

MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Court Docket No. PEN-12-582

**JOHN DOE and JANE DOE, as parents and next
friends of SUSAN DOE, *and***

MAINE HUMAN RIGHTS COMMISSION

Appellants,

v.

KELLY CLENCHY, *et al.*

Appellees.

ON APPEAL FROM THE PENOBSCOT COUNTY SUPERIOR COURT

**AMICI BRIEF OF THE MAINE CHAPTER OF THE AMERICAN ACADEMY OF
PEDIATRICS, THE MAINE PSYCHOLOGICAL ASSOCIATION, THE NATIONAL
ASSOCIATION OF SOCIAL WORKERS-MAINE CHAPTER, GLSEN DOWNEAST
MAINE, GLSEN SOUTHERN MAINE, TRANS YOUTH EQUALITY FOUNDATION, AND
THE MAINE WOMEN'S LOBBY**

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STATEMENT OF INTEREST OF AMICI

Amicus Curiae Maine Chapter of the American Academy of Pediatrics (AAP) is a membership organization of 220 pediatricians and subspecialists. The Maine Chapter of the AAP is dedicated to improving the lives of children and adolescents in Maine. It promotes excellence in health care by: (1) ensuring that members have the skills and knowledge to remain the best qualified health professionals who deliver care to infants, children, adolescents and young adults; (2) working to secure access to and delivery of high quality care for all children; and (3) monitoring the effect of changes to the health care delivery system on children and pediatricians. The Maine Chapter of the AAP believes that living consistent with one's gender identity, including at school and in other youth-based settings, is critical for the health and sound development of transgender children and adolescents.

Amicus Curiae Maine Psychological Association is a membership organization representing psychologists in Maine who work in private practice, at Maine's colleges and universities, and in the public sector. Its mission is to advance psychology as a science, as a profession, and as a means of promoting health and human welfare.

Amicus Curiae National Association of Social Workers-Maine Chapter is a state affiliate of the National Association of Social Workers (NASW), the largest organization of professional social workers in the world, with over 150,000 members in fifty-six chapters nationwide and internationally. The NASW-Maine Chapter, with approximately 1,300 members, is the major

professional social work organization in the state. Professional social workers are the nation's largest group of mental health service providers. Professional social workers address problems as varied as mental illness, substance abuse, health challenges, disabilities, inadequate housing, workplace tensions, poverty, family violence, trauma, social injustice, and inadequate access to services. The NASW-Maine Chapter is committed to advancing professional social work practice and to promoting human rights, social and economic justice, and unimpeded access to services for everyone.

Amicus Curiae GLSEN Downeast Maine and GLSEN Southern Maine are chapters of the Gay, Lesbian & Straight Education Network. GLSEN is the leading national education organization focused on ensuring safe schools for all students. Established in 1990, GLSEN envisions a world in which every child learns to respect and accept all people, regardless of sexual orientation or gender identity or expression. The GLSEN Downeast Maine Chapter works with schools throughout northern and eastern Maine, including in Orono, covering roughly the area of Maine's second congressional district. GLSEN Southern Maine works with schools in southern Maine roughly equivalent to the first congressional district. GLSEN and the National Center for Transgender Equality have created a model school policy on transgender students. That policy states, in part, that "[d]iscrimination often affects transgender and gender nonconforming students in particular ways that prevent them from fully participating in the school environment and impacts their ability to learn." The policy provides that different treatment of transgender students, including

“preventing students from using appropriate restrooms,” leads to negative school experiences and increases student dropout rates.

Amici Curiae Trans Youth Equality Foundation, based in Portland, Maine, provides education, advocacy and support for transgender and gender non-conforming children and youth and their families. Its mission is to share information about the unique needs of this community, partnering with families, educators, and service providers to help foster a healthy, caring, and safe environment for all transgender children.

For more than 30 years, Amicus Curiae Maine Women’s Lobby has been working to increase opportunities—through education and advocacy—on behalf of women and girls. Its goal is to ensure that women and girls in Maine can lead healthy and productive lives free from violence and discrimination. The Maine Women’s Lobby is a recognized leader on some of the most important issues of our time. It brings the voice of Maine women through public policy development, education, and advocacy focused on four core issues: economic security, health care and reproductive rights, civil rights, and freedom from violence.

Maine law guarantees to transgender students equal educational opportunities. *See* 5 M.R.S.A. §§ 4601-4602; 5 M.R.S.A. §§ 4591-4592. It recognizes that denying a transgender student the “equal enjoyment” of a schools’ “accommodations, advantages [and] facilities” impedes equal educational opportunity. *See* 5 M.R.S.A. § 4592 (1).

The amici curiae have a substantial interest in this case as organizations dedicated to the health and welfare of Maine’s children and adolescents. The promise of equal educational opportunity for transgender students can be fulfilled only if they are able to live fully – including in all components of the school environment – as the gender that they are. The principles set forth in this brief are well-established fundamental concepts of adolescent psychosocial development applied to the unique circumstances of individuals whose gender identity is different than their birth sex. For these individuals, normal psychological development and educational growth, including the critical ability to form peer relationships, requires that they integrate their gender identity into their lived experience. Most central to this case, this must include the ability to use the restroom consistent with one’s gender identity.

SUMMARY OF ARGUMENT

The promise of equal educational opportunity for transgender students can be fulfilled only if they are able to live fully – including in all components of the school environment – as the gender that they are. The principles set forth in this brief are well-established fundamental concepts of adolescent psychosocial development applied to the unique circumstances of individuals whose gender identity is different than their birth sex. For these individuals, normal psychological development and educational growth, including the critical ability to form peer relationships, require that they integrate their gender identity into their lived experience. Most central to this case, that must include the ability to use the restroom consistent with one’s gender identity.

ARGUMENT

I. Transgender Youth And Children Have The Same Developmental Needs As Others.

Transgender children and adolescents have the same developmental needs—and the same potential—as other youth.¹ When they are supported and allowed to live consistently with their gender identity, transgender children thrive and grow into healthy adults who have the same capacity for happiness, achievement, and contributing to society as others. But when they are denied acceptance and the ability to participate in all aspects of school and society on equal terms, transgender youth, like other youth who are stigmatized and marginalized, are at risk of serious problems, including depression, substance abuse, risky sexual practices, and suicidality.² In order to meet the promise of equal education for all students, *amici* urge this Court to clarify the scope of Maine law and, in particular, confirm that a transgender girl must be given access to the girls’ restroom in schools.

A. Transgender Children Have A Gender Identity That is Different from their Assigned Birth Sex.

A transgender child is one whose gender identity—a person’s basic sense of being male or female—differs from that typically associated with the sex

¹ When referring to transgender children and youth, this brief also sometimes uses the terms children and youth with a cross-gender identity, gender nonconforming children and youth, and gender variant children and youth.

² Public Health Agency of Canada, *Gender Identity in Schools: Questions and Answers* 4 (2010) (“[G]ender variant youth face the same general risk factors for depression and suicide as other youth,” but “due to gender variant youths’ experience of discrimination, stigmatization, harassment, verbal abuse and rejection, the effects of low self-esteem and depression may be severe.”).

assigned to him/her at birth. Gender identity is a deeply felt, core component of a person's identity.³ The factors that influence whether a person's gender identity is male or female are not known with precision; however, existing evidence suggests that gender identity is either innate or fixed at an early age, and likely has a strong biological and genetic component.⁴ Children usually start to become aware of their gender identity between the ages of 18 months and 3 years.⁵

Everyone has a gender identity—not just transgender people. For most people, their gender identity matches their assigned birth sex. Indeed, most people simply assume that a person who is born with a female body will identify as a female, and that a person who is born with a male body will identify as male. And, in most cases, that assumption is correct. However, as medical science recognizes, there are some individuals who have a deeply felt, internal identification and self-image as male or female that differs from their

³ American Psychological Association, *Answers To Your Questions About Transgender People, Gender Identity, and Gender Expression*, available at <http://www.apa.org/topics/sexuality/transgender.pdf> (last visited Apr. 29, 2013).

⁴ See, e.g., Peggy T. Cohen-Kettenis & Louis J. Gooren, *Transsexualism: A Review of Etiology, Diagnosis and Treatment*, 46 *J. Psychosomatic Res.* 315 (1999); Jiang-Ning Zhou et al., *A sex difference in the human brain and its relation to transsexuality*, 378 *Nature* 68 (1995); Louis Gooren, *Gender Transpositions: The Brain Has Not Followed Other Markers of Sexual Differentiation?*, 4 *Int'l J. of Transgenderism* (2000), available at <http://www.wpath.org/journal/www.iiav.nl/ezines/web/IJT/97-03/numbers/symposion/abstracts-1.htm>.

⁵ Gerald P. Mallon & Teresa DeCrescenzo, *Transgender Children and Youth: A Child Welfare Perspective*, 85 *Child Welfare* 215, 218 (March/April 2006); Heino Meyer-Bahlburg, *Gender Identity Disorder of Childhood: Introduction*, 24 *J. of Am. Acad. of Clinical Psychiatry* 681, 681-83 (1985).

assigned sex at birth.⁶ As explained in more detail below, a child who has such a deeply felt cross-gender identity can experience serious emotional distress, which is known in the psychological and psychiatric literature as Gender Dysphoria (GD) or Gender Identity Disorder (GID).⁷

Over the last two decades, medical practitioners have made great advances in treating and understanding transgender children and youth. In the past, parents who sought support for their transgender children had few options. Most practitioners had no experience working with these youth and brought the same bias and stereotypes to their treatment that pervade general, public views.⁸ Others focused on trying to alter the child's gender identity based on a false assumption that cross-gender identification must reflect an underlying pathology.⁹ Those efforts were not successful, and often caused significant harm.¹⁰

⁶ C.M. Cole et al., *Treatment of Gender Dysphoria*, 90 *Tex. Med.* 68, 68-72 (1994).

⁷ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* 532-38 (1994).

⁸ Reid Vanderburgh, *Appropriate Therapeutic Care for Families with Pre-Pubescent Transgender/Gender-Dissonant Children*, 26 *Child Adol. Soc. Work J.* 135, 139 (2009).

⁹ *Id.* at 140-41; see also Annelou L. C. de Vries & Peggy T. Cohen-Kettenis, *Clinical Management of Gender Dysphoria in Children and Adolescents: The Dutch Approach*, 59 *J. of Homosexuality* 301, 304 (2012) (past theories that "GID was a symptom of certain psychiatric disorders" are inconsistent with current studies finding no such correlation); Norman P. Spack, *An Endocrine Perspective on the Care of Transgender Adolescents*, 13 *J. of Gay & Lesbian Mental Health* 309, 310 (2009) (reporting that "symptoms that contributed to a bipolar diagnosis [in transgender children] disappeared once the patient's GID was treated") [hereinafter Spack, *An Endocrine Perspective*].

¹⁰ Gerald Mallon, *Practice with Transgendered Children, in Social Services with Transgendered Youth* 49, 55-58 (Gerald Mallon ed. 1999).

Today, medical and mental health care providers who specialize in the treatment of these children and youth recognize that “GID in children represents a normal developmental variation.”¹¹ Research and experience have shown that like other young people, transgender youth benefit from acceptance and support, a central component of which is being permitted to live consistently with their core gender identity.

B. Gender Identity Is Determinative Of A Person’s Sex.

From a medical and mental health perspective, sexual identity – meaning the internalized sense of a person’s gender as male or female as well as the externalized manifestation of that identity – is the most important determinant of a person’s sex.¹² Other components of sex include chromosomes, hormones, internal reproductive organs, external genitalia, and secondary sex characteristics. These components may affect the types of medical treatments a transgender person requires; however, the contemporary scientific understanding of sexual identity recognizes that a person’s gender identity (regardless of whether that identity matches other components such as external sex characteristics) is either innate or fixed at an early age, is not subject to voluntary control, and cannot be changed by therapy or other

¹¹ Edgardo Menvielle, *A Comprehensive Program for children with Gender Variant Behaviors and Gender identity Disorders*, 59 J. of Homosexuality 357, 363 (2012); see also Diane Ehrensaft, *Gender Identity Creativity*, 59 J. of Homosexuality 337, 345 (2012) (“[T]he vast majority of gender nonconforming children . . . come from stable families in which the most distinguishing features of their developmental histories are the parents’ reports that their child just presented him or herself that way, typically in the second year of life, but even occasionally as early as nine months to one year of age.”)

¹² Spack, *An Endocrine Perspective*, *supra* note 9, at 312-13.

means.¹³ The purpose of treatment is to alter the body to match the identity that already exists and to support the person's ability to live fully in that identity.¹⁴ Thus, the physical interventions that transgender people may undergo—such as hormone blockers, cross-hormone therapy, and sex-reassignment surgeries—simply help a transgender person live congruently with his or her gender identity; they do not change it.¹⁵ The medical treatment does not make a woman into a man or a man into a woman. A transgender man is already a man because that is his gender identity, and a transgender woman is already a woman because that is her gender identity. Instead, medical treatment helps transgender people have bodies that reflect their identity as male or female.

That scientific perspective explains why a girl who happens to be transgender should be fully recognized and respected as a girl—irrespective of whether she has undergone any particular medical treatments. To do otherwise, consigns her to a life of discomfort and distress. Once a transgender girl manifests her identity, there is no scientific or medical basis for withholding full recognition from her as a girl, or for treating her differently than other girls, merely because she is transgender—any more than there would be for treating a girl with some other medical condition relating to her

¹³ *Supra* note 4.

¹⁴ Spack, *An Endocrine Perspective*, *supra* note 9, at 312.

¹⁵ *Id.* (explaining that medical treatments for gender transition do not change the person's gender or sex, but rather affirm the person's gender identity).

gender as something less than a “full” or “real” girl. To the contrary, current medical standards support the full integration and inclusion of transgender children and youth into gender-separated activities and programs based on their gender identity so that they can experience the same benefits of socialization and identity formation as other youth.

C. Because Gender Identity Is Fundamental To A Person’s Identity, Living Inconsistently With One’s Gender Identity Leads To Distress.

Because gender identity is fundamental to a person’s identity, being unable to live consistently with one’s gender identity generally causes intense emotional suffering and distress for transgender youth.¹⁶ Understandably, the mental health and well-being of these young people are damaged by the repeated experience of “being misperceived, invalidated, and made to wear clothes or present themselves in ways that feel unnatural, uncomfortable, and possibly embarrassing.”¹⁷ When they have not been able to live consistently with their gender identity, “many gender dysphoric adolescents are considerably depressed, anxious, or both. Many engage in self-harming behavior and report suicidal ideation and attempts.”¹⁸ The same would be true

¹⁶ As noted above, the mental health diagnosis given to those who experience this suffering and distress is known as Gender Dysphoria or Gender Identity Disorder.

¹⁷ Stephanie A. Brill & Rachel Pepper, *The Transgender Child: A Handbook for Families and Professionals* 114 (2008).

¹⁸ Laura Edwards-Leeper & Norman P. Spack, *Psychological Evaluation and Medical Treatment of Transgender Youth in an Interdisciplinary “Gender Management Service” (GeMs) in a Major Pediatric Center*, 59 *J. of Homosexuality* 321, 326 (2012). When provided with supportive care and permitted to live consistently with their gender identity, “[i]t is not uncommon for these symptoms to decrease and even disappear[.]” *Id.* at 327. See also Spack et al., *Children and Adolescents with Gender Identity Disorder Referred to a Pediatric Medical Center*, 129 *Pediatrics* 418, 422 (2012)

of any adolescent who was being made to live as the other gender and to conform to the social and cultural norms of the other gender.¹⁹

In the past, transgender children and youth routinely suffered debilitating effects from having to suppress or conceal their gender identity. But today, with greater understanding of the need to support these youth, growing numbers of transgender children have an opportunity to grow up with acceptance at home and at school, and to participate equally in the same full range of activities and social interactions as other young people. When given this opportunity, transgender children thrive and have the same potential as others to become healthy, stable adults.

II. With Support For Social Transition, Transgender Children Can Thrive.

A. Social Transition Involves Living Consistently With One’s Gender Identity.

In recent years, medical care providers have recognized that, in appropriate cases, children who have a strong and persistent cross-gender identification can benefit—and be protected from otherwise serious harms—by

(“Transgender youths [who do not have supportive counseling] are also at higher risk of substance abuse, suicidal ideation, and suicidal attempts.”); Robert Garofalo et al., *Overlooked, misunderstood and at-risk: Exploring the lives and HIV risk of ethnic minority male-to-female transgender youth*, 38 J. of Adolescent Health 230, 235–36 (2006).

¹⁹ As one court has noted in a related context, “requiring [a transgender girl] to wear boy’s clothing to school would be as injurious to her psychiatric health as requiring a psychologically masculine boy to wear a dress to school.” *Doe v. Yunits*, Dkt. No. 00-1060A, 2001 WL 664947 (Mass. Super. Feb. 26, 2001).

undergoing what is known as a “social transition.”²⁰ Social transition simply means that a child lives in all facets of his/her life consistently with his/her gender identity. No medical interventions are involved. Social transition includes dressing consistently with the child’s internalized and deeply felt sense of who he or she is as a boy or girl, using names and pronouns based on the child’s gender identity and having others use them as well, and interacting with peers and one’s social environment in the gender role that corresponds to the child’s gender identity.²¹ For most children, living and interacting with others consistently with their lived experience of who they are provides tremendous and immediate relief.²²

For children undergoing a social transition, having the full support of family members and teachers and other school officials is particularly important. Before adolescence, there are few, if any, observable differences between boys and girls apart from the social and cultural conventions such as dress or hairstyle which, while distinct, are available to any child to adopt regardless of their assigned birth sex.²³ Accordingly, before adolescence, most

²⁰ See, e.g., Ehrensaft, *supra* note 11, at 338; Edwards-Leeper & Spack, *supra* note 18, at 327.

²¹ Brill & Pepper, *supra* note 17, at 113-15; Karen Saeger, *Finding Our Way: Guiding a Young Transgender Child*, 2 J. of GLBT Family Studies 207 (2006).

²² Edwards-Leeper & Spack, *supra* note 18, at 327; Brill & Pepper, *supra* note 17, at 113-15.

²³ A. 85 ¶ 46 (“[A] pre-pubertal child with GID who is a natal male with a female gender identity and who has undergone social role transition will look to others like a typical girl.”). See also Spack, *An Endocrine Perspective*, *supra* note 9, at 317 (“all the physical changes, including subtle changes like facial bone structure, that separate men and women in terms of appearance are pubertally-initiated”).

transgender children have little or no difficulty socially transitioning as long as they have sufficient support from others in their familial, social, and educational environment. Because there are no appropriate medical interventions for younger children, and because the distinctions between boys and girls at that age are largely cultural, it is critical to the child's healthy emotional development that parents and other adults unequivocally affirm the child's gender identity. As explained in more detail below, that includes permitting the child to use restroom facilities that correspond to the child's gender identity, since having access to the girls' or boys' restroom is one of the primary social markers of gender for younger children.²⁴

B. In Adolescence, Other Medical Options Become Available.

Puberty, of course, can change the dynamics associated with social transition. It is only at that point that children develop the secondary sex characteristics that make boys and girls distinguishable beyond social and cultural conventions. Therefore, when puberty approaches, youth may take hormone blockers to suppress puberty, while living in (or continuing) to live in the social role consistent with the child's gender identity.²⁵ Suppressing puberty permits these youth to explore and consolidate their identities without the distress of developing the permanent, unwanted physical characteristics of

²⁴ As explained in plaintiff's brief, the practice of providing separate restrooms for boys and girls is itself largely, if not entirely, based on social conventions.

²⁵ See, e.g., Bethany Gibson & Anita J. Catlin, *Care of the Child with the Desire to Change Gender—Part I*, 31 *Urologic Nursing* 222, 225-29 (July-August 2011). "This treatment is fully reversible, and cessation of the [hormone blocker] will result in the adolescent resuming puberty in their birth-assigned gender." *Id.* at 226.

their assigned birth sex. For example, hormone blockers, which are completely reversible, prevent a child who identifies as a girl from developing unwanted facial and body hair, roughening of skin texture, muscle mass, a deep voice, a masculine facial structure, and other unwanted secondary sex characteristics.²⁶ This intervention can alleviate what might otherwise be incapacitating distress and give a young person the opportunity to develop a strong, positive sense of self.²⁷

III. Maine Law Requires That Children Receive Equal Educational Opportunity.

Like a growing number of other states, Maine has recognized that transgender students need and deserve the same educational opportunities as other children, and that they must be treated equally in all school programs and activities. The Maine Human Rights Act prohibits schools from discriminating based on a child's gender identity in any aspect of school life, including "any academic, extracurricular, research, occupational or other program or activity." 5 M.R.S.A. § 4602(4)(A). To give meaning to that clear mandate, *amici* urge this Court to consider the harmful impact of excluding a transgender girl from access to the same restrooms used by her peers. For the reasons explained below, such a practice precludes that child's integration into the social fabric of everyday school life, disrupts the developmental process in a

²⁶ *Id.*

²⁷ *Id.* See also Peggy Cohen-Kettenis et al, *The treatment of adolescent transsexuals: Changing insights*, 5 J. of Sexual Med. 1892, 1896 (2008).

way that undermines her ability to feel safe and learn, and sets her up as a target for peer rejection, harassment, and discrimination.

Transgender children thrive when they are treated like other girls and boys, and they are harmed when they are singled out and made to feel—and to be seen by others—as different. This singling out and differential treatment inevitably stigmatizes these young people in the eyes of their peers. That can lead to social isolation which predictably also disrupts their ability to learn.²⁸ In addition to this immediate negative impact, the resulting stigma from singling out transgender children and branding them as “different” or “deficient” can do serious and irreparable harm to their long-term emotional and psychological development. To protect students from these preventable harms and ensure that they have an equal opportunity to learn and succeed at school, *amici* urge the Court to construe Maine’s non-discrimination law to permit transgender children and youth to participate equally in all aspects of school life, including access to gender-appropriate bathrooms.

IV. Families And Schools Play An Important Role In The Social, Emotional, And Psychological Development Of All Children.

Research shows that youth who are supported by their parents and other caregivers have significantly higher levels of self-esteem, social support, and general health in adulthood, compared to peers with low levels of family

²⁸ See, e.g., Kathryn R. Wentzel & Kathryn Caldwell, *Friendships, Peer Acceptance, and Group Membership: Relations to Academic Achievement in Middle School*, 68 *Child Dev.* 1198, 1198 (1997) (“Research has established a significant link between peer relationships and children’s academic achievements.”).

acceptance.²⁹ Specific parental and caretaker behaviors—such as advocating for their children when they are mistreated because of their gender identity or gender nonconformity—protect against depression, substance abuse, suicidal thoughts, and suicide attempts in early adulthood.³⁰ Parental efforts to support and affirm a child’s gender expression are among the most important protective factors for supporting the child’s long term health.³¹ In contrast, parental or caregiver behaviors such as pressuring a child to be more or less masculine or feminine, or telling a child that how he or she acts or looks will shame or embarrass the family, significantly increase the child’s risk for depression, substance abuse, unprotected sex, and suicidality in adulthood.³²

By enacting a nondiscrimination law that specifically protects transgender students, the Maine Legislature has expressed its intent to support those students and protect their ability to be safe and participate equally in school programs and activities. To effectuate that intent, schools

²⁹ Caitlin Ryan et al, *Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults*, 123 *Pediatrics* 346, 346, 349-50 (2009) [hereinafter Ryan et al., *Family Rejection*]. See also Caitlin Ryan et al, *Supportive Families, Healthy Children: Helping Families with Lesbian, Gay, Bisexual, and Transgender Children*, available at http://familyproject.sfsu.edu/files/FAP_English%20Booklet_pst.pdf (last visited on Apr. 29, 2013) [hereinafter Ryan et al., *Supportive Families*].

³⁰ Ryan et al., *Family Rejection*, *supra* note 29, at 350; Ryan et al., *Supportive Families*, *supra* note 29, at 17 (“Transgender and gender non-conforming children who are supported by their families have higher self-esteem, a more positive sense of the future and are at lower risk for health and mental health problems as young adults.”).

³¹ Ryan et al., *Family Rejection*, *supra* note 29, at 350; Ryan et al., *Supportive Families*, *supra* note 29, at 17.

³² Ryan et al., *Family Rejection*, *supra* note 29, at 350; Ryan et al., *Supportive Families*, *supra* note 29, at 17.

need to support families, like the parents in this case, who accept their transgender children and permit them to live consistently with their gender identity. To do otherwise would undermine parents' efforts to safeguard their children's safety and health and subject these young people to the serious negative outcomes identified above.

In this case, Susan's parents have supported her gender identity since she was a young child. For many years, the school appropriately did so as well, including permitting Susan to use the restrooms consistent with her female gender identity. It was not until the school abruptly changed its supportive policy and required her to use a separate bathroom that Susan's self-esteem and peer relationships began to suffer, and that her parents had to remove her from the school to protect her from further harm. (A. 90-91 ¶¶ 87-89; 92 ¶ 101; 170 ¶ 159).

With the single exception of families, schools play the most important role in children's development and socialization. As one author has noted:

Children spend the majority of their waking hours in school. Over the years they spend significantly more time with their classmates and teachers than they do with their parents. A child's experience at school can significantly enhance or undermine their sense of self. Furthermore, children need to feel emotionally safe to learn effectively.³³

³³ Brill & Pepper, *supra* note 17, at 153; *see also* Public Health Agency of Canada, *supra* note 2, at 11 ("Lack of supports and protective factors, particularly within the school system where [transgender children] spend much of their time, increases the risks they experience as vulnerable youth and may encourage them to leave school altogether.")

For adolescents, in particular, school “is the primary social setting in which friends are made, social skills are learned, and self-efficacy is developed.”³⁴ A young person’s healthy psychosocial development “is centrally connected to the quality of the social interactions that take place within the school setting.”³⁵

The same evidence-based research that guides families about how to avoid negative health outcomes and increase positive health outcomes applies equally to teachers and other school officials.³⁶ Because transgender youth are vulnerable to stigma and discrimination, they have a heightened need for safety and support at school.³⁷ Students who are rejected or harassed because of gender non-conformity are at high risk of serious mental health problems and of contracting sexually transmitted diseases and HIV.³⁸ Moreover, those negative impacts are not transient, but persist into adulthood.³⁹ Conversely, being able to socialize with other students and participate in school activities

³⁴ Deana F. Morrow, *Social Work Practice with Gay, Lesbian, Bisexual, and Transgender Adolescents*, 85 *Families in Society* 91, 93 (2004).

³⁵ *Id.*

³⁶ American Psychological Association, *Developing Adolescents: A Guide for Professionals* 24 (2002) (“Some of the same qualities that characterize families of adolescents who do well—a strong sense of attachment, bonding, and belonging, and a feeling of being cared about—also characterize adolescents’ positive relationships with their teachers and schools.”) [hereinafter APA, *Developing Adolescents*].

³⁷ Morrow, *supra* note 34, at 93. See also Gay, Lesbian, Straight Education Network, *Harsh Realities: The Experiences of Transgender Youth in Our Nation’s Schools* 47 (2009).

³⁸ Toomey et al, *Gender Nonconforming Lesbian, Gay, Bisexual and Transgender Youth: School Victimization and Young Adult Psychosocial Adjustment*, 46 *Dev. Psychol.* 1580, 1581 (2010).

³⁹ *Id.*

and programs in the appropriate gender role is highly predictive of a student's long term health.⁴⁰ These experiences are a critical part of healthy adolescent development. Being able to have these experiences enables transgender youth to develop a strong, positive sense of self—including healthy, culturally appropriate ways to be a boy or a girl—while learning how to feel connected to, and relate to, others. Being denied them predictably damages psychosocial development.⁴¹ As explained further below, having access to gender-appropriate restrooms is an essential part of that socialization process.

V. Bathrooms Play An Important Role In Peer Relationships And Socialization, Which Are Critical To A Child's Ability To Feel Safe And To Learn.

A. Requiring a transgender girl to use a separate bathroom disrupts her development and is harmful to her long term health and well being.

Singling out a transgender girl and requiring her to use a separate bathroom—not because of any misconduct or misbehavior, but solely because she has a medical condition that carries a social stigma—disrupts her ability to develop normal peer relationships, marginalizes and isolates her, and exposes her to rejection and discrimination. These are serious harms that prevent a child from feeling safe and from having equal opportunities to learn and to

⁴⁰ APA, *Developing Adolescents*, *supra* note 36, at 21 (discussing importance of peer relationships “for adjustment both during adolescence and into adulthood”).

⁴¹ *Id.* (“social isolation among peer-rejected teens has been linked to a variety of negative behaviors” and to “psychosocial difficulties during adulthood”).

participate at school. They are also likely to have a lasting negative impact on an individual's long term health and well being and the quality of her adult life.

One of the core aspects of adolescent development is learning how to develop and consolidate one's gender identity and gender role, including by building friendships with same-sex peers.⁴² For girls, no small part of that experience takes place in girls' bathrooms. Adolescent girls commonly go to the restroom together in groups or pairs and use restrooms as sites for a multitude of social activities. The socialization and bonding that take place in these settings are critical components of building confidence, self-esteem, and healthy relationships with same-sex peers.⁴³

Excluding an adolescent girl from these social spaces is profoundly isolating and makes it much more difficult for her to develop peer relationships. Rather than having multiple opportunities to socialize, interact with other girls, and develop a healthy gendered self, she is singled out, isolated and marginalized. As Susan, the plaintiff in this case, explained after she was required to use a separate bathroom: "There's no one to socialize with in there except yourself in a mirror." (A. 189 ¶ 86).

A policy that requires and reinforces isolation is inherently disruptive and sends a clear message there is something dangerous, inferior, or wrong

⁴² APA, *Developing Adolescents*, *supra* note 36, at 21 (noting importance of same-sex peer groups); *see also* Eleanor E. Maccoby, *Gender and Group Process: A Developmental Perspective*, *Current Directions*, 11 *Psychol. Science* 54, 56-57 (2002) (same).

⁴³ APA, *Developing Adolescents*, *supra* note 36, at 21; Maccoby, *supra* note 42, at 56-57 (2002).

about the excluded girl—a message that her peers readily absorb. That message is especially harmful when, as happened in this case, such a stigmatizing policy is adopted in response to an expression of hostility toward the child by other students.⁴⁴ A girl who is identified as “different”—particularly, when so identified by school administrators—is at high risk of being shunned or rejected by other girls, in ways that range from overt teasing or harassment to more subtle forms of relational aggression.⁴⁵ Being excluded from shared bathrooms would be harmful for any girl, but it is especially so for a girl who is already at risk of being marginalized because of her transgender status. At a minimum, such a policy would serve as a constant reminder of difference and preclude any possibility of full integration and acceptance. Every time a friend or group of girls is heading to the bathroom—something that happens multiple times a day—the excluded transgender girl will be forced either to fabricate an excuse about why she cannot join⁴⁶ or, regardless of any desire for privacy, to endure daily reminders to herself and everyone else of her difference. Understandably, the plaintiff in this case explained that being excluded from the shared restrooms used by all the other girls prevented her

⁴⁴ See, e.g., Reid Vanderburgh, *supra* note 8, at 149 (2009) (“Too often, the trans child is blamed for others’ hostility,” thereby exacerbating the child’s vulnerability to additional harassment and bullying). See also A. 90-93 ¶¶ 82-106.

⁴⁵ Michelle Forcier & Johanna Olson, Overview of Gender Development and Clinical Presentation of Gender Nonconformity in Children and Adolescents, Up To Date (Feb. 4, 2013), <http://www.uptodate.com>.

⁴⁶ School policies should not force or encourage students to lie, at the very time when parents, teachers, and other adults are focused on teaching students the importance of honesty and ethical choices. See APA, *Developing Adolescents*, *supra* note 36, at 13 (discussing importance of moral development in adolescents).

from feeling normal. It was “sort of like something that’s pulling you out from a crowd, like here are the normal kids, here’s you.” (A. 189 ¶ 85).

Requiring a transgender girl to use a separate bathroom is also harmful because it sends a potentially devastating message that she is not really a girl, but something freakish or “other.” Adolescents are commonly preoccupied with their physical appearance; many feel extremely self-conscious about any ways, real or imagined, in which their bodies differ from others.⁴⁷ These fears are especially acute for adolescent girls, who experience a greater loss of self-esteem and more anxiety about their bodies than boys.⁴⁸ For a transgender girl in particular, a policy that excludes her from access to the girls’ restroom is highly likely to trigger body shame and to leave lasting emotional scars.⁴⁹ In this case, Susan began feeling that shame and referring to herself as a freak immediately after school changed its policy. (A. 168 ¶ 145; 190 ¶ 87). Schools should not subject children to practices that put children at risk of such serious psychological damage, while serving no legitimate purpose.

⁴⁷ See, e.g., *id.* at p. 8 (“this is a period in which physical appearance commonly assumes paramount importance”); David Pruitt & American Academy of Child and Adolescent Psychiatry, *Your Adolescent: Volume 2* at 7 (2009) (“For all their bravado, young adolescents are rather delicate from a psychological viewpoint. . . . Studies have shown that self-esteem plummets during early adolescence.”)

⁴⁸ APA, *Developing Adolescents*, *supra* note 36, at 15 (in early adolescence “physical appearance tops the list of factors that determine global self-esteem, especially for girls”); Pruitt, *supra* note 47, at 7.

⁴⁹ Brill & Pepper, *supra* note 17, at 69 (transgender children have “an increased likelihood of self-deprecation, body shame, and body hatred”). See also APA, *Developing Adolescents*, *supra* note 36, at 15 (“Comments by others [about a child’s physical appearance] . . . reflect appraisals of the individual that some adolescents may incorporate as part of their identity and feelings about themselves.”).

CONCLUSION

For the reasons cited above, amici urge the Court to hold that Maine law requires public schools to treat transgender students equally by permitting them to participate consistently with their gender identity in all school programs, activities, and facilities, including access to restrooms.

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CERTIFICATE OF SERVICE

I, Richard O'Meara, hereby certify that copies of this Brief of the Amici the Maine Chapter of the American Academy of Pediatrics, the Maine Psychological Association, the National Association of Social Workers-Maine Chapter, GLSEN Downeast Chapter, GLSEN Southern Maine, Trans Youth Equality Foundation, and the Maine Women's Lobby were served upon counsel at the addresses set forth below by first class mail, postage-prepaid on May 1, 2013:

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