No. 16-273

IN THE

Supreme Court of the United States

GLOUCESTER COUNTY SCHOOL BOARD,
Petitioner,

v.

G.G., BY HIS NEXT FRIEND AND MOTHER, DEIRDRE GRIMM,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF FOR THE WORLD PROFESSIONAL ASSOCIATION FOR TRANSGENDER HEALTH ET AL. AS *AMICI CURIAE* SUPPORTING RESPONDENT

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TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

Nat. Ctr. for Transgender Equality, *The Report of the 2015 U.S. Transgender Survey* (2016), http://www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf 15

Ira B. Pauly, *The Current Status of the Change of Sex Operation*, 147 J. Nervous & Mental Disease 460 (1968) 4

Kristie L. Seelman, *Transgender Adults' Access to College Bathrooms and Housing and the Relationship to Suicidality*, 63 J. Homosexuality 1378 (2016), *available at* http://www.tandfonline.com/doi/pdf/10.1080/00918369.2016.1157998?needAccess=true 12

Substance Abuse & Mental Health Servs. Admin., *Ending Conversion Therapy: Supporting and Affirming LGBTQ Youth* (2015) *available at* http://store.samhsa.gov/shin/content//SMA15-4928/SMA15-4928.pdf 4, 5, 8, 9, 10

World Professional Association for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People* (2012), *available at* http://www.wpath.org/uploaded_files/140/files/Standards%20of%20Care, %20V7% 20Full%20Book.pdf. 1, 11, 12, 14

INTEREST OF THE *AMICI CURIAE*[1]

The **World Professional Association for Transgender Health** (WPATH), formerly known as the Harry Benjamin International Gender Dysphoria Association, is an international professional association with membership consisting of more than 900 physicians, psychologists, social scientists, and legal professionals. To further WPATH's mission to provide evidence-based research and care for transgender health, WPATH develops and publishes the medical consensus for best practices to promote health, research, education, respect, dignity, and equality for transgender people. WPATH's Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People (Standards of Care)[2] is widely recognized in the medical community as the authoritative standard for the provision of transgender health care.

The **Whitman-Walker Clinic** (Whitman-Walker) is a non-profit, community-based Federally Qualified Health Center serving the Washington D.C. metropolitan area, suburban Maryland, and northern Virginia. Established in 1973, Whitman-Walker is nationally renowned for its commitment to LGBT health and to HIV and sexual health care. Whitman-Walker is also home to one of the nation's

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[1] All parties consented to the filing of this brief. No counsel for a party authored any portion of this brief. No party and no other entity, except *amici* and their counsel, made any monetary contribution toward the preparation or submission of this brief.

[2] WPATH, *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People* (2012) (Standards of Care), *available at* http://www.wpath.org/uploaded_files/140/files/Standards%20of%20Care,%20V7%20Full%20Book.pdf.

oldest medical-legal partnerships and is active in legal matters of concern to the LGBT community, including access to healthcare, protections against discrimination, and transgender legal issues. Whitman-Walker's Youth Services team provides free care navigation, school-based and site-based health promotion and mental health services for LGBT youth and young adults.

The **Mazzoni Center**, founded in 1979, is the only health care provider in the Philadelphia region specifically targeting the unique health care needs of the LGBT community by providing comprehensive health and wellness services in an LGBT-focused environment while preserving the dignity and improving the quality of life of the individuals it serves. Mazzoni's Pediatric & Adolescent Comprehensive Transgender Services program, also known as PACTS, provides a comprehensive approach to addressing the specific needs of transgender youth and their families. PACTS' collaborative approach to care draws on the input and expertise of multiple departments within the Mazzoni Center—medical providers, social workers, therapists, and legal staff—to provide the best possible care for clients. PACTS currently serves 354 youth, ranging in age from 4 to 20, along with their families.

The **Child and Adolescent Gender Center** (CAGC) at UCSF Benioff Children's Hospital is a collaboration between UCSF and community organizations. CAGC offers comprehensive medical and psychological care, as well as advocacy and legal support, to gender nonconforming and transgender youth and adolescents. CAGC opened in May 2012 and currently serves over 250 patients, ranging in age from three to twenty-two. The healthcare team

at CAGC provides consultation to other providers around the United States regarding affirming medical treatment and hormone therapy for transgender patients. Most recently (in 2015) Dr. Rosenthal, CAGC's Medical Director, and three principal investigators were awarded a $6 million grant from the National Institutes of Health (NIH) for a longitudinal consortium study of transgender adolescents and young adults. Dr. Rosenthal is the principal investigator for the CAGC site.

The **Center for Transyouth Health and Development** at Children's Hospital Los Angeles promotes healthy futures for transgender youth by providing services, research, training, and capacity building that is developmentally informed, affirmative, compassionate, and holistic for gender nonconforming children and transgender youth. The Center is the largest clinic of its kind in the United States and is currently serving approximately 500 patients. The healthcare team at the Center provides consultation to other providers around the United States regarding affirming medical treatment and hormone therapy for transgender patients. Most recently (in 2015) Dr. Johanna Olson, the Center's Medical Director, and three principal investigators were awarded a $6 million grant from the NIH for a longitudinal consortium study of transgender adolescents and young adults.

Amici have a substantial interest in this case as organizations dedicated to promoting and improving the health and well-being of transgender individuals (in particular, transgender adolescents), and as community-based health centers providing medical and mental health services to transgender individuals, including adolescents and young adults. To that

end, several *amici* have regularly filed amicus briefs in cases, like this one, that raise issues of significant concern to *amici* and the individuals they serve. *See, e.g.*, *Kosilek v. O'Brien*, No. 14-1120 (U.S.); *Carcano v. McCrory*, No. 16-1989 (4th Cir.); *Tovar v. Essentia Health*, No. 16-3186 (8th Cir. 2016).

Amici submit this brief to explain the medical consensus and scientific evidence concerning the treatment of transgender adolescents and the manner in which the Gloucester County School Board's policy undermines the health of transgender citizens like Gavin Grimm.

SUMMARY OF ARGUMENT

Transgender people have been part of every human culture. In the United States, however, the medical community did not recognize the existence of transgender persons until the late nineteenth century. Medical professionals in this country historically viewed being transgender as a pathology to be corrected or "cured."[3] Today, medical science recognizes that being transgender is a natural part of human diversity and that, with proper support, transgender people are healthy, contributing members of society.[4]

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[3] *See* Ira B. Pauly, *The Current Status of the Change of Sex Operation*, 147 J. Nervous & Mental Disease 460, 465-66 (1968) (discussing how "well-meaning therapists" attempted "to 'cure'" transgender patients by attempting to realign their gender identities with the sex assigned at birth, and in doing so caused harm).

[4] *See, e.g.*, Substance Abuse & Mental Health Servs. Admin., *Ending Conversion Therapy: Supporting and Affirming LGBTQ Youth* 11 (2015) (SAMHSA, *Ending Conversion Therapy*), *available at* http://store.samhsa.gov/shin/content//SMA15-4928/SMA15-4928.pdf ("[V]ariations in gender identity and gender

Particularly since the 1960s, significant advances in research about transgender people and their medical needs have affirmed that transgender Americans are entitled to the same dignity and respect afforded to all people. Based on the contemporary scientific understanding of sex, gender dysphoria, and transgender persons, the medical community recognizes that the purpose of medical care is to support the health and well-being of transgender individuals, thereby enabling them to live consistently with their gender identity, just as other men and women do. How society treats our transgender members, including students, can either undermine or support that goal, with lifelong consequences for both the individuals affected and the larger society.

ARGUMENT

I. MEDICAL SCIENCE RECOGNIZES THE REALITY OF TRANSGENDER IDENTITY AND THE IMPORTANCE OF SUPPORTING TRANSGENDER PERSONS IN LIVING HEALTHY LIVES CONSISTENT WITH THEIR GENDER IDENTITY.

Gender identity is a person's inner sense of belonging to a particular gender.[5] It is an innate, deeply felt, and core component of human identity that is

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expression are a part of the normal spectrum of human diversity and do not constitute a mental disorder.")

[5] *See* Am. Psychological Ass'n, *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People*, 70 The Am. Psychologist 832, 834 (2015) (APA Guidelines) *available at https://www.apa.org/practice/guidelines/transgender.pdf* ("Gender identity is defined as a person's deeply felt, inherent sense of being a girl, woman, or female; a boy, a man, or male; a blend of male or female; or an alternative gender.").

fixed at an early age.[6] At birth, infants are as assigned an identity of male or female based on a cursory observation of their external genitalia.[7] That identification is then recorded on the person's birth certificate. Everyone has a gender identity, and for most people, their gender identity is consistent with their sex assigned at birth. Transgender people, however, have a gender identity that is different from the sex they were identified as, or assumed to be, at birth.[8]

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[6] *See* Am. Psychological Ass'n & Nat'l Ass'n of Sch. Psychologists, *Resolution on Gender and Sexual Orientation Diversity in Children and Adolescents in Schools* (2015), http://www.apa.org/about/policy/orientation-diversity.aspx ("a person's gender identity develops in early childhood"). A growing body of scientific research has concluded that gender identity likely has a strong biological basis. Am. Psychological Ass'n, *Report of the APA Task Force Report on Gender Identity and Gender Variance* 52-53 (2009) (APA Task Force Report), *available at* https://www.apa.org/pi/lgbt/resources/policy/gender-identity-report.pdf ("Research has begun to identify some unrelated, possibly biologically based characteristics of children and adults with GID, suggesting that GID may have a biological basis as well." (citation omitted)); Peggy T. Cohen-Kettenis et al., *The Treatment of Adolescent Transsexuals: Changing Insights*, 5 J. of Sexual Med. 1892, 1895 (2008) ("Biological factors do seem to play a role and may contribute to persistent GID." (citations omitted)).

7 APA Guidelines 862 ("Sex (sex assigned at birth): sex is typically assigned at birth (or before during ultrasound) based on the appearance of external genitalia.")

[8] *See id.* at 863 ("Transgender: an adjective that is an umbrella term used to describe the full range of people whose gender identity and/or gender role do not conform to what is typically associated with their sex assigned at birth."); *see also* David A. Levine & Committee on Adolescence, Am. Acad. of Pediatrics, Technical Report, *Office-Based Care for Lesbian, Gay, Bisexual, Transgender, and Questioning Youth*, 132 Pediatrics e297, e298

The medical diagnosis of gender dysphoria refers to the often severe emotional distress resulting from this difference, or incongruity. People diagnosed with gender dysphoria have an intense and persistent discomfort with the primary and secondary sex characteristics of their birth sex. Gender dysphoria is a serious medical condition codified in the *DSM-5*.[9]

Gender dysphoria was previously referred to as "gender identity disorder," or "GID." The American Psychiatric Association changed the name and diagnostic criteria for this condition to reflect that gender dysphoria "is more descriptive than the previous [DSM] term gender identity disorder and focuses on dysphoria as the clinical problem, not identity per se."[10] Like the American Psychiatric Association, all major professional associations of medical and mental health providers share this view.[11] They recognize that having a gender identity that differs from a person's sex assigned at birth is not in itself a disorder, but that the associated distress is a medical condition requiring appropriate treatment that affirms the person's gender identity.[12]

(2013) (AAP Technical Report), *available at* http://pediatrics.aappublications.org/content/pediatrics/132/1/e297.full.pdf ("For transgender individuals, their gender or identity does not match their natal sex.").

[9] *See* Am. Psychiatric Ass'n, *Diagnostic and Statistical Manual of Mental Disorders* 451-59 (5th ed. 2013) (*DSM-5*).

[10] *DSM-5*, at 451.

[11] *See* sources cited *infra* note 16.

[12] *DSM-5*, at 451-453; *see also* Cohen-Kettenis 1893 (many of the problems transgender youth struggle with are "the consequence rather than the cause" of their gender dysphoria).

II. GENDER TRANSITION IS THE ONLY RECOGNIZED SAFE AND EFFECTIVE TREATMENT FOR GENDER DYSPHORIA.

According to the established medical consensus, the only effective treatment for the disabling experience of gender dysphoria is to provide medical and social support to enable the transgender person to live authentically, based on his or her core identity.[13] A person's gender identity is an innate, deeply-rooted aspect of who that person is, and cannot be changed. Appropriate treatment does not attempt to realign an individual's gender identity to be consistent with physical sex characteristics, and past efforts to do so have caused individuals extraordinary harm and anguish. "[C]onversion therapy—efforts to change an individual's sexual orientation, gender identity or gender expression—is a practice that is not supported by credible evidence and has been disavowed by behavioral health experts and associations."[14] Today,

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[13] *See* APA Guidelines 846 ("Research has primarily shown positive treatment outcomes when [transgender] adults and adolescents receive [transgender]-affirmative medical and psychological services (i.e. psychotherapy, hormones, surgery…)"); SAMHSA, *Ending Conversion Therapy* 25 ("There is also scientific consensus that for many people, medical intervention in the form of hormone therapy or gender affirming surgeries may be medically necessary to alleviate gender dysphoria.").

[14] SAMHSA, *Ending Conversion Therapy* 1. Therapy seeking to realign an individual's gender identity has been expressly rejected by the American Medical Association, the American Academy of Pediatrics and all other leading medical professional organizations. *See, e.g.*, Am. Med. Ass'n, Policy No. H-160.991, *Health Care Needs of the Homosexual Population* (2012), https://searchpf.ama-assn.org/SearchML/searchDetails.action?uri=%2FAMADoc%2FHOD.xml-0-805.xml ("Our AMA . .

medical professionals recognize that treatment must respect the person's gender identity and support the person's ability to live consistently with that identity.

The protocol for gender transition is well-established and highly effective.[15] That protocol is

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. opposes[] the use of 'reparative' or 'conversion' therapy for sexual orientation or gender identity."); Hilary Daniel & Renee Butkus, Am. College of Physicians, *Lesbian, Gay, Bisexual, and Transgender Health Disparities: Executive Summary of a Policy Position Paper from the American College of Physicians*, 163 Annals Internal Med. 135, Appendix (2015), *available at* http://annals.org/article.aspx?articleid=2292051 ("Available research does not support the use of reparative therapy as an effective method in the treatment of LGBT persons. Evidence shows that the practice may actually cause emotional or physical harm."); Am. Sch. Counselor Ass'n, *The School Counselor and LGBTQ Youth* 37-38 (2016), https://www.schoolcounselor.org/asca/media/asca/PositionStatements/PS_LGBTQ.pdf; Daniel & Butkus 37 ("The College opposes the use of 'conversion,' 'reorientation,' or 'reparative' therapy for the treatment of LGBT persons"); Am. Psychoanalytic Ass'n, *Position Statement on Attempts to Change Sexual Orientation, Gender Identity, or Gender Expression* (2012), http://www.apsa.org/content/2012-position-statement-attempts-change-sexual-orientation-gender-identity-or-gender ("Psychoanalytic technique does not encompass purposeful attempts to 'convert,' 'repair,' change or shift an individual's sexual orientation, gender identity or gender expression. Such directed efforts are against fundamental principles of psychoanalytic treatment and often result in substantial psychological pain by reinforcing damaging internalized attitudes.").

[15] *See* Mohammad Hassan Murad et al., *Hormonal therapy and sex reassignment: a systemic review and meta-analysis of quality of life and psychosocial outcomes*, 72 Clinical Endocrinology 214, 214–231 (2010) (meta-analysis reporting that 80% of participants receiving trans-affirmative care experienced an improved quality of life, decreased gender dysphoria, and a reduction in negative psychological symptoms); SAMHSA, *Ending*

codified in the Standards of Care developed by WPATH, and is broadly recognized as the acceptable and appropriate treatment for gender dysphoria.[16]

Conversion Therapy 48-49 ("[T]he research showing positive effects for these interventions are based on protocols that require supportive, gender-clarifying therapy **and** a psychological/readiness evaluation") (emphasis in original).

[16] *See, e.g.*, Am. Med. Ass'n House of Delegates, Resolution 122 (A-08) *Removing Financial Barriers to Care for Transgender Patients* 1 (2008), *available at* http://www.tgender.net/taw/ama_resolutions.pdf ("[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." (footnotes omitted)); APA Task Force Report 32 ("The *Standards of Care* reflects the consensus in expert opinion among professionals in this field on the basis of their collective clinical experience as well as a large body of outcome research . . . ."); AAP Technical Report e301 (the Standards of Care "integrate the best available evidence with clinical experience from experts in the field of assisting transgender patients with transition.");Wylie C. Hembree et al., *Endocrine Treatment of Transsexual Persons: An Endocrine Society Clinical Practice Guideline*, 94(9) J. Clinical Endocrinology & Metabolism 3132, 3136 (2009), *available at* http://bit.ly/2lmCmfO (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"); Cohen-Kettenis 1893 ("[P]rofessionals largely follow the Standards of Care of the [WPATH]. . . ."); *see also De'Lonta v. Johnson*, 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 [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 Pro-

Under the Standards of Care, support for transgender individuals consists of an individualized protocol that can include psychotherapy support and counseling, support for social role transition, hormone therapy (including hormone blockers, as age appropriate), and a range of confirming surgeries.[17]

The three main components of transition-related medical care are social, pharmacological, and surgical. Social transition involves bringing a person's gender expression and gender role into alignment with their gender identity. It may include wearing clothes associated with one's gender identity, using a different name and pronouns, and interacting with peers and one's social environment in a manner that matches the person's gender identity.[18]

In addition to social transition, a transgender person may also take medications that recalibrate the hormone balance in their bodies to achieve levels consistent with others who share the same gender identity. For example, a transgender man may take medications to stop his body from producing estrogen and replace those hormones with testosterone, which will further masculinize that person's appearance.[19]

Lastly, a transgender person may pursue surgical treatment to alleviate the dysphoria associated with the person's primary and secondary sex characteris-

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fessional Association for Transgender Health ('WPATH')."); *Fields v. Smith*, 712 F. Supp. 2d 830, 838 n.2 (E.D. Wis. 2010) (accepting WPATH's Standards of Care as "the worldwide acceptable protocol for treating GID [gender dysphoria]"), *aff'd* 653 F.3d 550 (7th Cir. 2011).

[17] *See* Standards of Care 5.

[18] *See id.* at 18-20.

[19] *See id.* at 34-36.

tics.[20] The precise medical treatments required to alleviate a particular individual's gender dysphoria may vary, based on the person's individualized medical needs.

An equally-important aspect of gender dysphoria treatment, recognized in the Standards of Care, is fostering affirmation and support from the community (*i.e.*, family, friends, co-workers, healthcare providers, religious leaders).[21] That support consists of affirming a person's gender identity and supporting their efforts to live, for young people, as the girl or boy they know themselves to be, including by referring to them with the appropriate pronouns and treating them as one would any other boy or girl. By embracing a transgender boy as a boy and a transgender girl as a girl, the community conveys the acceptance of the person's identity. In contrast, rejecting the person's identity demeans the individual and exacerbates the dysphoric condition leading to serious negative health consequences.[22] In particular, because young people spend so much time at school, and because schools play such a major role in a young person's development, the failure of schools to support a student who has undergone gender transition can have predictably devastating emotional and developmental consequences.

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[20] *See id.* at 36.

[21] *See id.* at 30-32.

[22] Kristie L. Seelman, *Transgender Adults' Access to College Bathrooms and Housing and the Relationship to Suicidality*, 63 J. Homosexuality 1378, 1388-89 (2016), *available at* http://www.tandfonline.com/doi/pdf/10.1080/00918369.2016.1157998?needAccess=true (showing an increased risk of suicidality for transgender college students denied access to the same facilities used by other students).

III. THE SCHOOL BOARD'S POLICY CONFLICTS WITH THE STANDARDS OF CARE AND HARMS TRANSGENDER STUDENTS.

For transgender youth and adolescents, the challenges posed by gender dysphoria and the resulting need for medically-appropriate treatment are magnified by their stage of development and their dependence on schools and the other social institutions that govern their lives. Supportive school and family environments are essential to helping transgender youth cope with these challenges. Conversely, when a school undermines a transgender student's medical treatment, that negative treatment can cause serious, lasting harms.

Schools have an obligation to protect the health of all of their students. A supportive school eases the social challenges of gender transition and sets an example that stigmatizing transgender students is not to be tolerated.

A school that denies support for transgender students undermines their health and well-being. The School Board's policy of denying transgender students access to the same restrooms used by other boys and girls marks these students as different and unworthy of equal treatment. The stigma caused by such discrimination makes it much more difficult and, in some cases, impossible for an adolescent dealing with gender dysphoria to resolve their distress and, with the help of their health care providers, make progress toward successful treatment.

The Standards of Care recognize that adolescents who are transgender must be given the opportunity—and support—to transition so that they can lead

healthy and authentic lives, rather than suppress or hide their identity.[23] The School Board's policy, by contrast, impedes a transgender student from fully making that transition for as long as the student remains in the district's schools, regardless of the student's medical needs or the severity of the harm caused by that interference with the student's medical care. Such a policy exacerbates the psychological harms felt by transgender students and contravenes the clear scientific and medical consensus on the appropriate treatment of transgender adolescents to promote their long-term health and well-being.

Because schools play such a major role in students' lives, the impact of a discriminatory school policy is significant. From Monday through Friday, for seven hours or more per day, students are in schools studying, learning, and interacting with educators and peers. Treating a transgender boy differently than other boys undermines the student's medical treatment, calls into question the student's core sense of who he is, and predictably exacerbates his gender dysphoria.

Young people are particularly reliant on educators and school administrators, who both control many aspects of students' daily lives and experiences and shape the ways in which peers interact with them. Adolescent students are especially vulnerable when the lack of support or hostility they face from peers is supported or fostered by school officials. For groups that already experience social stigma, discrimination, and mistreatment, the impact of a disrespectful or discriminatory school policy is ampli-

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[23] Standards of Care 21 (discussing the dangers of not giving transgender adolescents the opportunity to transition).

fied. When a school fails to respect or, worse, rejects a transgender adolescent's gender identity, the adverse consequences can be severe.

Transgender students face widespread discrimination and mistreatment in schools. In a 2015 national survey, more than three-quarters (77%) of respondents who were known or perceived as being transgender during their K-12 education had one or more negative experiences, such as being verbally harassed, prohibited from dressing according to their gender identity, or physically or sexually assaulted.[24] Fifty-four percent (54%) of these students were verbally harassed and 24% were physically attacked.[25] Seventeen percent (17%) of these respondents left a K–12 school because of the severity of the mistreatment, and 6% were expelled from school.[26] School policies that fail to treat transgender boys like other boys and transgender girls like other girls exacerbate the harms caused by this already pervasive discrimination, violence, and harassment.

In this case, the School Board's policy of barring Gavin from the same restrooms used by other boys directly interferes with his medical treatment and subjects him to daily discrimination and disrespect, constantly shining a spotlight on his transgender identity in a way that stigmatizes and separates him

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[24] Nat. Ctr. for Transgender Equality, *The Report of the 2015 U.S. Transgender Survey* 131 (2016), http://www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf (2015 Transgender Survey). This is the largest survey of transgender individuals ever conducted, including 27,715 respondents from all fifty states, as well as U.S. territories. *Id.* at 2.

[25] *Id.* at 131.

[26] *Id.*

from other students. Gavin is treated by the School Board as if being transgender is a problem that needs to be addressed, rather than accepting Gavin as a boy thereby allowing him to thrive. Despite his resilience and courage, the negative impact of that discrimination will have a lasting impact on Gavin's life. As a result of the district's discriminatory policy, Gavin has been deprived of the opportunity to interact with others and to complete his high school education on equal terms, simply as a boy among other boys.

That discriminatory treatment is harmful, contrary to the contemporary scientific understanding of transgender health, and based upon unsupported fears and stereotypes that have no place in our society or system of law.

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For the foregoing reasons, *amici* urge the Court to hold that the School Board's policy is a prohibited form of discrimination against transgender students.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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