

No. 15-2056

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

G.G., by his next friend and mother, **DEIRDRE GRIMM**,

Plaintiff-Appellant,

v.

GLOUCESTER COUNTY SCHOOL BOARD,

Defendant-Appellee.

**On Appeal from the United States District Court
for the Eastern District of Virginia
Newport News Division**

**UNOPPOSED MOTION FOR LEAVE TO FILE BRIEF OF AMICI
CURIAE IN SUPPORT OF APPELLANT**

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**MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE
IN SUPPORT OF APPELLANT**

Amici are a transgender student, Evie Priestman, and seven public interest organizations whose professional employees have served and supported transgender youth: Gay, Lesbian & Straight Education Network (“GLSEN”); Gay-Straight Alliance Network (“GSA Network”); Gender Benders; iNSIDEoUT; ROSMY; Time Out Youth; and We Are Family.¹ *Amici* hereby move, by and through the undersigned and pursuant to Fed. R. App. P. 29, for leave to file a brief as *amici curiae* in this matter. *Amici*’s proposed brief, attached hereto, urges this Court to grant Plaintiff-Appellant’s request to reverse the judgment of the trial court below in issuing an order denying Plaintiff’s motion for preliminary injunction.

Amici offer the Court important perspective on the ways in which school restroom policies affect transgender students in general. As *Amici*’s brief will show, Plaintiff-Appellant G.G.’s experiences are not unique and are in fact consistent with the experiences of transgender students throughout the Fourth Circuit and the nation. Additionally, *Amici* and their clients residing within the Fourth Circuit have an interest in the outcome of this Court’s decision, as school policies in each of their jurisdictions could be affected by the Court’s findings. In

¹ Descriptions of each *amicus* are included in the proposed Brief of Amici Curiae filed herewith.

granting this motion this Court will allow *Amici* to present the interests of transgender students to the Court for consideration in this important and precedential matter.

Amici have consulted with counsel for all parties about the filing of the proposed brief. Although Appellees have not consented to its filing, they have authorized *Amici* to represent to the Court that the Appellees do not intend to oppose this motion.

Respectfully submitted,

s/ David Dinielli

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing motion was served on all parties or their counsel through the CM/ECF system.

Dated: October 28, 2015

s/ David Dinielli

David Dinielli

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**BRIEF OF AMICI CURIAE GENDER BENDERS ET AL.
IN SUPPORT OF PLAINTIFF-APPELLANT AND URGING REVERSAL**

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**STATEMENT REGARDING CONSENT TO FILE, AUTHORSHIP, AND
MONETARY CONTRIBUTIONS**

No party opposes the filing of this brief. Pursuant to Rule 29(c) of the Federal Rules of Appellate Procedure, Amici Curiae state that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than Amici Curiae or their counsel made a monetary contribution to its preparation or submission.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(c), *Amici Curiae* Gender Benders; GLSEN; GSA Network; iNSIDEoUT; ROSMY; Time Out Youth; and We Are Family state that they have no parent corporations, and no publicly held company owns any stock in any of *Amici*.

Dated: October 28, 2015

Respectfully submitted,

s/David Dinielli

David Dinielli

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INTERESTS AND IDENTITIES OF AMICI CURIAE

Amici include one transgender high school student and seven public interest organizations whose professional employees have served and supported transgender youth. *Amici* have witnessed firsthand the harms of policies that exclude transgender students from the restroom matching their gender identity. Relying on their extensive experience and expertise, *Amici* respectfully request that this Court reverse the judgment of the trial court below.

Evie Priestman is a sixteen-year-old transgender boy who attends Wakefield High School in Arlington County, Virginia. He recently delivered a TEDx talk in Arlington, Virginia about how the Arlington community is unique in its acceptance of kids with all kinds of differences, including gender. TEDx Arlington, <http://tedxarlington.com/speakers-2/evie-priestman/> (last visited Oct. 28, 2015). He has also been featured in a New York Times editorial series called Transgender Today. *Evie Priestman*, N.Y. Times, <http://www.nytimes.com/interactive/projects/storywall/transgender-today/stories/evie-priestman> (last visited Oct. 28, 2015).

Gay, Lesbian & Straight Education Network (“GLSEN”) is the leading national education organization focused on ensuring safe schools for all students. Founded in 1990, GLSEN strives to ensure that each member of every school community is valued and respected regardless of sexual orientation or gender

identity or expression. As a means of achieving this aim, GLSEN conducts extensive and original research to create and refine evidence-based solutions for K-12 education; authors developmentally appropriate resources for educators to use throughout their school community; partners with key decision-makers to ensure that comprehensive and inclusive safe schools policies are considered, passed, and implemented; partners with dozens of national education organizations to leverage shared expertise; and empowers students to effect change by supporting student-led efforts to positively impact their own schools and local communities.

Gay-Straight Alliance Network (“GSA Network”) is a next-generation racial and gender justice LGBT organization. Based in Oakland, California, GSA Network provides technical assistance to statewide and local organizations around the country, such as Time Out Youth (another *Amicus*), in running youth-empowerment programs. GSA Network also works closely with California youth. In California, GSA Network hosts a youth council that enables young people to learn about their rights as lesbian, gay, bisexual, and transgender (“LGBT”) students, how they can advocate to their school boards and state legislatures, and how to start and maintain gay-straight alliances (“GSAs”). GSA Network focuses its efforts, training, and programming on individuals who are marginalized in multiple ways, for example, individuals who are transgender *and* living in poverty, or individuals who are genderqueer *and* Black. The youth who are most heavily

involved in GSA Network's programs are low-income transgender and queer youth of color.

Gender Benders is a membership organization that meets both virtually on Facebook and physically in person. The mission of the group is to create safe and supportive spaces for transgender and gender-nonconforming individuals and allies. Gender Benders connects people with resources, provides support, and initiates transgender-inclusive community change through social action. Gender Benders' vision is that every transgender person has an opportunity to find an affirming community. 400 individuals are members of the online group, and fifty to sixty people attend physical meetings in upstate South Carolina. Most of the group's meetings take place in Greenville, South Carolina, but they also meet in Spartanburg, Clemson, and Anderson. The youngest member of the group is thirteen, and the oldest are in their sixties. On average, members are in their mid-twenties. The group is mostly white, with fewer than ten percent of members identifying as people of color.

iNSIDEoUT is a non-profit organization based in Raleigh, North Carolina that serves between three hundred and five hundred youth each year. The organization is run by a board of youth who are all teenagers, and the overall mission of the organization is to empower LGBTQ young people to support one another and actualize their goals together. The organization works with the youth

board to plan events throughout the year like queer prom, “Queernival,” and overnight retreats. Most youth in the organization are lesbian, gay, bisexual, or straight and not transgender. However, the youth board usually contains at least one transgender member. The organization also provides support to students forming gay-straight alliances in schools.

ROSMY is a twenty-five year old nonprofit based in Richmond, Virginia that serves 250 youth annually in the Richmond and Charlottesville areas. Youth support groups form the core of ROSMY’s services. In addition to a general support group for lesbian, gay, bisexual, transgender, and allied youth, ROSMY hosts support groups for transgender youth and middle school youth. ROSMY began hosting the transgender support group four years ago and the middle school support group two years ago. As ROSMY has grown, the population it serves has shifted. While there used to be only one transgender youth in the transgender support group, the number of youth in the transgender support group outnumbers the youth in the general support group today. ROSMY also hosts drop-in hours at its physical location in Richmond, a twenty-four hour support hotline, and annual activities for youth including prom.

Time Out Youth is the largest lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) youth organization in the U.S. Southeast/Mid-Atlantic. It is based in Charlotte, North Carolina and directs its services to youth ages eleven to twenty

who live in Mecklenburg and surrounding counties. The aim of Time Out Youth is to empower LGBTQ youth and to create a safe space for LGBTQ youth to build community. Time Out Youth executes a variety of programs for LGBTQ youth including an emergency financial assistance program, a host home program, a teen dating and violence awareness program, and Q Tribe, a support group for transgender youth. Time Out Youth conducts presentations for GSAs and hosts a state-wide GSA network that provides technical assistance and support to GSAs throughout North Carolina. Most of the students that Time Out Youth serves identify as transgender or gender-diverse, and the majority of youth who physically attend programs at Time Out Youth often identify as transgender.

We Are Family is a nonprofit organization based in Charleston, South Carolina that provides support, leadership development, and direct services to about sixty mostly white LGBT youth each year. We Are Family hosts two support groups, one for transgender youth ages seven to fourteen, and another for transgender youth ages sixteen to twenty-three. Between nine and twelve youth attend the younger group, and between sixteen and twenty attend any given meeting of the older group, though it has more than sixty members. Other youth do not attend the support groups but participate in advocacy meetings. We Are Family also provides funding to support gaps in income for transgender people in an effort called the Trans Love Fund.

INTRODUCTION AND SUMMARY OF ARGUMENT

The District Court failed to appreciate the harm G. and other transgender students experience as a result of their schools' exclusionary restroom policies (policies that prohibit transgender students from using the restroom that matches their gender identity) and identified G.'s claims of hardship as "largely unsubstantiated." JA 163. However, *Amici's* narratives substantiate G.'s claims and illuminate the practical effects of exclusionary restroom policies on the day-to-day lives of transgender boys and girls as they stand in line in the cafeteria, walk to classes with friends, and carefully plan whether and when they will use the restroom that day.

Exclusionary restroom policies cause irreparable harm by (1) stigmatizing transgender students; (2) failing to provide transgender students with realistic access to any restroom; (3) forcing transgender students to take extreme measures to avoid the restroom altogether; and (4) obstructing treatment for gender dysphoria. Stigma may lead to a host of secondary consequences, causing transgender students to internalize negative messages about themselves, experience serious mental health conditions including depression and suicidality, endure increased harassment, and struggle to maintain positive social relationships. Delaying or avoiding restroom use—a common consequence of exclusionary restroom policies—also is harmful, causing transgender students to suffer

discomfort and infection that distracts them from learning. These harms are compounded by the social context in which exclusionary restroom policies operate. In our nation's public schools, transgender students are common targets of harassment and discrimination. By contrast, restroom policies that permit transgender students to use the restroom matching their gender identity treat transgender students equally and enable them to stay in school and thrive. Under these policies, transgender students have the same educational opportunities as others.

ARGUMENT

I. Exclusionary Restroom Policies Harm Transgender Students

A. Exclusionary Restroom Policies Stigmatize Transgender Students

Exclusionary restroom policies stigmatize transgender students by singling them out for restrictions that are not imposed upon non-transgender students. Non-transgender students can use the restroom that matches their gender identity, but transgender students cannot. These policies mark all transgender students as different, as individuals whose gender identities are meaningfully distinct from the gender identities of non-transgender students. The resulting stigma causes some transgender students (1) to internalize negative messages about themselves; (2) to experience serious mental health conditions including depression and suicidality;

(3) to endure increased harassment; and (4) to struggle to maintain positive social relationships.

1. Stigma Causes Transgender Students To Internalize Negative Messages About Themselves

Ivy Hill, Co-Founder of Gender Benders, listed in a telephone interview a series of messages that transgender youth may internalize as a result of exclusionary restroom policies, including: “Our identities are not valid. We are not real. We are defined by our bodies, and we will never be more than our bodies. We are less than human. There needs to be some fear about even using a restroom with us. We are shameful.” Telephone Interview with Ivy Hill, Co-Founder, Gender Benders (Oct. 5, 2015) [hereinafter Gender Benders Interview].

Todd Rosendahl, Director of School Outreach at Time Out Youth, identified another negative message that transgender youth internalize: “A transgender girl who came out during her senior year was forced to use a single-stall restroom located in a remote corner of the school building. She saw her school’s attitude toward her reflected in the restroom’s location. Just like the restroom she was forced to use, she should be hidden in a corner where she wouldn’t be seen or heard.” Telephone Interview with Todd Rosendahl, Dir. of Sch. Outreach, Time Out Youth (Sept. 30, 2015) [hereinafter Time Out Youth Interview].

The source of such messages makes them particularly potent for transgender youth: “When you’re hearing this from entities that are supposed to protect you and teach you, then I can’t overstate how negative that message is.” Gender Benders Interview.

The Co-Founder of Gender Benders also noted that, because the number of transgender students generally is small in comparison to general school populations, the messages transgender students internalize as a result of exclusionary restroom policies are personal, not general. *Id.* A transgender boy in a school with an exclusionary restroom policy hears that he *personally* is different, inferior, and shameful. Transgender students who receive these messages daily begin to believe they are true. The Co-Founder of Gender Benders described a fifteen-year-old transgender boy in North Carolina, for example, who has internalized a sense of shame about identifying as transgender at least in part because of his school’s exclusionary restroom policy: “There’s a lot of shame already about identifying as trans[gender]. Then you internalize others’ fears about using the restroom with you. The shame piles up.” *Id.*

2. *Stigma Impairs Transgender Students’ Mental Health*

GINNA BRELSFORD, Co-Executive Director of GSA Network, discussed the serious negative impact of a school’s exclusionary restroom policy on a transgender boy: “At one point, he was suicidal because school was such an unsafe

place for him. He was told he could use the girls' restroom or the nurse's restroom. He felt singled out by having to use the restroom in the nurse's office. He wasn't able to go to gym class. He avoided the restroom altogether. He wouldn't drink water because he never felt safe going to the restroom at school. He developed a urinary tract infection because he was holding his urine for so long." Telephone Interview with Ginna Brelsford, Co-Exec. Dir., GSA Network (Oct. 1, 2015) [hereinafter GSA Network Interview].

3. Stigma Makes Transgender Students Targets for Invasive Questioning and Harassment

Exclusionary restroom policies also stigmatize transgender students by treating transgender students differently from non-transgender students. Such policies often invite peers as well as teachers to question transgender students about their bodies—questions that would universally be considered inappropriate and harassing if they were directed toward non-transgender children. Principals and staff at schools in South Carolina, for example, have asked transgender students about their bodies. Telephone Interview with Melissa Moore, Exec. Dir., We Are Family (Oct. 8, 2015) [hereinafter We Are Family Interview]. Non-transgender students may also infer that verbal harassment or even physical assault of transgender students is acceptable. Nationally, more than eleven percent of LGBT students reported being physically assaulted (e.g., punched, kicked, or

injured with a weapon) in the past year because of their gender expression. Joseph G. Kosciw et al., GLSEN, *The 2013 National School Climate Survey* 23 (2014), available at http://www.glsen.org/sites/default/files/2013%20National%20School%20Climate%20Survey%20Full%20Report_0.pdf.

Besides marking transgender students as different, exclusionary restroom policies can directly cause transgender students to physically navigate the school building in a way that exposes them to harassment. Nathan Smith, Director of Public Policy at GLSEN, explained: “Constantly being late walking back to class or having to rush across school to use a single-stall restroom opens the door to harassment whether it’s a ‘you’re not good enough’ kind of harassment or ‘you’re not really a boy’ kind of harassment.” Telephone Interview with Nathan Smith, Dir. of Pub. Policy, GLSEN (Oct. 1, 2015) [hereinafter GLSEN Interview].

4. Stigma Caused by Exclusionary Restroom Policies Impairs

Transgender Students’ Social Relationships

Exclusionary restroom policies further stigmatize transgender students by causing them to feel isolated from their peers at school. Melissa Moore, Executive Director of We Are Family, discussed a transgender girl in South Carolina who is very popular and prohibited from using the girls’ restroom: “The restroom is a social hub, and it’s a stigmatizing thing. There is a rumor going around the school that she’s a boy, so that’s causing her a lot of stress.” We Are Family Interview.

Evie Priestman, a transgender male sixteen-year-old living in Virginia, further explained how exclusionary restroom policies can dissolve social bonds: “Usually the men’s and women’s restroom are close to each other. So if you’re hanging out with your friends and need to take a restroom break, you can normally all go together. But that’s not the case when you’re forced to use a gender neutral restroom. You have to walk to a different part of the building, and you feel left out. Your peers are going to one part of the building while you’re going to a different part of the building.” Telephone Interview with Evie Priestman, Junior, Wakefield High School, Arlington Cnty., Va. (Oct. 6, 2015) [hereinafter Priestman Interview].

B. Exclusionary Restroom Policies Deny Transgender Students

Meaningful Access to Any Restroom

No matter which restroom transgender students use in schools that enforce exclusionary restroom policies, they risk negative consequences. When transgender students use gender-neutral restrooms at these schools, they may be outed,¹ harassed, or late to class. When transgender students use the restroom that matches the sex they were assigned at birth at these schools, they experience severe psychological distress and harassment by other students. And transgender

¹ “Outing” transgender individuals means publicizing the inconsistency between their gender identities and the sex they were assigned at birth.

students at these schools are simply prohibited from using the right restroom—the restroom that matches their gender identity. By contrast, transgender students who attend schools with inclusive restroom policies report positive experiences when they use the restroom that matches their gender identity. *See infra* Part III.

1. The Gender-Neutral Restroom Is Not a Realistic Option for Transgender Students at Schools with Exclusionary Restroom Policies Because They Are Frequently Outed, Harassed, or Late to Class When They Use It

Amici provided multiple examples of transgender students who are outed by their schools' restroom policies. A transgender girl in South Carolina who has been accepted and well-liked at her school, began to experience problems with other students as a result of her school's policy forbidding her from using the girls' restroom: "She is one of the most popular girls in her high school, but her peers have begun to wonder why she always uses the gender-neutral restroom, and some students have started a rumor that she is a boy." We Are Family Interview. A transgender boy in middle school in South Carolina similarly reports that using the gender-neutral restroom "raises a lot of questions from his classmates."

Wearefamilychs, *Live5TransStories*, YouTube (Oct. 8, 2015), <https://www.youtube.com/watch?v=zqCt9bVg0gk&feature=youtu.be> (view beginning at 11:30).

Besides having their privacy invaded, transgender students risk harassment when they use gender-neutral restrooms. Having been forced to call attention to themselves by using a restroom no one else uses, they are likely to be called names or have their gender identities questioned. The Executive Director of We Are Family explained that even teachers can be perpetrators of such harassment: “Principals and staff have asked some transgender students inappropriate questions about their genitals when the students emerged from the gender-neutral restroom located in the nurse’s office.” We Are Family Interview.

Transgender students are also frequently tardy when they use gender-neutral restrooms, which are often distant from their classes, reducing the amount of time students spend in class or increasing the time they spend in the principal’s office. Transgender students in South Carolina, for example, have missed assignments and have been written up for being late to class after trekking to and from the nurse’s restroom located all the way across campus. *Id.* The Executive Director of We Are Family even noted that “a couple of transgender students have missed class because they were in the principal’s office educating the principal about transgender issues after the principal noticed them using the gender-neutral restroom.” *Id.* The Director of Public Policy at GLSEN confirmed that tardiness is a problem associated with gender-neutral restrooms: “The only time students have the opportunity to use the restrooms without asking permission is in between

classes. At my high school we had four minutes between classes. If there's only one gender-neutral restroom on your campus and it's far away, then that student is at a disadvantage." GLSEN Interview.

Fear of tardiness can also lead to harm. Two transgender boys in Virginia, both age fifteen or sixteen, avoided using the restroom because they lacked sufficient time between classes to avoid being late. As a result they both developed urinary tract infections ("UTI"). Telephone Interview with Beth Panilaitis, Exec. Dir., ROSMY (Oct. 5, 2015) [hereinafter ROSMY Interview]. A transgender boy in Charleston, South Carolina has similarly suffered UTIs after refraining from using a distant gender-neutral restroom for fear that he would miss something important in class. Wearefamilychs, *Live5TransStories*, YouTube (Oct. 8, 2015), <https://www.youtube.com/watch?v=zqCt9bVg0gk&feature=youtu.be> (view beginning at 10:55).

2. The Restroom That Matches the Sex Transgender Students Were Assigned at Birth Is Not a Realistic Option for Transgender Students Because It Conflicts with Their Gender and Exposes Them to Harassment and Violence

When transgender students try to use the restroom matching the sex they were assigned at birth, they experience severe distress and harassment from other students, just like any students would if they tried to use a restroom that did not

match their gender. Amy Glaser, Co-Founder of iNSIDEoUT, reported the experience of an eighteen-year-old transgender male in Raleigh, North Carolina: “I was standing outside the bathroom, waiting to go in, and someone came out and called me disgusting. They said they knew what I was and that I didn’t belong there.” Telephone Interview with Amy Glaser, Co-Founder, iNSIDEoUT (Oct. 9, 2015).

A transgender boy in South Carolina was forced to barricade himself in a bathroom stall when he used the restroom that matched the sex he was assigned at birth. Derek Dellinger, *Upstate SC Transgender Student Says He Was Bullied While Using Restroom*, Fox Carolina (Oct. 9, 2015 11:48 PM), <http://www.foxcarolina.com/story/30229574/upstate-sc-transgender-student-says-he-was-bullied-while-using-restroom>. When he went to the girls’ restroom, two students taunted him, calling him names and “shouting at him to come out of the stall he was in . . . for fifteen minutes.” *Id.* Transgender students risk harassment and violence when they use the restroom that matches the sex they were assigned at birth.

C. Exclusionary Restroom Policies Cause Transgender Students To Take Extreme Measures To Avoid the Restroom Altogether

In an effort to avoid the stigma, harassment, and rejection associated with using a restroom that does not match their gender identity, some transgender students simply avoid the restroom. They inflict physical harm upon themselves by

fasting, dehydrating themselves, and “holding it in” all day, which can lead to discomfort as well as infection. These measures cause physical harm and impair students’ prospects for academic success. Some transgender students even skip school or drop out, in part because they lack access to a realistic restroom option.

1. Avoiding the Restroom Leads to Physical Discomfort and Infection

One study of transgender individuals and restroom use demonstrates the physical harms that may occur when transgender individuals lack access to any realistic restroom option:

Fifty-four percent of respondents reported having some sort of physical problem from trying to avoid using public bathrooms, all of whom reported that they ‘held it’ to avoid public restrooms. Health problems that respondents reported due to avoiding using public bathrooms include: dehydration (n=9), urinary tract infections (n=7), kidney infection (n=2), and other kidney-related problems (n=2). Six percent of respondents have seen a doctor for health problems caused by avoiding public restrooms.

Respondents described additional health problems due to avoiding public restrooms. One respondent explained, ‘I had avoided using public bathrooms for so many years and would hold it when I needed to go that now my bladder is weaker.’ Another respondent described how excessive continence might aggravate an existing medical condition: ‘I have kidney problems already. I know it’s not good for me to hold it, but the alternative could be much worse.’

Jody L. Herman, *Gendered Restrooms and Minority Stress: The Public Regulation of Gender and its Impact on Transgender People’s Lives*, 19 J. Pub. Mgmt. & Soc. Pol’y 65, 75 (2013).

These experiences are not uncommon, both nationally and in the Fourth Circuit. Ginna Brelsford, Co-Executive Director of GSA Network, discussed a young transgender man's experience in California: "He wouldn't drink water because he never felt safe going to the restroom at school. He developed urinary tract infections because he was holding his urine for so long." GSA Network Interview.

The Executive Director of ROSMY identified "at least one or two youth in Virginia who have gotten urinary tract infections because of not being able to get to the gender-neutral restroom when it is so far away from class." ROSMY Interview.

The Director of School Outreach at Time Out Youth, explained the experiences of transgender youth in North Carolina: "Many trans[gender] youth do not use the restroom at all. They drink and eat very little to prevent the need to use the restroom." Time Out Youth Interview.

Ivy Hill, Co-Founder of Gender Benders, discussed a fifteen-year-old transgender boy in South Carolina who sometimes avoids eating or drinking all day in order to avoid the restroom. Gender Benders Interview.

2. *Avoiding the Restroom Impairs Transgender Students' Academic Performance and Contributes to High Rates of School Drop-Out Among Transgender Youth*

Lack of access to a realistic restroom option in schools with exclusionary restroom policies impairs transgender students' academic success by shifting the focus of their school experience from education to the restroom and contributes to high rates of school drop-out among transgender youth. In one study, a transgender boy reported that his school's exclusionary restroom policy "distracted him in class both because of his need to remain continent in the face of physical discomfort and his anxiety about finding an available restroom at the end of the class period." Herman, *supra*, at 75. The interviewee explained: "The [restrooms] in the guidance office are supposed to be unisex, but they're still marked men/women, so I don't feel comfortable using the one marked women and then I have to wait an hour before I can try going there again . . . There's not always a line, but we only have ten minutes between classes, so if the restroom is occupied, I don't have any time to wait. It's also not easy to leave during class, which means I would have to go back at the end of class." *Id.* at 74-75.

Todd Rosendahl, Director of School Outreach at Time Out Youth, related a similar narrative. A transgender boy in one high school reported that he did not use the school restroom even once in the past three years. Time Out Youth Interview.

The effort he took to avoid the restroom all day did not make it any easier for him to focus on his education.

Rosendahl also noted that transgender youth skip school and drop out of school, in part because of exclusionary restroom policies. *Id.* He explained that many transgender youth are pushed out of hostile school environments and pursue GEDs instead. *Id.* He identified three transgender youth who have left their schools in the past six months in order to participate in homeschooling as a result of their frustration and lack of support in school. *Id.*

The Co-Executive Director of GSA Network reiterated that transgender students are pushed out of public school based on lack of support and rejection, including the sense of rejection resulting from exclusionary restroom policies. “Where there are no protections, my sense is that it’s a very difficult and sometimes dangerous position to be in. I know that a lot of young people we work with end up turning to homeschool because they’re having a difficult or dangerous time in public high schools.” GSA Network Interview. The Co-Founder of Gender Benders discussed a seventeen-year-old transgender girl who experienced just this. Following issues surrounding her gender, including an exclusionary restroom policy, she dropped out of school altogether and lacked any desire to complete her secondary education or pursue higher education. Gender Benders Interview.

D. Exclusionary Restroom Policies Obstruct Medically Necessary

Treatment for Gender Dysphoria

Prohibiting transgender students from using the restroom that corresponds to their gender identity impairs medically necessary treatment for gender dysphoria, the medical diagnosis for “discomfort or distress that is caused by a discrepancy between a person’s gender identity and that person’s sex assigned at birth.” Eli Coleman et al., World Prof’l Ass’n for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People* 5 (7th ed. 2012), available at http://www.wpath.org/site_page.cfm?pk_association_webpage_menu=1351. Under the WPATH Standards of Care, the widely recognized treatment protocol for gender dysphoria,² support for

² Wylie C. Hembree et al., *Endocrine Treatment of Transsexual Persons: An Endocrine Society Clinical Practice Guideline*, 94 J. of Clinical Endocrinology Metabolism 3132 (2009), available at <http://press.endocrine.org/doi/full/10.1210/jc.2009-0345> (identifying the Standards of Care as “carefully prepared documents [that] have provided mental health and medical professionals with general guidelines for the evaluation and treatment of transsexual persons”); Am. Med. Ass’n House of Delegates, Resolution 122 (A-08) *Removing Financial Barriers to Care for Transgender Patients* (2008) (“The World Professional Association for Transgender Health, Inc. (“WPATH”) is the leading international, interdisciplinary professional organization devoted to the understanding and treatment of gender identity disorders, and has established internationally accepted Standards of Care for providing medical treatment for people with GID [that] are recognized within the medical community to be the standard of care for treating people with GID.”); Am. Psychological Ass’n Task Force on Gender Identity & Gender Variance, *Report of the Task Force on Gender Identity and Gender Variance* 32 (2008), available at <https://www.apa.org/pi/lgbt/resources/policy/gender-identity-report.pdf> (“The *Standards of Care* reflects the consensus in expert opinion among

transgender individuals consists of an individualized protocol that can include psychotherapy support and counseling, support for social role transition, hormone therapy (including hormone blockers), and a range of confirming surgeries. *Id.* at 8-10. Through social role transition, transgender adolescents come to live all aspects of their lives consistently with their gender identity. Exclusionary restroom policies limit transgender students' ability to live consistently with their gender identity by (1) barring them from using the restroom matching their gender identity and (2) keeping them on notice that they are not "real boys" or "real girls." In these ways, exclusionary restroom policies obstruct medically necessary treatment for gender dysphoria.

professionals in this field on the basis of their collective clinical experience as well as a large body of outcome research"); *see also, e.g., De'Lonta v. Johnston*, 708 F.3d 520, 522-23 (4th Cir. 2013) ("The Standards of Care, published by the World Professional Association for Transgender Health, are the generally accepted protocols for the treatment of GID [gender dysphoria]"); *Soneeya v. Spencer*, 851 F. Supp. 2d 228, 231 (D. Mass. 2012) ("The course of treatment for Gender Identity Disorder generally followed in the community is governed by the 'Standards of Care' promulgated by the World Professional Association for Transgender Health ('WPATH')."); *Fields v. Smith*, 712 F. Supp. 2d 830, 838 n.2 (E.D. Wis. 2010), *aff'd* 653 F.3d 550 (7th Cir. 2011) (accepting WPATH Standards of Care as "the worldwide acceptable protocol for treating GID [gender dysphoria]").

II. Exclusionary Restroom Policies Operate in Negative School Climates

The social context in which exclusionary restroom policies operate compounds their negative effects. Transgender students at schools with exclusionary restroom policies are stigmatized and deprived of meaningful access to the restroom, and the impact of these serious harms is often magnified by the intensely negative climates that many transgender students already face in school. Data from national studies of LGBT youth reveals the gravity of the situation.

Nationally, LGBT youth experience high rates of harassment in school. Kosciw, *supra*, at xvi. Among LGBT youth, transgender youth face the highest rates of harassment. In the largest completed study of the experiences of transgender people, “[f]ully 61% of respondents who expressed a transgender identity or [gender-nonconformity] at school reported considerable abuse because of their identity/expression.” Jaime M. Grant et al., National Center for Transgender Equality and National Gay and Lesbian Task Force, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* 35 (2011).

Transgender students in Virginia are no exception. More than half of LGBT students in Virginia regularly hear negative remarks about transgender people. GLSEN, *School Climate in Virginia* 1 (2014), available at <http://www.glsen.org/sites/default/files/GLSEN%202013%20Virginia%20State>

%20Snapshot.pdf. And more than eight in ten regularly hear other students in their school make negative remarks about how someone expressed their gender, such as comments about someone not acting feminine or masculine enough. *Id.*

LGBT students in Virginia report hearing biased language not only from their peers, but also from school staff. *Id.* One in four regularly hears school staff make negative remarks about someone's gender expression. *Id.*

Students in Virginia additionally report that harassment of LGBT students sometimes turns physical. *Id.* According to data from GLSEN, ten percent of LGBT students in Virginia are physically assaulted (e.g., punched, kicked, or injured with a weapon) based on the way they expressed their gender. *Id.*

Data from another survey confirms GLSEN's findings. Virginian respondents to a national survey of transgender individuals reported the following: "Those who expressed a transgender identity or [gender-nonconformity] while in grades K-12 reported alarming rates of harassment (74%), physical assault (35%) and sexual violence (23%)[.] Harassment was so severe that it led 11% to leave a school in K-12 settings or leave higher education[.]" National Center for Transgender Equality and National Gay and Lesbian Task Force, *Findings of the National Transgender Discrimination Survey: Virginia Results 1* (2011), available at http://www.transequality.org/sites/default/files/docs/resources/ntds_state_va.pdf.

State-specific data that GLSEN and other organizations have gathered confirms a prevailing atmosphere of hostility towards transgender students throughout the Fourth Circuit.³ In South Carolina, about seventy percent of LGBT students regularly hear negative remarks about transgender people, and about fifteen percent are physically assaulted based on the way they expressed their gender. GLSEN, *School Climate in South Carolina 1* (2014), available at <http://www.glsen.org/sites/default/files/GLSEN%202013%20South%20Carolina%20State%20Snapshot.pdf>. The Co-Founder of Gender Benders discussed two transgender students in South Carolina whose experiences support the data GLSEN gathered: “One transgender student, a fifteen-year-old transgender boy who is forced to use a gender neutral restroom, avoids eating and drinking all day. He’s been called ‘he-she,’ ‘dyke,’ and ‘tranny.’ Another transgender student, a seventeen-year-old transgender girl, is forced to use the boy’s restroom or the gender-neutral restroom. She dropped out of school because of issues surrounding her gender, and she lacked any desire to pursue higher education as a result. She experienced harassment on Facebook where people made comments about her gender and genitals and called her a ‘tranny’ or ‘a he-she.’ It was very personal and extremely degrading harassment.” Gender Benders Interview.

³ State-specific data from West Virginia is not available.

In North Carolina, more than sixty percent of LGBT students hear negative remarks about transgender people, and over ten percent are physically assaulted based on the way they express their gender. GLSEN, *School Climate in North Carolina 1* (2014), available at <http://www.glsen.org/sites/default/files/GLSEN%202013%20North%20Carolina%20State%20Snapshot.pdf>. North Carolinian respondents to the National Transgender Discrimination Survey reported similar data: “Those who expressed a transgender identity or [gender-nonconformity] while in grades K-12 reported alarming rates of harassment (88%) [and] physical assault (28%) [.] Harassment was so severe that it led 8% to leave a school in K-12 settings or leave higher education[.]” National Center for Transgender Equality and National Gay and Lesbian Task Force, *Findings of the National Transgender Discrimination Survey: North Carolina Results 1* (2011), http://www.transequality.org/sites/default/files/docs/resources/ntds_state_nc.pdf.

In Maryland, nearly sixty percent of LGBT students regularly hear negative remarks about transgender people, and five percent report being physically assaulted based on the way they express their gender. GLSEN, *School Climate in Maryland 1* (2014), available at <http://www.glsen.org/sites/default/files/GLSEN%202013%20Maryland%20State%20Snapshot.pdf>. Maryland respondents to the National Transgender Discrimination Survey reported the following: “Those who expressed a transgender identity or [gender-nonconformity] while in grades

K-12 reported alarming rates of harassment (81%), physical assault (38%) and sexual violence (16%) [.] Harassment was so severe that it led 6% to leave a school in K-12 settings or leave higher education[.]” National Center for Transgender Equality and National Gay and Lesbian Task Force, *Findings of the National Transgender Discrimination Survey: Maryland Results 1* (2011), available at http://www.transequality.org/sites/default/files/docs/resources/ntds_state_md.pdf.

The negative climate that transgender students face in school leads to serious consequences. LGBT students who experience LGBT-related discrimination at school are more than three times as likely to have missed school in the past month as those who had not (42.3% vs. 13.8%); have lower GPAs than their peers (3.0 vs. 3.3); have lower self-esteem; and have higher levels of depression. Kosciw, *supra*, at xviii.

Exclusionary restroom policies contribute enormously to these negative school climates by sending an official message of stigma and discrimination, continually marking transgender students as different on a daily basis and encouraging the negative attitudes and stereotypes that fuel harassment and violence. In addition to facing disproportionately high risks for verbal harassment and physical assault, transgender students at schools with exclusionary restroom policies must carefully plan whether and when to use the restroom as part of a complicated calculus that balances risks of stigma, discomfort, infection, and

dysphoria. Needlessly, exclusionary restroom policies play a major role in creating school climates that deny transgender students equal educational opportunities and erect discriminatory barriers to their academic achievement, physical health, and social success.

III. Inclusive Restroom Policies Help To Ensure Transgender Students Stay in School and Achieve Academic Success

In marked contrast to transgender students who face exclusionary restroom policies, transgender students who are treated equally and permitted to use the same restrooms used by other students of their gender are much more likely to stay in school and fare significantly better in school than those who are not. One transgender student in Virginia lived under both policies, and his academic performance demonstrated their effect. The Executive Director of ROSMY explained: “His grades were good early in high school, but there was a huge drop in his grades when he was coming out partly because he was still using the girls’ restroom. Ultimately, he was allowed to use the boys’ restroom, and he ended up having a good amount of support in the school, earning all As and Bs his senior year.” ROSMY Interview. This transgender student flourished when he was permitted to use the restroom matching his gender identity.

The Director of Public Policy at GLSEN confirmed the benefits of inclusive restroom policies: “Students who go to schools with inclusive policies, staff

training, and access to the restrooms they choose have a better experience than those who go to schools [with exclusionary restroom policies]. Students in the latter type of schools have lower GPAs, feel less safe, and are less connected to their school community.” GLSEN Interview.

The Co-Executive Director of GSA Network provided additional support: “Youth have said [that inclusive restroom policies have] a drastic impact on their lives because they’re able to focus on school instead of worrying about running to the nurse’s office between classes. They’re happier and performing better academically.” GSA Network Interview.

One student affiliated with GSA Network explained further the benefits of being treated the same as other students and permitted to use the restroom that matches one’s gender identity: “My years in high school were an exceptional time of self-discovery and acceptance. I had come out to my friends, teachers, and family all my freshman year and finally felt affirmed in my authentic self. Yet, while those around me were supportive of the identity I held, I was still faced with the obstacle of governmental policies and legislation that failed to recognize my identity or respect my needs as a student. Using the restroom must be one of the most instinctual actions we partake in throughout the day, but for a transgender person it comes with complications. The summer before my senior year, however, was when [I was finally able to use the right restroom, and] I was able to attend

school and concentrate on my education more than my safety. Being allowed to be myself in the most basic human ways (using the restroom) was vital to my performance in class and after high school. When talking about transgender and gender non-conforming students and restrooms, it should be no different than conversations about non-transgender students and restrooms; allow students the ability to feel safe, supported, and secure.” *Id.*

Another student wrote to the Co-Executive Director of GSA Network to explain the positive effects of being treated equally by using the same restroom as other male students: “I no longer had to hold it until I had a long enough break to go to the nurse's office for the single stall bathroom which was far from all of my classes. Often if there was someone in the nurse's office already I wouldn't be able to use the restroom or would have to wait even longer which would make me late to class, or miss a lot of class. There were a lot of days I just didn't go at school because it was stigmatizing and far away from my classes. I would get a UTI from holding my urine and have to miss more school for doctor's appointments and from the anxiety I had about whether I would be able to pee while I was at school. Being able to use the boys' bathroom meant that I didn't get UTIs anymore and that I could use the bathroom without being late for class.” *Id.*

Inclusive restroom policies also send a strong message that transgender students will be treated equally and are considered just as important and valued as

other students. Evie Priestman, a transgender boy in high school in Virginia, described the positive impact of his school's inclusive restroom policy: "It is great for trans[gender] kids in my school. They love it because it means the school noticed the issues they face as transgender students and wanted to help them. Even taking one small step by letting them use the bathroom they prefer is a huge step to them because it makes them feel more comfortable in their skin." Priestman Interview.

CONCLUSION

School policies that exclude transgender students from the same restrooms used by other students of the same gender are discriminatory and cause transgender students irreparable harm. In addition to treating transgender students differently than all others and subjecting them to harassment and stigma, these policies force transgender students to take extreme measures to delay restroom use or avoid the restroom altogether, leading to discomfort, infection, and academic struggle. These policies obstruct medically necessary treatment for gender dysphoria by preventing transgender students from living consistently with their gender identity. These discriminatory policies play a central role in creating negative school environments for transgender youth and exacerbate their vulnerability to stigma, discrimination, violence, and dropping out. By contrast, transgender students who are treated

equally and permitted to use the same restroom used by other students of their gender are much more likely to stay in school, thrive, and succeed.

AMICI CURIAE'S CERTIFICATE OF COMPLIANCE

The undersigned, hereby certifies pursuant to Fed .R. App. P. 32(a)(7)(C) that the Brief of Amici Curiae complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B). According to the word count of Word for Windows, the word-processing system used to prepare the brief, the brief, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), contains 5,710 words.

I further certify that the foregoing brief complies with the typeface and type style requirements of Fed. R. App. P. 32(a)(5) and (6) because it has been prepared in a proportionally spaced typeface in 14-point Times New Roman font.

Dated: October 28, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing motion was served on all parties or their counsel through the CM/ECF system.

Dated: October 28, 2015

s/ David Dinielli

David Dinielli