
**United States Court of Appeals
for the
Ninth Circuit**

Case No. 18-35708

PARENTS FOR PRIVACY; KRIS GOLLY and JON GOLLY, individually and as guardians ad litem for A.G.; NICOLE LILLY; MELISSA GREGORY, individually and as guardian ad litem for T.F.; and PARENTS RIGHTS IN EDUCATION, an Oregon nonprofit corporation,
Plaintiffs-Appellants,

v.

DALLAS SCHOOL DISTRICT NO. 2; OREGON DEPARTMENT OF EDUCATION; GOVERNOR KATE BROWN, in her official capacity as SUPERINTENDENT OF PUBLIC INSTRUCTION; UNITED STATES DEPARTMENT OF EDUCATION; BETSY DEVOS, in her official capacity as United States Secretary of Education as successor to JOHN B. KING, JR.; UNITED STATES DEPARTMENT OF JUSTICE; JEFF SESSIONS, in his official capacity as United States Attorney General, as successor to LORETTA F. LYNCH,

Defendants-Appellees,
BASIC RIGHTS OREGON,
Intervenor-Defendant-Appellee.

On Appeal from the United States District Court for the District of Oregon,
Portland Division, No. 3:17-cv-01813-HZ
The Honorable Marco A. Hernandez

AMICI CURIAE BRIEF OF THE NATIONAL PTA, GLSEN, AMERICAN SCHOOL COUNSELOR ASSOCIATION, AND NATIONAL ASSOCIATION OF SCHOOL PSYCHOLOGISTS IN SUPPORT OF APPELLEES

Wesley R. Powell
Mary Eaton
Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, NY 10019
(212) 728-8000

Counsel of Record for Amici Curiae

[ADDITIONAL COUNSEL LISTED ON INSIDE COVER]

Patricia O. Haynes
Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, NY 10019
(212) 728-8000

Arthur L. Coleman
Education Counsel, LLC
101 Constitution Avenue NW
Suite 900
Washington, DC 20001
(202) 689-2878

CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1, the undersigned hereby certifies that none of Amici have a parent corporation nor does any publicly-held corporation own 10% or more of Amici's stock.

/s/ Wesley R. Powell
Wesley R. Powell
Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, NY 10019
(212) 728-8000

TABLE OF CONTENTS

INTERESTS AND IDENTITIES OF AMICI CURIAE	1
INTRODUCTION	4
SUMMARY OF ARGUMENT	8
ARGUMENT	11
I. IN-SCHOOL DISCRIMINATION SERIOUSLY HARMS TRANSGENDER STUDENTS.	11
A. Transgender students suffer a variety of harms at school due to mistreatment by others.	13
B. Restroom and locker room discrimination severely harm transgender students.	16
II. THE EXPERIENCES OF MANY SCHOOLS ACROSS THE NATION DEMONSTRATE THAT NON-DISCRIMINATORY POLICIES HARM NO ONE.....	18
A. Schools have already successfully implemented non- discriminatory policies that balance the privacy interests of all students.	18
B. Discrimination against transgender students is based on unfounded fears.	27
CONCLUSION	29

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page(s)</u>
<i>Brown v. Board of Educ.</i> , 347 U.S. 483 (1954).....	10
<i>Davis ex rel. Lashonda D. v. Monroe County Bd. of Educ.</i> , 526 U.S. 629 (1999).....	10
<i>Parents for Privacy v. Dallas School District No. 2</i> , 326 F. Supp. 3d 1075 (D. Or. July 24, 2018)	5, 8, 28
<i>United States v. Virginia</i> , 518 U.S. 515 (1996).....	7

Other Authorities

Janice Adams, Superintendent, Benicia Unified School District in Orr and Baum, <i>Schools in Transition: A Guide for Supporting Transgender Students in K-12 Schools (2015)</i> , http://hrc-assets.s3-website-us-east-1.amazonaws.com/files/assets/resources/Schools-In-Transition.pdf	20
Drew Adams, <i>My School Failed to Protect Trans Students Like Me, So I Did Something About It</i> , GLSEN (Feb. 22, 2017), http://www.glsen.org/blog/my-school-failed-protect-trans-students-me-so-i-did-something-about-it	18
The American Academy of Pediatrics at https://www.aap.org/en-us/about-the-aap/aap-press-room/Pages/AAPOpposesLegislationAgainstTransgenderChildren.aspx	21
The American Federation of Teachers, http://www.aft.org/node/11195	22
The American Psychological Association, http://www.apa.org/pi/lgbt/programs/transgender/	21
American School Counselor Association at https://www.schoolcounselor.org/magazine/blogs/may-june-2016/transgender-student-support	21

The Association for Supervision and Curriculum Development at <http://www.ascd.org/publications/newsletters/education-update/jan16/vol58/num01/Charting-a-Course-to-Transgender-Inclusion.aspx>.....21

Atherton High School, Jefferson County (KY), “SBDM Council Bylaws & Policies,” at Policy 500 (Oct. 16, 2014) <http://schools.jefferson.kyschools.us/High/Atherton/PDFs/SBDM.pdf>.....22, 24

Boulder Valley School District, “Guidelines Regarding the Support of Students and Staff Who Are Transgender and/or Gender Nonconforming,” at 1 (May 10, 2016) <https://www.bvdsd.org/policies/Policies/AC-E3.pdf>20

Charlotte-Mecklenberg Schools (NC), “Supporting Transgender Students” (June 20, 2016) http://dig.abclocal.go.com/wtvd/docs/CMS-supporting-transgender-students-training-final_5599792.pdf.....22

Kirsten Clements-Nolle, et al., *Attempted suicide among transgender persons: The influence of gender-based discrimination and victimization*, 51 *Journal of Homosexuality*, 53–69 (2006)16

Aidan DeStefano, “My School Was Right to Let Me Use the Bathroom Consistent With Who I Am,” ACLU (May 25, 2018), <https://www.aclu.org/blog/lgbt-rights/transgender-rights/my-school-was-right-let-me-use-bathroom-consistent-who-i-am>27

District of Columbia Public Schools, “Transgender and Gender-Nonconforming Policy Guidance,” (June 2015) <https://dcps.dc.gov/sites/default/files/dc/sites/dcps/publication/attachments/DCPS%20Transgender%20Gender%20Non%20Conforming%20Policy%20Guidance.pdf>23, 24

Lily Durwood et al., *Mental Health and Self-Worth in Socially Transitioned Transgender Youth*, 56 *Journal of the American Academy of Child & Adolescent Psychiatry* 116 (2017).....6

GLSEN Model District Policy on Transgender and Gender Nonconforming Students (2016)20

GLSEN, *Mother of Trans Student Lost to Suicide and Advocate for Title IX Guidance Release Statement*, GLSEN, <http://www.glsen.org/article/glsen-mother->

trans-student-lost-suicide-and-advocate-title-ix-guidance-release-statement (last visited Jan. 23, 2019)	13
El Rancho Unified School District (CA), “Board Policy 5145: Nondiscrimination/Harassment” (May 20, 2014) http://www.erusd.org/pdf/board_policies/5145_3.pdf	22
Emily Greytak, et al., <i>From Teasing to Torment: School Climate Revisited, A Survey of U.S. Secondary School Students and Teachers</i> , GLSEN (2016), https://www.glsen.org/sites/default/files/TeasingtoTorment%202015%20FINAL%20PDF%5B1%5D_0.pdf	8-9
Emily Greytak, et al., <i>Harsh Realities: The Experiences of Transgender Youth in Our Nation’s Schools</i> , GLSEN (2009), https://www.glsen.org/sites/default/files/Harsh%20Realities.pdf	15
Emily A. Greytak, et al., <i>Putting the “T” in “Resource”: The Benefits of LGBT-Related School Resources for Transgender Youth</i> , 10 <i>Journal Of LGBT Youth</i> 1-2 (2013).....	25
Jody L. Herman, et al., <i>Age of Individuals who Identify as Transgender in the United States</i> , The Williams Institute (2017)	11
Jody L. Herman, <i>Gendered Restrooms and Minority Stress: The Public Regulation of Gender and its Impact on Transgender People’s Lives</i> , 19 <i>Journal of Public Management & Social Policy</i> 74-75 (2013).....	6, 17
Sandy James et al., <i>The Report of the 2015 U.S. Transgender Survey</i> , National Center for Transgender Equality at 5-6, 15 (Dec. 2016), http://www.ustranssurvey.org/report	14, 15
Interview with Johanna Olson-Kennedy, Medical Director of the Center for Transyouth Health and Development, Children’s Hospital in Los Angeles on NPR, South Carolina Public Radio (March 23, 2016)	25
Michelle M. Johns, et al., <i>Transgender Identity and Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High School Students — 19 States and Large Urban School Districts, 2017</i> , <i>Morbidity and Mortality Weekly Report</i> 68(3) (Jan. 25, 2019)	11

Kosciw, et al., <i>The 2017 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual, Transgender, & Queer Youth in Our Nation’s Schools</i> , GLSEN (2018)	5, 14, 15, 17, 21
Joseph Kosciw, et al., <i>The Effect of Negative School Climate on Academic Outcomes for LGBT Youth and The Role of In-School Supports</i> , 12 <i>Journal of School Violence</i> 45-63 (2012)	14
Max Kutner, <i>Denying Transgender People Bathroom Access Is Linked To Suicide</i> , Newsweek (May 1, 2016), http://www.newsweek.com/transgender-bathroom-law-study-suicide-454185	16
National Association of School Psychologists, Position Statement, <i>Safe Schools for Transgender and Gender Diverse Students</i> (2014)	11
The National Association of School Psychologists, https://www.nasponline.org/asset/Documents/Research%20and%20Policy/Position%20Statements/Transgender_PositionStatement.pdf	22
The National Education Association, https://www.nea.org/assets/docs/20184_TraTrangen%20Guide_v4.pdf	22
National PTA at http://www.pta.org/newsevents/newsdetail.cfm?ItemNumber=4838	22
Nicole Pelletiere, <i>‘We’re Not a Threat’: Transgender Teen Shares Powerful Message on Bullying</i> , ABC News (June 15, 2016), http://abcnews.go.com/Lifestyle/threat-transgender-teen-shares-powerful-message-bullying/story?id=39752422	12, 26
Rachel Percelay, Media Matters, <i>17 School Districts Debunk Right-Wing Lies About Protections For Transgender Students</i> (June 3, 2015), https://mediamatters.org/research/2015/06/03/17-school-districts-debunk-right-wing-lies-abou/203867	28
Julia Raifman et al., <i>Difference-in-Differences Analysis of the Association Between State Same-Sex Marriage Policies and Adolescent Suicide Attempts</i> , <i>JAMA Pediatrics</i> (Feb. 20, 2017), http://jamanetwork.com/journals/jamapediatrics/fullarticle/2604258	25

Statement from Katharine Prescott to GLSEN (Feb. 26, 2017) 13

Hayley Sutton, *Transgender college students are also more at risk for suicide when denied access to bathrooms aligned with their gender*, 13 Campus Security Report 9 (2016) 16

Katherine Szczerbinski, *Education Connection: The Importance of Allowing Students to Use Bathrooms and Locker Rooms Reflecting Their Gender Identity*, 36 Child. Legal Rts. J. 153 (2016) 18

Avianne Tan, *California Mother Appeals for Support for Transgender Teens After Losing Son to Suicide*, ABC News (May 27, 2015), <http://abcnews.go.com/US/california-mother-appeals-support-transgender-teens-losing-son/story?id=31338159> 13

Curtis Tate, et al., *These schools let transgender students use the bathroom, and here’s what happened*, Kansas City Star (June 20, 2016), <http://www.kansascity.com/news/politics-government/article84811367.html> 28

U.S. Dep’t of Education Sexual Harassment Guidance (2001) 10

U.S. Dep’t of Education Racial Harassment Guidance (1994) 10

Washoe County School District (NV), “Administrative Regulation 5161 Gender Identity and Gender Nonconformity,” (Feb. 12, 2015) http://www.nvasb.org/assets/washoecsd_regulation.pdf 23

Amy Stuart Wells, et al., *How Racially Diverse Schools and Classrooms Can Benefit All Students*, The Century Foundation (2016), <https://tcf.org/content/report/how-racially-diverse-schools-and-classrooms-can-benefit-all-students/> 9

INTERESTS AND IDENTITIES OF AMICI CURIAE

The **National PTA** is a nationwide network of four million families, students, teachers, administrators, and business and community leaders devoted to promoting the education, health, safety and well-being of every child and making every child's potential a reality. National PTA is comprised of 54 state congresses, comprising all 50 states, the District of Columbia, U.S. Virgin Islands, Puerto Rico and the Department of Defense Schools in Europe. Additionally, there are more than 24,000 local PTA units nationwide. PTA serves 16.5 million students across the country.

The overall purpose of PTA is to bring together families, educators and business and community leaders to solve the toughest challenges facing schools and communities and engage and empower families and communities to participate in that mission. For more than 100 years, PTA has been a powerful voice for all children, a relevant resource for families and communities, and a strong advocate for public education.

GLSEN is a non-profit education organization that works with students, parents, and educators across the country and around the world to make all schools safe and affirming for all students, regardless of sexual orientation, gender identity, or gender expression. Since 1990, GLSEN has partnered with educators, schools, and districts across the United States to develop, evaluate, and

promulgate LGBT-supportive policies, programs, and practices for K-12 schools. GLSEN's work has contributed to measurable improvements in the school experience of lesbian, gay, bisexual, and transgender students in all 50 states, and the organization is now recognized globally as a key contributor to educational access and opportunity for at-risk youth.

GLSEN's expertise and experience informs the work of UN agencies on the Sustainable Development Goals in Education, legislators and policymakers at all levels in the United States, and individual schools and districts via our network of 42 local chapters in 31 states. GLSEN also conducts quantitative and qualitative research on the experience of LGBTQ students in K-12 schools and advocates in support of a research-based public policy agenda. In addition, GLSEN's student leadership development and student organizing programs have reached hundreds of thousands of students in all 50 states, mobilized via events like GLSEN's Day of Silence and Ally Week or through GLSEN youth summits or student club support programs. Thousands of alumni of GLSEN's student programs have gone on to lives of service, including work as public and elected officials, business leaders and entrepreneurs, and principals, counselors, and teachers.

The **American School Counselor Association (ASCA)** is a nonprofit, 501(c)(3) professional organization based in Alexandria, VA. ASCA

supports school counselors' efforts to help students focus on academic, social, emotional, and career development. ASCA provides professional development, publications and other resources, research and advocacy to more than 35,000 school counselors around the globe.

The **National Association of School Psychologists (NASP)** is the world's largest organization of school psychologists, representing more than 25,000 school psychologists throughout the United States and 25 other countries, with members in every state, the District of Columbia, and Puerto Rico. NASP's vision is that all children and youth thrive in school, at home, and throughout life. To that end, NASP empowers school psychologists by advancing effective practices to improve students' learning, behavior, and mental health. NASP supports that all youth have equal opportunities to participate in and benefit from educational and mental health services within schools regardless of sexual orientation, gender identity, or gender expression. Critical to this effort is fostering positive, safe, and affirming school environments.

INTRODUCTION

Amici¹ are a diverse group of national and state education organizations whose membership and constituents are on the front lines every day, doing the hard work of educating students through academic instruction and support, furnishing counseling and guidance and providing opportunities for engagement with peers and others. Critical to this educational mission, Amici seek to build and maintain non-discriminatory learning environments for all students, regardless of their backgrounds, characteristics, or experience.

As educators, parents, families, and education supporters, Amici know that discrimination against transgender students hurts kids and that the exclusion of transgender students from restroom and locker room facilities that match their gender identity is inhumane and based on unfounded fears. Amici have gained extensive, hands-on experience in what policies and practices best serve all students while providing transgender students with full access to non-discriminatory learning environments. Amici have seen transgender students' capacity for educational success and healthy development when properly supported, and the tragic harms transgender students suffer when that essential support is denied. In Amici's experience, which this brief shares with the Court,

¹ No counsel for any party authored this brief in whole or in part, and no person or entity other than Amici made a monetary contribution to its preparation or submission. Pursuant to Federal Rule of Appellate Procedure 29(c), all parties consent to the filing of this brief.

securing a non-discriminatory educational environment for transgender students does not compromise the well-being and educational experience of their non-transgender classmates in any respect. This experience supports the District Court’s dismissal of Plaintiff-Appellants’ (“Appellants”) complaint on the grounds that the Dallas School District’s policy with respect to transgender student access to restrooms and locker rooms (“Student Safety Plan”) did not violate Appellants’ constitutional or other legal rights. *Parents for Privacy v. Dallas School District No. 2*, 326 F. Supp. 3d 1075, 1101-04 (D. Or. 2018).

First, Amici know first-hand the all too common harms transgender students suffer when stigmatized by discrimination, which the Student Safety Plan served to mitigate at Dallas High School. Stigmatizing discrimination includes being forced to use a restroom or locker room that is not aligned with a student’s gender identity or being shunted to a separate restroom or locker room that no other students are required to use. For example, over 40% of transgender students fast, dehydrate, or otherwise force themselves not to use the restroom during the school day when they are not permitted to use common restroom facilities consistent with their gender identity at school. See Joseph Kosciw, et al., *The 2017 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual, Transgender, & Queer Youth in Our Nation’s Schools*, GLSEN (2018) (hereinafter “2017 NSCS”) (42.7% avoid restrooms and 40.6% avoid locker rooms); see also

Jody L. Herman, *Gendered Restrooms and Minority Stress: The Public Regulation of Gender and its Impact on Transgender People's Lives*, 19 *Journal of Public Management & Social Policy* 65, 74-75 (2013) (54% of adult transgender students and employees surveyed “reported having some sort of physical problem from trying to avoid using public restrooms”).

Transgender students subjected to discrimination also experience elevated levels of severe depression and suicide. *Id.* at 67 (“In the largest survey of trans people to date, transgender and gender non-conforming people reported . . . attempting suicide at alarming rates (41%).”). On the other hand, when transgender students are accorded the dignity they deserve (*e.g.*, when they are permitted to use facilities that conform to their gender identity), transgender students reflect the same, healthy psychological profile as their peers. Lily Durwood, et al., *Mental Health and Self-Worth in Socially Transitioned Transgender Youth*, 56 *Journal of the American Academy of Child & Adolescent Psychiatry* 116, 116 (2017).

Second, schools and school districts across the nation have already developed and successfully deployed practical, effective strategies – much like the Student Safety Plan – to ensure transgender students receive appropriate support and, ultimately, the educational experiences they need to succeed and live healthy, fulfilling lives. This includes allowing *all* students to use the restroom and locker

room that matches their gender identity while ensuring that all students' privacy is protected. The experiences of these schools thoroughly refute the supposed justifications for discrimination, including those Appellants advance here: that permitting transgender students to use the sex-separated restrooms and locker rooms that align with their gender identity violates the "bodily privacy" of other students, and necessarily subjects them to "embarrassment, humiliation, anxiety, fear, apprehension, stress, degradation, and loss of dignity." Appellants Br. at 4-5. Consistently, inclusive policies have been implemented with great success and respect for the privacy, human dignity, and educational needs of the schools' entire student populations. Put differently, Amici's experience teaches that transgender students can be provided full and equal use of restrooms and locker rooms in school without compromising the privacy interests or dignity of other students.

In its civil rights decisions, the Supreme Court has employed "dispositive realities" to reject "self-fulfilling prophecies" that are "routinely used to deny rights or opportunities." *United States v. Virginia*, 518 U.S. 515, 543 (1996). Here, the dispositive realities include the successful experiences and practices of Amici and other educators throughout the nation in implementing inclusive restroom and locker room policies. The District Court properly rejected Appellants' claim that their right to privacy was violated by the Student Safety Plan, which sought to protect a Dallas transgender student's right of "equally

accessing educational opportunities and resources.” *Parents for Privacy*, 326 F. Supp. 3d at 1106.

SUMMARY OF ARGUMENT

Understanding the enduring harms transgender students suffer when denied the ability to use restrooms and locker rooms aligned with their gender identity is critical in this case. Such harms flow from the very relief Appellants seek: repeal of the Student Safety Plan and prohibition of Dallas’s transgender students from entering restrooms and locker rooms aligned with their gender identity.

As educators throughout the country understand, there is no reason for public schools to harm transgender students, particularly when based on unfounded fears. Rather, schools can and should help *all* students understand and achieve their full potential so that they become citizens and workers who are productive, engaged, and fulfilled.

Without a school environment that is authentically welcoming and that honors and protects the dignity and best interests of all students—every one of whom is different in some way—many students are harmed. A school that lacks a culture that embraces safety, respect, and inclusion for all, regardless of background and circumstance, injures the disfavored students. *See* Emily Greytak, et al., *From Teasing to Torment: School Climate Revisited, A Survey of U.S.*

Secondary School Students and Teachers, GLSEN (2016), https://www.glsen.org/sites/default/files/TeasingtoTorment%202015%20FINAL%20PDF%5B1%5D_0.pdf. Conversely, maintaining school policies that honor the dignity of all students and expose them “to other students who are different from themselves and the novel ideas and challenges that such exposure brings leads to improved cognitive skills, including critical thinking and problem solving” and teaches students “how to navigate adulthood in an increasingly diverse society.” Amy Stuart Wells, et al., *How Racially Diverse Schools and Classrooms Can Benefit All Students*, The Century Foundation (2016), <https://tcf.org/content/report/how-racially-diverse-schools-and-classrooms-can-benefit-all-students/>.

As set forth in Section I, the discriminatory denial of equal access to restrooms and locker rooms often results in dire educational and life consequences for the transgender students affected. Extensive research shows the myriad harms transgender students experience in discriminatory school settings, including when subjected to restroom and locker room discrimination. Understanding the severity of these harms is critical context for the Court’s consideration of this case. Indeed, as reflected in Supreme Court cases and U.S. Department of Education policies,

the contours of federal non-discrimination law have been informed by, and shaped to prevent, real-world harms experienced by students.²

As set forth in Section II, the purported bases for subjecting transgender students to the heightened risk of severe harm through banning them from restrooms and locker rooms consistent with their gender identity lacks empirical support, and instead are predicated upon unfounded fears. Educators in many places can and do provide transgender students the inclusive and supportive environment they need—including equal access to restrooms and other facilities—without harming other students. Indeed, schools and districts across the country have successfully implemented policies that neither discriminate against transgender students nor harm others. The District Court was therefore correct in concluding that Appellants had failed to show any privacy violation in allowing the Student Safety Plan to stand.

² See, e.g., *Brown v. Board of Educ.*, 347 U.S. 483, 495 n.11 (1954) (rejecting “separate but equal” doctrine based on extensive social science research and information); *Davis ex rel. Lashonda D. v. Monroe County Bd. of Educ.*, 526 U.S. 629, 651 (1999) (examining the severity of student-on-student harassment sufficient to constitute a Title IX claim on the basis of interference with equal access to educational opportunities); U.S. Dep’t of Education Sexual Harassment Guidance (2001) (explaining in detail, with examples, the harm to students that is an element of federal harassment standards); U.S. Dep’t of Education Racial Harassment Guidance (1994) (same).

ARGUMENT

I. IN-SCHOOL DISCRIMINATION SERIOUSLY HARMS TRANSGENDER STUDENTS.

Approximately 150,000 transgender students attend secondary schools throughout America and a recent survey of ten states and nine urban school districts shows that 1.8% of students identify as transgender.³ Transgender individuals have a gender identity that differs from the gender assigned to them at birth. National Association of School Psychologists, Position Statement, *Safe Schools for Transgender and Gender Diverse Students* (2014). Transgender students live in all 50 states and U.S. territories, come from different racial, ethnic, and religious backgrounds; are represented in every socioeconomic level; and attend all variety of K-12 schools.

³ Transgender persons comprise an estimated 0.6% of the adult United States population (approximately 1.4 million adults 18 or older) and 0.7% of youth ages 13 to 17 (approximately 150,000 youth). Jody L. Herman, et al., *Age of Individuals who Identify as Transgender in the United States*, The Williams Institute (2017); see also, Michelle M. Johns, et al., *Transgender Identity and Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High School Students — 19 States and Large Urban School Districts, 2017*, Morbidity and Mortality Weekly Report 68(3) (Jan. 25, 2019) (finding that 1.8% of students across ten states and nine urban school districts identified as transgender).

Listen to transgender student Corey Maison:

We are just like any other kids. We only want people to accept and love us for who we are.

Nicole Pelletiere, 'We're Not a Threat': Transgender Teen Shares Powerful Message on Bullying, ABC News (June 15, 2016), <http://abcnews.go.com/Lifestyle/threat-transgender-teen-shares-powerful-message-bullying/story?id=39752422>.

Instead,

Corey was bullied for being transgender when she was younger. The first incident was when a child pushed her down a hill covered in frozen ice, causing injuries to Corey's face. Eventually, Corey was moved to another school as a result of the bullying. . .

"I might look happy now, but I haven't always been. . . I've known I was different all my life. When I was little I loved to play with dolls and play dress up. I loved painting my nails too. Wearing my mom's high heels was my favorite! But only in the house. Never outside...because I was born a boy. I never had many friends. I didn't fit in with girls, and the boys made fun of me. In 5th grade I was bullied so bad. Almost every day I came home from school crying. . . . One of the kids told me I should kill myself because no one liked me anyway. He told me no one would miss me if I was dead.

Id.

Sadly, Corey Maison's experience is all too common. At school, transgender students often suffer a variety of serious harms—emotional and physical—not because they *are* transgender but as a result of *how they are treated because they are transgender*. These students are particularly vulnerable in elementary and secondary school settings, where harms inflicted by peers and adults significantly impede their education and their prospects for leading fulfilling

and productive lives. When a school takes no action to ameliorate these conditions, it compounds the harms suffered by transgender students, often leading to tragic consequences.

A. Transgender students suffer a variety of harms at school due to mistreatment by others.

As described by Katharine Prescott, who lost her transgender son Kyler to suicide at age 14:

Kyler struggled to be respected and understood at school because of his gender identity. Administrators and teachers clearly were not supportive of his gender identity, and he was misgendered in front of other students on a number of occasions. Because of this, I pulled him out of the traditional classroom and put him in independent study so that he would not be humiliated in this way. Kyler had always loved school, so it was tragic that this basic right to education was infringed upon. Kyler felt stabbed in the heart every time someone would say 'she.' It's really traumatic to keep getting called something you truly feel you're not.

Statement from Katharine Prescott to GLSEN (Feb. 26, 2017) (document on file with undersigned counsel); *see also* GLSEN, *Mother of Trans Student Lost to Suicide and Advocate for Title IX Guidance Release Statement*, GLSEN, <http://www.glsen.org/article/glsen-mother-trans-student-lost-suicide-and-advocate-title-ix-guidance-release-statement> (last visited Jan. 16, 2018); Avianne Tan, *California Mother Appeals for Support for Transgender Teens After Losing Son to Suicide*, ABC News (May 27, 2015), <http://abcnews.go.com/US/california-mother-appeals-support-transgender-teens-losing-son/story?id=31338159>.

Kyler's story is by no means unique. “[D]isturbing patterns of mistreatment and discrimination” relating to transgender individuals are well documented. *See, e.g.,* Sandy James, et al., *The Report of the 2015 U.S. Transgender Survey*, National Center for Transgender Equality at 4 (Dec. 2016), <http://www.ustranssurvey.org/report> (hereinafter “USTS”).

Transgender students too often encounter school experiences that cause long-lasting mental, emotional, and socio-economic trauma. In elementary and secondary education, transgender students are subjected to bullying and harassment at alarmingly high rates. *See, e.g.,* 2017 NSCS; Joseph Kosciw, et al., *The Effect of Negative School Climate on Academic Outcomes for LGBT Youth and the Role of In-School Supports*, 12 *Journal of School Violence* 45, 63 (2012). School climates that are unwelcoming or threatening have a direct bearing on students' well-being and safety. *Id.* Of the 40% of USTS respondents who were out as transgender during their K-12 education or believed classmates, teachers, or school staff thought they were transgender: 54% were verbally harassed; 24% were physically attacked; 13% were sexually assaulted; 36% were disciplined for fighting back against bullies; 17% left a school because the mistreatment was so severe; and 6% were expelled from school. USTS at 132.

Compared to transgender students who did not suffer these negative experiences, transgender students who did were more likely to have attempted

suicide (52% compared to 37%), more likely to be in serious psychological distress (47% compared to 37%), and more likely to have been homeless (40% compared to 22%). USTS at 5-6, 15.

The negative experiences transgender students suffer impede their ability to learn and fully participate in school. For example, surveys have found that 34.9% of transgender students report missing at least one school day in the previous month because they felt unsafe at school. *See* 2017 NSCS at 15. Without safe and supportive school environments, transgender students also frequently avoid attending school functions (75.4% report doing so) and participating in extracurricular activities (70.5%). *Id.*

The disruption to education is even worse for those transgender students who are frequently harassed during the school day: 68% of such students reported having missed school because of concerns for their safety. Emily Greytak, et al., *Harsh Realities: The Experiences of Transgender Youth in Our Nation's Schools*, GLSEN (2009), <https://www.glsen.org/sites/default/files/Harsh%20Realities.pdf>. These more frequently targeted students also have lower grades, are less likely to plan to attend college, and have lower educational outcomes than transgender students who attend safer schools. *Id.* at 25.

B. Restroom and locker room discrimination severely harm transgender students.

Transgender students suffer particular harms when they attend schools that force them to use separate restrooms and locker rooms or to use sex-separated restrooms and locker rooms that do not align with their gender identity. These harms include stigmatization, and increased risk of harassment and assault.

Transgender students who are denied access to restrooms and locker rooms that align with how they live their lives are frequently singled out for unwanted and harmful attention. In some instances, for example, members of the school community find out that fellow students are transgender precisely when they enter restrooms that do not match their gender identity, or separate facilities than those used by other students. The stigmatization that results from this treatment can have powerfully negative impacts on transgender students' well-being. Evidence shows that denying transgender individuals equal access to such facilities can cause severe psychological distress often leading to attempted suicide. Max Kutner, *Denying Transgender People Bathroom Access Is Linked To Suicide*, Newsweek (May 1, 2016), <http://www.newsweek.com/transgender-bathroom-law-study-suicide-454185>; Kristen Clements-Nolle, et al., *Attempted suicide among transgender persons: The influence of gender-based discrimination and victimization*, 51 *Journal of Homosexuality* 53, 63-65 (2006); see also Hayley Sutton, *Transgender college students are also more at risk for suicide when*

denied access to bathrooms aligned with their gender, 13(2) Campus Security Report 9 (2016).

The stigma imposed by such discriminatory restrictions on transgender students' access to restrooms and locker rooms is so deleterious that, for example, nearly 40% of transgender students at times avoid going to the bathroom by fasting, dehydrating, or otherwise forcing themselves not to use the restroom throughout the school day, even when necessary, and forgo use of locker rooms. 2017 NSCS at 12-13 (42.7% avoid restrooms and 40.6% avoid locker rooms). Such behavior can lead to medical problems and makes it harder to focus on academic learning in school. Jody L. Herman, *Gendered Restrooms and Minority Stress: The Public Regulation of Gender and its Impact on Transgender People's Lives*, 19 *Journal of Public Management and Social Policy* 65, 74-75 (2013) (survey respondents reported that "accessing and using restrooms was disruptive to their daily life at school," and 54% of survey respondents "reported having some sort of physical problem from trying to avoid using public restrooms").

Forcing transgender students to choose between using separate restrooms or locker rooms and using facilities that do not align with their gender identity impairs their ability to develop a healthy sense of self, peer relationships, and the cognitive skills necessary to succeed in adult life. *See* Katherine

Szczerbinski, *Education Connection: The Importance of Allowing Students to Use Bathrooms and Locker Rooms Reflecting Their Gender Identity*, 36 Child. Legal Rts. J. 153, 153 (2016). Transgender student Drew Adams describes the effects of his experience:

Forcing me to use a gender-neutral bathroom was an insult to my identity. It was absolutely humiliating to walk halfway across the school, passing several men's rooms, to find one of the gender-neutral bathrooms to use. I practically hid from administrators who would have thought I was skipping class if I had said I was going to the bathroom while walking past one. My school had decided to alienate me, along with every other transgender student at my school.

Drew Adams, *My School Failed to Protect Trans Students Like Me, So I Did Something About It*, GLSEN (Feb. 22, 2017), <http://www.glsen.org/blog/my-school-failed-protect-trans-students-me-so-i-did-something-about-it>.

II. THE EXPERIENCES OF MANY SCHOOLS ACROSS THE NATION DEMONSTRATE THAT NON-DISCRIMINATORY POLICIES HARM NO ONE.

A. Schools have already successfully implemented non-discriminatory policies that balance the privacy interests of all students.

The experience of educators across the country demonstrates that inclusion and non-discrimination can be achieved while protecting the privacy interests of all students. The Student Safety Plan exemplifies this well: while permitting every student to use a gender-separated bathroom associated with his or her gender identity, the Student Safety Plan also permits Dallas students who desire access to increased privacy to use single-user bathrooms and, as to locker

rooms, either use the single-sex staff lounge as a locker room or use the segregated lockers, showers, and bathrooms within the locker rooms. Compl. at ¶¶ 91, 99, 103. Moreover, the ability of *all students* to avail themselves of these protections renders wholly unsupportable Appellants’ contention that the Student Safety Plan exposes them to “an ongoing environment that is objectively offensive.” Appellants’ Br. at 39.

The Student Safety Plan is consistent with policies that have been successfully implemented around the nation. While states and school districts’ specific approaches to these issues may differ, common across all state and district policies is and must be a commitment to providing a safe and supportive school environment that allows transgender students to pursue their education and thrive without facing the mistreatment, stigmatization, and harms discussed above, including access to facilities that correspond to transgender students’ gender identity.

The experience of Janice Adams, superintendent of the Benicia Unified School District in California, provides an example of how administrators with no prior experiences with transgender students can and do successfully implement inclusive policies:

One day about eight years ago, a mother came to me and asked what I could do to support her child who would be starting kindergarten in the fall. . . . Toni was assigned male at birth, but her parents were considering

letting her start school as a girl, which is how she had been identifying for some time.

[. . .]

By far the easiest part of the process was the acceptance by Toni's classmates, who embraced her and affirmed her identity. As we worked to balance the need to educate and inform parents while protecting Toni's right to privacy, I met with a small number of concerned parents individually and attended a parent night facilitated by Gender Spectrum. We provided education regarding transgender children to the school's staff, our administrative team and the governing board. For the most part there was a compassionate response to do the right thing. There were people who struggled with changes we put in place, but we continually focused on supporting Toni and doing what was right.

Janice Adams, Superintendent, Benicia Unified School District in Orr and Baum,

Schools in Transition: A Guide for Supporting Transgender Students in K-12

Schools (2015), [http://hrc-assets.s3-website-us-east-](http://hrc-assets.s3-website-us-east-1.amazonaws.com//files/assets/resources/Schools-In-Transition.pdf)

[1.amazonaws.com//files/assets/resources/Schools-In-Transition.pdf](http://hrc-assets.s3-website-us-east-1.amazonaws.com//files/assets/resources/Schools-In-Transition.pdf).

Typically, inclusive school policies address the following topics: (i) bullying, harassment, and discrimination; (ii) privacy/confidentiality; (iii) media and community communication; (iv) names, pronouns, and school records; (v) access to gender-segregated activities and facilities, including restrooms and locker rooms; (vi) dress code; (vii) student transitions; (viii) training and professional development; and (ix) publication of the policy. GLSEN Model District Policy on Transgender and Gender Nonconforming Students (2018); *see, e.g.*, Boulder Valley School District, "Guidelines Regarding the Support of Students and Staff Who Are Transgender and/or Gender Nonconforming," at 1 (May 10, 2016)

<https://www.bvsd.org/policies/Policies/AC-E3.pdf> (“[T]he goal is to ensure the safety, comfort, and healthy development of the students who are transgender or gender nonconforming while maximizing the students’ social integration and minimizing stigmatization of the students.”). Optimally, comprehensive policies and practices also include establishing supportive student clubs (*e.g.*, Gender and Sexuality, or Gay/Straight Alliance Clubs), training supportive educators, implementing inclusive curricula, and adopting, communicating clearly, and enforcing inclusive policies as well. 2017 NSCS at 53-77.

These approaches are informed by decades of research, collaboration with education and mental health professionals, and prior successes in schools across the nation. Notably, similar inclusive approaches to policy and practice have been endorsed by the Amici organizations and other national educational and medical organizations.⁴

⁴ *See,*

- The American Academy of Pediatrics at <https://www.aap.org/en-us/about-the-aap/aap-press-room/Pages/AAPOpposesLegislationAgainstTransgenderChildren.aspx>;
- The American Psychological Association at <http://www.apa.org/pi/lgbt/programs/transgender/>;
- American School Counselor Association at <https://www.schoolcounselor.org/magazine/blogs/may-june-2016/transgender-student-support>;
- The Association for Supervision and Curriculum Development at <http://www.ascd.org/publications/newsletters/education->

A critical element of an effective non-discrimination policy concerns transgender students' equal access to restrooms and locker rooms that align with their gender identity. Many such policies allow *any* student to use a private or single-stall facility, rather than forcing transgender students to endure the stigma of being the only students forced to use a separate facility. *See, e.g.*, Charlotte-Mecklenberg Schools (NC), "Supporting Transgender Students" at 42 (June 20, 2016) http://dig.abclocal.go.com/wtvd/docs/CMS-supporting-transgender-students-training-final_5599792.pdf ("If there's a request for increased privacy, any student should be provided a reasonable accommodation, such as private or screened area in the same locker room [or] . . . use of a nearby private area."); El Rancho Unified School District (CA), "Board Policy 5145: Nondiscrimination/Harassment" (May 20, 2014) http://www.erusd.org/pdf/board_policies/5145_3.pdf (establishing the same policy as to reasonable requests for privacy in locker rooms); Atherton High School, Jefferson County (KY), "SBDM Council Bylaws & Policies," at Policy

[update/jan16/vol58/num01/Charting-a-Course-to-Transgender-Inclusion.aspx](http://www.abclocal.go.com/wtvd/docs/CMS-supporting-transgender-students-training-final_5599792.pdf);

- The National Education Association at https://www.nea.org/assets/docs/20184_Transgender%20Guide_v4.pdf;
- The American Federation of Teachers at <http://www.aft.org/node/11195>;
- The National Association of School Psychologists at https://www.nasponline.org/assets/Documents/Research%20and%20Policy/Position%20Statements/Transgender_PositionStatement.pdf;
- National PTA at <http://www.pta.org/newsevents/newsdetail.cfm?ItemNumber=4838>.

500 (Oct. 16, 2014) <http://schools.jefferson.kyschools.us/High/Atherton/PDFs/SBDM.pdf> (stating that “[i]f a student desires increased privacy, regardless of the underlying reason, the administrator shall make every effort to provide the student with reasonable access to an alternative restroom such as a single-stall restroom” and requiring “access to a reasonable accommodation” such as a nearby private area or use of a separate restroom stall if a student requests increased privacy in locker room facilities); District of Columbia Public Schools, “Transgender and Gender-Nonconforming Policy Guidance,” at 9 (June 2015) <https://dcps.dc.gov/sites/default/files/dc/sites/dcps/publication/attachments/DCPS%20Transgender%20Gender%20Non%20Conforming%20Policy%20Guidance.pdf> (stating that “[a]ny student, transgender or otherwise, who has a need or desire for increased privacy, regardless of underlying reasons, also has the right to access a single-user bathroom, such as a staff restroom or the bathroom in the nurse’s office” and, as to locker rooms, “any student should be offered access to a reasonable accommodation” such as use of a private area in the facility or use of a nearby private area) (emphasis in original).

Importantly, schools may provide transgender students with an option to use a private facility (e.g., a school nurse’s restroom), but such policies make clear that transgender students are not required to use those alternatives. Washoe County School District (NV), “Administrative Regulation 5161 Gender Identity

and Gender Nonconformity,” at 3 (Feb. 12, 2015) http://www.nvasb.org/assets/was_hoecsd_regulation.pdf (“The use of such accommodations shall be a matter of choice for a student”).

Thus, schools already implementing inclusive restroom and locker room policies have, like Dallas, obviated privacy, religious, and other concerns by offering alternative accommodations to any student who objects to or is uncomfortable with sharing restrooms and locker rooms with transgender students. *See, e.g.*, Atherton High School, Jefferson County (KY), “SBDM Council Bylaws & Policies,” at Policy 500 (Oct. 16, 2014) <http://schools.jefferson.kyschools.us/High/Atherton/PDFs/SBDM.pdf> (privacy within the shared facility); District of Columbia Public Schools, “Transgender and Gender-Nonconforming Policy Guidance,” at 9 (June 2015) <https://dcps.dc.gov/sites/default/files/dc/sites/dcps/publication/attachments/DCPS%20Transgender%20Gender%20Non%20Conforming%20Policy%20Guidance.pdf> (option of using a private facility). What schools must not do, though, is what Appellants seek here: to bootstrap a handful of students’ (or their parents’) fears into a reason to segregate and stigmatize transgender students, especially given the well-documented harms that flow from such differential treatment.

Districts and schools that adopt and implement inclusive policies and practices—including restroom and locker room policies—establish physically and

psychologically safe schools, resulting in better health and educational outcomes for transgender students. While all LGBT students benefit from these approaches, transgender students benefit even more significantly. Emily A. Greytak, et al., *Putting the “T” in “Resource”: The Benefits of LGBT-Related School Resources for Transgender Youth*, 10 *Journal Of LGBT Youth* 1-2 (2013). In the end, the data validates what educational and other professionals know through their hands-on experiences: “people who are validated and supported in their selfhood are happier, have [fewer] mental health challenges and are more successful.” Interview with Johanna Olson-Kennedy, Medical Director of the Center for Transyouth Health and Development, Children’s Hospital in Los Angeles on NPR, South Carolina Public Radio (March 23, 2016). This link between LGBT-inclusive policies and improved mental health outcomes is supported by analogous research showing that granting the marriage right to same-sex couples has been associated with reduced suicide rates among adolescent sexual minorities. See Julia Raifman, et al., *Difference-in-Differences Analysis of the Association Between State Same-Sex Marriage Policies and Adolescent Suicide Attempts*, *JAMA Pediatrics* (Feb. 20, 2017), <http://jamanetwork.com/journals/jamapediatrics/fullarticle/2604258>.

Corey Maison’s school experience was transformed as a result of the implementation of inclusive policies.

“[S]chool now is wonderful,” Maison[’s mother] said. “The staff and students are very accepting. She’s treated just like any of the other girls. She’s allowed to use the girls’ bathroom and locker room, and play on the girls’ sports team and cheer team if she wants to.”



Corey Maison (pictured).

Nicole Pelletiere, *‘We’re Not a Threat’: Transgender Teen Shares Powerful Message on Bullying*, ABC News (June 15, 2016), <http://abcnews.go.com/Lifestyle/threat-transgender-teen-shares-powerful-message-bullying/story?id=39752422>.

Other transgender students report experiencing a similar transformation when their school adopts inclusive policies. For example, when Aidan DeStefano was in 11th grade, he made his gender identity known to officials and students at his high school, who referred to him by his preferred name and pronouns and permitted him to use the bathroom consistent with that identity. He described that experience this way: “I immediately felt different in every part of my life. Schoolwork was easier for me. I felt happier and more myself. . . By the time I first walked into the boys’ bathroom in 12th grade, I was ready. I knew I

was a guy, and everyone seemed to support me.” Aidan DeStefano, “My School Was Right to Let Me Use the Bathroom Consistent With Who I Am,” ACLU (May 25, 2018), <https://www.aclu.org/blog/lgbt-rights/transgender-rights/my-school-was-rightlet-me-use-bathroom-consistent-who-i-am>. Unsurprisingly, DeStefano also reported that these inclusive policies had a positive impact on his educational performance: “In my last semesters of high school, I made the honor roll three times in a row — something I had never achieved before because I had been too distracted and stressed trying to hide who I was.” *Id.*

B. Discrimination against transgender students is based on unfounded fears.

The widespread, successful, and non-disruptive implementation of inclusive policies in schools every day belies the purported bases for restroom and locker room discrimination and exposes them as unfounded pretexts. As shown above, for years schools around the country have secured equal access to school facilities for transgender students while protecting the privacy of all students.

The experience of these schools and districts contradicts the insupportable claim that transgender-inclusive restroom and locker room policies disrupt the school environment. For example, a 2015 survey of the 17 largest

school districts in the 12 states (plus Washington, DC)⁵ that, at that time, had enacted statewide rules prohibiting discrimination on the basis of gender identity found that “[y]ears after implementing their own anti-discrimination policies, none of the schools have experienced any problems.” Rachel Percelay, Media Matters, *17 School Districts Debunk Right-Wing Lies About Protections For Transgender Students* (June 3, 2015) <https://mediamatters.org/research/2015/06/03/17-school-districts-debunk-right-wing-lies-abou/203867>. Specifically, schools implementing inclusive restroom and locker room policies have not experienced any problems as a result. See Curtis Tate, et al., *These schools let transgender students use the bathroom, and here’s what happened*, Kansas City Star (June 20, 2016) <http://www.kansascity.com/news/politics-government/article84811367.html> (describing that some schools report that adopting inclusive policies “has improved the learning environment”). This accords with the District Court’s observation that “it is telling that Plaintiffs’ complaint does not contain any allegation of harassment or misuse of school facilities.” *Parents for Privacy*, 326 F. Supp. 3d at 1102.

From Amici’s considerable experience, schools can and do appropriately and effectively accommodate any student’s professed privacy or

⁵ The survey included the District of Columbia and the following states: California, Colorado, Connecticut, Illinois, Iowa, Maine, Massachusetts, Minnesota, New Jersey, Oregon, Washington, and Vermont.

other concerns with sharing restrooms and locker rooms with transgender students (or any other student) by doing just what Dallas has done here: offering them access to a single user facility and enhancing privacy protections within shared facilities. Appellants' proposed alternative—banning Dallas's transgender students from common restroom and locker room facilities consistent with their gender identity—would consign Dallas's transgender students to continued discrimination and suffering.

CONCLUSION

This Court should affirm the District Court's dismissal of Appellants' claims.

Respectfully submitted,

/s/ Wesley R. Powell

Wesley R. Powell

Mary Eaton

Willkie Farr & Gallagher LLP

787 Seventh Avenue

New York, NY 10019

(212) 728-8000

Counsel of Record for Amici Curiae

Patricia O. Haynes
Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, NY 10019
(212) 728-8000

Arthur L. Coleman
Education Counsel, LLC
101 Constitution Avenue NW
Suite 900
Washington, DC 20001
(202) 689-2878

CERTIFICATE OF SERVICE

I certify that on this 11th day of March 2019, I served the foregoing Amici Curiae Brief of the National PTA, GLSEN, American School Counselor Association, and National Association of School Psychologists in Support of Appellees via the Court's ECF system upon all counsel.

Dated: March 11, 2019

/s/ Wesley R. Powell
Wesley R. Powell
Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, NY 10019
(212) 728-8000

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C), the undersigned counsel certifies that:

(i) I am a member in good standing of the Bar of the United States Court of Appeals for the Ninth Circuit;

(ii) this brief complies with the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6) because it has been prepared using Microsoft Office Word and is set in Times New Roman font in a size equivalent to 14 points or larger;

(iii) this brief complies with the length requirement of Rule 29(a)(5) because it is 5,840 words.

Dated: March 11, 2019

/s/ Wesley R. Powell
Wesley R. Powell
Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, NY 10019
(212) 728-8000