

Case No. 19-1952

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

GAVIN GRIMM,

Plaintiff-Appellee,

v.

GLOUCESTER COUNTY SCHOOL BOARD,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
CASE NO. 4:15-CV-54 BEFORE HONORABLE ARENDA L. WRIGHT ALLEN

**UNOPPOSED MOTION FOR LEAVE TO FILE BRIEF OF
PROPOSED *AMICUS CURIAE* THE TREVOR PROJECT
IN SUPPORT OF PLAINTIFF-APPELLEE**

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

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If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 19-1952 Caption: Gavin Grimm v. Gloucester County School Board

Pursuant to FRAP 26.1 and Local Rule 26.1,

The Trevor Project
(name of party/amicus)

who is proposed amicus curiae, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? YES NO
2. Does party/amicus have any parent corporations? YES NO
If yes, identify all parent corporations, including all generations of parent corporations:
3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? YES NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(a)(2)(B))? YES NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) YES NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? YES NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: /s/ Howard S. Hogan

Date: 11/25/2019

Counsel for: Proposed Amicus Curiae

CERTIFICATE OF SERVICE

I certify that on November 25, 2019 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

/s/ Howard S. Hogan
(signature)

November 25, 2019
(date)

INTRODUCTION

Pursuant to Federal Rule of Appellate Procedure 29(a)(3), proposed *amicus curiae* The Trevor Project respectfully moves for leave to file the accompanying brief as *amicus curiae* in support of plaintiff-appellee, Gavin Grimm. Counsel for proposed *amicus curiae* timely notified counsel of record for the parties of its intent to file this motion, and they consented to the filing of this motion and *amicus* brief.

The role of an *amicus curiae* is to assist the Court “in cases of general public interest by making suggestions to the court, by providing supplementary assistance to existing counsel, and by insuring a complete and plenary presentation of difficult issues so that the court may reach a proper decision.” *S. Carolina Elec. & Gas Co. v. Whitfield*, 2018 WL 3470660, at *4 n.11 (D.S.C. July 18, 2018). Where, as here, the *amicus curiae* has a “unique perspective or specific information that can assist the court beyond what the parties can provide,” *Voices for Choices v. Illinois Bell Tel. Co.*, 339 F.3d 542, 545 (7th Cir. 2003), courts routinely accept *amicus* briefs. On issues concerning transgender youth, The Trevor Project offers specialized knowledge and can assist the Court in explaining why defendant’s bathroom policy is harmful and unlawful government-sponsored discrimination.

IDENTITY AND INTEREST OF AMICI CURIAE

Founded in 1998, The Trevor Project is the nation’s largest lesbian, gay, bisexual, transgender, queer, and questioning (“LGBTQ”) youth crisis intervention

and suicide prevention organization. It is the only nationwide organization that offers accredited, free, and confidential phone, instant message, and text messaging crisis intervention services for LGBTQ youth. These services are used by thousands of youth each month. Through analyzing and evaluating data obtained from these services, The Trevor Project produces innovative research that brings new knowledge, with clinical implications, to issues affecting LGBTQ youth.

The Trevor Project has a substantial interest in opposing school board actions premised on discrimination against the transgender youth it serves. The Trevor Project works firsthand with transgender youth, many of whom struggle with the stigma of being forced to use a school restroom that conflicts with their gender identity, or have suffered harassment or physical injury when accessing assigned restrooms. The Trevor Project is therefore acutely aware of the severe, often lifelong mental health effects that discrimination of this form can have on transgender youth.

DESIRABILITY AND RELEVANCE OF THE PROPOSED BRIEF

By drawing on its own experiences as well as recent social science research, The Trevor Project can offer this Court a unique perspective about how school board policies denying transgender youth access to restrooms that correspond with their gender identity causes significant and lasting harm to these young people.

Research unequivocally demonstrates that denial of access to gender appropriate restrooms in schools can cause significant psychological and social

distress to transgender youth. For example, in the week after the Texas legislature introduced an anti-transgender “bathroom bill,” The Trevor Project experienced a dramatic spike in the number of transgender individuals calling into its support helpline or reaching out to its chat and messaging helplines.¹ These types of restroom policies, predictably, have a pernicious effect on the mental health of the affected transgender youth.²

In June 2019, The Trevor Project released the results of a cross-sectional survey with over 25,000 LGBTQ youth between the ages of 13 and 24 with representation from all 50 states and the District of Columbia.³ It is the largest survey of LGBTQ youth mental health ever conducted.⁴ Approximately one-third of the respondents identified as transgender and/or non-binary.⁵ Of transgender

¹ The Trevor Project, *Spike in Crisis Contacts Related to Anti-Trans Rhetoric* (Aug. 2, 2017), https://www.thetrevorproject.org/trvr_press/spike-in-crisis-contacts-related-to-anti-trans-rhetoric/.

² Lance S. Weinhardt et al., *Transgender and Gender Nonconforming Youths' Public Facilities Use and Psychological Well-Being: A Mixed-Method Study*, 2 *Transgender Health* 140, 148–49 (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5685206/>.

³ The Trevor Project, *National Survey on LGBTQ Youth Mental Health* (June 2019), at 1, <https://www.thetrevorproject.org/wp-content/uploads/2019/06/The-Trevor-Project-National-Survey-Results-2019.pdf>.

⁴ *Id.*

⁵ *Id.* at 10.

and/or non-binary youth surveyed, 58% felt discouraged from using a bathroom that corresponds to their gender identity.⁶

Denying transgender youth access to facilities that correspond with their gender identity can inflict devastating—and sometimes fatal—damage. The Trevor Project’s insight into and experience with this issue and the affected youth affords it a vital perspective on the harm that would result from reversing the district court’s decision to grant the plaintiff-appellee’s motion for summary judgment and deny the defendant-appellant’s motion for summary judgment.

CONCLUSION

For the foregoing reasons, The Trevor Project respectfully moves this Court for leave to appear as *amicus curiae* in support of the plaintiff-appellee, Gavin Grimm, and to file the *amicus* brief accompanying this motion.

Dated: November 25, 2019

Respectfully submitted,

/s/ Howard S. Hogan

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⁶ *Id.* at 4.

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CERTIFICATE OF COMPLIANCE

On behalf of proposed *amicus curiae* The Trevor Project, I hereby certify pursuant to Federal Rule of Appellate Procedure 32(g)(1) that the foregoing motion is proportionally spaced, has a typeface of 14 points or more, is set in Times New Roman, and contains 764 words, as counted by Microsoft Word, excluding the items that may be excluded under Federal Rule of Appellate Procedure 27(a)(2)(B).

Dated: November 25, 2019

By: /s/ Howard S. Hogan
Howard S. Hogan

CERTIFICATE OF SERVICE

I, Howard S. Hogan, a member of the Bar of this Court, hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system on November 25, 2019. I certify that to my knowledge all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: November 25, 2019

By: /s/ Howard S. Hogan
Howard S. Hogan

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4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(a)(2)(B))? YES NO
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Signature: /s/ Howard S. Hogan

Date: 11/25/2019

Counsel for: Amicus Curiae

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/s/ Howard S. Hogan
(signature)

November 25, 2019
(date)

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I. INTEREST OF *AMICUS CURIAE*

The Trevor Project, which is the nation's largest lesbian, gay, bisexual, transgender, queer, and questioning ("LGBTQ") youth crisis intervention and suicide prevention organization, respectfully submits this *amicus curiae* brief in support of plaintiff-appellee, Gavin Grimm. The Trevor Project offers the only accredited, free, and confidential phone, instant message, and text messaging crisis intervention services for LGBTQ youth. These services are used by thousands of youth each month. Through analyzing and evaluating data obtained from these services, The Trevor Project produces innovative research that brings new knowledge, with clinical implications, to issues affecting LGBTQ youth.

The Trevor Project has a substantial interest in opposing school board actions premised on discrimination against the transgender youth it serves. The Trevor Project works firsthand with transgender youth, many of whom struggle with the stigma of being forced to use a school restroom that conflicts with their gender identity, or have suffered harassment or physical injury when accessing assigned restrooms. The Trevor Project is therefore acutely aware of the severe, often lifelong mental health effects that discrimination of this form can have on transgender youth.¹

¹ No party's counsel authored this brief in whole or in part. No party or party's counsel contributed money that was intended to fund preparing or submitting this brief. No person other than *amicus curiae*, its members, or its counsel contributed money that was intended to fund preparing or submitting the brief.

II. ARGUMENT

Transgender people are those whose gender identity differs from their sex assigned at birth. As this Court recognized, the transgender community “has traditionally been unrecognized, unrepresented, and unprotected.” *G.G. v. Gloucester Cty. Sch. Bd.*, 853 F.3d 729, 730 (4th Cir. 2017) (mem.) (Davis, J., concurring). Through its decades of service to the LGBTQ community, The Trevor Project has developed a unique understanding of the harmful and lasting effects of government-sponsored discrimination, particularly for transgender youth. The defendant-appellant’s policy of requiring transgender students to use bathrooms corresponding to their sex assigned at birth is just the latest iteration of discrimination against transgender youth.

The Trevor Project hears regularly how detrimental and damaging policies restricting access to bathrooms and other facilities in schools are to the transgender youth it serves. For example, in the week after the Texas legislature introduced an anti-transgender “bathroom bill,” The Trevor Project experienced a dramatic spike in the number of transgender individuals calling into its support helpline and reaching out to its chat and messaging helplines.² And in a June 2019 national

² The Trevor Project, *Spike in Crisis Contacts Related to Anti-Trans Rhetoric* (Aug. 2, 2017), https://www.thetrevorproject.org/trvr_press/spike-in-crisis-contacts-related-to-anti-trans-rhetoric/.

survey of over 25,000 LGBTQ respondents conducted by The Trevor Project, 58% of the transgender and/or non-binary youth surveyed reported being discouraged from using a restroom that corresponds to their gender identity.³ Transgender and/or non-binary youth who reported experiencing discrimination on the basis of their gender identity (including but not limited to being barred from access to restrooms consistent with their identity) also reported attempting suicide in the past year at a far greater rate than their LGBTQ peers who did not experience this type of discrimination.⁴

The Gloucester County School Board's discriminatory policies forced Gavin Grimm to endure the plight of not having safe and equal access to bathrooms, and not having transcripts and other documents that reflect his chosen name. As Gavin put it: "[T]he stress was unbearable. I was in an environment every single day, five days a week, where I felt unsafe, anxious, and disrespected. I told my mom that I was having suicidal thoughts, and I was hospitalized briefly . . . for mental health treatment for suicidality, depression, and anxiety." JA 119.

³ The Trevor Project, *National Survey on LGBTQ Youth Mental Health*, 1 (June 2019), <https://www.thetrevorproject.org/wp-content/uploads/2019/06/The-Trevor-Project-National-Survey-Results-2019.pdf> [hereinafter *Trevor Project National Survey*].

⁴ *Id.*

A decision by this Court affirming the district court's decision to grant the plaintiff-appellee's motion for summary judgment and deny the defendant-appellant's motion for summary judgment is therefore critical to protect transgender youth. Indeed, in recent years, federal courts have resoundingly rejected policies compelling transgender students to use facilities inconsistent with their gender identity as unlawful government-sponsored discrimination.⁵

A. Transgender Youth Face Ongoing Systemic Discrimination Just For Being Who They Are.

Contemporary science recognizes that being transgender is part of the natural spectrum of human identity and is not a disease, disorder, or illness.⁶ Yet recent

⁵ *Doe by & through Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 538 (3d Cir. 2018); *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1041 (7th Cir. 2017); *J.A.W. v. Evansville Vanderburgh Sch. Corp.*, 396 F. Supp. 3d 833, 833 (S.D. Ind. 2019); *Adams by & through Kasper v. Sch. Bd. of St. Johns Cty.*, 318 F. Supp. 3d 1293, 1325 (M.D. Fla. 2018); *M.A.B. v. Bd. of Educ. of Talbot Cty.*, 286 F. Supp. 3d 705, 717–26 (D. Md. 2018); *Parents for Privacy v. Dallas Sch. Dist. No. 2*, 326 F. Supp. 3d 1075, 1093 (D. Or. 2018); *Evancho v. Pine-Richland Sch. Dist.*, 237 F. Supp. 3d 267, 283 (W.D. Pa. 2017); *Bd. of Educ. of the Highland Local Sch. Dist. v. U.S. Dep't of Educ.*, 208 F. Supp. 3d 850, 871, 878 (S.D. Ohio 2016).

⁶ *See, e.g.*, Ben Pickman & Brandon Griggs, *The World Health Organization Will Stop Classifying Transgender People As Mentally Ill*, CNN (June 20, 2018), <https://www.cnn.com/2018/06/20/health/transgender-people-no-longer-considered-mentally-ill-trnd/index.html>; Mary Papenfuss, *World Health Organization Removes Gender Nonconformity From List Of Mental Disorders*, HUFFINGTON POST (May 31, 2019), https://www.huffpost.com/entry/transgender-right-world-health-organization-no-longer-mental-disorder_n_5cf0ade0e4b0e346ce7bbd93.

research conducted by The Trevor Project confirms the challenges and ongoing systemic discrimination that the transgender community experiences as a result of just being themselves.

In June 2019, The Trevor Project released the results of a cross-sectional survey with over 25,000 LGBTQ youth between the ages of 13 and 24 with representation from all 50 states and the District of Columbia.⁷ About one-third of the respondents identified as transgender and/or non-binary.⁸ It is the largest survey of LGBTQ youth mental health ever conducted. 78% of transgender and/or non-binary youth reported being the subject of discrimination due to their gender identity.⁹ More than half of transgender and/or non-binary youth have seriously considered suicide in the past year, with 29% reporting having actually attempted suicide in the same period.¹⁰ Other key findings from the survey are:

- Of the LGBTQ youth who experienced physical harm, 36% attempted suicide in the past 12 months; among those who had experienced discrimination, 22% attempted suicide.¹¹
- 71% of LGBTQ youth reported feeling sad or hopeless for at least two weeks in the past year.¹²

⁷ *Trevor Project National Survey*, *supra* note 3, at 1.

⁸ *Id.* at 10.

⁹ *Id.* at 4.

¹⁰ *Id.* at 2.

¹¹ *Id.* at 4.

¹² *Id.* at 1.

- Less than half of LGBTQ respondents were out to an adult at school, with youth less likely to disclose their gender identity than their sexual orientation.¹³

Earlier this year, researchers at the Centers for Disease Control and Prevention (“CDC”) conducted a study that confirmed many of the findings from The Trevor Project’s survey. The CDC researchers found that transgender teens are at a disproportionately higher risk of being victims of violence, and attempting suicide compared to their cisgender peers.¹⁴ Approximately 27% of transgender students said they feel unsafe at school compared to 5% of cisgender males and 7% of cisgender females.¹⁵ More transgender students also reported being bullied at school—over one-third compared to 15% of cisgender males and 21% of cisgender females.¹⁶ The CDC researchers also found that more than half of transgender students reported feeling sad or hopeless, and that the risk factors for suicide were 35% for transgender teens as compared to 5.5% of cisgender males and 9% of

¹³ *Id.* at 5.

¹⁴ 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*, 68 MORBIDITY & MORTALITY WEEKLY REP. 67, 68 (2019), <https://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6803a3-H.pdf>.

¹⁵ *Id.* at 69.

¹⁶ *Id.*

cisgender females.¹⁷ Likewise, another study determined that transgender students were at the highest risk for school safety indicators such as bullying and skipping school due to feeling unsafe.¹⁸

Transgender students experience a greater incidence of emotional distress not because of their gender identity, or any other aspect of who they are, but because of persistent discrimination by those around them.¹⁹ Feeling unsafe using school facilities helps to explain the widespread inequities between transgender and cisgender students.²⁰ For example, a recent study found that 32% of transgender youth were exposed to victimization, and that victimization alone was predictive of mental health issues such as missing school due to distress and suicidal ideation.²¹

¹⁷ *Id.*

¹⁸ Brittanie Atteberry-Ash et al., *School safety experiences of high school youth across sexual orientation and gender identity*, 104 CHILDREN & YOUTH SERV. REV. 104403 (2019), <https://www.sciencedirect.com/science/article/pii/S0190740919301902>.

¹⁹ Joanna Almeida et al., *Emotional Distress Among LGBT Youth: The Influence of Perceived Discrimination Based on Sexual Orientation*, 38 J. YOUTH & ADOLESCENCE 1001, 1002 (2009), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3707280/pdf/nihms261853.pdf>

²⁰ Laura J. Wenick, Alex Kulick & Matthew Chin, *Gender Identity Disparities in Bathroom Safety and Wellbeing among High School Students*, 46 J. YOUTH & ADOLESCENCE 917 (2017), <https://www.ncbi.nlm.nih.gov/pubmed/28361196>;

²¹ Tyler Hatchel et al., *Minority Stress Among Transgender Adolescents: The Role of Peer Victimization, School Belonging, and Ethnicity*, 28 J. CHILD & FAMILY STUDIES 2467 (2019), <https://link.springer.com/article/10.1007/s10826-018-1168-3>.

It should come as no surprise that support and acceptance, by contrast, benefit transgender youth significantly. Recent research corroborates that supporting transgender children in accordance with their gender identities is positively correlated with developmentally normative levels of depression and anxiety in those children.²² Expectedly, “allowing children to present in everyday life as their gender identity rather than their natal sex is associated with developmentally normative levels of depression and anxiety.”²³ When transgender youth are supported by their families, “results provide clear evidence that transgender children have levels of anxiety and depression no different from their nontransgender siblings.”²⁴

Policies ensuring equal access to facilities are therefore vital in showing transgender students that their schools recognize their identities and accept them for simply being who they are. Conversely, policies prohibiting equal access to facilities are detrimental to the well-being of transgender students and constitute a serious form of discrimination.

²² Kristina R. Olson et al., *Mental Health of Transgender Children Who Are Supported in Their Identities*, 137 PEDIATRICS 1, 5 (2016).

²³ *Id.* at 5.

²⁴ *Id.* at 7.

B. The Trevor Project's Data Confirms The Negative Effects of Policies Denying Transgender Youth Access to Restrooms That Correspond with Their Gender Identity.

Over the past two decades, The Trevor Project has counseled thousands of transgender youth who have faced discrimination on a daily basis at school. In particular, many transgender youth feel stigmatized by school district policies compelling them to use a restroom that conflicts with their gender identity. In the June 2019 national survey conducted by The Trevor Project, 58% of the transgender and/or non-binary youth surveyed reported being discouraged from using a restroom that corresponds to their gender identity.²⁵

The Trevor Project recognizes and attempts to heal the wounds caused by discrimination against the LGBTQ community by providing several crisis intervention and suicide prevention services. Specifically, TrevorLifeline is a telephone counseling service that LGBTQ youth can call for support in times of stress and trouble, and TrevorChat and TrevorText are online chat and text messaging services, respectively, that LGBTQ youth can use as an alternative to speaking on the telephone.²⁶ The Trevor Project also hosts a social networking site called TrevorSpace that allows LGBTQ youth to connect with one another.²⁷ The

²⁵ *Trevor Project National Survey*, *supra* note 3, at 4.

²⁶ The Trevor Project, *Get Help Now*, <https://www.thetrevorproject.org/get-help-now/>.

²⁷ The Trevor Project, *TrevorSpace*, <https://www.trevorspace.org/>.

Trevor Project provides comprehensive training for staff and volunteers who serve as counselors or moderators on its platforms so that they are prepared to help LGBTQ youth facing a difficult period and, if necessary, refer them to resources where they could find help from mental health professionals.²⁸

The Trevor Project maintains statistical data regarding the people who use its crisis and suicide prevention services. Many transgender students who contact The Trevor Project in moments of crisis describe concerns or stresses associated with the lack of safe access to restrooms and other facilities in their schools.²⁹ Supervisors for The Trevor Project's crisis services, such as TrevorText and TrevorChat, report that access-related issues come up regularly, as often as weekly.³⁰ These impressions are borne out by data collected on TrevorLifeline, TrevorText, and TrevorChat, as dozens of transgender youth have reached out to The Trevor Project

²⁸ The Trevor Project, *Trainings for Youth-Serving Professionals*, <https://www.thetrevorproject.org/education/trainings-for-youth-serving-professionals/>.

²⁹ This information is derived from anonymized data that The Trevor Project has collected, compiled, and reviewed on its platforms—TrevorLifeline, TrevorText, TrevorChat, and TrevorSpace—pertaining to youth expressing concerns regarding access to restrooms and other facilities in school. In order to protect the privacy of the youth using its services, The Trevor Project does not make this data publicly available.

³⁰ *Id.*

with specific concerns about access to restrooms in their high schools.³¹ Counselors regularly direct transgender students to a database of gender-inclusive restrooms when they are out in public.³² Terms like “bathroom” and “restroom” appear on TrevorText and TrevorChat hundreds of times.³³

While each transgender student might have a different way to describe what it is like for them to use the restroom, the common thread that connects them are that these experiences are uniformly difficult.³⁴ For many transgender youth, entering a bathroom is a source of deep anxiety and raises concerns for their safety.³⁵ For instance, one transgender student reported that someone assaulted them in their school bathroom and yelled at them for being “a tranny.”³⁶

Students also contact the Trevor Project because they are being misgendered, called by the wrong name, taunted, as well as physically assaulted when they use the bathroom.³⁷ One student recounted that whenever they go to the restroom, others look at them “weird,” laugh, and use the wrong name constantly, leading the student

³¹ *Id.*

³² Refuge Restrooms, *About REFUGE*, <https://www.refugerestrooms.org/about>.

³³ *See supra* note 29.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

to feel afraid that something bad was going to happen.³⁸ The Trevor Project has supported numerous transgender students who face this hostile treatment and feel hopeless, distressed, and anxious because of it.³⁹

The harm caused by a lack of access to safe restrooms corresponding with transgender students' gender identity is not limited to just those students. One youth reached out to the Trevor Project because a friend was expelled for using a bathroom that aligned with their gender identity.⁴⁰ Transgender students have also expressed that their families fear for their safety and advise them to only use gender-neutral facilities.⁴¹ One student told a counselor at The Trevor Project that they are not allowed to use the bathrooms consistent with their gender identity at school because the staff and their mother think they might get hurt."⁴²

The lack of safe access to bathrooms is detrimental to the lives of transgender students in high school. Some contacted The Trevor Project to explain that, after coming out to their friends as transgender or gender non-conforming ("GNC"), they were faced with skepticism because they were not using the restroom that aligned

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

with their gender identity.⁴³ One student tried to tell his friends that he was transgender, but they told him “he wasn’t” because he didn’t use the boys bathroom.⁴⁴ Similarly, other students report that when they inform classmates of their gender identity, their peers will stare and barrage them with questions such as “Are you sure?,” “What do you have?,” and “What bathroom do you use?”⁴⁵

In addition to the fear of social isolation, some users of TrevorLifeline report suffering from significant gender dysphoria when their high schools pressure or force them to use a bathroom based on their sex assigned at birth.⁴⁶ This social and systematic rejection caused these transgender youth considerable distress, and they questioned whether they would “ever” be able to safely exist as themselves.⁴⁷

Transgender youth care deeply about having safe access to restrooms and other school facilities that correspond with their gender identity.⁴⁸ These types of facilities, when they can be accessed consistent with someone’s gender identity, can be a crucial source of validation for who they are and their most deep-seated personal

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

experiences.⁴⁹ When such recognition is denied, the transgender students who contact The Trevor Project sometimes express hopelessness that their identities will ever be accepted and well-founded fears about how that denial will affect their safety and ability to participate in the world.⁵⁰

The Trevor Project's experiences are consistent with social science research conducted by other leading organizations on this issue. In 2017, GLSEN, an organization dedicated to eradicating discrimination, harassment, and bullying against LGBTQ youth in K-12 schools, conducted a national school climate survey. GLSEN surveyed over 23,000 students between the ages of 13 and 21 from all 50 states, the District of Columbia, and five U.S. territories.⁵¹ About a quarter of respondents identified as transgender, 11% identified as genderqueer, and 8% identified as non-binary.⁵² Of the transgender and GNC students surveyed, 46.5% were required to use a bathroom that did not align with their gender identity.⁵³

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Joseph G. Kosciw et al., *The 2017 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Youth in Our Nation's Schools*, 7 GLSEN (2018), https://www.glsen.org/sites/default/files/2019-10/GLSEN-2017-National-School-Climate-Survey-NSCS-Full-Report_0.pdf.

⁵² *Id.* at 8.

⁵³ *Id.* at 42.

GLSEN also found that transgender and GNC students were more likely than cisgender students to avoid bathrooms due to safety issues when forced to use the bathroom of their sex assigned at birth.⁵⁴ One transgender student reported: “I was barred from using the boys’ bathroom and when forced to use the girls’ I experienced frequent harassment and physical assault. I frequently went a whole day without using the bathrooms, and this has led to severe health complications.”⁵⁵ Another student said that he “encountered verbal harassment in the bathroom, and people peeping into the stalls saying ‘look it’s a girl!’ and other similar incidents that made [him] feel unsafe.”⁵⁶

Researchers examining the effects of high school policies on transgender and GNC youth have also found that restrictive bathroom policies create an unsafe environment and have a negative impact on the health outcomes of transgender youth.⁵⁷ A staggering 56% of transgender students reported feeling unsafe using bathrooms, 46% had problematic experiences when using a bathroom, and only 16%

⁵⁴ *Id.*

⁵⁵ *Id.* at 15.

⁵⁶ *Id.* at 24.

⁵⁷ Lance S. Weinhardt et al., *Transgender and Gender Nonconforming Youths' Public Facilities Use and Psychological Well-Being: A Mixed-Method Study*, 2 *TRANSGENDER HEALTH* 140, 148–49 (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5685206/>.

reported having access to restrooms that correspond with their gender identity.⁵⁸ Transgender and GNC students who felt unsafe in bathrooms due to appearance were more likely to have lower levels of resilience, greater levels of perceived LGBT stigma, and report problematic anxiety in the past year than those who felt safe.⁵⁹

The common theme that The Trevor Project has witnessed is that transgender youth feel that policies forcing them to use the bathroom reflecting their sex assigned at birth means that they are unwanted burdens and unwelcome in society. They feel that their school does not value them and does not want them to exist. Indeed, new evidence has shown that when transgender students have the right to safely access bathrooms consistent with their gender identity, they report higher levels of mental health, self-esteem, and academic success.⁶⁰ Transgender youth should be allowed to simply live as who they really are instead of fearing that government-sanctioned discrimination against them will incite their classmates or teachers to bully them and treat them without regard for their identity or dignity. These youth deserve the same respect, opportunities, and access to school facilities as their peers.

⁵⁸ *Id.* at 144.

⁵⁹ *Id.* at 148.

⁶⁰ See Kosciw, *supra* note 51, at 15, 49, 79–80; Carolyn M. Porta et al., “Kicked out”: *LGBTQ youths’ bathroom experiences and preferences*, 56 J. ADOLESCENCE 107 (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5346479/> (finding that gender-neutral bathrooms foster a sense of safety and inclusivity).

C. Federal Courts Agree That Policies Denying Transgender Youth Access to Restrooms That Correspond with Their Gender Identity Causes Lasting Stigmatic Injury.

Federal courts have echoed the consensus professional opinion in finding that policies restricting access to bathrooms corresponding with transgender students' gender identities impose a significant and direct harm on them, particularly to their physical and mental health.

As the lower court held, and this Court should affirm, "there is no question that the Board's policy discriminates against transgender students on the basis of their gender nonconformity" and "transgender status in violation of Title IX." *Grimm v. Gloucester Cnty. Sch. Bd.*, 2019 WL 3774118, at *9–10 (E.D. Va. Aug. 9, 2019). Judge Wright Allen held that the defendant's policy perpetuated harm and "inflicted grief, pain, and suicidal thoughts," as "[t]ransgender students are singled out, subjected to discriminatory treatment, and excluded from spaces where similarly situated students are permitted to go." *Id.* at *9, *15. Like many transgender youth that contact The Trevor Project, Gavin Grimm felt so "stigmatized and isolated" by the discriminatory policy that walking to the bathroom felt like a "walk of shame." *Id.* at *10.

Across the country, federal courts have come to the same conclusion as the lower court did here, emphasizing the lasting stigmatic injury of restrictive bathroom policies upon transgender students. For example, in *Doe by & through Doe v.*

Boyertown Area Sch. Dist., 897 F.3d 518, 538 (3d Cir. 2018), the Third Circuit affirmed the lower court’s rejection of a challenge to a school district’s policy allowing transgender students to access bathrooms consistent with their gender identity. The court held that the policy was “narrowly tailored to serve a compelling governmental interest,” and that a contrary policy forcing transgender students to use separate facilities “would very publicly brand all transgender students with a scarlet ‘T,’ and they should not have to endure that as the price of attending their public school.” *Id.* at 530–31.

Likewise, in holding that “the meaning of ‘sex’ in Title IX includes ‘gender identity’ for purposes of its application to transgender students,” a Florida district court concluded that a transgender student established a Title IX violation where the school board barred him from using male restrooms. *Adams by & through Kasper v. Sch. Bd. of St. Johns Cty.*, 318 F. Supp. 3d 1293, 1325 (M.D. Fla. 2018), *appeal docketed*, No. 18-13592 (11th Cir. Aug. 24, 2018). In *Adams*, the transgender student felt “alienated and humiliated” by the school’s policy, as “it cause[d] him anxiety and depression to walk past the boys’ restroom on his way to a gender-neutral bathroom, knowing every other boy is permitted to use it but him.” *Id.* at 1308. Moreover, “it also sen[t] a message to other students who see him use a ‘special bathroom’ that he is different, when all he wants is to fit in.” *Id.*

In *Parents for Privacy v. Dallas Sch. Dist. No. 2*, 326 F. Supp. 3d 1075, 1093 (D. Or. 2018), *appeal docketed*, 18-35708 (9th Cir. Aug. 23, 2018), the district court upheld a school district’s policy of allowing transgender students to use the facilities of their choice. The court reasoned that “[f]orcing transgender students to use facilities inconsistent with their gender identity would undoubtedly harm those students and prevent them from equally accessing educational opportunities and resources.” *Id.* at 1106. Such a “policy would punish transgender students for their gender nonconformity and constitute a form of sex-stereotyping.” *Id.*

Indeed, the district court in *M.A.B. v. Bd. of Educ. of Talbot Cty.* found that a school’s policy prohibiting a transgender male student from using the boys’ bathrooms violated Title IX and the Equal Protection Clause. 286 F. Supp. 3d 705, 723–26 (D. Md. 2018). The court underscored that barring the student from facilities consistent with his gender identity “harms his health and well-being,” and “interferes with his social transitioning.” *Id.* at 724–25.

Courts have found that restrictive bathroom policies not only cause transgender students psychological harm, but also physiological harm. In *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, a transgender student who was prohibited from using the boys’ bathroom suffered from fainting and dizziness because he “restricted his water intake and attempted to avoid using any restroom.” 858 F.3d 1034, 1041 (7th Cir. 2017); *see also J.A.W. v. Evansville Vanderburgh Sch.*

Corp., 396 F. Supp. 3d 833, 833 (S.D. Ind. 2019) (relying on *Whitaker*, the school’s practice of requiring students to use a bathroom that did not conform with their gender identity violated Title IX and equal protection). The student in *Whitaker* “suffered from stress-related migraines, depression, and anxiety because of the [school] policy’s impact on his transition and what he perceived to be the impossible choice between living as a boy or using the restroom,” and “[h]e even began to contemplate suicide.” 858 F.3d at 1041. Although the school provided the option of using gender-neutral restrooms, they were “on the opposite side of campus from where his classes were held” and resulted in him missing class time because of the location and being further stigmatized as he was the only one with access to the restrooms. *Id.* at 1041–42. In light of the “irreparable harm” caused by the school’s restrictive bathroom policy, the Seventh Circuit affirmed the lower court’s order granting a preliminary injunction to the transgender student. *Id.* at 1044–45, 1055.

Just as in *Whittaker*, a Pennsylvania district court held that the transgender students “have suffered and will continue to suffer immediate and irreparable harm” absent a preliminary injunction allowing the transgender students from using “restrooms consistent with their gender identities.” *Evancho v. Pine-Richland Sch. Dist.*, 237 F. Supp. 3d 267, 283 (W.D. Pa. 2017). In *Evancho*, the high school’s policy change segregated transgender students from their peers and resulted in their being “subject to several episodes of . . . untoward or harassing conduct by some

other students based on their gender identities.” *Id.* at 282. As such, the transgender students were “marginalized . . . causing them genuine distress, anxiety, discomfort and humiliation.” *Id.* at 294.

Likewise, an Ohio district court made similar findings in granting a preliminary injunction against a school’s policy. *See Bd. of Educ. of the Highland Local Sch. Dist. v. U.S. Dep’t of Educ.*, 208 F. Supp. 3d 850, 871, 878 (S.D. Ohio 2016). It found irreparable harm in “[t]he stigma and isolation” the transgender student felt in being “singled out and forced to use a separate bathroom.” *Id.* The student often went “the entire day without using the bathroom,” which “impair[ed] her ability to focus on learning.” *Id.* at 871. As a consequence of this stigmatization, she “began to suffer from extreme anxiety and depression” and “was hospitalized for suicidal ideation and depressed mood.” *Id.* at 856.

Transgender students are simply “young people seeking to do what young people try to do every day—go to school, obtain an education, and interact as equals with their peers.” *Evancho*, 237 F. Supp. 3d at 301–02. The day-to-day harm that transgender youth endure because of the perpetuation of institutional discrimination and the stigma of being singled out for differential treatment based on their gender identity cannot be allowed to stand.

D. Schools That Refuse to Recognize the Chosen Names of Transgender Students In Their Documents and Transcripts Increase Their Risk of Discrimination and Harassment.

Transgender students, like their non-transgender peers, require legal documents that accurately reflect their identity. As students navigate the challenges of adolescence, they increasingly take on responsibilities tied to their personal identities rather than those of their parents or guardians. Every day, students apply for jobs, college admissions, learners' permits, drivers' licenses, passports, and voter registration cards, all of which require their legal names. Given that the application process often requires multiple forms of identification, it is imperative that the identification documents accurately reflect the student's identity. Yet, every time transgender youth are compelled to use legal names and identification documents that conflict with their gender identities, it "outs" the individual as transgender and puts them at risk of discrimination and harassment.

The 2015 U.S. Transgender Survey report found that 32% of respondents who offered identification with a name or gender marker that did not match their presentation reported negative experiences, including being denied service, verbally harassed, or physically assaulted.⁶¹ This is particularly concerning in the school

61 Sandy E. James et al., *The Report of the 2015 U.S. Transgender Survey: Executive Summary*, 7 (2016), <https://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF>.

context, where many transgender students report that their schools are unwilling to treat them in accordance with their gender identity. Of the transgender and GNC students surveyed in GLSEN's 2017 national school climate survey, 42% of respondents stated that they were unable to use their preferred name or pronouns in school.⁶² Indeed, the percentage of transgender or GNC students prevented from using their preferred names was even higher in 2017 than it was in 2015 and 2013.⁶³ Of the approximately 4,600 colleges in the United States,⁶⁴ Campus Pride has found that *only* 258 (or 5.6 percent) enable students to use a chosen name, instead of a legal name, on campus records and documents.⁶⁵

Recent social science research underscores the importance of using transgender students' chosen names for mental health and social transition. When an individual's chosen name is respected in contexts like school and among friends, the result is a reduction in depressive symptoms, suicidal ideation, and suicidal

62 See Kosciw, *supra* note 51, at xx.

63 *Id.* at 123–24.

64 See Nat'l Ctr. Educ. Statistics, *Educational Institutions*, <https://nces.ed.gov/fastfacts/display.asp?id=84> (last visited Nov. 20, 2019).

65 Campus Pride, *Colleges and Universities that Allow Students to Change the Name and Gender on Campus Records*, <https://www.campuspride.org/tpc/records/> (last visited Nov. 20, 2019).

behavior.⁶⁶ Likewise, the American Psychological Association recommends “us[ing] names and pronouns that are appropriate to [a] person’s gender presentation and identity.”⁶⁷ This aligns with the guidance of the World Professional Association for Transgender Health (“WPATH”), an organization that publishes the community-consensus treatment protocols for gender dysphoria followed by leading U.S. medical and mental health groups.⁶⁸ WPATH recommends identity documents consistent with an individual’s gender identity as “essential to the ability of all people to enjoy rights and opportunities equal to those available to others; to access

66 Stephen T. Russell et al., *Chosen Name Use Is Linked To Reduced Depressive Symptoms, Suicidal Ideation and Behavior Among Transgender Youth*, 63 J. ADOLESCENT HEALTH 503, 506 (2018), <https://www.ncbi.nlm.nih.gov/pubmed/29609917>. See also Amanda M. Pollitt, *Predictors and Mental Health Benefits of Chosen Name Use Among Transgender Youth*, YOUTH & SOC’Y (2019), <https://journals.sagepub.com/doi/abs/10.1177/0044118X19855898> (finding that chosen name use was associated with large reductions in negative health outcomes among transgender youth).

67 Am. Psych. Assoc., *Answers to Your Questions: About Transgender People, Gender Identity, and Gender Expression*, 4 (2014), <https://www.apa.org/topics/lgbt/transgender.pdf>.

68 World Prof’l Ass’n Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People*, 10 (7th ed. 2011), <https://www.wpath.org/media/cms/Documents/Web%20Transfer/SOC/Standards%20of%20Care%20V7%20-%202011%20WPATH.pdf>.

accommodation, education, employment, and health care; to travel; to navigate everyday transactions; and to enjoy safety.”⁶⁹

The Gloucester County School Board’s refusal to provide Gavin with transcripts and other documents that do not reflect his chosen name and gender identity therefore perpetuates discrimination toward transgender students. As the lower court held, this amounts to a flagrant violation of Title IX and cannot stand.

III. CONCLUSION

The Trevor Project hears regularly from the transgender youth it serves that being able to access bathrooms that aligns with an individual’s gender identity and being recognized by their chosen name are vital to their health and well-being. To be denied fair and equal treatment on these bases can have lasting consequences on their mental health. Transgender youth deserve the same chance as others to be who they are and to participate fully in our society. As Gavin Grimm has said: “I am not the only transgender [person] . . . and I deserve the rights of every other human being. I am just a human. I am just a boy. Please consider my rights when you make your decision.”⁷⁰

69 World Prof’l Ass’n Transgender Health, *WPATH Identity Recognition Statement* (Nov. 15, 2017), <https://www.wpath.org/media/cms/Documents/Web%20Transfer/Policies/WPATH%20Identity%20Recognition%20Statement%2011.15.17.pdf>.

70 ACLUvideos, *Gavin Grimm at Gloucester County School Board Meeting*, YouTube, https://youtu.be/My0GYq_Wydw.

For the foregoing reasons, The Trevor Project requests that this Court affirm the district court's order granting the plaintiff-appellee's motion for summary judgment and denying the defendant-appellant's motion for summary judgment.

Dated: November 25, 2019

Respectfully submitted,

/s/ Howard S. Hogan

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