

**BOSE
McKINNEY
& EVANS LLP**

ATTORNEYS AT LAW

Philip R. Zimmerly

Direct Dial: (317) 684-5116

Fax: (317) 223-0116

E-Mail: PZimmerly@boselaw.com

January 4, 2023

VIA UPS NEXT DAY AIR

Office of the Clerk
United States Court of Appeals for the Seventh Circuit
Everett McKinley Dirksen United States Courthouse
219 South Dearborn Street
Room 2722
Chicago, Illinois 60604

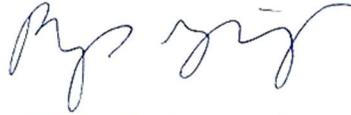
RE: Supplemental Authority pursuant to Fed. R. Civ. P. 28(j)
B.E., et al. v. Vigo County Sch. Corp., et al., No. 22-2318, and
A.C., et al. v. Metro. Sch. Dist. of Martinsville, et al., No. 22-1786

Dear Clerk:

Pursuant to Fed. R. App. P. 28(j) and Cir. R. 28(e), Appellants cite to *Adams v. School Board of St. Johns County, Florida*, No. 18-13592, 2022 WL 18003879 (11th Cir. Dec. 30, 2022) (en banc), as additional authority in this consolidated appeal. The *Adams* decision is offered to supplement pages 22, 24, and 35 of the Brief of Appellants and pages 6-7 of the Reply Brief, where Appellants provided this Court with notice of the Eleventh Circuit's pending *en banc* review of substantially similar legal issues under the Equal Protection Clause of the Fourteenth Amendment and Title IX of the Education Amendments Act of 1972. In *Adams*, the Eleventh Circuit *en banc* held that "separating school bathrooms based on biological sex passes constitutional muster and comports with Title IX." *Id.* at *1. In its Equal Protection analysis, the court recognized students' "privacy interests hinge on using the bathroom away from the opposite sex and shielding one's body from the opposite sex, not using the bathroom in privacy." *Id.* at *9. With regard to its Title IX analysis, the court relied upon 20 U.S.C. § 1686 and 34 C.F.R. § 106.33, recognizing that any contrary policy decisions "should be left to Congress." *Id.* at *13-18.

I hereby certify that the body of this letter does not exceed 350 words as allowed by FRAP 28(j).

Sincerely,



Philip R. Zimmerly

PRZ

cc: Kenneth J. Falk, Esq.
Stevie J. Pactor, Esq.
Megan Stuart, Esq.
Clifford Berlow, Esq.
Thomas M. Fisher, Esq.
Mark S. Grube, Esq.
Shannon Mintor, Esq./Asaf Orr, Esq./ Christopher Stoll, Esq./ Joseph J.
Wardenski, Esq.
Dimitri Portnoi, Esq.
Cynthia C. Robertson, Esq.