

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

JOAQUÍN CARCAÑO; PAYTON GREY  
MCGARRY; H.S., by her next friend and  
mother, KATHRYN SCHAFER; ANGELA  
GILMORE; KELLY TRENT; BEVERLY  
NEWELL; and AMERICAN CIVIL LIBERTIES  
UNION OF NORTH CAROLINA,

*Plaintiffs,*

v.

PATRICK MCCRORY, in his official capacity  
as Governor of North Carolina; UNIVERSITY  
OF NORTH CAROLINA; BOARD OF  
GOVERNORS OF THE UNIVERSITY OF  
NORTH CAROLINA; and W. Louis Bissette, Jr.,  
in his official capacity of the Board of Governors  
of the University of North Carolina,

*Defendants,*

and

PHIL BERGER, in his official capacity as  
President Pro Tempore of the North Carolina  
Senate, and TIM MOORE, in his official capacity  
as Speaker of the North Carolina House of  
Representatives,

*Defendant-Intervenors,*

No. 1:16-cv-00236-TDS-JEP

**AMICI CURIAE BRIEF OF SCHOOL ADMINISTRATORS FROM  
CALIFORNIA, DISTRICT OF COLUMBIA, FLORIDA, ILLINOIS, KENTUCKY,  
MAINE, MASSACHUSETTS, MICHIGAN, MINNESOTA, NEVADA, NEW  
HAMPSHIRE, NEW JERSEY, NEW YORK, NORTH CAROLINA, OREGON,  
RHODE ISLAND, TEXAS, VERMONT, WASHINGTON, AND WISCONSIN IN  
SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

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**STATEMENT REGARDING PARTICIPATION BY PARTIES (LR 7.5(d))**

No counsel for a party authored this brief, in whole or in part,<sup>1</sup> and no person other than *amici curiae* and their counsel made any monetary contribution to fund the preparation or submission of this brief.

**STATEMENT OF IDENTITY, INTEREST, AND AUTHORITY TO FILE**

*Amici curiae* are a school district and superintendents, principals, school board members, general counsel, social workers, and other officials from schools and school districts that have adopted, or are in the process of adopting, inclusive policies and practices for their transgender students. Together, *amici* represent a broad cross-section of schools and districts from across the country, collectively responsible for educating more than 1.3 million students annually. *Amici* offer valuable perspectives on a number of the issues in this case, based on their broad collective experience with adopting, implementing, and enforcing such policies in their schools. Counsel for *amici* conducted interviews with individual *amici* to obtain their input for this brief; synopses of *amici* interviews are on file with *amici*'s counsel Pillsbury Winthrop Shaw Pittman, LLP ("Pillsbury"). *Amici* who were not interviewed or are not quoted in this brief have experiences consistent with those expressed herein. A list identifying the *amici* follows;

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<sup>1</sup> A version of this brief was previously submitted to the United States Circuit Court of Appeals for the Fourth Circuit in October 2015, in support of the Appellant in *G.G. v. Gloucester County School Board*, case no. 15-2056. *Amici* note that Ms. Borelli and Mr. Palazzolo, counsel for Plaintiffs, interviewed some of the *amici* participating in the Fourth Circuit brief, all of whom have joined this brief. Neither Ms. Borelli nor Mr. Palazzolo has been involved in authoring this brief, and neither has engaged in further communications with any of the *amici* in connection with this brief.

Appendix A includes additional information regarding *amici*'s background and relevant experience.

<b>Judy Chiasson, Ph.D.</b>	Program Coordinator for the Office of Human Relations, Diversity and Equity, Los Angeles Unified School District, Los Angeles, California
<b>David Vannasdall</b>	Superintendent, Arcadia Unified School District, Arcadia, California
<b>Diana K. Bruce</b>	Director of Health and Wellness, District of Columbia Public Schools, Washington, DC
<b>Denise Palazzo</b>	Former Instructional Facilitator and Diversity and LGBTQ <sup>2</sup> Coordinator, Broward County, Florida
<b>Jeremy Majeski</b>	Principal, Komensky Elementary School, Berwyn, Illinois
<b>Thomas A. Aberli, Ed.D.</b>	Principal, J.M. Atherton High School, Louisville, Kentucky
<b>Howard Colter</b>	Superintendent, Mount Desert Island Regional School System, Bar Harbor, Maine
<b>Matthew Haney</b>	Principal, Mount Desert Island High School, Bar Harbor, Maine
<b>Ken Kunin</b>	Superintendent, South Portland Public Schools, South Portland, Maine
<b>Roger Bourgeois</b>	Superintendent-Director, Greater Lowell Technical Regional School District, Massachusetts
<b>Blake Prewitt</b>	Superintendent, Ferndale Public Schools, Ferndale, Michigan
<b>Michael Thomas</b>	Interim Superintendent, Minneapolis Public Schools, Minneapolis, Minnesota
<b>Mary Doran</b>	Former School Board Chair (term ended 12/31/15), Saint Paul Public Schools Board of Education, St. Paul, Minnesota
<b>Washoe County School District</b>	Washoe County School District, Reno, Nevada
<b>James C. Morse, Sr., Ed.D.</b>	Superintendent, Oyster River Cooperative School District, Durham, New Hampshire

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<sup>2</sup> The acronym "LGBTQ" stands for lesbian, gay, bisexual, transgender, and questioning.

<b>Thomas Smith, Ed.D.</b>	Superintendent, Hopewell Valley Regional School District, Mercer County, New Jersey
<b>John O'Reilly</b>	Principal, Academy of Arts and Letters, Public School/Middle School 492, Brooklyn, New York
<b>Heidi Carter</b>	Chair, Durham Public Schools Board of Education, Durham, North Carolina
<b>Rudy Rudolph</b>	Project Manager, Equity Department, Portland Public Schools, Portland, Oregon
<b>Peyton Chapman</b>	Principal, Lincoln High School, Portland, Oregon
<b>Rachel Santa, Ed.D.</b>	Director of Special Education, Cumberland, Rhode Island Schools
<b>Lindsey Pollock, Ed.D.</b>	Principal, Garden Oaks Montessori Magnet School, Houston, Texas
<b>Brian Schaffer</b>	Principal, Lamoille Union High School, Hyde Park, Vermont
<b>Lisa Love</b>	Manager of Health Education, Seattle Public Schools, Seattle, Washington
<b>Dylan Pauly</b>	General Counsel, Madison Metropolitan School District ("MMSD"), Madison, Wisconsin
<b>Sherie Hobs</b>	Social Worker, MMSD, Madison, Wisconsin
<b>Bryan Davis, Ph.D.</b>	Superintendent, Shorewood School District ("SSD"), Shorewood, Wisconsin
<b>Paru Shah, Ph.D.</b>	President, Board of Education, SSD, Shorewood, Wisconsin

### INTRODUCTION

Collectively, *amici* are responsible for the education, safety, and wellbeing of **more than 1.3 million students across the country** and have extensive experience in the development, implementation, administration, and enforcement of inclusive policies for transgender students in a school setting. Some, such as Dr. Chiasson, Ms. Bruce, Ms. Chapman, and Mr. Bourgeois, have many years of experience applying inclusive policies in their schools; others have recently implemented such policies to meet the needs of their

schools' transgender students.

Thousands of transgender students attend American schools every day, many of whom – like Plaintiff H.S. – have come forward to request from their schools the same support and respect for their gender identity that all other students receive as a matter of course. In *amici's* view, it is both the legal and professional obligation of all educators to provide that support and respect to *all* students. North Carolina House Bill 2 (“H.B. 2”) effectively precludes North Carolina educators from meeting those obligations.

*Amici's* experiences refute the hypothetical concerns raised here by Defendants and Intervenor-Defendants (collectively, “Defendants”) – that allowing all students to use multiple-occupancy restroom and locker room facilities that match their gender identity will lead to general disruption in these public spaces, violate the privacy and/or “comfort” of other students, and/or will lead to the abolition of gender-segregated restroom and locker room facilities. These same hypothetical concerns have been raised in some of *amici's* schools. Although *amici* have addressed – and in some cases personally grappled with – many of the same fears and concerns, in their professional experience in the school context, *none of those fears and concerns have materialized in the form of actual problems in their schools*. Instead, inclusive policies have had the effect of not only fully supporting the reality of transgender students' circumstances, but also of fostering a safer and more welcoming learning environment for all.



## ARGUMENT

### **I. POLICIES RESPECTFUL OF EVERY STUDENT’S GENDER IDENTITY MINIMIZE DISRUPTIONS AND HELP CREATE A SAFE, WELCOMING, AND PRODUCTIVE LEARNING ENVIRONMENT FOR ALL**

*At first, we had our concerns – would letting students participate in activities and facilities that were consistent with their gender identity create problems? What would happen? Ultimately, we decided that we as the adults needed to manage our fears and give students the respect and dignity that they deserved. And I’m pleased to say that none of our fears has materialized.*

Dr. Judy Chiasson Testimony to the Cal. Senate Education Comm. on A.B. 1266 (June 12, 2013), available at <https://www.youtube.com/watch?v=Xmq9dIQdsNE> (“Chiasson Testimony”).

As educators who have devoted much of their lives to young people, *amici* recognize that all students deserve equal respect and equal treatment by their educators. The schools and districts with which *amici* are associated have adopted, or are in the process of adopting or refining, policies that allow transgender students access to the same facilities and opportunities as other students. *Amici*’s collective experience is that inclusive policies are necessary for a learning environment that is accessible, safe, and welcoming, which in turn enhances the educational experience for all students. Respecting students’ gender identity eliminates the disruption that results from singling out, stigmatizing, and modeling discrimination against transgender students supporting the reality of a transgender student’s circumstances, and avoids disrupting the normal social interactions involved in use of communal school bathrooms and locker rooms.

Defendants express fears over the imagined consequences of fully integrating transgender students into the school community. *Amici*’s experiences reveal these fears

to be unfounded. The policies in place in *amici*'s schools – some for a decade, or nearly so – simply have not resulted in the problems about which Defendants speculate. *Amici*'s experiences have instead been overwhelmingly positive. Far from being disruptive or potentially unsafe, as Defendants speculate, such policies have *minimized* disruption and safety concerns. In *amici*'s experience, the only disruption is caused by a lack of clarity about how to support transgender students. As Ms. Bruce observes, “A policy that requires equal treatment is not difficult to implement. Beyond sorting it out at the beginning, it’s not an ongoing, lingering issue[.]” Diana Bruce Interview, Oct. 5, 2015.

As educators, “[o]ur goal is to make sure that *every* young person is as present, and as able to engage in academic work as possible. Promoting a safe and welcoming environment is a way to promote education.” *Id.* (emphasis added). The results have been overwhelmingly positive, not only for transgender students, but for all students, faculty, administrators, and communities as a whole.

**A. Despite the Unfounded Fears of Adults, Students’ Experiences in Schools with Inclusive Policies Have Been Positive**

In *amici*'s professional experience, fears and concerns about inclusive policies are almost exclusively held by adults, rather than by students.<sup>3</sup> The students, by contrast, have often set a leading example in respectful treatment of transgender students –

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<sup>3</sup> *E.g.*, Howard Colter Interview, June 6, 2016 (“As to the students, I am most impressed. They are very understanding and accepting of their classmates. It feels like the adult community is struggling with it more.”); Sherie Hohs Interview, Oct. 15, 2015 (“This isn’t a kid issue. It’s an adult issue.”); Roger Bourgeois Interview, Oct. 8, 2015 (“Most of the problem is with the adults; the students are pretty accepting of these issues.”); Dr. Rachel Santa Interview, May 27, 2016 (“Adults have more issues than the students do.”).

recognizing their rightful place in school facilities that match their gender identity. Based on her more than ten years' experience working with the inclusive policies in place at Los Angeles Unified School District ("LAUSD"), the second-largest school district in the country, Dr. Chiasson recounts:

Our experience has been that the fears of the adults rarely play out. The students are very affirming and respectful of their classmates. Most of the reaction that I've ever encountered has been in response to people's fears, not the students' experiences. The students' experiences have been overwhelmingly positive. I have yet to be called into a situation to respond to an actual incident; I've only had to respond to fears, and the fears are unfounded.

Dr. Judy Chiasson Interview, Sept. 23, 2015.

Several of the *amici* have themselves wrestled with many of the same concerns raised by Defendants here, when first faced with the need to adopt an inclusive policy. For example, Mr. Vannasdall's district's initial experience with a transgender student resulted in litigation. Administrators and others were concerned that respecting a transgender student's gender identity would be disruptive and burdensome. David Vannasdall Interview, Sept. 23, 2015. But Mr. Vannasdall and his colleagues had a change of heart that began with a simple, open conversation between administrators and the student and his family. *Id.* In that conversation, it became "obvious that this student had no intentions of creating a disruption – he just wanted a home and a place to learn, and not worry about which restroom to use." *Id.* Once administrators understood that the student was simply asking to be treated like any other boy, their obligation as educators became clear – to help this student, and all students

come to school ready to learn. If they're worrying about the restroom, they're not fully there to learn, but instead just trying to navigate their day. Give students the opportunity to just be a kid, to use the bathroom, and know that it's not a disruption, it just makes sense."

*Id.* Ultimately, Dr. Vannasdall's district resolved the lawsuit against it by a voluntary resolution agreement with the U.S. Department of Justice, which included adopting a comprehensive policy respecting students' gender identity.<sup>4</sup> The outcome has been "very positive for the school, the district, and the students," according to Mr. Vannasdall, who now regularly consults with educators across the country, giving informal advice and guidance on inclusive policies for transgender students. *Id.* The "game-changer" for Arcadia and for other districts with which Mr. Vannasdall has consulted, is when educators "remember what we are here to do" – to help kids learn. *Id.*

Dr. Aberli and Atherton High School's first experience with transgender youth also arose out of a student request, and he, too, was unfamiliar with this issue, and had concerns about possible disruptions or privacy issues. But he tried to understand the student's request on both a personal level and in terms of the legal obligations of the schools. Dr. Thomas Aberli Interview, Oct. 7, 2015. Atherton's policy was developed through an extensive collaborative effort by Dr. Aberli and a panel of school administrators, teachers and parents, in which "[w]e considered the issue very carefully and thoughtfully, and

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<sup>4</sup> See U.S. Department of Justice, Office of Civil Rights Case No. 09-12-1020 (July 24, 2013), available at <http://www.justice.gov/sites/default/files/crt/legacy/2013/07/26/arcadialetter.pdf> (Resolution Letter); <http://www.justice.gov/sites/default/files/crt/legacy/2013/07/26/arcadiaagree.pdf> (Resolution Agreement).

posted all of the evidence we reviewed online.” Aberli Interview.<sup>5</sup> Atherton’s policy is based on LAUSD’s policy, which has worked well for a decade, without any complaints.

*Id.* Although there were some comments to the effect that, if the people in his (Kentucky) district wanted California policies, they would move to California, Dr. Aberli stated unequivocally that empathy and equality do not stop at state borders:

The value of human life is the same in Kentucky as it is anywhere else in this nation. And when we’re talking about an issue of civil rights, we’re talking about the value we put on human individuals.

Aberli Testimony. Understanding that the policy is about protecting students’ basic civil rights has helped clarify the issue.

It helped people to understand that this wasn’t about providing a special accommodation or “special rights” – this is about eliminating discrimination. When you tell a person you will do something that makes them stand out from everyone else, *that’s* when you start discriminating against them.

Aberli Interview. At the outset, in addition to a number of adults in his district, a handful of students also questioned Atherton’s new policy.

We had students that opposed the policy originally, and they’re still with us. I respect that some people may disagree or even feel uncomfortable with the policy, because honestly, for many people – including myself until a few months ago – they simply weren’t knowledgeable, or it wasn’t a close enough personal issue in terms of interacting with openly LGBT people to have a comfort level. I acknowledge and respect that. But I am not going to use someone’s discomfort as a means for discriminating against a protected population.

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<sup>5</sup> See also Dr. Thomas Aberli Testimony before the Kentucky Senate Education Committee on S.B. 76 (Feb. 19, 2015), video excerpt available at <https://www.youtube.com/watch?v=QodplMWsEvQ>. The materials Dr. Aberli references as having been posted online are available at [www.jefferson.kyschools.us/schools/high/atherton/SBDMDocuments.html](http://www.jefferson.kyschools.us/schools/high/atherton/SBDMDocuments.html).

*Id.* Ultimately, despite the initial opposition, Dr. Aberli reports that in practice he has “received zero complaints regarding a specific incident of concern for a violation of privacy. The concerns raised by individuals have all been philosophical.” *Id.*

Indeed, in *amici*’s experience, “an affirming policy has a positive effect on other students as well. If everyone is taken care of, students see that and they value that.”

Denise Palazzo Interview, Oct. 3, 2015. “When kids see that you are respecting all students, then they know that they will be respected. We are showing them how to treat people respectfully and know they will be treated the same.” Dr. Rachel Santa Interview, May 27, 2016. As Principal Peyton Chapman relates,

Students have high integrity radars – if some youth are made fun of, then they know it could happen to them. These fears keep all students in small boxes. They don’t try things out, engage their creativity and figure out who they are and can be. If schools define “who” students need to be and how they should behave, then they are less free to explore themselves, cultures and communities.

Peyton Chapman Interview, May 27, 2016. A policy respectful of every student’s gender identity, by contrast, fosters mutual respect and “creates open and innovative environments.” *Id.*

**B. Frequently Raised Areas of Concern, Such as Inappropriate Student Behavior in Restrooms and Locker Rooms, Have Not Been an Issue**

*There have not been any issues regarding this policy in locker rooms or bathrooms. But it has brought greater awareness of how we can increase privacy for all students.*

Aberli Interview.

No student should be denied access to any gender-specific facilities that are

available to other students of the same gender identity solely because of their transgender status. As educators and administrators who have been at the forefront of responding to issues similar to those raised by the Defendants, *amici* are well-situated to provide the Court with experience-based information about some of the hypothetical fears and concerns commonly raised when schools integrate transgender students into gender-specific restrooms and locker rooms, including the fear that some individuals might use an inclusive policy to gain access to the facilities of another gender for an improper purpose. *Amici* have found such fears and concerns to be wholly unfounded in practice.

### **1. Concerns About Restrooms Have Not Materialized**

“Questions about bathrooms come up in every staff training, and it’s an important thing that school staff want to understand. I think there’s an assumption that there will be disruption around restrooms.” Bruce Interview. But, as Ms. Bruce observes, all schools routinely “deal[] with many more adolescent behavior issues than just who’s using the bathroom based on gender identity,” and are very experienced with and adept at addressing them. *Id.* As with any behavior issue, “oftentimes disruption in our experience has been around inconsistency by staff – and that’s why clear guidance for schools is important[.]. . . . Our transgender students just want to use the restroom and be safe when they do it, and that’s all they’re trying to do.” *Id.*

Dr. Aberli similarly reports that Atherton has

multiple transgender individuals in our school, and restroom access has not been an issue. . . . [T]here has not been any issue at all with respect to the implementation. It’s not a big deal when you look at it from a standpoint of, we’re dealing with real people, we’re dealing with

children. Even at the high school level we're dealing with people who have had a hard enough time as it is, and they're just looking for reasonable support from the school in a very challenging social context, or during a very difficult process, as it is for many of them.

Aberli Interview. In *amici's* collective experience,

[t]here's been no pandemonium. There have been no transgender students who are sexual predators, or who are "switching gender" to peek at others. None of those irrational fears have been realized at all. I supervise our Title IX investigator, and there have been no issues with our policy there. I also supervise the general complaint process. Nothing has come through either of those two processes on this issue.

Dylan Pauly Interview.

## **2. Concerns About Locker Rooms Have Not Materialized**

As with restrooms, *amici* have experienced no problems with locker rooms related to transgender-inclusive policies. Such policies generally allow students access to locker rooms in accordance with gender identity, and in *amici's* experience, have resulted in no student attempts to exploit the policy or to break the rules in any way. Diana Bruce explains that "our transgender students are not interested in walking around the locker rooms and checking out anatomy. They're just trying to get through P.E. safely." Bruce Interview. Mary Doran concurs: "[W]hen the *coaches* tell me 'this [transgender policy] isn't an issue, isn't a big deal,' that really says something." Mary Doran Interview, Oct. 16, 2015.

Indeed, in the rare instances that *amici* have needed to address locker room issues, it has been to ensure the safety of the transgender students – "the real risk is to people who identify as transgender, or gay, or just 'other.'" Kunin Interview, June 10, 2016.



And even there, “[l]ocker rooms aren’t a [special] concern because we are already accustomed to dealing with students who have unique or special needs in the locker room context. This is just one more type of student that may need additional support in that space.” Palazzo Interview.

### **3. Concerns About Possible Nefarious Purposes or Inconsistency on the Part of the Transgender Student in Gaining Access to Restrooms and Locker Rooms Have Not Materialized**

*Amici* have also frequently addressed the concern that transgender students might just be “confused,” are likely to change their minds often about their gender identity, or might be falsely claiming to be transgender for some nefarious purpose. None of these concerns have materialized for *amici*. Moreover, *amici*’s policies allow schools to make reasonable assessments of individual requests for accommodation. As Dr. Chiasson explained in a letter to Dr. Aberli,

[i]t is reasonable to expect that a student will exercise consistency with respect to their identity and access to facilities. Students cannot switch their identity arbitrarily or opportunistically. For example, a student cannot be transgender only during physical education.

If the school strongly suspects that the request is not legitimate, they should provide accommodation for the student while continuing the conversation to better understand the student’s motivation for the request. Being transgender is a deeply rooted identity. ... It is not subject to arbitrary whims.

Chiasson Letter to Aberli dated May 29, 2014.<sup>6</sup> Similarly, Mr. Bourgeois explains that

A student can’t just show up and say, “I’m a male, but I want to start using the girls’ locker room today.” People worry some football player

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<sup>6</sup> A copy of Dr. Chiasson’s letter to Dr. Aberli (“Chiasson Letter”) is included among the materials posted by Atherton. See footnote 5, *supra*.

will show up and want to get into the girls locker room, but we would not allow that. There's a process we go through to work with them and their families, and verify their identity. Far from being disruptive, our experience has been that those students just want to blend in.

Bourgeois Interview. All *amici*'s schools follow a similar policy, and as a general matter, it is easy to identify genuine requests.

Some people fear someone will masquerade ... as transgender to be predatory. But being transgender is persistent and consistent throughout the day: all classes; all relationships; in and out of the classroom. ... I've never had that happen, where someone has pretended to be transgender for nefarious reasons. It's just plain silly to think that [a male student] is going to come to school for months on end, wear female attire, present as female to all of his friends and teachers, just so he can go into the female locker room.

Chiasson Interview. Indeed, schools are very adept at dealing with instances of misbehavior in restrooms and locker rooms precisely because it is not particularly difficult for a student to gain access to another gender's facilities.

Adolescents can be impulsive, and we have had boys and girls dart into the other bathroom. We find them and deal with them. They certainly don't need to masquerade as transgender to engage in that misconduct.

*Id.* In other words, schools routinely deal with behavioral problems – and *amici* “would have a problem” with any student actively violating the privacy of another. Schaffer Interview, June 1, 2016. While parents, teachers and administrators alike are always looking out for the safety of all students, a policy respecting transgender students is far more likely to thwart misbehavior in these spaces than cause it.

## **II. SCHOOLS CAN AND SHOULD FULLY RESPECT BOTH THE GENDER IDENTITY AND THE PRIVACY CONCERNS OF ALL STUDENTS**

Many of the concerns that have been raised with regard to inclusive policies for

transgender students involve perceived threats to the “privacy” or “comfort” of other students. As educators, *amici* are respectful of the needs and concerns of all of their students – but *amici* strongly disagree that a school should discriminate against transgender students in order to accommodate complaints that other students are “uncomfortable” with sharing a restroom or locker room with a transgender person. That is simply not how educators deal with students’ discomfort with others or with themselves. To the extent that a student has concerns about sharing facilities with transgender students, schools must help the student deal with that discomfort in a way that does not impinge upon others’ civil rights.

One solution is to offer private facilities to the student who does not want to use the same facilities as a transgender student. Most of *amici*’s schools offer private facilities that may be used by persons of either gender, in addition to gender-segregated facilities. Ms. Bruce, for example, recounts that in her schools,

[a]ccording to our policy guidance, if a student has a problem, we can make another bathroom available to that student. I haven’t heard from our schools, however, of students that have asked to use a different restroom in that circumstance. When I train our school staff, some want to ask hypotheticals, but in our experience, this has not been an issue. Young people are pretty savvy and comfortable, and can understand and empathize with someone who just wants to use the bathroom.

Bruce Interview. Indeed, some students prefer to use these private facilities for any number of reasons, and are permitted to do so without the need to provide an explanation – including in the rare circumstance that a student might not want to use the same facility as a transgender student. Dr. Chiasson, for example, explains that

any student who, for whatever reason, feels uncomfortable in a communal setting – whether because of weight, personal comfort, body image, social anxiety, or other reasons – we will accommodate that without the need for explanation, and they can use a private setting such as a nurse’s room. The sad truth is that our transgender children are significantly more likely to be the targets of student misconduct, rather than the perpetrators of it.

Chiasson Interview. Similarly, Dr. Aberli’s school

allows any student who wants to use a private restroom to do so. What I have clearly communicated in public, was that any student may use the front office restroom. We don’t ask why. There’s a thousand reasons that a student needs privacy, so it’s our responsibility to accommodate any student for any reason. It could be shyness, or trauma.

Aberli Interview. When separate facilities are not available or practical, there are other means of providing extra privacy when needed, such as using a curtain to create a separate area, or allowing a student to use the locker room before or after other students.

Matthew Haney Interview, June 6, 2016.

But, even in the rare case where a student might express discomfort with sharing facilities with a transgender student, the solution cannot be to deny access to transgender student. As Mr. Bourgeois explains, any such student expressing such discomfort will be offered alternative facilities or arrangements to address their concerns,

[b]ut we’re not going to tell the transgender student they can’t go where they’re comfortable. I can still remember the remnants of white people being uncomfortable with black people being in same locker rooms and restrooms, so it’s not about whether everyone is “comfortable.” Just because some people were uncomfortable didn’t mean you treated people as second-class citizens.

Bourgeois Interview. Mr. Kunin agrees that “being uncomfortable doesn’t overrule someone’s rights,” but he emphasizes that “there are also ways to support the person who

is uncomfortable – we would want that person to feel safe and participate, too.” Kunin Interview. In short, although the schools should accommodate requests for extra privacy (regardless of the reason), no student should ever be *forced* to use separate facilities (or to go without using communal restrooms and locker rooms at all) – as North Carolina is effectively forcing transgender students in its public schools and universities to do – in order to accommodate the actual or anticipated discomfort of other students.

Defendants, through H.B. 2 and related measures, propose to meet anticipated privacy and “comfort” concerns by precluding transgender individuals from using multiple occupancy restrooms and locker rooms that do not correspond to the gender marker indicated on their birth certificate. Defendants have suggested that it could be a “reasonable accommodation” to provide “a single occupancy restroom, locker room, or shower facility when readily available and when practicable” for transgender individuals. Dkt. 55 at 2 (quoting N.C. Exec. Order No. 93 (Apr. 12, 2016)). But the fact is that, particularly in the educational context, such a discriminatory policy singles out students like Plaintiffs H.S. and McGarry from their peers and creates a serious dilemma for them – requiring them to either use a separate restroom or locker room simply because they are transgender (assuming such facilities are even available, which they are not for Plaintiffs H.S. and McGarry), or put themselves at risk of harassment or bullying by forcing them to use facilities that are patently inconsistent with their gender.

Having to navigate this problem daily seriously interferes with transgender students’ education, impairs their ability to learn and socialize, and results in real

physical and emotional harm. Ms. Bruce explains that when transgender students

have reported worrying about whether they can use the restroom that matches their gender identity, they have said they just don't go to the bathroom at school. That can't possibly help them learn. We don't want them preoccupied with trying not to use the bathroom, when they're supposed to pay attention to trigonometry. ... We want them to know where they can use the restroom, so they can feel more like anyone else in their school and not like an outsider. We want to make sure that all of our students have an opportunity to participate in everything a school has to offer, including social opportunities throughout the campus. When transgender students don't use the restroom, they're missing an opportunity to socialize with their peers.

Bruce Interview. Although, as noted above, *amici* routinely offer separate facilities to any student requesting additional privacy for any reason (including but certainly not limited to transgender students), no student should ever be forced to use a separate facility simply because they are transgender. Dr. Aberli agrees that “making transgender students use the nurse’s room” is no answer at all:

Tell me what we would say to that child – that there’s something so freakish about you, and so many people are uncomfortable with you, that you have to use a completely separate restroom than the one you feel like you should be using?

Aberli Interview. Instead, in *amici*'s view, all students' needs are best served when educators are in a position to treat all students equally. As Ms. Pauly articulates,

It's our goal to have every student comfortable in their learning environment. [But if] we had a student with a health condition that wasn't comfortable changing in a locker room with everyone else, we wouldn't have a “health condition locker room” and a “non-health condition locker room.” This is the same thing. This allows us to offer the same accommodation to every student to allow them to be comfortable.

Pauly Interview. H.B. 2, however, strips North Carolina's educators of their ability to

treat all of their students equally – to the detriment of all North Carolina schools.

### **III. GENDER-SEGREGATED SPACES AND ACTIVITIES ARE FULLY CONSISTENT WITH SCHOOL POLICIES RESPECTING EVERY STUDENT’S GENDER IDENTITY**

Defendants have suggested that permitting individuals to use facilities consistent with their gender identity could lead to the abolition of gender-specific restrooms and locker rooms. Contrary to that “slippery slope” argument, however, all *amici* continue to maintain gender-segregated restroom and locker room facilities in their schools. In fact, respecting the gender identity of transgender students reinforces, rather than undermines, the concept of separate facilities for girls and boys. By contrast, requiring a transgender girl like H.S. to use the boys’ restroom and locker room undermines the notion of gender-specific spaces. Dr. Chiasson offers an example from her own district, in which a new student, a transgender male, had been

using the female facilities, incorrectly assuming that because he was a natal female, that he would be required to do so. *It was equally uncomfortable for him to use the girls’ facilities as it was for the girls themselves.* When the administration learned of the situation, they told the young man that he could use the boys’ facilities. Everyone was relieved.

Chiasson Letter. Mr. O’Reilly similarly commented that, until he considered the effect of forcing a transgender student to use a restroom inconsistent with gender identity, he “hadn’t really understood the literal meaning of the word ‘misfit.’ When forced to use the restroom for the gender they do not associate with, a student literally becomes a *misfit*: someone being forced into a place they don’t belong.” O’Reilly Interview, Sept. 20, 2015. Notably, transgender students (like H.S. and Mr. McGarry here) have not

sought to eliminate gender-specific facilities but instead merely want to use the facilities that correspond with their gender identity. Because respecting transgender students' gender identity solves the "misfit" problem in gender-segregated spaces, "[t]ransgender-affirming policies solve problems, not create them. Even if the law allowed it, forcing a transgender boy to use the female facilities would be extremely uncomfortable for all parties involved." Chiasson Interview.

### **CONCLUSION**

Defendants assume that policies respectful of individuals' gender identity are disruptive and impinge upon the rights and well-being of cisgender individuals, but *amici's* experience as school administrators has shown otherwise: respect for a transgender student's gender identity supports the dignity and worth of all students by affording them equal opportunities to participate and learn. Moreover, such policies have not been disruptive – either to the academic climate or to the maintenance of gender-specific facilities – and instead protect the safety and privacy of all youth.

While *amici* agree with Plaintiffs that H.B. 2 is contrary to the law, on a more fundamental level it is simply bad public policy, and particularly so in the educational context. All students inhabit a world – both inside and outside of school – that includes transgender people. Pretending that this is not so for the sake of entirely unfounded concerns is harmful to transgender students, to their fellow students, and to the community at large. *Amici* therefore urge this Court to grant Plaintiffs' Motion for Preliminary Injunction.



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Respectfully submitted,  
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## **APPENDIX A: *Amici* Background and Experience**

*Amici curiae* are a school district and superintendents, principals, school board members, general counsel, social workers, and other officials from schools and school districts that have adopted or are in the process of adopting inclusive policies for their transgender students. They represent a broad cross-section of schools and districts from across the country, collectively responsible for the education of more than 1.3 million students annually. *Amici* offer valuable perspectives on a number of the issues in this case, based on their broad collective experience with adopting, implementing, and enforcing such policies. Counsel for *amici* conducted telephone interviews with certain individual *amici* in Fall 2015 and Spring 2016, to obtain the statements cited and quoted in this brief. The experiences of *amici* not quoted or cited in this brief are consistent with those expressed in the brief. With the exception of *amicus* Washoe County School District, *amici* join this brief in their individual capacities and not as representatives of their respective schools or districts.

**Judy Chiasson, Ph.D.**, is the Program Coordinator for the Office of Human Relations, Diversity and Equity in the Los Angeles Unified School District (“LAUSD”) in Los Angeles, California. LAUSD is the second-largest school district in the country, with more than 732,000 students in more than 1,200 schools, spanning 745 square miles. Dr. Chiasson helped author LAUSD’s guidance documents on transgender students, and has overseen the implementation of LAUSD’s policy since it was adopted a decade ago. Dr. Chiasson has given legislative testimony based on LAUSD’s approximately ten years

of experience with its policies<sup>1</sup>, and has consulted with other school administrators across the country on transgender and other diversity issues.

**David Vannasdall** has worked in the education field for twenty-two years, and been Superintendent for Arcadia Unified School District (“Arcadia”) in Arcadia, California since July 2014, having previously served as Arcadia’s Deputy Superintendent for two years and principal of Arcadia High School for eight years. He developed Arcadia’s policy for supporting transgender students. Mr. Vannasdall has consulted with school officials nationally on transgender issues, and has presented on Arcadia’s policy to other superintendents. Arcadia has approximately 10,000 students, and has two years of experience with inclusive policies for transgender students.

**Diana Bruce** is the Director of Health and Wellness for the District of Columbia Public Schools (“DCPS”), a district that educates approximately 46,500 students across 111 schools. DCPS has provided transgender students access to facilities in accordance with their gender identity since 2006, and Ms. Bruce led the effort surrounding the school district’s adoption of a policy providing in-depth guidance in June 2015. Ms. Bruce consults with administrators across the country about DC’s nearly decade-long experience with inclusive policies for transgender students.

**Denise Palazzo** is a past Instructional Facilitator and Diversity and LGBTQ<sup>2</sup> Coordinator for Broward County Public Schools (“BCPS”) in Broward County, Florida,

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<sup>1</sup> Dr. Chiasson’s 2013 testimony to the California Senate Education Committee (“2013 Chiasson Testimony”) is available at: *LAUSD’s Judy Chiasson’s Testimony on AB 1266*, YouTube (Oct. 19, 2013), <https://www.youtube.com/watch?v=Xmq9dIQdsNE>. An unofficial transcript is on file with Pillsbury.

where she had previously taught for fourteen years. BCPS is the sixth-largest public school system in the United States and the second-largest in the state of Florida, with more than 265,000 students. Ms. Palazzo spearheaded BCPS's recent effort to adopt a formal policy allowing transgender students access to programs and facilities in accordance with their gender identity, which has now been finalized. The new policy enhances the recommendations and guidance that BCPS adopted in 2012. Ms. Palazzo also advises officials throughout the country about inclusive policies for transgender students, and continues to consult with BCPS and other school districts throughout Florida and the nation.

**Jeremy Majeski** is the Principal of Komensky Elementary School ("Komensky") in Berwyn, Illinois. He has been an educator for thirteen years and Komensky's principal for four years. Mr. Majeski directed the development and implementation of an inclusive policy at Komensky after a transgender student requested support, and is now helping to direct implementation of the policy throughout Berwyn South School District 100 ("Berwyn"), which educates approximately 4,000 students. Berwyn was recently honored by the Illinois Safe Schools Alliance as the Ally of the Year for 2015.

**Thomas Aberli, Ed.D.**, is the Principal of J.M. Atherton High School ("Atherton"), which educates approximately 1,300 students in Louisville, Kentucky. Atherton has had a formal policy of respecting students' gender identity since June 2014. Dr. Aberli oversaw the adoption of this anti-discrimination policy through a thoughtful process that engaged the public, a twelve-member decision-making council, and the

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<sup>2</sup> The acronym "LGBTQ" stands for lesbian, gay, bisexual, transgender, and questioning.

superintendent. Dr. Aberli also recently testified about Atherton's policy before the Kentucky Senate Education Committee.<sup>3</sup>

**Howard Colter** is the Superintendent of Mount Desert Island Regional School System ("MDIRSS"), and **Matthew Haney** is Principal of Mount Desert Island High School in Bar Harbor, Maine. MDIRSS serves eleven schools and over 1,500 students, including approximately 571 students at Mount Desert Island High School. In 2015, the policy committee of the MDIRSS board forwarded to its individual schools recommended guidelines that aim to foster a learning environment that is safe and free from discrimination, harassment, and bullying and to assist in the educational and social integration of transgender students in its schools. Mr. Colter has worked in education for forty-four years and obtained a Master's Degree in Education and School Administration Credentials. He has been a superintendent for thirty-three years in school systems in California, Massachusetts, New Hampshire, and Maine, with sixteen years at MDIRSS. He has also served as a principal at the elementary, middle, and high school levels, although mostly in high schools. Mr. Haney, now completing his sixteenth year in education, began as a collegiate coach and athletic director. Since then, he has served for eight years as an assistant principal and for three years as a principal at Mount Desert High School. Before becoming principal, Mr. Haney was dean of curriculum at Mount Desert Island High. Mr. Haney holds a Master's Degree in Educational Leadership.

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<sup>3</sup> A video excerpt from Dr. Aberli's testimony (Aberli Testimony) is available at: KET – Kentucky Educational Television, *Principal Thomas Aberli on Transgender Student Policy Legislative Update KET*, YouTube (Feb. 20, 2015) <https://www.youtube.com/watch?v=QodplMWSvQ>. An unofficial transcript is on file with Pillsbury.

**Ken Kunin** is the Superintendent of South Portland Public Schools (“South Portland”) in South Portland, Maine, a district that includes eight schools and educates over 3,000 students. Mr. Kunin began as Superintendent in August 2015, and previously served as principal of one of the most diverse high schools north of Boston for five years, and as middle and high school principal of an international school in Rome, Italy, for four years. Mr. Kunin holds a Master’s degree in Special Education and a Certificate of Advanced Studies in Educational Leadership.

**Roger Bourgeois** is the Superintendent-Director of Greater Lowell Technical Regional School District, a single-school district that educates approximately 2,200 students in Massachusetts. Mr. Bourgeois has eight years of experience as a superintendent with schools that allow students to access facilities and programs in accordance with their gender identity. Mr. Bourgeois serves by appointment of the governor on the Massachusetts Commission on LGBTQ Youth, for which he currently serves on the Safe Schools Committee. He also participates in school trainings through the Massachusetts Department of Education’s Safe Schools Program, and has testified at state legislative hearings involving transgender youth issues.

**Blake Prewitt** is the Superintendent of Ferndale Public Schools in Ferndale, Michigan. Mr. Prewitt has been in the education field for over twenty years, and has served as a principal, assistant principal, and curriculum director before becoming superintendent in July 2014. Ferndale Public Schools educates over 3,000 students each year and operates an early childcare center, two elementary schools, an intermediate school, a middle school, two high schools, one alternative education program, and one

adult education school. In April 2016, the Ferndale Schools Board of Education unanimously agreed to support the proposed state guidelines for LGBT youth that would allow transgender and gender non-conforming students to use the facilities in accordance with their gender identity, citing their Strategic Plan grounded in the values of trust, respect, and inclusion.

**Michael Thomas** is the Chief of Schools and Interim Superintendent of Minneapolis Public Schools (“MPS”), a district that educates over 35,000 students across 75 schools. Mr. Thomas previously served for six years as an elementary and junior high school principal in the Osseo School District and six years coordinating that district's equity and integration efforts. Before being recruited to Osseo School District, Mr. Thomas worked in St. Paul Public Schools as a social worker and director of student and family support. After his term as Interim Superintendent, Mr. Thomas will continue in his role as Chief of Schools for MPS. MPS has over five years of experience with inclusive policies for transgender students. Policy 6135, adopted in January 2014, provides transgender students the option to self-select into the group of their gender identity or expression the student consistently use at school, including for locker and dressing room use.

**Mary Doran** is the former chair of the Saint Paul Public Schools (“SPPS”) Board of Education; her term-limited term ended December 31, 2015. She served on the Board of Education for four years, including the last two years as chair, during which she led the effort to craft, pass, and implement the SPPS Gender Inclusion Policy, which passed with unanimous support from Board of Education members in March 2015 and was



implemented at the start of the 2015-16 academic year. SPPS is one of Minnesota's largest school districts, with more than 39,000 students, over fifty-eight schools, and more than 5,300 full-time staff members, including over 3,100 teachers.

**Washoe County School District (WCSD)** is a public school district providing public education to students in Washoe County, Nevada, including the cities of Reno and Sparks, and the unincorporated communities of Verdi, Incline Village, and Gerlach. WCSD is the second-largest school district in Nevada with approximately 63,000 students enrolled in ninety-three schools. In February 2015, WCSD adopted Administrative Regulation 5161, which provides that transgender students shall have access to restrooms, locker rooms, and other use facilities that correspond to the gender identity expressed by the student and asserted at school.

**James Morse, Sr., Ed.D.**, is the Superintendent of Schools for the Oyster River Cooperative School District, serving approximately 2,100 students across four schools in Durham, Lee, and Madbury, New Hampshire. Before serving as Superintendent for Oyster River, Dr. Morse served as the superintendent for the Portland School District—Maine's largest school district. Dr. Morse has worked in public education for forty years, including thirty years as a superintendent, three years as an assistant superintendent, and seven years as a principal. In September 2015, Dr. Morse implemented the state's first public school policy that defines the terms "gender identity," "gender expression," "transgender," and "cisgender" and provides for a written plan related to privacy and gender identity disclosure. The policy also provides transgender students access to

bathrooms and locker rooms in accordance with their gender identity, and provides alternative, private facilities for all students should they choose to use them.

**Thomas Smith, Ed.D.**, is the Superintendent of Schools at Hopewell Valley Regional School District, a comprehensive regional public school district serving approximately 4,000 students in preschool through twelfth grade from three communities in Mercer County, New Jersey. Dr. Smith has worked in the education field for over twenty years and has been Superintendent at Hopewell for over six years. Hopewell has provided transgender students access to facilities in accordance with their gender identity since at least 2009, and Dr. Smith has consulted with administrators throughout the state about Hopewell's experience with inclusive policies for transgender students.

**John O'Reilly** is the Principal of the Academy of Arts and Letters, Public School/Middle School 492 ("A&L") in Brooklyn, New York (part of the New York City Department of Education ("NYC DOE"), which serves 1.1 million students in over 1,800 schools). A&L educates students from kindergarten through the eighth grade, and adopted an inclusive policy for transgender students four years ago. After Mr. O'Reilly implemented A&L's policy, the NYC DOE issued similar guidelines requiring equal opportunity and access for transgender students.

**Heidi Carter** is the chair of the Durham Public Schools Board of Education in Durham, North Carolina. She has served as chair for the past four years, and on the board for a total of twelve years. Durham Public Schools is one of the ten-largest school districts in North Carolina, comprising over forty schools and educating approximately 33,500 students from pre-kindergarten through high school. It is one of the top-thirty

school districts in the nation for employing National Board Certified Teachers, and two of its schools were included on *US News & World Report's* "Best High Schools" list in 2015. The Durham Public Schools Board of Education approved a resolution opposing H.B. 2, and in April 2016 revised its non-discrimination policy to prohibit discrimination based on gender identity.

**Rudy Rudolph** is a longtime administrator for the Portland Public Schools ("PPS") in Portland, Oregon, the largest school district in the state with eighty-five schools and approximately 49,000 students. Ms. Rudolph is currently a Project Manager for the Equity Department for PPS. She has spearheaded a group of administrators and allies in the district to facilitate the full inclusion of LGBTQ students, and continues to work closely with schools throughout PPS in supporting the inclusion and success of all students, including transgender students. Ms. Rudolph is also involved in the ongoing development, implementation, and improvement of support for transgender students, staff, and families. **Peyton Chapman** has been the principal of the 1,700-student Lincoln High School in Portland, Oregon for ten years. She has also been a vice principal at another high school, and taught grades 6-12 for eight years, in both high- and low-poverty schools. Ms. Chapman holds a Master's Degree in Teaching and a *Juris Doctor* degree. She has worked closely with School Psychologist Jim Hanson to expand Lincoln's community-based "Health Action Network" stakeholder group, implement gender equity professional development for staff, coaches and parents, and to empower student voices through diversity clubs such as Lincoln's Queer Straight Alliance. Ms.

Chapman has been interviewed by the Associated Press and a local NBC television affiliate regarding her experience with policies that support transgender students.

**Rachel Santa, Ed.D.**, is the Director of Special Education for the Cumberland, Rhode Island School District, which serves approximately 4,500 students. Dr. Santa has worked in special education since 1990 and has over twelve years of experience in school administration and providing services for students in the public school setting. The Rhode Island Interscholastic League policies provide transgender students access to bathrooms and locker rooms and participation in team sports in accordance with their gender identity. Dr. Santa was an integral part of Cumberland School District's unanimous passage of an official district-wide policy this year that gives all students an opportunity to use alternative facilities should they feel uncomfortable using a gender-designated facility for any reason. Dr. Santa works in collaboration with school committees in developing policies, processes and procedures that support the equitable education of all students.

**Lindsey Pollock, Ed.D.**, is the Principal of a Montessori magnet school in Houston, Texas that serves approximately 760 students from pre-kindergarten through eighth grade. She has served as principal of her school since July 2008. In 2014, Dr. Pollock provided an interview to the cable news outlet CNN regarding her school's policy supporting transgender students. *6 Ways to Embrace Gender Differences at School* (Oct. 3, 2014), available at <http://www.cnn.com/2014/10/03/living/children-gender-inclusive-schools/> (last visited June 23, 2016).

**Brian Schaffer** is the Principal of Lamoille Union High School in Hyde Park, Vermont. Mr. Schaffer has sixteen years of experience as an educator and school administrator, including nine years as Principal. He was selected as the 2016 Vermont Principal of the Year by the National Association of Secondary School Principals, and as the 2015 Outstanding Educator of the Year by Outright Vermont.

**Lisa Love** is the Manager of Health Education for Seattle Public Schools (“SPS”), a school district which educates approximately 53,000 students in ninety-seven schools. Ms. Love’s position with SPS includes providing technical assistance to families and staff seeking support for LGBT students, training staff on LGBT issues, and developing district policies and procedures. Ms. Love has been in the field of education for almost twenty years, and directed the efforts that led to SPS’s adoption in 2012 of a formal superintendent procedure that respects students’ gender identity.

**Dylan Pauly** is General Counsel for Madison Metropolitan School District (“MMSD”) in Madison, Wisconsin, the second-largest school district in the state with more than 27,000 students. Ms. Pauly drafted MMSD’s policy for transgender students, and has presented the policy to the Wisconsin Association of School Boards and the National School Boards Association. Ms. Pauly also supervises the district’s Title IX investigator. **Sherie Hohs** is a Social Worker with MMSD with twelve years of experience in the district. Her work focuses on supporting the needs of LGBTQ students, providing professional development trainings to staff, and working with parents and community partners. Ms. Pauly and Ms. Hohs both consult with administrators across

the state and from other parts of the country about inclusive policies for transgender students.

**Bryan Davis, Ph.D.**, is Superintendent of Shorewood School District, which serves approximately 2,000 students in Shorewood, Wisconsin. Dr. Davis has eighteen years of experience in the education field, including six years as a superintendent and eight years as a principal. **Paru Shah, Ph.D.**, is President of Shorewood's Board of Education. Dr. Shah has been a school board member since January 2014 and an associate professor at the University of Wisconsin-Milwaukee since September 2011. In February 2014, the Shorewood School Board approved Policy 411- Equal Educational Opportunities as well as Guideline 411- Nondiscrimination Related to Students Who Are Transgender and Students Nonconforming to Gender Role Stereotypes. In May 2016, the U.S. Department of Education cited the Shorewood School District in a report highlighting school districts across the nation that are at the forefront of emerging policies and practices for supporting transgender students.

## CERTIFICATE OF SERVICE

I hereby certify that, on June 24, 2016, I conditionally filed the foregoing *Amici Curiae* Brief of School Administrators from California, District of Columbia, Florida, Illinois, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Nevada, New Hampshire, New Jersey, New York, North Carolina, Oregon, Rhode Island, Texas, Vermont, Washington, and Wisconsin in Support of Plaintiffs' Motion for Preliminary Injunction with the Clerk of the Court using the CM/ECF system, which will automatically serve electronic copies upon all counsel of record.

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