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August 14, 2020

Delivered Via ECF

Patricia S. Connor, Clerk
United States Court of Appeals for the Fourth Circuit
Lewis F. Powell, Jr. United States Courthouse Annex
1100 East Main Street, Suite 501
Richmond, VA 23219

Re: G.G., by his next friend and mother, Deirdre Grimm v. Gloucester County School Board, No. 19-1952 (argued May 26, 2020)

Dear Ms. Connor:

The Gloucester County School Board respectfully responds to the August 7, 2020, letter from counsel for Appellee, which cites *Adams v. School Board of St. John's County, Florida*, No. 18-13592 (11th Cir. 2020), as supplemental authority.¹

Adams was decided by a divided court. As Chief Judge Pryor stated in his dissenting opinion at 73, “[a]lmost no aspect of [the majority’s] analysis emerges unscathed” from the thoughtful and careful reasoning of that dissent.

¹ The *Adams* opinion was issued on August 7, 2020, and the deadline for a rehearing *en banc* has not yet expired. Further, the Eleventh Circuit entered an Order on August 10, 2020, stating “A judge of this Court withholds issuance of the mandate in this appeal.” As such, reliance on *Adams* is premature.

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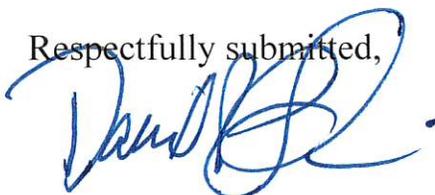
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The *Adams* majority's constitutional analysis is based largely on its conclusion that the School District's policy is "administered arbitrarily." Slip op. at 15. That is not the case here.

The majority's analysis also depends on the District Court's finding that Adams is "like any other boy." See slip op. at 4, 5 n.2. Indeed, the concept that Adams is actually a boy, anatomy notwithstanding, is central to the majority's analysis. The analysis is flawed because that finding is clearly erroneous. The *Adams* decision leaves *all boys* with *no choice* but to "enter a stall" when using the restroom to preserve their privacy. If not reversed, the District Court's decision in this case will do the same.

Grimm is indisputably *not* "like any other boy." He is anatomically different in a way that is highly relevant to the issues in this case – privacy in the use of restrooms at a public high school. See e.g., dissent at 60, quoting *Skinner v. Ry. Labor Execs.' Ass'n*, 489 U.S. 602, 626 (1989).

Respectfully submitted,



David P. Corrigan

DPC/

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