

APPEAL NO. 18-13592-EE

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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DREW ADAMS,  
Plaintiff-Appellee,

v.

THE SCHOOL BOARD OF ST. JOHNS COUNTY, FLORIDA  
Defendant-Appellant.

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On Appeal from the United States District Court  
for the Middle District of Florida, Jacksonville Division  
District Court No. 3:17-cv-00739-TJC-JBT

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**SUPPLEMENTAL BRIEF OF APPELLANT**  
**THE SCHOOL BOARD OF ST. JOHNS COUNTY, FLORIDA**

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Terry J. Harmon FBN 0029001  
Jeffrey D. Slanker FBN 0100391  
Robert J. Sniffen FBN 000795  
Michael P. Spellman FBN 937975

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123 North Monroe Street  
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Telephone: (850) 205-1996  
Fax: (850) 205-3004  
Counsel for Appellant

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

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

1. AAPL – *Amicus Curiae*
2. AAUW – *Amicus Curiae*
3. A Better Balance - *Amicus Curiae*
4. Aberli, Thomas A. – *Amicus Curiae*
5. Achievement First Public Charter Schools – *Amicus Curiae*
6. Adams, Drew – Appellee
7. Adams, Scott – Appellee's Father
8. Adecco Group AG - Parent company for Amicus Curiae General Assembly Space, Inc.
9. Adecco, Inc. - Parent company for Amicus Curiae General Assembly Space, Inc.
10. ADL – *Amicus Curiae*

Adams v. The School Board of St. Johns County, Florida  
Appeal No. 18-13592-EE

11. Advocates for Youth – *Amicus Curiae*
12. Airbnb, Inc. – *Amicus Curiae*
13. Akin Gump Strauss Hauer & Feld LLP - Counsel for Amici Curiae
14. Alger, Maureen P. – Counsel for Amicus Curiae
15. Allen, Tommy – Board Member of Appellant
16. Alliance Defending Freedom – Counsel for Amicus Curiae
17. Alphabet, Inc. (GOOG) - Parent company for Amicus Curiae Google LLC
18. Altman, Jennifer G. – Counsel for Appellee
19. Amend, Andrew – (New York State Office of the Attorney General) - Counsel for Amicus Curiae
20. American Academy of Child and Adolescent Psychiatry (AACAP) – *Amicus Curiae*
21. American Academy of Nursing – *Amicus Curiae*
22. American Academy of Pediatrics – *Amicus Curiae*
23. American Association of University Women (AAUW) - *Amicus Curiae*
24. American College of Physicians – *Amicus Curiae*
25. American Medical Association – *Amicus Curiae*
26. American Medical Women’s Association – *Amicus Curiae*

Adams v. The School Board of St. Johns County, Florida  
Appeal No. 18-13592-EE

27. American Nurses Association – *Amicus Curiae*
28. American School Counselor Association – *Amicus Curiae*
29. Apple Inc. – *Amicus Curiae*
30. Asana, Inc. – *Amicus Curiae*
31. Association of Medical School Pediatric Department Chairs – *Amicus Curiae*
32. Atlanta Women for Equality – *Amicus Curiae*
33. Baker & Hostetler LLP - Counsel for Amicus Curiae
34. Banks, Emily – *Amicus Curiae*
35. Barden, Robert Chris – Counsel for Appellant, Terminated
36. Barrera, Kelly – Board Member of Appellant
37. Barth, Morgan – *Amicus Curiae*
38. Baxter, Rosanne C. – Counsel for Amicus Curiae
39. Bazer, Morgan – *Amicus Curiae*
40. BCC – *Amicus Curiae*
41. Bertschi, Craig E. – Counsel for Amicus Curiae
42. Beth Chayim Chadashim (BCC) - *Amicus Curiae*
43. Binning, Sarah R. – Counsel for Amicus Curiae
44. BlackRock, Inc. (BLK) - Beneficial owner of Amicus Curiae Yelp Inc.

Adams v. The School Board of St. Johns County, Florida  
Appeal No. 18-13592-EE

45. Boies, Schiller & Flexner, LLP – Counsel for Amicus Curiae
46. Borelli, Tara L. – Counsel for Appellee
47. Boston Area Rape Crisis Center – *Amicus Curiae*
48. Bourgeois, Roger – *Amicus Curiae*
49. Bruce, Diana K. – *Amicus Curiae*
50. Buckeye Region Anti-Violence Organization, a Program of Equitas Health – *Amicus Curiae*
51. Berlow, Clifford W. – Counsel for Amicus Curiae
52. California – *Amicus Curiae*
53. California Women Lawyers – *Amicus Curiae*
54. California Women’s Law Center – *Amicus Curiae*
55. Campbell, James A. – Counsel for Amicus Curiae
56. Canan, Patrick – Board Member of Appellant
57. Carney, Karen – *Amicus Curiae*
58. Carpenter, Christopher S., Ph.D - *Amicus Curiae*
59. Carter, Heidi – *Amicus Curiae*
60. Casa de Esperanza: National Latina Network for Healthy Families and Communities – *Amicus Curiae*
61. Castillo, Paul David – Counsel for Appellee
62. Center for Constitutional Rights – *Amicus Curiae*

Adams v. The School Board of St. Johns County, Florida  
Appeal No. 18-13592-EE

63. Center for Religious Expression – Counsel for Amicus Curiae
64. Center for Reproductive Rights – *Amicus Curiae*
65. Central Conference of American Rabbis – *Amicus Curiae*
66. Champion Women – *Amicus Curiae*
67. Chandy, Sunu P. (National Women’s Law Center) - Counsel for Amici Curiae
68. Chang, Tommy – *Amicus Curiae*
69. Chapman, Peyton – *Amicus Curiae*
70. Chaudhry, Neena (National Women’s Law Center) - Counsel for Amici Curiae
71. Coalition of Black Trade Unionists – *Amicus Curiae*
72. Coleman, Arthur - Counsel for Amicus Curiae
73. Colter, Howard – *Amicus Curiae*
74. Connecticut – *Amicus Curiae*
75. Conron, Kerith J., M.P.H., Sc.D - *Amicus Curiae*
76. Copsey, Alan D. (Washington State Office of the Attorney General) - Counsel for Amicus Curiae
77. Corrigan, Hon, Timothy J. – United States District Judge
78. Credo Mobile, Inc. – *Amicus Curiae*
79. Cyra, Sherri – *Amicus Curiae*

Adams v. The School Board of St. Johns County, Florida  
Appeal No. 18-13592-EE

80. Dasgupta, Anisha S. (New York State Office of the Attorney General)  
- Counsel for Amicus Curiae
81. Davis, Bryan – *Amicus Curiae*
82. Davis, Steven D. – Counsel for Amici School Administrators
83. Day One – *Amicus Curiae*
84. DC Coalition Against Domestic Violence – *Amicus Curiae*
85. Delaware – *Amicus Curiae*
86. DeSelm, Lizbeth – *Amicus Curiae*
87. Deutsche Bank AG. – *Amicus Curiae*
88. DiBenedetto, Arthur – *Amicus Curiae*
89. Disability Rights Education and Defense Fund (DREDF) – *Amicus Curiae*
90. District of Columbia – *Amicus Curiae*
91. Doolittle, Kirsten L. – Counsel for Appellee
92. Doran, Mary – *Amicus Curiae*
93. Doss, Eric – *Amicus Curiae*
94. DREDF – *Amicus Curiae*
95. Dyer, Karen Caudill – Counsel for *Amicus Curiae*
96. Dwyer, John C. – Counsel for *Amicus Curiae*
97. Eaton, Mary - Counsel for Amicus Curiae

Adams v. The School Board of St. Johns County, Florida  
Appeal No. 18-13592-EE

98. eBay Inc. – *Amicus Curiae*
99. Education Counsel, LLC - Counsel for Amicus Curiae
100. Empire Justice Center – *Amicus Curiae*
101. Endocrine Society – *Amicus Curiae*
102. Eppink Samuel T., Ph.D. (expected 2019) - *Amicus Curiae*
103. Equal Rights Advocates – *Amicus Curiae*
104. Equality California – *Amicus Curiae*
105. Ewing, Gregory – *Amicus Curiae*
106. Family Values @ Work – *Amicus Curiae*
107. Ferguson, Robert W. (Attorney General for the State of Washington) -  
Counsel for Amici Curiae
108. Florida School Boards Insurance Trust – Insurance Carrier for  
Appellant
109. Flores, Andrew R., Ph.D. - *Amicus Curiae*
110. Flynn, Diana K. – Counsel for Appellee
111. FORGE, Inc. – *Amicus Curiae*
112. Forson, James (Tim) – Superintendent of the St. Johns County School  
District
113. Fountain, Lisa Barclay – Counsel for Appellant
114. Gartrell, Nanette, M.D. - *Amicus Curiae*

115. Gates, Gary J., Ph.D. - *Amicus Curiae*
116. Gender Based Violence Organizations – *Amicus Curiae*
117. Gender Diversity – *Amicus Curiae*
118. Gender Justice – *Amicus Curiae*
119. Gender Spectrum – *Amicus Curiae*
120. General Assembly Space, Inc. – *Amicus Curiae*
121. Generales, Markos C. – (Akin Gump Strauss Hauer & Feld LLP)  
Counsel for Amicus Curiae
122. Girls for Gender Equity – *Amicus Curiae*
123. Girls, Inc. – *Amicus Curiae*
124. GitHub, Inc. – *Amicus Curiae*
125. Glassdoor, Inc. – *Amicus Curiae*
126. GlaxoSmithKline LLC – *Amicus Curiae*
127. GlaxoSmithKline PLC: Parent company for Amicus Curiae  
GlaxoSmithKline LLC
128. GLMA – Health Professionals Advancing LGBT Equality - *Amicus Curiae*
129. GLSEN – *Amicus Curiae*
130. Goldberg, Suzanne – Counsel for Amicus Curiae
131. Gonzales, Gilbert, Ph.D., M.H.A. - *Amicus Curiae*

132. Gonzalez-Pagan, Omar – Counsel for Appellee
133. Google LLC – *Amicus Curiae*
134. Goss Graves, Fatima (National Women’s Law Center) - Counsel for  
Amicus Curiae
135. Greer, Eldridge – *Amicus Curiae*
136. Grossman, Miriam – *Amicus Curiae*
137. Grijalva, Adelita – *Amicus Curiae*
138. Gurtner, Jill – *Amicus Curiae*
139. Haney, Matthew – *Amicus Curiae*
140. Hargis, Kellie M. – *Amicus Curiae*
141. Harmon, Terry J. – Counsel for Appellant
142. Harrington, Emily – Counsel for Amicus Curiae
143. Hawaii – *Amicus Curiae*
144. Haynes, Patricia - Counsel for Amicus Curiae
145. Herman, Jody L., Ph.D. - *Amicus Curiae*
146. Heyer, Walt – *Amicus Curiae*
147. Hohs, Sherie – *Amicus Curiae*
148. Holland & Knight, LLP – Counsel for Amicus Curiae
149. Holloway, Ian W., Ph.D., M.S.W., M.P.H. - *Amicus Curiae*
150. Hughes, Paul W. (Mayer Brown) - Counsel for Amicus Curiae

151. IBM Corporation – *Amicus Curiae*
152. Ifill, Sherrilyn A. - Counsel for Amicus Curiae
153. Illinois – *Amicus Curiae*
154. Illinois Accountability Initiative – *Amicus Curiae*
155. In Our Own Voice: National Black Women's Reproductive Justice  
Agenda – *Amicus Curiae*
156. Indiegogo, Inc. – *Amicus Curiae*
157. Iowa – *Amicus Curiae*
158. Iowa Coalition Against Sexual Assault – *Amicus Curiae*
159. Jacksonville Area Sexual Minority Youth Network, Inc. – *Amicus  
Curiae*
160. Jacobs, Edward J. – Counsel for Amicus Curiae
161. James, Letitia (Attorney General for the State of New York) - Counsel  
for Amicus Curiae
162. Kaiser Foundation Health Plan, Inc. (“Kaiser Permanente”) - *Amicus  
Curiae*
163. Kaiser Permanente – *Amicus Curiae*
164. Kaplan, Aryeh L. – Counsel for Appellee
165. Kasper, Erica Adams – Appellee’s Next Friend and Mother
166. Kellum, Nathan W. – Counsel for Amicus Curiae

167. Kenney, Tim – *Amicus Curiae*
168. Kimberly, Michael B. (Mayer Brown LLP) - Counsel for Amicus Curiae
169. Kirkland, Earl – Counsel for Amicus Curiae
170. Knotel, Inc. - *Amicus Curiae*
171. Kogan, Terry S. – *Amicus Curiae*
172. Kostelnik, Kevin C. – Counsel for Appellant, Terminated
173. Kunin, Ken – *Amicus Curiae*
174. Kunze, Lisa – Principal of Allen D. Nease High School
175. Laidlaw, Michael – *Amicus Curiae*
176. Lambda Legal Defense and Education Fund, Inc. – Counsel for Appellee
177. Lapointe, Markenzy – Counsel for Appellee
178. Las Cruces Public Schools – *Amicus Curiae*
179. LatinoJustice PRLDEF – *Amicus Curiae*
180. Lawyers Club of San Diego – *Amicus Curiae*
181. Lee, Jen Hee – Counsel for Amicus Curiae
182. Legal Aid At Work – *Amicus Curiae*
183. Legal Momentum – *Amicus Curiae*
184. Legal Voice – *Amicus Curiae*

185. Levi Strauss & Co. - *Amicus Curiae*
186. Linden Research, Inc. d/b/a Linden Lab – *Amicus Curiae*
187. Los Angeles Unified School District – *Amicus Curiae*
188. Louisiana Foundation Against Sexual Assault – *Amicus Curiae*
189. Love, Laura H. – *Amicus Curiae*
190. Lyft, Inc. - *Amicus Curiae*
191. MacKenzie, Dominic C. – Counsel for Amicus Curiae
192. Maine – *Amicus Curiae*
193. Majeski, Jeremy – *Amicus Curiae*
194. Mallory, Christy, J.D. - *Amicus Curiae*
195. Mapbox, Inc. - *Amicus Curiae*
196. Marin Software Incorporated (MRIN) - *Amicus Curiae*
197. Martin, Emily (National Women’s Law Center) - Counsel for Amicus Curiae
198. Massachusetts – *Amicus Curiae*
199. Mayer Brown LLP - Counsel for Amici Curiae
200. McCaleb, Gary S. – Counsel for Amicus Curiae
201. McCalla, Craig – *Amicus Curiae*
202. McRae Bertschi & Cole, LLC – Counsel for Amicus Curiae
203. Meece, Gregory R. – *Amicus Curiae*

204. Meerkamper, Shawn – *Amicus Curiae*
205. Melody, Colleen M., (Washington State Office of the Attorney General) - Counsel for Amicus Curiae
206. Mesa, David D. – Counsel for Amicus Curiae
207. Meyer, Ilan, H., Ph.D. - *Amicus Curiae*
208. Michigan – *Amicus Curiae*
209. Michigan Coalition to End Domestic & Sexual Violence – *Amicus Curiae*
210. Microsoft Corporation (MSFT): *Amicus Curiae* and parent company for *Amicus Curiae* GitHub, Inc.
211. Mignon, Bill – Board Member of Appellant
212. Miller, William C. – Counsel for Appellee
213. Minnesota – *Amicus Curiae*
214. Minter, Shannon – Counsel for Amicus Curiae
215. Morse, James C., Sr. – *Amicus Curiae*
216. Munson, Ziad W. – *Amicus Curiae*
217. Murray, Kerrel – Counsel for Amicus Curiae
218. NAACP Legal Defense & Educational Fund, Inc. – *Amicus Curiae*
219. Nardecchia, Natalie – Counsel for Appellee, Terminated
220. National Alliance to End Sexual Violence – *Amicus Curiae*

221. National Asian Pacific American Women's Forum – *Amicus Curiae*
222. National Association of School Psychologists – *Amicus Curiae*
223. National Association of Social Workers – *Amicus Curiae*
224. National Association of Women Lawyers – *Amicus Curiae*
225. National Center for Law and Economic Justice – *Amicus Curiae*
226. National Center for Transgender Equality – *Amicus Curiae*
227. National Coalition Against Domestic Violence – *Amicus Curiae*
228. National Council of Jewish Women – *Amicus Curiae*
229. National Crittenton – *Amicus Curiae*
230. National LGBTQ Task Force – *Amicus Curiae*
231. National Organization for Women Foundation – *Amicus Curiae*
232. National PTA and The American School Counselor Association –  
*Amicus Curiae*
233. National Resource Center on Domestic Violence – *Amicus Curiae*
234. National Women's Law Center, et al. – *Amicus Curiae*
235. Nebraska Coalition to End Domestic and Sexual Violence – *Amicus*  
*Curiae*
236. Nelson, Janai S. – Counsel for Amicus Curiae
237. Nevada Coalition to End Domestic and Sexual Violence – *Amicus*  
*Curiae*

238. New Hampshire Coalition Against Domestic and Sexual Violence –  
*Amicus Curiae*
239. New Jersey – *Amicus Curiae*
240. New Mexico – *Amicus Curiae*
241. New Mexico Coalition of Sexual Assault Programs, Inc. – *Amicus Curiae*
242. New York – *Amicus Curiae*
243. New York State Coalition Against Sexual Assault – *Amicus Curiae*
244. NIO Inc. (NIO): Parent company for *Amicus Curiae* NIO USA, Inc.
245. NIO NextEV Ltd.: Parent company for *Amicus Curiae* NIO USA, Inc.
246. NIO USA, Inc. - *Amicus Curiae*
247. Northern Marianas Coalition Against Domestic & Sexual Violence –  
*Amicus Curiae*
248. Oasis Legal Services – *Amicus Curiae*
249. Oath Inc. - Parent company for *Amicus Curiae* Tumblr, Inc
250. O’Melveny & Myers LLP – Counsel for Amicus Curiae
251. O’Reilly, John – *Amicus Curiae*
252. OGC Law, LLC. – Counsel for Amicus Curiae
253. Ohio Alliance to End Sexual Violence – *Amicus Curiae*
254. Oregon – *Amicus Curiae*

255. Oregon Coalition Against Domestic & Sexual Violence – *Amicus Curiae*
256. Orr, Asaf – Counsel for Amicus Curiae
257. Palacios, Patricia – Counsel for Amicus Curiae
258. Palazzo, Denise – *Amicus Curiae*
259. Parent-Child Center – *Amicus Curiae*
260. Patreon, Inc. - *Amicus Curiae*
261. Pediatric Endocrine Society – *Amicus Curiae*
262. Pennsylvania – *Amicus Curiae*
263. PFLAG, Inc. – *Amicus Curiae*
264. Pierce, Jerome – Counsel for Amicus Curiae
265. Pillsbury Winthrop Shaw Pittman LLP – Counsel for Appellee
266. Pincus, Andrew J. (Mayer Brown LLP) - Counsel for Amicus Curiae
267. Planned Parenthood of South, East and North Florida – *Amicus Curiae*
268. Planned Parenthood of Southwest and Central Florida – *Amicus Curiae*
269. Pollock, Lindsey – *Amicus Curiae*
270. Portnoi, Dimitri – Counsel for Amicus Curiae
271. Postmates Inc. - *Amicus Curiae*

272. Powell, Wesley R. – Counsel for Record of Amicus Curiae
273. Purcell, Noah G. (Solicitor General for the State of Washington) -  
Counsel for Amicus Curiae
274. Rakuten, Inc.: Beneficial owner of *Amicus Curiae* Lyft, Inc.
275. Ranck-Buhr, Wendy – *Amicus Curiae*
276. Rao, Devi M. – Counsel for Amicus Curiae, Terminated
277. Rape/Domestic Abuse Program – *Amicus Curiae*
278. RC Barden and Associates – Counsel for Appellant, Terminated
279. Recruit Holdings Co., Ltd. (TYO 6098): Parent company for *Amicus Curiae* Glassdoor Inc.
280. Replacements, Ltd. - *Amicus Curiae*
281. Retzlaff, Pamela – *Amicus Curiae*
282. Reynolds, Andrew, Ph.D. - *Amicus Curiae*
283. RGF OHR USA, Inc.: Parent company for Amicus Curiae Glassdoor Inc.
284. Rhode Island – *Amicus Curiae*
285. Rivaux, Shani – Counsel for Appellee
286. Robertson, Cynthia C. – Counsel for Appellee
287. Rose, Nicholas M. (Baker & Hostetler LLP) - Counsel for Amicus Curiae

Adams v. The School Board of St. Johns County, Florida  
Appeal No. 18-13592-EE

288. Rothfield, Charles - Counsel for Amicus Curiae
289. Samuels, Jocelyn, J.D. - *Amicus Curiae*
290. San Diego Cooperative Charter Schools – *Amicus Curiae*
291. Santa, Rachel – *Amicus Curiae*
292. SASA Crisis Center – *Amicus Curiae*
293. Sears, R. Bradley, J.D. - *Amicus Curiae*
294. Schaffer, Brian – *Amicus Curiae*
295. Scholars Who Study The Transgender Population – *Amicus Curiae*
296. Schommer, Monica – *Amicus Curiae*
297. School Administrators from 29 States and the District of Columbia –  
*Amicus Curiae*
298. School District of South Orange and Maplewood – *Amicus Curiae*
299. Segal, Richard M. – Counsel for Appellee
300. Shah, Paru – *Amicus Curiae*
301. Shirk, Sarah – *Amicus Curiae*
302. Shutterstock, Inc. (SSTK) - *Amicus Curiae*
303. SisterReach – *Amicus Curiae*
304. Slanker, Jeffrey D. – Counsel for Appellant
305. Slavin, Alexander – Counsel for Amicus Curiae
306. Slough, Beverly – Board Member of Appellant

307. Smith, Nathaniel R. – Counsel for Appellee
308. Sniffen, Robert J. – Counsel for Appellant
309. Sniffen & Spellman, P.A. – Counsel for Appellant
310. Spellman, Michael P. – Counsel for Appellant
311. Spital, Samuel (counsel for LDF) – Counsel for Amicus Curiae
312. Spotify AB - Parent company for *Amicus Curiae* Spotify USA Inc.
313. Spotify Technology S.A. - Parent company for *Amicus Curiae* Spotify  
USA Inc
314. Spotify USA Inc. - *Amicus Curiae*
315. Spryszak, Delois Cooke – *Amicus Curiae*
316. SSAIS.org – *Amicus Curiae*
317. Steptoe & Johnson LLP – Counsel for Amicus Curiae
318. Stop Sexual Assault in Schools (SSAIS.org) – *Amicus Curiae*
319. Stork, Victoria Lynn – (Baker & Hostetler LLP) - Counsel for Amicus  
Curiae
320. SurvJustice – *Amicus Curiae*
321. Sutherland, Emily – *Amicus Curiae*
322. Taymore, Cyndy – *Amicus Curiae*
323. Teufel, Gregory H. – Counsel for Amicus Curiae
324. The American Academy of Pediatrics – *Amicus Curiae*

325. The Impact Fund – *Amicus Curiae*
326. The Law Office of Kirsten Doolittle, P.A. – Counsel for Appellee
327. The School Board of St. Johns County, Florida – Appellant
328. The Southwest Women's Law Center – *Amicus Curiae*
329. The Women's Law Center of Maryland – *Amicus Curiae*
330. Toomey, Joel – Magistrate Judge
331. Trans Youth Equality Foundation – *Amicus Curiae*
332. Tumblr, Inc. - *Amicus Curiae*
333. Twitter Inc. (TWTR) - *Amicus Curiae*
334. Tyler & Bursch, LLP. – Counsel for *Amicus Curiae*
335. Tyler, Robert H. – Counsel for *Amicus Curiae*
336. Tysse, James E. – (Akin Gump Strauss Hauer & Feld LLP) – Counsel  
for *Amicus Curiae*
337. Underwood, Barbara D. (Solicitor General for the State of New York)  
- Counsel for *Amici Curiae*
338. Union for Reform Judaism – *Amicus Curiae*
339. UniteWomen.org – *Amicus Curiae*
340. Upchurch, Bailey & Upchurch, P.A. – General Counsel to Appellant
341. Upchurch, Frank D. – General Counsel to Appellant
342. Valbrun-Pope, Michaelle – *Amicus Curiae*

343. Van Meter, Quentin – *Amicus Curiae*
344. Van Mol, Andre – *Amicus Curiae*
345. Vannasdall, David – *Amicus Curiae*
346. Vaughn, Craig – *Amicus Curiae*
347. Verizon Communications Inc. (VZ) - Parent company for *Amicus Curiae* Tumblr, Inc.
348. Vermont – *Amicus Curiae*
349. Vermont Network Against Domestic & Sexual Violence – *Amicus Curiae*
350. Virginia – *Amicus Curiae*
351. Virginia Sexual & Domestic Violence Action Alliance – *Amicus Curiae*
352. Vitale, Julie – *Amicus Curiae*
353. Voices of Hope – *Amicus Curiae*
354. Wallace, Matthew M. – Counsel for *Amicus Curiae*, Terminated
355. Washington – *Amicus Curiae*
356. Washoe County School District – *Amicus Curiae*
357. Wasick, Joanna (Baker & Hostetler LLP) - Counsel for *Amicus Curiae*
358. Weber, Thomas – *Amicus Curiae*

359. Weisel, Jessica M. – (Akin Gump Strauss Hauer & Feld LLP)  
Counsel for Amicus Curiae
360. Williams Institute at UCLA School of Law - *Amicus Curiae*
361. Willkie Farr & Gallagher LLP - Counsel for Amicus Curiae
362. Wilson, Bianca, D.M., Ph.D. - *Amicus Curiae*
363. Wisconsin Coalition Against Sexual Assault – *Amicus Curiae*
364. Women of Reform Judaism, and Men of Reform Judaism – *Amicus Curiae*
365. Women's Bar Association of the District of Columbia – *Amicus Curiae*
366. Women's Bar Association of the State of New York – *Amicus Curiae*
367. Women’s Center for Advancement – *Amicus Curiae*
368. Women’s Law Project - *Amicus Curiae*
369. Women's Law Project and Young Women United – *Amicus Curiae*
370. Women Lawyers On Guard Inc. (“WLG”) - *Amicus Curiae*
371. Women's Legal Defense and Education Fund – *Amicus Curiae*
372. Women’s Liberation Front – *Amicus Curiae*
373. Wong, Kyle – Counsel for Amicus Curiae
374. Working Assets, Inc. - Parent company for *Amicus Curiae* CREDO Mobile, Inc.

- 375. Wyoming Coalition Against Domestic Violence and Sexual Assault –  
*Amicus Curiae*
- 376. Xerox Corporation (XRX) - *Amicus Curiae*
- 377. Yelp Inc. (YELP) - *Amicus Curiae*
- 378. Young Women United - *Amicus Curiae*

The undersigned certifies that included in this CIP is a list of the publicly traded companies and corporations that have indicated an interest in the outcome of the case or appeal through their appearance as an *Amicus Curiae*. Upon information and belief, the undersigned is not required to enter this information into the web-based CIP.

Aside from those appearing as *Amicus Curiae*, the undersigned is unaware of any publicly traded companies or corporations that have an interest in the outcome of the case or appeal. The undersigned will enter this information into the web-based CIP contemporaneous with the filing of this Certificate of Interested Persons and Corporate Disclosure Statement.

**TABLE OF CONTENTS**

**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT ..... C-1**

**TABLE OF CONTENTS .....i**

**TABLE OF AUTHORITIES ..... ii**

**ARGUMENT..... 1**

    I.    The Bostock Decision.....2

    II.   Bostock Supports that the School Board’s Policy Does Not Violate Title IX.....3

    III.  Bostock Supports that the School Board’s Definition of Sex is Substantially Related to an Important Governmental Interest.....6

**CONCLUSION.....11**

**CERTIFICATE OF COMPLIANCE .....12**

**CERTIFICATE OF SERVICE .....12**

**TABLE OF AUTHORITIES**

**DECISIONAL AUTHORITY**

Bostock v. Clayton County, Georgia,  
590 U.S. \_\_\_\_, S. Ct., 2020 WL 3146686..... *passim*

Frontiero v. Richardson,  
411 U.S. 677 (1973) .....10

Pennhurst State Sch. & Hosp. v. Halderman,  
451 U.S. 1 (1981) .....6

Tuan Anh Nguyen v. I.N.S.,  
533 U.S. 53 (2001) .....9

United States v. Virginia,  
518 U.S. 515 (1996) .....10

**STATUTES**

20 U.S.C. § 1681..... *passim*

20 U.S.C. § 1686.....3

F.S. §1003.22 (2009).....7

**ADMINISTRATIVE RULES**

34 C.F.R. § 106.33 .....3, 5

F.A.C. Rule 6A-6.024 (1)(2008).....7

## ARGUMENT

The Supreme Court’s decision in Bostock v. Clayton County, Georgia, 590 U.S. \_\_\_\_, S. Ct., 2020 WL 3146686 (June 15, 2020) supports the School Board’s arguments as to why the district court should be reversed. As the School Board has argued throughout this case, separating bathrooms on the basis of biological sex (i.e. the real anatomical differences between men and women) – and nothing more – is constitutionally permissible and authorized by Title IX of the Education Amendments of 1972. Importantly, Adams has not argued that the separation of bathrooms based on sex is impermissible; instead, he disagrees with the manner in which the School Board defines sex. But sex, as the Supreme Court has now held, is a “distinct concept” from transgender status. Id. at \*11.

Any argument that Bostock lends support to affirming the district court is foreclosed by Adams’ legal counsel’s representations regarding the impact of Bostock at oral argument. Adams’ legal counsel represented, *in pertinent part*:

We are not persuaded that anything about Harris will add much to the analysis here, because here...Jackson v. Birmingham tells us that Title IX is a vastly different statute and is much broader in many ways. But this case is about a classification that everybody agrees exists on the face of the policy - so analysis from the Supreme Court about how to ferret out discriminatory intent by a decisionmaker - we don’t think that will add much to the analysis here - and this case really turns on whether the pure speculation and conjecture that has been offered by the School Board is adequate to justify this kind of

profoundly damaging discrimination against transgender students.

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...all this case is about is that every student should have the right to use the restroom matching their consistently asserted gender identity, including transgender students. That is the right cisgender students have right now. And the question is whether there is an adequate justification to deny that right to transgender students.

Oral argument at 25:45 through 26:28; 22:38 through 22:57.

Surely, the classification in this case draws lines based on sex. But the question is not, as the district court posed, whether Adams is a boy and therefore should be able to use the boys' bathroom. The question is whether classifying individuals for purposes of using the bathroom in schools on a definition of sex founded in the biological and physiological differences between boys and girls is actionable discrimination. Bostock's recognition that sex is distinct from transgender status warrants reversal of the district court's order. Unless this Court accepts Adams' invitation to define the term "sex" in contradiction to Supreme Court precedent, the School Board's argument carries the day.

### **I. The Bostock Decision**

The Supreme Court in Bostock held that "[a]n employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex." Bostock at \*3.

The Supreme Court expressly declined to extend its reasoning to other statutes that have similar prohibitions against discrimination based on sex, like Title IX, and other scenarios outside of those presented in the case, including the separation of bathrooms based on sex. Id. at \*17.

## **II. Bostock Supports that the School Board’s Policy Does Not Violate Title IX**

Similar to Title VII, which prohibits discrimination in the workplace “because of ... sex,” Title IX prohibits discrimination in educational programs and activities “on the basis of sex.” But, unlike Title VII, Title IX permits educational institutions to separate living facilities on the basis of sex, and its implementing regulations permit educational institutions to separate bathrooms, locker rooms and showering facilities on the basis of sex. 20 U.S.C. § 1686; 34 C.F.R. § 106.33. This key distinction between the statutory schemes at play, and the analysis in Bostock, supports reversal of the district court.

In Bostock, the Supreme Court recognized that transgender status is a distinct concept from sex and proceeded in its analysis on the assumption that “sex” referred “only to biological distinctions between male and female.” Bostock at \*\*4, 11. The entirety of the holding, and the reasoning that flows from it, are built on the premise that a woman who identifies as a man—a transgender man—is a woman. This recognition rejects the entirety of the rationale of the district court’s

decision which was built on the foundation that the question to decide was simply whether Adams is a boy and thus should be permitted to use the boys' bathroom.

The Bostock majority reasoned that firing a transgender female because of her transgender status was sex discrimination. Id. at \*15. In reaching this conclusion, the Supreme Court offered the following example:

Or take an employer who fires a transgender person who was identified as a male at birth but who now identifies as a female. If the employer retains an otherwise identical employee who was identified as female at birth, the employer intentionally penalizes a person identified as male at birth for traits or actions that it tolerates in an employee identified as female at birth. Again, the individual employee's sex plays an unmistakable and impermissible role in the discharge decision.

Id. at \*7. This conclusion can only be reached on a conception of sex founded in biology and not gender identity. Under Bostock's analysis, it is because the transgender female was a male that the termination was actionable, as the employer penalized a male for traits it would tolerate in females. Id. at \*10.

The Bostock decision is fatal to Adams' argument [Adams Response Brief at p. 46] ("Defendant's policy excludes Drew from the boys' bathroom on his transgender status") and crumbles the foundation of the district court's decision. Again, the district court's decision was founded on the conclusion that Title IX's use of the term "sex" was ambiguous and that the ambiguity should be resolved in favor of a reading that "sex" includes gender identity. [Doc. 192 at 63]. However, the term "sex" under Title VII, as interpreted by the Supreme Court, means the

biological and physiological differences between men and women, which is consistent with the clear and ordinary meaning of the term “sex” when Title IX was enacted a few short years after 1964. [School Board Initial Brief at pp. 34-42].

This is important in the context of the Title IX claim advanced by Adams, because unlike the employers in Bostock who were not permitted to terminate employees because of their sex by the terms of Title VII, the School Board is expressly authorized under Title IX’s implementing regulations to separate bathrooms on the basis of sex. See 34 C.F.R. § 106.33, which states *in pertinent part*:

A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students **of one sex** shall be comparable to such facilities provided for students **of the other sex**.

(emphasis added). Adams does not dispute that the School Board is allowed to separate bathrooms on the basis of sex and does not argue that sex-separated bathrooms must be abolished. [Adams Answer Brief at p. 52]. Rather, Adams contends that the School Board’s definition of sex to his exclusion from the boys’ bathroom is discriminatory. Essentially, Adams posits that the School Board misclassified him for purposes of bathroom usage in its schools.

But this is not *actionable* sex discrimination. Instead, the School Board’s policy of separating student bathrooms on the basis of biological sex is legally permissible, because the School Board is authorized under Title IX and its

regulations to separate bathrooms in this manner. In light of Bostock, the Supreme Court has now implicitly, if not explicitly recognized, that sex means biological sex.

As already argued at length in the School Board's Initial Brief, any ambiguities in Title IX must be resolved in favor of a finding that sex means biological sex and that the act of separating bathrooms on this criterion is not actionable, because Title IX, unlike Title VII, was enacted pursuant to the Spending Clause. When legislation is adopted pursuant to the spending clause, Congress is required "[to] speak with a clear voice" and "unambiguously" put state funding recipients on notice of the conditions of federal funds. Pennhurst State Sch. & Hosp. v. Halderman, 451 U.S. 1, 17 (1981). Neither the language of Title IX nor the decision in Bostock support that Congress intended for schools to be liable under Title IX for discrimination when it separates bathrooms on the basis of biological sex, a result that is permitted by the statute and its implementing regulations.

### **III. Bostock Supports that the School Board's Definition of Sex is Substantially Related to an Important Governmental Interest**

The School Board draws lines for bathroom usage based on the biological and physiological differences between boys and girls. Equal Protection Clause jurisprudence provides that governments may make sex-based classifications in certain instances so long as its justified. It is justified here, and the claims

advanced by Adams that the School Board's definition of sex is in violation of the Constitution is without merit in light of Bostock.

Because the School Board's policy draws lines based on sex, intermediate scrutiny applies without even considering Adams' gender identity. Adams' legal counsel agreed as much at oral argument. See Oral argument at 16:44 through 16:54 (arguing that intermediate scrutiny is triggered because the School Board's policy makes sex-based classifications). Under intermediate scrutiny, this Court is tasked with determining whether the School Board's policy of separating student bathrooms on the basis of biological sex is substantially related to an important governmental interest. Bostock expressed no intention of resolving claims of sex discrimination under the Constitution, but its reasoning that sex is distinct from transgender status again supports reversal in this case.

The district court's decision to distill the question to whether Adams is a boy<sup>1</sup> misses the point of the classification employed by the School Board and the

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<sup>1</sup> As the record reflects, Adams was treated differently not because he identified as a boy, but because he is not biologically a boy and lacks the characteristics of biological boys. Undisputed in this case is the fact that the medical documentation submitted by Adams at the time of his enrollment, which required a physical examination conducted by a health professional, demonstrated that he was biologically a female. See [Docs. 161 at Tr. 229-234; 162 at Tr. 50]; F.S. §1003.22 (2009); and F.A.C. Rule 6A-6.024 (1) (2008) ("Any health professional who is licensed in Florida or in the state where the student resided at the time of the health examination and who is authorized to perform a general health examination under

manner in which it must be tested. Whether the policy is substantially related to an important governmental interest, here the privacy and safety interests of students using the bathroom in schools, must be tested in light of the fact that Adams has never argued that sex-separated bathrooms should be abolished. The parties agree that the School Board may separate bathrooms on the basis of sex, and the lower court recognized that students have a privacy interest when using the bathroom.

The error is the district court's conclusion that the School Board's policy is not substantially related to an important governmental interest, because privacy interests are not implicated when Adams uses the bathroom. Accepting this rationale leads to an absurd result; that is, the abolition of sex-separated bathrooms. That is because, if privacy is not implicated given the manner in which Adams uses the bathroom, the same can be said for when any biological girl uses the boys' bathroom in the same manner as Adams. Adams argues for the permissibility of separating bathrooms on the basis of sex, but his rationale for why the School Board's policy is not substantially related to an important governmental interest, that privacy is not implicated when he uses the bathroom, undercuts the necessity for that very distinction. So the question is — how can these two positions coexist?

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such licensure shall be acceptable to certify that health examinations have been completed”).

They cannot. The only way to advance the important governmental interest of privacy in the bathroom is through a policy that makes a distinction based on the biological and physiological differences between the sexes.

Adams' legal counsel's response to this quandary was the assertion that the "quantum of harm" suffered by a transgender student is greater than the harm a biological girl that identifies as a girl would suffer if she was unable to use the boys' bathroom because of the policy. See Oral argument at 16:57 through 21:47. But harm is not part of Equal Protection Clause jurisprudence. Once the requirements of standing (including an injury) are established, the question is whether the definition of sex employed by the School Board is substantially related to an important governmental interest rendering that injury non-actionable.

Precedent counsels that classifications based on sex for these reasons is constitutionally permissible; that is, where real differences between the biology and physiology of boys and girls necessitate the classification. As the Supreme Court held in Tuan Anh Nguyen v. I.N.S., a classification built on a stereotype is one built on a "frame of mind resulting from irrational or uncritical analysis." 533 U.S. 53, 68 (2001). According to the Supreme Court:

[t]o fail to acknowledge even our most basic biological differences ... risks making the guarantee of equal protection superficial, and so disserving it. Mechanistic classification of all our differences as stereotypes would operate to obscure those misconceptions and prejudices that are real.

Id. at 73. Adams asks this Court to countenance the reduction of the real differences between men and women into stereotypes.

This case is not like Frontiero v. Richardson, where a distinction was made between men and women based on stereotypical notions about the earning power and ability of the sexes. 411 US 677, 688-91 (1973). This is not a case like United States v. Virginia, where the classification between men and women was based on stereotypical and paternalistic notions about women. 518 U.S. 515, 549-51 (1996). Rather, this is a case where the real differences in biology and physiology of the sexes were used to advance the important governmental interest of maintaining privacy in student bathrooms, and there is no evidence that some other benign classification could serve that interest just as well, or at all.

So, what of Bostock and the Equal Protection Claim in this case? Bostock's implicit finding that the term sex in Title VII means the biological differences between men and women, and its explicit finding that sex is distinct from transgender status, support the conclusion that defining sex along biological and physiological lines for purposes of using the bathroom was just the type of permissible distinction envisioned by the Supreme Court in cases like Nguyen. This merits reversal.

## CONCLUSION

Bostock recognizes the inescapable fact that sex is based on biology and is separate and distinct from an individual's transgender status. This common sense recognition entirely supports the policy adopted by the School Board and its arguments raised in this case. As such, the district court should be reversed.

Respectfully submitted this 2nd day of July, 2020.

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**CERTIFICATE OF COMPLIANCE**

I CERTIFY that this brief complies with this Court’s June 17, 2020, Order limiting supplemental briefs to no more than twenty (20) pages. I FURTHER CERTIFY that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6). This brief has been prepared in a proportionally spaced typeface using Microsoft Word Version 2007 in 14 point Times New Roman.

/s/ Terry J. Harmon  
\_\_\_\_\_ **TERRY J. HARMON**

**CERTIFICATE OF SERVICE**

I hereby certify one true and accurate copy of the foregoing document has been furnished by electronic means to all counsel of record as well as by U.S. Certified Mail, Postage Prepaid and Return Receipt Requested.

One originally signed version and six copies of this brief with tan covers have been delivered via Federal Express to:

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