

## UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

## MOTION INFORMATION STATEMENT

Docket Number(s): 21-1365

Caption [use short title]

Motion for: Leave to File an Amicus Brief

Set forth below precise, complete statement of relief sought:

The Trevor Project respectfully moves for leave to file the accompanying brief as amicus curiae in support of Defendants-Appellees.

Soule v. Connecticut Association of Schools, Inc

MOVING PARTY: Amicus The Trevor Project

OPPOSING PARTY: None

☐ Plaintiff☐ Defendant☐ Appellant/Petitioner☐ Appellee/Respondent

MOVING ATTORNEY: Shireen Barday

OPPOSING ATTORNEY: None

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Court- Judge/ Agency appealed from: District of Connecticut - Judge Robert N. Chatigny

## Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):

☒ Yes ☐ No (explain):

Opposing counsel's position on motion:

☒ Unopposed ☐ Opposed ☐ Don't Know

Does opposing counsel intend to file a response:

☐ Yes ☐ No ☒ Don't Know

## FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has this request for relief been made below?

☐ Yes ☐ No

Has this relief been previously sought in this court?

☐ Yes ☐ No

Requested return date and explanation of emergency:

Is oral argument on motion requested?

☐ Yes ☒ No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set?

☐ Yes ☒ No If yes, enter date:

## Signature of Moving Attorney:

/s/ Shireen Barday

Date: May 1, 2023

Service by: ☒ CM/ECF ☐ Other [Attach proof of service]

# 21-1365

**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

Selina Soule, a minor by Bianca Stanescu, her mother, et al.,

*Plaintiff-Appellants,*

v.

Connecticut Association of Schools, Inc, et al.,

*Defendants-Appellees,*

*and*

Andraya Yearwood, et al,

*Intervenor Defendants-Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT, No. 3:20-cv-00201 (RNC)

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**UNOPPOSED MOTION FOR LEAVE TO FILE BRIEF OF AMICUS  
CURIAE THE TREVOR PROJECT, INC. IN SUPPORT OF  
DEFENDANTS-APPELLEES AND IN FAVOR OF AFFIRMANCE**

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## **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 Defendants-Appellees. 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.

Where, as here, *amicus curiae* has a unique perspective or specific information that can assist the court beyond what the parties can provide, courts routinely accept *amicus* briefs. *See Hamilton v. Beretta U.S.A. Corp.*, 264 F.3d 21, 27 (2d Cir. 2001) (noting that *amicus curiae* briefs were “helpful” to the court). The Trevor Project is the nation’s largest lesbian, gay, bisexual, transgender, queer, and questioning (“LGBTQ”) youth crisis intervention and suicide prevention organization . Because it offers crisis intervention services for LGBTQ youth, The Trevor Project is familiar with the factors that impact the experience and wellbeing of transgender youth. On issues concerning the equitable allowance of transgender youth participation in interscholastic sports, The Trevor Project offers specialized knowledge and can assist the Court in explaining why Connecticut’s policy allowing transgender youth to participate in interscholastic sports in accordance with their gender identity is necessary to continue the health and wellness benefits that currently flow from this policy.

### **INTEREST OF THE TREVOR PROJECT**

Founded in 1998, The Trevor Project is the nation's leading 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. Thousands of individuals use these services every month. By monitoring, analyzing, and evaluating data obtained from these services, The Trevor Project produces innovative research that brings new insight, with clinical implications, on issues affecting LGBTQ youth.

The Trevor Project has a special interest in supporting state actions premised on preventing discrimination against the transgender youth it serves. For decades, The Trevor Project has worked directly with transgender youth, many of whom have shared the joy of being able to participate in school sports in a manner that is consistent with their gender identity as well as the pain and stigma of being excluded from sports. The Trevor Project is therefore acutely aware of the lifesaving effect that inclusive and equitable policies like that of the Connecticut Interscholastic Athletic Conference can have on transgender youth, and thus can provide a critical perspective for the Court regarding the health and wellness benefits that would continue to flow to transgender youth if the District Court's decision is affirmed.

### **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 regarding the health and wellness benefits that would continue to flow to transgender youth if the District Court's decision is affirmed. The unique perspective provided by The Trevor Project is relevant to the disposition of this case because it sheds light on the positive effects of equitable policies like that of the Connecticut Interscholastic Athletic Conference as well as the severity of the potential negative outcomes in the absence of such policies.

### **CONCLUSION**

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

Dated: May 1, 2023

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

Pursuant to Fed. R. App. P. 27(d) and Local Rule 27.1, I hereby certify that this Motion complies with the applicable typeface and type style requirements. This Motion contains 575 words and was prepared using a proportionally spaced typeface using 14-point Times New Roman font.

Dated: May 1, 2023

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was electronically filed with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Dated: May 1, 2023

Respectfully submitted,

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**EN BANC BRIEF OF AMICUS CURIAE THE TREVOR PROJECT, INC.  
IN SUPPORT OF DEFENDANTS-APPELLEES AND IN FAVOR OF  
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**CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(a)(4)(A), the undersigned counsel certifies that The Trevor Project, Inc. (“The Trevor Project”) is a 501(c)(3) organization. The Trevor Project does not have a parent corporation. The Trevor Project is not a publicly traded company, and no publicly held corporation owns 10% or more of its stock.

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## **INTEREST OF THE TREVOR PROJECT**

Founded in 1998, The Trevor Project is the nation's leading 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. Thousands of individuals use these services every month. By monitoring, analyzing, and evaluating data obtained from these services, The Trevor Project produces innovative research that brings new insight, with clinical implications, on issues affecting LGBTQ youth.

The Trevor Project has a special interest in supporting state actions premised on preventing discrimination against the transgender youth it serves. For decades, The Trevor Project has worked directly with transgender youth, many of whom have shared the joy of being able to participate in school sports in a manner that is consistent with their gender identity as well as the pain and stigma of being excluded from sports. The Trevor Project is therefore acutely aware of the lifesaving effect that inclusive and equitable policies like that of the Connecticut Interscholastic Athletic Conference can have on transgender youth, and thus can provide a critical

perspective for the Court regarding the health and wellness benefits that would continue to flow to transgender youth if the District Court’s decision is affirmed.<sup>1</sup>

### **ARGUMENT**

The Connecticut Interscholastic Athletic Conference (“CIAC”) has promulgated a rule that allows transgender youth to continue participating in high school athletics in a manner consistent with their gender identity.<sup>2</sup> For many, high school athletics are a hallmark of their educational experience—this is as true for transgender youth as it is for their cisgender peers. Affirming the District Court’s order will ensure that transgender youth continue to have an equal opportunity to participate in and enjoy the health and wellness benefits from sports participation, consistent with Connecticut law. Moreover, CIAC’s policy will benefit cisgender women by discouraging the policing of bodies that are not stereotypically feminine and allowing them to participate on more diverse teams.

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<sup>1</sup> 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. All parties have consented to the filing of this brief.

<sup>2</sup> The term “gender identity” refers to an individual’s “deeply felt, inherent sense of their gender.” *Edmo v. Corizon, Inc.*, 935 F.3d 757, 768 (9th Cir. 2019). An individual’s gender identity is durable and cannot be changed by medical intervention. See GLAAD Media Reference Guide - Transgender, GLAAD, <https://www.glaad.org/reference/transgender>. Cisgender individuals have a gender identity aligning with their sex assigned at birth. *Id.*

The Trevor Project has spent decades serving the LGBTQ community by providing direct services to youth through telephone, chat, and text platforms, where staff and volunteers work directly to support LGBTQ youth. The Trevor Project developed these resources to prevent LGBTQ youth suicides and to provide mental health resources for LGBTQ youth. As a result of this work, The Trevor Project has developed a unique understanding of the harmful and lasting effects government-sponsored discrimination has on transgender youth. The Trevor Project's daily experiences with transgender youth, corroborated by years of research, confirm that policies allowing transgender youth to have an equal opportunity to join sports teams that align with who they are provide a myriad of benefits to their mental and physical health and wellbeing. In sharp contrast, denying transgender youth this opportunity is a serious form of discrimination, which sends a harmful message of stigmatization and exclusion and deprives transgender youth of the physical, psychological, and emotional benefits of school sports.

The Trevor Project therefore urges the Court to affirm the District Court's order in favor of Defendants-Appellees.

**I. Inclusive And Equitable Policies And Laws Benefit Transgender Youth's Health And Well-Being.**

By their inclusive nature, policies and laws like that of the CIAC help remove the stigma that transgender youth—a group that already experiences significant

harassment and discrimination—routinely face.<sup>3</sup> Equitable participation policies like that of the CIAC are inherently beneficial to transgender youth as those policies ensure that transgender youth are included and therefore send the positive message that those athletes are deserving of respect and equal opportunity.<sup>4</sup> The Trevor Project’s telephone lifeline and chat and messaging crisis services are routinely contacted by transgender youth from Connecticut and across the nation expressing the positive impact of sports participation as well as the heartbreaking effects of exclusion. Further, The Trevor Project has seen increases in crisis contacts from transgender youth when harmful and disparaging rhetoric is used against their community.<sup>5</sup>

The Trevor Project recognizes and attempts to heal the wounds caused by discrimination against the LGBTQ community by providing crisis intervention and suicide prevention services through telephone, chat, and text platforms.<sup>6</sup> The Trevor Project also hosts a social networking site called TrevorSpace that allows LGBTQ

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<sup>3</sup> See *Grimm v. Gloucester Cty. Sch. Bd.*, 972 F.3d 586, 617 (4th Cir. 2017).

<sup>4</sup> See, e.g., *Parents for Privacy v. Barr*, 949 F.3d 1210, 1239 n.21 (9th Cir. 2020) (recognizing the government’s interest in “assuring that [transgender youth] do not suffer the stigmatizing injury of discrimination by being denied access to multi-user bathrooms that match their gender identity”).

<sup>5</sup> Think Progress, *Transgender People Turned to Safety Hotlines in Drove in Response to Trump’s Erasure Memo* (Oct. 30, 2018), <https://archive.thinkprogress.org/trans-erasure-memo-causes-spike-calls-lgbtq-safety-hotlines-70508959958e/>.

<sup>6</sup> The Trevor Project, *Get Help Now*, <https://www.thetrevorproject.org/get-help-now/>.

youth to connect with one another.<sup>7</sup> The 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 can receive help from mental health professionals.<sup>8</sup>

As a result, The Trevor Project is acutely aware of how important inclusive participation policies are to the transgender youth it serves. The Trevor Project has documented the empirical impact of affirming policies and environments on transgender youth. The Trevor Project's 2023 National Survey on LGBTQ Youth Mental Health gathered data on discriminatory policies and environments reported by more than 28,000 LGBTQ individuals between the ages of 13 and 24.<sup>9</sup> 51% of the respondents identified as transgender or non-binary.<sup>10</sup> It is one of the most diverse surveys of LGBTQ youth mental health ever conducted. 64% of transgender and non-binary youth reported being the subject of discrimination due to their gender identity<sup>11</sup> and 27% of transgender and non-binary youth reported that they have been

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<sup>7</sup> The Trevor Project, *TrevorSpace*, <https://www.trevorspace.org/>.

<sup>8</sup> The Trevor Project, *Trainings for Youth-Serving Professionals*, <https://www.thetrevorproject.org/education/trainings-for-youth-servingprofessionals/>.

<sup>9</sup> The Trevor Project, *National Survey on the Mental Health of LGBTQ Young People* (2023), <https://www.thetrevorproject.org/survey-2023/>, [hereinafter, "Trevor Project National Survey"].

<sup>10</sup> *Id.* at 30.

<sup>11</sup> *Id.* at 16.

physically threatened or harmed due to their gender identity.<sup>12</sup> Nearly half of transgender girls and women have seriously considered suicide in the past year, and 16% actually attempted suicide in the same period.<sup>13</sup> These findings clearly demonstrate the benefits that affirming school environments have on a group that faces widespread institutional and daily discrimination.

External research corroborates The Trevor Project’s findings and underscores the importance for inclusive sports environments for transgender athletes.<sup>14</sup> Transgender students experience a greater incidence of emotional distress not because of their gender identity, but because of persistent discrimination by those

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<sup>12</sup> *Id.* at 15.

<sup>13</sup> *Id.* at 6.

<sup>14</sup> See Jonah P. DeChants et al., “*I Get Treated Poorly in Regular School—Why Add To It?*”: *Transgender Girls’ Experiences Choosing to Play or Not Play Sports*, TRANSGENDER HEALTH (2022), <https://www.liebertpub.com/doi/10.1089/trgh.2022.0066>; 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*, 68 MORBIDITY & MORTALITY WEEKLY REP. 67, 68 (2019), <https://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6803a3-H.pdf> (finding that approximately 27% of transgender students felt unsafe at school compared to 5% of cisgender males and 7% of cisgender females, resulting in more than half of transgender students reporting feeling sad and hopeless); Erin C. Wilson et al., *The Impact of Discrimination on the Mental Health of Trans\*Female Youth and the Protective Effect of Parental Support*, 20 AIDS AND BEHAVIOR 1, 7–8 (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5025345/> (detailing the negative impacts of social discrimination on transgender youth’s health and wellbeing).

around them.<sup>15</sup> For example, a recent study found that 32% of transgender youth were exposed to victimization and that victimization alone predicted mental health issues such as missing school because of distress and suicidal ideation.<sup>16</sup>

The intersectional effects of discriminatory laws and policies are also pervasive. The Trevor Project's latest research published in February 2023 found that Black transgender and non-binary youth reported nearly *double* the rate of having been physically threatened or harmed compared to Black cisgender LGBTQ youth and a staggering 77% of Black transgender and non-binary youth reported experiencing discrimination.<sup>17</sup> Devastatingly, one in four Black transgender and non-binary youth reported a suicide attempt in the past year.<sup>18</sup>

It should come as no surprise that support and acceptance, by contrast, benefit transgender youth significantly. For example, Black transgender and non-binary youth with high social support from friends had 39% lower odds of reporting a

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<sup>15</sup> 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>

<sup>16</sup> Tyler Hatchel et al., *Minority Stress Among Transgender Adolescents: The Role of Peer Victimization, School Belonging, and Ethnicity*, 28 J. CHILD & FAMILY STUDIES 2467, 2471–73 (2019), <https://link.springer.com/article/10.1007/s10826-018-1168-3>.

<sup>17</sup> The Trevor Project, *Research Brief: Mental Health of Black Transgender and Nonbinary Young People*, at 2 (Feb. 2023), [https://www.thetrevorproject.org/wp-content/uploads/2023/02/EMBARGOED\\_2.28.23\\_The-Trevor-Project-Research-Brief\\_Black-TGNB-Youth-Mental-Health.pdf](https://www.thetrevorproject.org/wp-content/uploads/2023/02/EMBARGOED_2.28.23_The-Trevor-Project-Research-Brief_Black-TGNB-Youth-Mental-Health.pdf).

<sup>18</sup> *Id.* at 1.

suicide attempt in the past year.<sup>19</sup> Similarly, The Trevor Project’s 2023 survey found that transgender and non-binary youth reported much lower rates of attempting suicide when they had a gender-affirming space at their school,<sup>20</sup> and empirical research corroborates that supporting transgender youth in accordance with their gender identities is positively correlated with improved mental health in those children.<sup>21</sup> 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.”<sup>22</sup> 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 non-transgender siblings.”<sup>23</sup>

Policies ensuring equal access to participation in sports are therefore vital in showing transgender students that their schools recognize their identities and value them as individuals. Affirming the District Court’s order in favor of Defendants-Appellees is necessary to support the health and wellbeing of transgender youth and protect them from the harms caused by discrimination.

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<sup>19</sup> *Id.* at 3.

<sup>20</sup> Trevor Project National Survey, at 4.

<sup>21</sup> Kristina R. Olson et al., *Mental Health of Transgender Children Who Are Supported in Their Identities*, 137 PEDIATRICS 1, 5 (2016).

<sup>22</sup> *Id.* at 5.

<sup>23</sup> *Id.* at 7.

## **II. Allowing Transgender Youth Access To Participation On Sports Teams That Correspond With Their Gender Identities Provides Many Benefits.**

Over the past two decades, The Trevor Project has counseled hundreds of thousands of transgender youth who face discrimination at school every day. In particular, many transgender youth feel stigmatized by policies barring them from joining sports teams aligned with their gender identity.

The Trevor Project maintains data about the people who use its crisis and suicide-prevention services. Many transgender students contact The Trevor Project in moments of crisis concerned about school sports.<sup>24</sup> Supervisors for The Trevor Project's crisis services report that sports-related issues come up regularly, as often as weekly.<sup>25</sup> These impressions are borne out by data collected on its telephone, chat, and text platforms, as dozens of transgender youth have reached out to The Trevor Project with specific concerns about participation in sports at their high schools.<sup>26</sup> Counselors often direct transgender students to websites providing resources for students, athletes, coaches, and administrators to find information about the inclusion of transgender athletes in sports.<sup>27</sup>

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<sup>24</sup> The information in this Section comes from anonymized data that The Trevor Project has collected, compiled, and reviewed on its telephone, chat, and text platforms as well as data collected as part of a 2020 survey about participation in sports. In order to protect the privacy of the youth using its services, The Trevor Project does not make this data publicly available.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *See, e.g.,* TransAthlete, *About Chris*, <https://www.transathlete.com/about-chris>.

Transgender youth regularly report that their participation in sports teams is integral to their lives and a source of positive energy.<sup>28</sup> Many students expressed that participating in sports built their self-esteem, created bonds with their peers, and supported their academic success.<sup>29</sup> For one transgender student who had been kicked out of their home, participating in athletics provided a source of resilience and hope.<sup>30</sup> Several other students who dealt with unsupportive parents found surrogate families on their teams.<sup>31</sup> One student said that their cross-country and track teammates “were basically the only friends [they] had.”<sup>32</sup> Another student explained how support from their coach helped them “alleviate gender dysphoria” and “stay healthy.”<sup>33</sup> Many students explained that playing sports improved their depression and anxiety.<sup>34</sup> These benefits are particularly important given the severe mental health problems that transgender youth experience after they face discrimination. *See supra* Section I.

Transgender students feel valued when treated fairly in sports but suffer emotional hardship when treated like they do not belong. Some transgender students

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<sup>28</sup> *Supra* note 24.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

worried about being bullied for participating in sports.<sup>35</sup> Transgender students hope to be judged for their contributions to their school sports teams, rather than for how well they meet traditional gender norms.<sup>36</sup> Despite earning their spots on their teams and working tirelessly during the off-season, several transgender students reported that they continually felt like they needed to prove themselves to their teammates just because they are transgender.<sup>37</sup> Inclusionary policies like CIAC's help enforce the notion that transgender athletes belong on sports teams consistent with their identity.

Even those transgender students who do participate on school teams often worry that their gender identity will hamper their athletic careers. Several students aspired to play sports in college, but feared that they would never be able to because of restrictions on transgender athletes.<sup>38</sup> One disabled transgender student said that they would have to give up on training for the Paralympic team because of the policies excluding transgender athletes.<sup>39</sup>

Students also contacted The Trevor Project because they feared that they would suffer adverse treatment from their school and teammates if they were to come

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<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

out as transgender.<sup>40</sup> Several transgender students expressed concern that their playing time would be cut or that they would be kicked off their team.<sup>41</sup> One student also reported concern that they would be barred from athletics if they spoke to their high-school counselor about their mental health or gender identity.<sup>42</sup> Unfortunately, a number of transgender students said that transitioning would be the end of their involvement in sports altogether.<sup>43</sup>

While the fear of losing their team was agonizing for many transgender students, the pain of actually being excluded from participating on a team was even worse.<sup>44</sup> One student told a counselor that “the only thing[] that would ever make me any happier is if I got sports back” and that their sport “is the thing I loved most in the world.”<sup>45</sup> Another explained that playing sports helps them “to feel and be athletic, to spend time with a group that accepts me for who I am, to hear my chosen name being used frequently, to reaffirm my innate athleticism.”<sup>46</sup>

Participation policies like that of CIAC are essential to ensuring that transgender youth maintain these positive experiences and are included in an important source of community and support. This is especially true given another

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<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

statistic identified through The Trevor Project's research; LGBTQ youth who report having at least one accepting adult were 40% less likely to report a suicide attempt in the past year.<sup>47</sup> Coaches, trainers, and others associated with sports can serve as that critical adult.

Inclusive participation policies remove the barriers and emotional hardships transgender youth already experience when participating in sports. Transgender students in Connecticut will experience similar forms of emotional turmoil and pain if this Court does not allow CIAC's policy to be enforced, as the policy removes unnecessary attention from a youth's transgender status and ensures that they are welcome on teams that align with who they are.

The common theme that The Trevor Project witnessed is that inclusive policies like that of CIAC send a message that transgender youth are wanted and welcome in their school community. In sharp contrast, exclusionary policies send the message that transgender youth are unwanted and alone. No young person should be barred from the benefits of sports participation—friendship, fun, and stress relief—due to their gender identity. Transgender youth fundamentally need and

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<sup>47</sup> The Trevor Project, *Research Brief: Accepting Adults Reduce Suicide Attempts Among LGBTQ Youth* (June 27, 2019), <https://www.thetrevorproject.org/2019/06/27/research-brief-accepting-adults-reduce-suicide-attempts-among-lgbtq-youth/>.

deserve the same respect, support, and access to school sports as their peers. CIAC's participation policy is a significant step in the right direction.

### **III. The Trevor Project's Experiences Are Consistent With Social Science Research Conducted By Other Leading Organizations.**

Researchers examining the effects of high school policies on transgender youth also found that institutional recognition of the importance of an individual's gender identity enhances the wellbeing of transgender youth. GLSEN's 2021 National School Climate Survey found that transgender and non-binary students had a 74.1% lower likelihood of experiencing discrimination regarding participation on school sports teams if their school had a policy or guideline that allowed participation in school sports matching one's gender identity.<sup>48</sup>

Connecticut's transgender youth in particular are at risk of suffering immense harm from the elimination of affirmation school environments. GLSEN's 2019 National Youth Climate Survey revealed that 68% of LGBTQ students in Connecticut schools heard negative remarks about transgender people.<sup>49</sup> Further, 32% of transgender students were prevented from using their chosen name or pronouns in school and 39% of transgender students were unable to use the school bathroom aligned with their gender.<sup>50</sup>

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<sup>48</sup> See *supra* note 58, at 74.

<sup>49</sup> GLSEN, *School Climate for LGBTQ Students in Connecticut* (2019), <https://www.glsen.org/sites/default/files/2021-01/Connecticut-Snapshot-2019.pdf>.

<sup>50</sup> *Id.*

Athletic participation provides many positive health and psychosocial benefits to youth, including psychological resiliency, feelings of connectedness, and positive self-image.<sup>51</sup> A meta-analysis of prior research on the benefits of participation in sports found that the most commonly reported psychological and social health benefits were improved self-esteem, social interaction, and fewer depressive symptoms.<sup>52</sup> In particular, team sports were linked to improved health outcomes because of the social nature of the participation.<sup>53</sup> Allowing youth to take part in sports is particularly important in the context of school, as schools are “the primary social setting in which” youth make friends, learn social skills, and develop self-efficacy.<sup>54</sup> Studies also show a significant relationship between participation in

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<sup>51</sup> See U.S. DEP’T HEALTH & HUM. SERVS., THE NATIONAL YOUTH SPORTS STRATEGY 49 (2019), [https://health.gov/sites/default/files/2019-10/National\\_Youth\\_Sports\\_Strategy.pdf](https://health.gov/sites/default/files/2019-10/National_Youth_Sports_Strategy.pdf); Erin E. Buzuvis, *Transgender Student-Athletes and Sex-Segregated Sport: Developing Policies of Inclusion for Intercollegiate and Interscholastic Athletics*, 21 SETON HALL J. SPORTS & ENT. L. 1, 46–47 (2011).

<sup>52</sup> Rochelle M. Eime et al., *A Systematic Review of the Psychological and Social Benefits of Participation in Sport for Children and Adolescents: Informing Development of a Conceptual Model of Health through Sport*, 10 INT’L J. BEHAV. NUTRITION & PHYSICAL ACTIVITY 1, 13–16 (2013), <https://ijbnpa.biomedcentral.com/track/pdf/10.1186/1479-5868-10-98>.

<sup>53</sup> *Id.* at 16.

<sup>54</sup> Deana F. Morrow, *Social Work Practice with Gay, Lesbian, Bisexual, and Transgender Adolescents*, 85 FAMS. SOC’Y 91, 93 (2004).

sports and academic achievement.<sup>55</sup> These benefits are particularly valuable for transgender youth, who face an elevated risk of isolation, harassment, and suicide.<sup>56</sup>

Unfortunately, The Trevor Project's own data shows that transgender and non-binary youth had significantly lower rates of participation in sports compared to their cisgender LGBTQ peers. The decreased participation in sports by transgender and non-binary students is unsurprising given the lack of institutional support by schools. In a recent study focused on LGBTQ youth, researchers found that students felt unsafe in school athletic contexts due to experiences of discrimination from their peers and inaction from athletic staff.<sup>57</sup> GLSEN's 2021 National School Climate Survey revealed that 58.9% of LGBTQ students reported

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<sup>55</sup> See, e.g., Ryan D. Burns et al., *Sports Participation Correlates With Academic Achievement: Results From a Large Adolescent Sample Within the 2017 U.S. National Youth Risk Behavior Survey*, 127 PERCEPTUAL & MOTOR SKILLS 448, 448 (2020), <https://journals.sagepub.com/doi/abs/10.1177/0031512519900055> (finding that adolescents participating in one or more sports teams throughout the past year also reported higher academic achievement compared with adolescents participating in zero sports teams); see also Suzanne Le Menestrel & David F. Perkins, *An Overview of How Sports, Out of School Time, and Youth Well Being Can and Do Intersect*, 115 NEW DIRECTIONS FOR YOUTH DEV. 13, 15 (2007).

<sup>56</sup> See Sari L. Reisner et al., *Mental Health of Transgender Youth in Care at an Adolescent Urban Community Health Center: A Matched Retrospective Cohort Study*, 56 J. ADOLESCENT HEALTH 274, 274 (2015) (finding that transgender youth are at greater risk for negative mental health outcomes than cisgender youth), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4339405/>.

<sup>57</sup> Scott B. Greenspan, *LGBTQ + and Ally Youths' School Athletics Perspectives: A Mixed-Method Analysis*, 16 J. LGBT YOUTH 403, 403 (2019), <https://www.tandfonline.com/doi/full/10.1080/19361653.2019.1595988?scroll=top&needAccess=true>.

experiencing LGBTQ-related discriminatory policies or practices at school, and 11.3% of LGBTQ students reported being prevented or discouraged from participating in school sports by school staff or coaches because they were LGBTQ.<sup>58</sup> Additionally, 61.6% of LGBTQ students reported feeling very uncomfortable talking with an athletic coach or physical education teacher about LGBTQ issues.<sup>59</sup>

Yet, studies also show that institutional support of transgender youth has an immensely positive effect on their health and wellbeing. Research shows that transgender youth living in their affirmed gender, rather than their sex assigned at birth, had significantly lower rates of depression and higher self-worth compared to those who did not live in accordance with their gender identities.<sup>60</sup> In addition, transgender youth who socially transition and were living in their affirmed gender had rates of depression and anxiety that were comparable to their cisgender

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<sup>58</sup> GLSEN, The 2021 National School Climate Survey at xvii (2021), <https://www.glsen.org/sites/default/files/2022-10/NSCS-2021-Full-Report.pdf>.

<sup>59</sup> *Id.* at 52.

<sup>60</sup> See, e.g., Lily Durwood et al., *Mental Health and Self-Worth in Socially Transitioned Transgender Youth*, 56 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 116, 120 (2017) (“Our findings of normative levels of depression, slightly higher rates of anxiety, and high self-worth in socially transitioned transgender children stand in marked contrast with previous work with gender-nonconforming children who had not socially transitioned. Those studies overwhelmingly reported markedly higher rates of anxiety and depression and lower self-worth, with disproportionate numbers of children in the clinical range.”).

counterparts.<sup>61</sup> In line with these research studies, leading medical and mental health organizations stress the importance of a successful social transition to the health and wellbeing of transgender youth.<sup>62</sup>

For many transgender youth, a key element of their successful social transition is the opportunity to participate on sports teams in a manner consistent with their gender identities.<sup>63</sup> CIAC's participation policy will enable transgender women and girls to enjoy the myriad benefits that athletics provide, from physical and mental health to academic success.

#### **IV. Leading National Sports Organizations Recognize The Importance Of Including Transgender Women And Girls And Of Not Policing Athletes' Bodies.**

Leading sports organizations across the country have also recognized the importance of maximizing the inclusion of transgender women and girls in sports and working to reduce barriers for transgender athletes.<sup>64</sup> At the high school level,

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<sup>61</sup> *Id.*; see also Olson, *supra* note 21, at 4–5; see also The Trevor Project, *Research Brief: Gender-Affirming Care for Transgender Youth* (Jan. 29, 2020), <https://www.thetrevorproject.org/2020/01/29/research-brief-gender-affirming-care-for-youth/>.

<sup>62</sup> APA, *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People*, 70 AM. PSYCHOLOGIST 832, 843 (2015); see also COMM. ON ADOLESCENCE, *Office-Based Care for Lesbian, Gay, Bisexual, Transgender, and Questioning Youth*, 132 PEDIATRICS 198, 201 (2013).

<sup>63</sup> Scott Skinner-Thompson & Ilona M. Turner, *Title IX's Protections for Transgender Student Athletes*, 28 WIS. J.L. GENDER & SOC'Y 271, 296 (2013).

<sup>64</sup> See, e.g., U.S. Tennis Ass'n, *Transgender Inclusion Policy*, <https://www.usta.com/en/home/about-usta/who-we-are/national/transgender-inclusion-policy.html>; USA Hockey, *USA Hockey Transgender Athlete Eligibility*

administrators recognize the urgent need to include and support transgender athletes. Back in 2015, the National Federation of State High School Associations published an article describing the inclusion of transgender students on high school athletic teams as “a key issue across the country” in light of the “integral” role athletics play in extracurricular programs, and the role of sports in “developing positive self-esteem and a connection to school and community as well as a deterrent to the use of alcohol, drugs, tobacco or other unhealthy activities.”<sup>65</sup> The article concluded that allowing transgender students to participate according to their affirmed gender identity is “consistent with the educational values of equity and fairness for all students.”<sup>66</sup> Moreover, organizations serving youth and women in sports are continuing to revise and clarify their policies to ensure greater acceptance and participation for transgender athletes.<sup>67</sup>

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*Policy*, [https://cdn3.sportngin.com/attachments/document/8a0b-1766565/USA\\_Hockey\\_Transgender\\_Athlete\\_Eligibility\\_Policy.pdf?\\_ga=2.19077567.68179676.1548013415-499535307.1547832653](https://cdn3.sportngin.com/attachments/document/8a0b-1766565/USA_Hockey_Transgender_Athlete_Eligibility_Policy.pdf?_ga=2.19077567.68179676.1548013415-499535307.1547832653).

<sup>65</sup> Pat Griffin, Nat’l Fed’n of St. High Sch. Ass’n, *Developing Policies for Transgender Students on High School Teams* (Sept. 8, 2015), <https://www.nfhs.org/articles/developing-policies-for-transgender-students-on-high-school-teams/>.

<sup>66</sup> *Id.*

<sup>67</sup> See, e.g., Women’s Sports Found., *Participation Of Transgender Athlete In Women’s Sports*, <https://www.womenssportsfoundation.org/wp-content/uploads/2016/08/participation-of-transgender-athletes-in-womens-sports-the-foundation-position.pdf>.

Leading organizations devoted to promoting women and girls in sports have recognized the importance of including and accommodating transgender athletes. More than twenty organizations committed to women's rights, including the Tucker Center for Research on Girls & Women in Sport, Women Leaders in College Sports, and the Women's Sports Foundation, published a joint statement emphasizing their support for "the full inclusion of transgender people in athletics."<sup>68</sup> The organizations highlighted "their long history of advocating for fairness in sports and opportunities for all women to benefit from athletic participation," and noted that "harm to *all* women and girls" occurs when transgender women and girls are "denied opportunities to participate."<sup>69</sup> Consistent with The Trevor Project's own findings, these organizations underscored that "when transgender people are excluded from participation on teams that align with their gender identity, the result is often that they are excluded from participating altogether."<sup>70</sup> In concluding, the organizations

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<sup>68</sup> *Statement of Women's Rights and Gender Justice Organizations in Support of Full and Equal Access to Participation in Athletics for Transgender People* (Apr. 2019), <https://nwlc.org/wp-content/uploads/2019/04/Womens-Groups-Sign-on-Letter-Trans-Sports-4.9.19.pdf>; *see also Statement from Women's Rights And Gender Justice Organizations in Support of the Equality Act* (Mar. 17, 2021), <https://now.org/media-center/press-release/statement-of-womens-rights-and-gender-justice-organizations-in-support-of-the-equality-act/> ("Girls and women who are transgender should have the same opportunities as girls and women who are cisgender to enjoy the educational benefits of sports, such as higher grades, higher graduation rates, and greater psychological well-being.")

<sup>69</sup> *Id.* (emphasis added).

<sup>70</sup> *Id.*

emphasized the need to “treat[] all people including transgender people, with fairness and respect.”<sup>71</sup>

Studies have shown also that banning transgender women and girls from athletic participation often imposes a harm on cisgender women (particularly women of color)<sup>72</sup> and encourages the policing of bodies that fall outside of stereotypical notions of femininity.<sup>73</sup> Natural body diversity is an inherent part of sports, and laws and policies that police the bodies of girls and women will lead to more stereotyping and discrimination. Girls and women already have far fewer opportunities to play sports than boys and men do, which is precisely why Title IX was enacted—“to ensure that all students have equal access to education opportunities, *regardless of gender*.”<sup>74</sup> The National Women’s Law Center has underscored that “Title IX’s bar on sex discrimination extends to protect the rights of transgender and intersex girls and women to play on school sports teams consistent with their gender identity.”<sup>75</sup>

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<sup>71</sup> *Id.*

<sup>72</sup> Derrick Clifton, *Anti-Trans Sports Bills Aren’t Just Transphobic — They’re Racist, Too* (Mar. 31, 2021), THEM, [https://www.them.us/story/anti-trans-sports-bills-transphobic-racist?\\_sm\\_au\\_=iHVRJ0jRLJLPvM7MFcVTvKQkcK8MG](https://www.them.us/story/anti-trans-sports-bills-transphobic-racist?_sm_au_=iHVRJ0jRLJLPvM7MFcVTvKQkcK8MG) (underscoring that while most lawmakers could not name a single example of transgender girls competing in local sports, the one case many lawmakers cited was that of two young Black women who won 15 combined track championships in Connecticut between 2017 and 2019).

<sup>73</sup> Nat’l Women’s L. Ctr., *Fulfilling Title IX’s Promise: Let Transgender and Intersex Students Play* (June 14, 2022), <https://nwlc.org/resource/trans-and-intersex-inclusion-in-athletics/>.

<sup>74</sup> *Id.* (emphasis added).

<sup>75</sup> *Id.*

The clear consensus among organizations working on the frontlines to advance the interests of women and girls in sport is that reducing barriers to participation for transgender women and girls is an urgent priority, and allowing transgender women and girls to play on teams aligning with their gender identity is an essential step toward increasing participation and fairness for *all* women and girls. CIAC's participation policy is consistent with these important conclusions.

### **CONCLUSION**

Transgender women and girls simply want the same acceptance and opportunities as their peers. CIAC's inclusive participation policy ensures that transgender youth are able to participate in sports and takes a significant step in preventing incredibly harmful prejudices and stigma against transgender youth. Even for those transgender youth who may never join a sports team, benefits flow from knowing that their schools welcome them with equal opportunity under the law. For the foregoing reasons, The Trevor Project respectfully requests that this Court affirm the District Court's order granting Defendants-Appellee's motion to dismiss and enter judgement in favor of Defendants-Appellees.

Dated: May 1, 2023

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**CERTIFICATE OF COMPLIANCE**

Pursuant to Fed. R. App. P. 29(a)(5)(G) and Local Rules 29.1(c) and 32.1(a)(4)(A), I certify that this brief complies with the length limitation because this brief contains 4,817 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

Pursuant to Fed. R. App. P. 32(a)(5) and 32(a)(6), as well as Local Rule 32.1, this brief complies with the typeface and type style requirements because this brief has been prepared in a proportionately spaced typeface using Times New Roman 14-point font.

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I hereby certify that a true and correct copy of the foregoing was electronically filed with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system.

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