

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Newport News Division

GAVIN GRIMM,

Plaintiff,

v.

Case No. 4:15-cv-54

GLOUCESTER COUNTY SCHOOL
BOARD,

Defendant.

REPLY BRIEF IN SUPPORT OF MOTION TO STAY

The Gloucester County School Board's ("School Board") Motion to Stay is not intended as a delay tactic or to frustrate a final resolution of Grimm's claims further. Instead, this area of the law is rapidly evolving, and the Supreme Court's recent decision to hear the *Harris Funeral Homes* case will directly impact this litigation. It is in everyone's interest to stay this matter pending the Supreme Court's ruling.

The Supreme Court has "long recognized that courts have inherent power to stay proceedings and 'to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.'" *Stone v. I.N.S.*, 514 U.S. 386, 411 (1995) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)). The Fourth Circuit has also found that a district court may, in its discretion, stay a civil matter pending a decision from a higher court that could control the outcome. *See Hickey v. Baxter*, 833 F.2d 1005, 1987 WL 39020, at *1 (4th Cir.1987) (unpublished table decision) ("We find that the district court acted within its discretion in staying proceedings while awaiting guidance from the Supreme Court in a case that could decide relevant issues.").

In *Harris Funeral Homes*, the United States Supreme Court will decide whether Title VII's proscription of sex discrimination includes discrimination based either on an individual's status as transgender or on sex stereotyping under *Price Waterhouse*. The Supreme Court's decision in *Harris Funeral Homes* will certainly impact Grimm's Title IX claim. Indeed, Grimm concedes that point.

Grimm, however, contends *Harris Funeral Home* will have no impact on his Equal Protection Clause claim, arguing this Court already held transgender individuals constitute a quasi-suspect class. Grimm ignores that this Court's holding on the Equal Protection Clause claim was based in part on the reasoning that discrimination against transgender individuals "relies on sex stereotypes" and thus amounts to "a sex-based classification." [ECF No. 148 at 25]. As such, this Court's application of a heightened standard of scrutiny at the summary judgment stage could be directly impacted by the Supreme Court's decision in *Harris Funeral Homes* if the Supreme Court addresses sex stereotyping as it relates to an individual's purported transgender status.

Grimm nonetheless contends a stay should not be granted since it will result in irreparable harm to him. The School Board disagrees. Grimm is only seeking nominal monetary damages. The primary relief he seeks is a permanent injunction requiring the School Board to update his transcript to match the male gender marker on his birth certificate. Yet, Grimm is already attending community college. Grimm, 12:3-12. He asserts that he "plans" to attend a four year college and that "[e]very time I have to provide a copy of my transcript to a new school or employer, I will have to show them a document that negates my male identity and marks me as different from other boys." Grimm Decl. ¶ 69 [ECF No. 186]. As such, Grimm believes delaying a decision will require him to relive his experience each time he applies to college. Yet,

there is no evidence Grimm has in fact applied to college, and little evidence that using his current school transcript will have any effect on him.¹ It is speculative that the issue of his transcript will cause him irreparable harm.

Finally, it would be a poor use of judicial resources for this Court not to enter a stay pending a decision on the *Harris Funeral Homes* case. Should this Court enter summary judgment in favor of either party, an appeal will likely be taken to the Fourth Circuit. Grimm surely will want to have the Fourth Circuit consider the *Harris Funeral Homes* decision should this Court grant the School Board summary judgment, and the same is true for the School Board if Grimm is granted summary judgment.

Further, depending on the timing of this Court's decision and the inevitable Fourth Circuit appeal, the *Harris Funeral Homes* case may still be pending. It is unlikely the Fourth Circuit would proceed with the appeal before the Supreme Court renders a decision. Further, a decision from the Supreme Court that is contrary to this Court's decision would likely result in a remand from the Fourth Circuit to this Court for consideration of the *Harris Funeral Homes* ruling. Staying this case now allows this Court to make the most informed decision possible and avoid unnecessary litigation.

The Gloucester County School Board respectfully requests that this Court grant its Motion and stay further proceedings in this action pending the *Harris Funeral Homes* decision.

**GLOUCESTER COUNTY SCHOOL
BOARD**

By Counsel

¹ It is worth noting Grimm has been the subject of national media attention for years, much of it coming at his invitation. Further, Grimm is often invited to be a speaker at colleges and conferences and compensated for his services. Grimm, 9:9-13.

/s/

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CERTIFICATE

I hereby certify that on the 6th day of June, 2019, I filed a copy of the foregoing document with the Clerk of the Court using the CM/ECF system, which will automatically send a Notice of Electronic Filing to all counsel of record.

/s/

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