash] at risk for experiencing life-long diminished well-being and life-functioning.’”); *Evancho v. Pine-Richland Sch. Dist.*, 237 F. Supp. 3d 267, 294 (W.D. Pa. 2017) (recognizing plaintiffs’ assertions that they subjectively feel marginalized, and objectively are being marginalized, which is causing them genuine distress, anxiety, discomfort and humiliation”); *Dodds v. United States Dep’t of Educ.*, 845 F.3d 217, 221 (6th Cir. 2016) (“exclusion of Doe from the girls’ restrooms has already had substantial and immediate adverse effects on the daily life and well-being of an eleven-year-old child (*i.e.* multiple suicide attempts prior to entry of the injunction)”).

<sup>4</sup> Joseph G. Kosciw et al., *GLSEN, The 2013 Nat’l School Climate Survey: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth in Our Nation’s*

respected, students experience less bullying and have better educational outcomes. In schools with anti-LGBT bullying policies, for example, students have better relationships with staff and as a result feel safer in school.<sup>5</sup> When transgender students are supported, they have higher grade point averages, better attendance records, increased self-esteem, and are bullied at lower rates than peers at other schools. Joseph G. Kosciw et al., *GLSEN, The 2007 Nat'l School Climate Survey:*

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*Schools* xxiii (2014), <https://tinyurl.com/lb6hojt>. Those who identify as transgender while in grades K–12 reported disproportionately high rates of harassment (78%), physical assault (35%), and sexual violence (12%). Jaime M. Grant et al., *Nat'l Ct. for Transgender Equal. & Nat'l Gay and Lesbian Task Force, Injustice at Every Turn: A Report of the Nat'l Transgender Discrimination Survey* (2011), <https://www.hivlawandpolicy.org/sites/default/files/Injustice%20at%20Every%20Turn.pdf>. Transgender students who experienced discrimination at school were more likely to miss school, had lower GPAs, and had higher levels of depression and lower levels of self-esteem than their peers. Kosciw, *supra*, at xviii.

<sup>5</sup> Nat'l Ass'n of Sch. Psych. & Gender Spectrum, *Gender Inclusive Schools: Policy, Law, and Practice* 2 (2016) (citing Jenifer K. McGuire et al., *School Climate for Transgender Youth: A Mixed Method Investigation of Student Experiences and School Responses*, 39 *J. Youth & Adolesc.* 1175 (2010)). In schools that have an academic curriculum that positively represents LGBT individuals, there is less bullying and harassment. GLSEN, *Research Brief, Teaching Respect: LGBT Inclusive Curriculum and School Climate* 1–2 (2011), <https://tinyurl.com/lx4qont>. In schools with LGBT-inclusive environments, LGBT students have more academic success than those in schools with negative environments. Stephen T. Russell et al., *Safe Schools Policy for LGBTQ Students*, 24 *Social Policy Report*, no. 4, at 6–7 (2010). And when schools support transgender students who come out and socially transition at school, transgender students feel more included in the school community than those who are closeted. See Emily A. Greytak et al., *GLSEN, Harsh Realities: The Experience of Transgender Youth in Our Nation's Schools* 30–31 (2009), <https://tinyurl.com/ksu3jo3>. This sense of belonging correlates with higher academic achievement. *Id.* at 29.

*The Experiences of Lesbian, Gay, Bisexual and Transgender Youth in Our Nation's Schools* 121 (2008), <https://tinyurl.com/lakhdmo>.

*Amici* have an interest in school policies that provide their employees' children with the best, most inclusive educational opportunities. Employees who are confident in their children's physical and emotional security at school will be more productive and satisfied employees.

## **2. The Policy Harms *Amici's* Transgender Employees.**

By singling out the transgender population, the Policy signals to *Amici's* transgender employees that they are less worthy than other community members, and that they should suppress a fundamental part of who they are. This has a direct and detrimental effect on *Amici's* transgender employees.

It is well established that stigma can cause tangible harm to those targeted: "Structural stigma provides the context and identifies which members of society are devalued. It also gives a level of permission to denigrate or attack particular groups, or those who are perceived to be members of certain groups in society." *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921, 974 (N.D. Cal. 2010) (citation and marks omitted); see also Mark L. Hatzenbuehler et al., *Stigma as a Fundamental Cause of Population Health Inequalities*, 103 Am. J. of Pub. Health 813, 815–16 (2013) (stigma can have "a corrosive influence on health" and can harm a person's social relationships and self-esteem).

The Policy is based upon and perpetuates stigma against transgender people. The Board defended the Policy below by claiming that permitting transgender children to use restrooms corresponding to their gender identity could allow students “with untoward intentions to do things they ought not to do,” but was unable to substantiate this supposed concern. *Adams*, 318 F. Supp. 3d at 1305. The District Court found that there was no evidence that transgender children chose to use restrooms to commit predatory or abusive acts, nor that there were any “reported instances of privacy breaches during the time Adams used the boys’ restroom at” his school. *Id.* at 1308; *see also Carcano v. McCrory*, 203 F. Supp. 3d 615, 639 (M.D. N.C. 2016). In direct contrast, the Board conceded that allowing a fully transitioned transgender girl to use the boys’ restroom – a result the Policy actually envisions and condones – would itself pose safety issues. *Adams*, 318 F. Supp. 3d at 1305-06.

The fallacy of the Board’s justification for its position shows that the Policy is not the product of any real safety concern but instead of stigma against transgender people—not unlike, and no more justifiable than, other instances where “safety concerns” were used to enact discriminatory government policies against disfavored minorities. *See, e.g., Turner v. Randolph*, 195 F. Supp. 677 (W.D. Tenn. 1961) (rejecting safety argument made by state public health officials and finding that “no scientific or reliable data have been offered to demonstrate that the joint use of toilet facilities [by people of different races] \* \* \* would constitute a serious danger to the

public health, safety or welfare”); Anthony Niedwiecki, *Save Our Children: Overcoming the Narrative that Gays and Lesbians are Harmful to Children*, 21 DUKE J. GENDER L. & POL’Y 125, 142–52, 161–63 (2013) (discussing how gay rights opponents have relied on a narrative that equates homosexuality with pedophilia); Phoebe Godfrey, *Bayonets, Brainwashing, and Bathrooms: The Discourse of Race, Gender, and Sexuality in the Desegregation of Little Rock's Central High*, 62 ARK. HIST. Q. 42–52 (Spring 2003) (discussing how white parents’ fears that black boys and girls would harm their daughters was a driving force in the fight against school integration).

*Amici* appreciate the importance of diversity and inclusion in the workplace, and have implemented policies to promote the same. In contrast, the Policy reinforces and perpetuates harmful stereotypes about the transgender community, undermines the policies that *Amici* have adopted that are affirmatively non-discriminatory, and results in diminished employee morale.

**B. The Policy Harms the Ability of *Amici* to Recruit Employees.**

One of the greatest business benefits *Amici* derive from their policies advancing diversity and inclusion in the workplace, and one of the greatest harms that will result from allowing governmental discrimination against transgender students, relates to recruitment and retention of the best employees. Employers need to be able to build and retain the most qualified and talented workforce. LGBT-

friendly policies provide tangible advantages in employee recruitment and retention: many LGBT and non-LGBT workers prefer to work for companies with supportive policies and in communities with supportive laws. Badgett, *supra* note 1, at 2, 38–39; *see also* Matt Motyl et al., *How Ideological Migration Geographically Segregates Groups*, 51 J. Experimental Soc. Psychol. 1 (2014), <http://tinyurl.com/j8pkoul> (individuals are moving from ideologically unfriendly communities to congruent communities). Research conducted by Dr. Richard Florida,<sup>6</sup> a prominent American urban studies scholar, shows that “members of the creative class” in particular (roughly 50 million people including scientists, engineers, and entrepreneurs, researchers and academics, architects and designers, artists, entertainers, and professionals in business, media, management, health care, and law) use diversity as a proxy for determining whether a city would provide a welcoming home. Human Rights Campaign Found., *2014 Municipal Equality Index: A Nationwide Evaluation of Municipal Law* 6 (2014), <http://tinyurl.com/h3fqlyx>.

A community that stigmatizes a class of persons generally will be unattractive to members and families of that class. Accordingly, *Amici* conducting business in

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areas with policies that discriminate will be at a disadvantage in recruiting top talent. In this way, the Policy undermines *Amici*'s human resources, recruitment, and businesses.

Similarly, many *Amici* already maintain business operations in various regions of the country. If some of those regions recognize the rights of transgender students to be free from discrimination while others do not, transgender employees or employees with transgender children, or even employees who simply prefer to work in a community that does not discriminate, will be unwilling to transfer to locations where such discrimination is permitted, harming *Amici*'s ability to deploy their workforce in a manner that most benefits their business interests.

**C. The Policy Harms *Amici* by Having an Adverse Effect on Commerce.**

Allowing governments to discriminate against transgender students will also interfere with *Amici*'s choice of geographies in which to conduct business. *Amici*'s employees and customers will not support the siting of business activities in locations—otherwise desirable to *Amici*—where discrimination is tolerated, or even, as in the case of the Policy, mandated by the government.

The reaction of the business community to the passage of a similarly discriminatory law in North Carolina, Session Law 2016-3 (“H.B. 2”), is instructive. After H.B. 2 was passed, over 200 leading CEOs and business leaders signed an open letter calling on North Carolina Governor McCrory and the North Carolina

General Assembly to repeal provisions of H.B. 2. Letter from Human Rights Campaign and Equality North Carolina to the Office of the Governor, Pat McCrory (Mar. 29, 2016), <http://tinyurl.com/h6cl35t>. Businesses also responded by withdrawing or canceling anticipated investments in North Carolina. PayPal, for example, announced that it would seek an alternative location to Charlotte, North Carolina, for its new global operations center because H.B. 2, like the Policy, “perpetuates discrimination” based on gender identity and “violates the values and principles that are at the core of PayPal’s mission and culture.” Press Release, Dan Schulman, President & CEO of PayPal, PayPal Withdraws Plan for Charlotte Expansion (Apr. 5, 2016), <http://tinyurl.com/zvk3spx>; *see* Jon Kamp & Valerie Bauerlein, *PayPal Cancels Plan for Facility in North Carolina, Citing Transgender Law*, Wall St. J. (Apr. 5, 2016), <http://tinyurl.com/zzdoy63>. Similarly, Deutsche Bank froze a planned North Carolina expansion that would have brought a significant number of jobs to the Raleigh-Durham area. Jon Kamp & Valerie Bauerlein, *Deutsche Bank Freezes North Carolina Expansion, Citing Transgender Law*, Wall St. J. (Apr. 12, 2016), <http://tinyurl.com/orjftoj>.

The business community likewise opposed the Trump Administration’s recent threat to roll back protections for transgender people under federal law. In an open letter to President Trump, more than fifty companies—representing over \$2.4 trillion in annual revenue with almost 4.8 million employees—voiced their opposition to the

Trump Administration’s proposal to define gender based on birth anatomy. Tony Romm, *Apple, Facebook and Google Among 56 Businesses Telling Trump not to Weaken Transgender Rights*, The Washington Post (Nov. 1, 2018), <https://tinyurl.com/yaj57xku>. Noting that “discrimination imposes enormous productivity costs,” the companies explained that “[t]ransgender people are our beloved family members and friends, and our valued team members. What harms transgender people harms our companies.” *Id.*

If local and state governments—and indeed the federal government—are permitted to enact and enforce discriminatory systems such as the Policy here (both in the educational arena and beyond), *Amici* operating in those areas, or those who wish to conduct business operations there, will be adversely affected. Jon Miller and Lucy Parker, *Strengthening the Economic Case*, OPEN FOR BUSINESS, at <https://tinyurl.com/y7wo3lzz> (“The evidence shows that open, inclusive and diverse societies are better for economic growth, and that discrimination on the basis of sexual orientation or gender identity can damage long-term economic prospects.”). Employees will not want to work there, nor will they want to work for a company that conducts business there. Customers will not want to buy products or services from such a company. *Amici*’s economic interests are harmed by discrimination, which is why all of them have policies or practices that prevent it, and why all of them have joined this brief to the Court.

**D. The Policy Harms *Amici*'s Interest in Public Policies that Adequately Prepare Youth to Enter the Workplace.**

The Supreme Court has recognized that our national education system maintains a venerable role in the shaping of American culture:

[E]ducation is perhaps the most important function of state and local governments. . . . It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment.

*Brown v. Board of Educ.*, 347 U.S. 483, 493 (1954).

*Amici* agree. Our schools and educators play an integral role in shaping children's values as citizens and in creating norms. And how children learn to treat others in school impacts their views and behavior outside of school and, later, once they are in the work force. An education system that discriminates against transgender children teaches youth that transgender people are second-class citizens and should be treated as such. This dangerous lesson normalizes and enables bullying, prejudice, and harassment, which can translate into workplace and community intolerance in adulthood. In contrast, schools with policies that are inclusive of transgender students create adults who have learned to value and respect each other, no matter their differences. See Amrit Thapa et al., *Nat'l School Climate Ctr., School Climate Research Summary: August 2012* 4 (2012), <https://files.eric.ed.gov/fulltext/ED573683.pdf>.

*Amici* have an interest in ensuring that the education provided to this country's youth prepares them for inclusive workplaces like those of *Amici*—environments in which all members of society can maintain an inherent sense of worth and dignity.

### **III. The Policy Is Discriminatory and Undermines *Amici*'s Core Values.**

Beyond the economic and other practical benefits that LGBT-friendly policies foster, *Amici*'s policies of diversity and inclusion reflect their core values, and *Amici* believe that treating transgender people with the dignity and respect they deserve is simply the right thing to do. *Amici* reject policies like the Policy, which needlessly discriminate according to gender identity.

The Policy discriminates against transgender children and violates their privacy. It divides children into two groups—"biological boys" and "biological girls"—based on the gender indicated on the child's original enrollment documents, and it prohibits children from using restrooms that do not correspond to that gender. This scheme targets transgender children in particular because they are the only children whose gender identity can vary from the gender indicated on their enrollment documents. The Policy needlessly humiliates and harms transgender youth—and only transgender youth—by prohibiting them from publicly affirming their gender identity through the use of corresponding restroom facilities.

All *Amici* have nondiscrimination policies or practices that permit transgender individuals to use company facilities consistent with their gender identity—policies

that *Amici* adopted out of respect for the dignity, autonomy, and privacy of their transgender employees and/or customers and also because *Amici* know that diversity and inclusion are good for business. *None* of these policies has resulted in an increase in sexual assaults or incidents of the kind invoked by the Board. To the contrary, *Amici* find that their policies contribute to a work environment that promotes collaboration, creativity, and productivity.

## CONCLUSION

By discriminating against and harming *Amici*'s transgender employees, customers, and their families, the Policy, and similar policies and statutes that may arise if the Policy is permitted to stand, threatens *Amici*'s diverse and inclusive workplaces and their bottom lines. Because the Policy lacks any reasoned justification, and because the Policy has significant adverse effects on the transgender community and thereby harms *Amici*, *Amici* respectfully urge the Court to affirm the ruling of the district court and determine that the Policy violates both the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Title IX of the Education Amendments of 1972.

Dated: February 28, 2019

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because this brief contains 4,719 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in Times New Roman 14-point font.

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## 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 Eleventh Circuit by using the appellate CM/ECF system on February 28, 2019.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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