

NO. 21-2166

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Carolina Youth Action Project, et al.,
Plaintiffs-Appellees

v.

Alan Wilson,
Defendant-Appellant.

On Appeal from the United States District for the
District of South Carolina

**BRIEF OF NATIONAL WOMEN'S LAW CENTER, THE NATIONAL
ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,
NATIONAL DISABILITY RIGHTS NETWORK, NATIONAL CENTER
FOR YOUTH LAW, AND ADDITIONAL ADVOCACY ORGANIZATIONS
AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFFS-APPELLEES**

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Chicago Foundation for Women
Disability Rights Advocates
Family Equality
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CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1, 29, and Local Rule 26.1, the undersigned counsel of record certifies that none of the *amici curiae* are a nongovernmental entity with a parent corporation or a publicly held corporation that owns 10 percent or more of its stock.

Dated: March 23, 2022

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TABLE OF CONTENTS

	Page
CORPORATE DISCLOSURE STATEMENT	i
TABLE OF AUTHORITIES	iii
STATEMENT OF INTEREST OF <i>AMICI CURIAE</i>	1
INTRODUCTION & SUMMARY OF ARGUMENT.....	5
ARGUMENT	6
I. Punitive and vague school disciplinary laws and school policing push students out of school and perpetuate the school-to-prison pipeline.....	6
II. Black students and other students of color, LGBTQ students, students with disabilities, and students at the intersections of these identities are particularly harmed by school disciplinary laws and school policing, resulting in a range of negative consequences	13
A. Black students and other students of color, LGBTQ students, students with disabilities, and students at the intersections of these identities are disproportionately harmed.....	13
(a) Punitive and vague school disciplinary laws significantly harm Black students and other students of color.....	14
(b) Punitive and vague school disciplinary laws also significantly harm LGBTQ students	21
(c) Punitive and vague school disciplinary laws also significantly harm students with disabilities	22
B. The harms caused by school pushout and the school-to- prison pipeline can lead to negative short- and long- term academic, social-emotional, and economic consequences.....	25
CONCLUSION.....	28

TABLE OF AUTHORITIES

	Page(s)
Cases:	
<i>Kenny v. Wilson</i> , No. 2:16-CV-2794-MBS, 2021 WL 4711450 (D.S.C. Oct. 8, 2021)	15, 24, 26
Statutes and Other Authorities:	
34 C.F.R. § 300.320(a)(4)	25
34 C.F.R. § 300.530	25
Fed. R. App. P. 29(a)(4)(E).....	1
S.C. Code Ann. § 16-17-420.....	5, 29
S.C. Code Ann. § 16-17-530.....	5, 29
ACLU & NAACP, <i>Handcuffs on Success: The Extreme School Discipline Crisis in Mississippi Public Schools</i> (Jan. 2013)	2
Adaku Onyeka-Crawford, Kayla Patrick & Neena Chaudhry, <i>Let Her Learn: Stopping School Pushout for Girls of Color</i> , Nat’l Women’s Law Ctr. (2017).....	16
Adam Poullisse & Q McCray, <i>School Resource Officer Who Used Taser on Eustis High School Student Not Facing Discipline, Student Arrested</i> , WFTV9 ABC (Jan. 28, 2021)	18
Adora Obi Nweze, President, Florida NAACP, Statement at the Oversight of State-Run Juvenile Correctional Facilities Known as “Boot Camps”: Hearing Before the Subcomm. on Crime, Terrorism, and Homeland Security of the H. Comm. on the Judiciary, 110th Cong. 110-127 (2007)	2
Advancement Project & Alliance for Educational Justice, <i>We Came to Learn: A Call to Action for Police-Free Schools</i> (2018)	19
Alisha Haridasani Gupta, ‘No Time to Be a Child’, N.Y. Times (Sept. 25, 2021)	20
Alliance for Girls, <i>Uniting Isolated Voices: Girls and Gender-Expansive Youth During COVID-19 25</i> (July 2021)	21

Alliyah Allen et al., <i>Black Girls During the Pandemic and Protest, A Long Walk Home</i>	20
Am. C. L. Union, <i>Cops and No Counselors: How the Lack of School Mental Health Staff Is Harming Students</i> 18 (2019)	11, 29
Amanda Merkwae, <i>Schooling the Police: Race, Disability, and the Conduct of School Resource Officers</i> , 21 Mich. J. Race & Law 147 (2015)	11
American Civil Liberties Union, <i>Bullies in Blue: The Origins and Consequences of School Policing</i> 30 (Apr. 2017).....	28
“... and they cared”: <i>How to create better, safer learning environments for girls of color</i> , Nat’l Women’s L. Ctr. & The Educ. Trust (Aug. 2020)...	16, 17, 27
<i>Better Solutions for Youth with Mental Health Needs in the Juvenile Justice System</i> , The Mental Health and Juvenile Just. Collaborative for Change (2014).....	23
Chelsea Cirruzzo, <i>Nearly 40,000 Children Have Lost a Parent to Covid-19</i> , U.S. News (Apr. 7, 2021)	20
Civil Rights Data Collection.....	15
Clifton B. Parker, <i>Teachers More Likely to Label Black Students as Troublemakers, Stanford Research Shows</i> , Stanford News (Apr. 15, 2015).....	14
Coshandra Dillard, <i>The Weaponization of Whiteness in Schools</i> , 65 Teaching Tolerance 19 (2020)	8, 9
Crosse et al., <i>Are Effects of School Resource Officers Moderated by Student Race and Ethnicity?</i> , Crime & Delinquency (2021)	19
Daniel J. Losen & Paul Martinez, <i>Lost Opportunities: How Disparate School Discipline Continues to Drive Differences in the Opportunity to Learn</i> , The Center for Civil Rights Remedies & Learning Policy Institute 3 (2020).....	7
Daniel J. Losen, Paul Martinez & Grace Hae Rim Shin, <i>Disabling Inequity: The Urgent Need for Race-Conscious Resource Remedies</i> , Civil Rights Project, The Center for Civil Rights Remedies, UCLA 6 (March 22, 2021)	22, 23, 24

<i>Education – Juvenile Services Education System – Establishment, Powers, and Duties (S.B. 497), Maryland House of Delegates Judicial Proceedings Comm. (Feb. 17, 2021)</i>	3
Elizabeth Pufall Jones et al., <i>Discipline and Disconnected: How Students Experience Exclusionary Discipline in Minnesota and the Promise of Non-Exclusionary Alternatives</i> (2018).....	8
Emily K. Weisburst, <i>Patrolling Public Schools: The Impact of Funding for School Police on Student Discipline and Long-Term Education Outcomes</i> (2018).....	26
Emily Shugerman, <i>After 12-Year-Old Black Girls Say They Were Strip-Searched, Turmoil in N.Y. School District</i> , The Daily Beast (Jan. 30, 2019).....	17
Erica L. Green, <i>NAACP requests federal investigation into juvenile justice education</i> , The Baltimore Sun (Nov. 6, 2015)	3
Gillian R. Chadwick, <i>Reorienting the Rules of Evidence</i> , 39 Cardozo L. Rev. 2115 (2018).....	21
Girls Inc., <i>What You Need to Know About School Pushout and How to Combat It</i>	7
Hamida Labi, Monique Lin Luse & Kesha Moore, <i>Position on Reopening and Operating Schools During the COVID-19 Pandemic</i> , NAACP Legal Defense Fund (Sept. 15, 2021).....	20
Heather Steed et al., <i>By Using Vague Language to Define Misconduct, Many States Put Children at Risk for Unfair Disciplinary Action</i> , Child Trends (Mar. 10, 2022).....	7
Jasmine Tucker & Kayla Patrick, <i>What Happens When Girls Don't Graduate from High School?</i> , Natl Women's Law Ctr. (2017).....	27
Jason A. Okonofua et al., <i>When Policy and Psychology Meet: Mitigating the Consequences of Bias in Schools</i> , Science Mag (Oct. 16, 2020).....	14
Jason P. Nance, <i>Student Surveillance, Racial Inequalities, and Implicit Racial Bias</i> , 66 Emory L.J. 765 (2017).....	26
Jen Weiss, <i>Scan This: Examining Student Resistance to School Surveillance, in Schools Under Surveillance</i> 213 (Torin Monahan & Rodolfo D. Torres eds., 2010).....	26

Jonathan Edwards, <i>A school safety officer shot a fleeing teen. He has been fired and police have opened a homicide investigation</i> , Wash. Post (Oct. 8, 2021).....	19, 20
Joy Radice, <i>The Juvenile Record Myth</i> , 106 Georgetown L. J. 365 (2018).....	27
Justice Policy Institute, <i>Education Under Arrest: The Case Against Police in Schools</i> 17 (2011).....	28
Kalyn Belsha, <i>Stress and Short Tempers: Schools Struggle with Behavior as Students Return</i> , Chalkbeat (Sept. 27, 2021).....	12
Katie Shepherd, <i>‘She was just mouthing off’: 13-Year-Old Who Pointed a Finger Gun at Four Classmates Faces Felony Charge</i> , Wash. Post (Oct. 11, 2019).....	10
Katy Steinmetz, <i>She Coined the Term ‘Intersectionality’ Over 30 Years Ago. Here’s What It Means to Her Today</i> , Time (Feb. 20, 2020).....	13
Ken Downey Jr., <i>Black children disproportionately affected by parental deaths from COVID-19</i> , Healio (Apr. 5, 2021).....	20
L. Kate Mitchell, <i>We Can’t Tolerate That Behavior in This School: The Consequences of Excluding Children with Behavioral Health Conditions and the Limits of the Law</i> , 41 N.Y.U. Rev. L. & Soc. Change 407 (2017).....	23
Laura Dorwart, <i>The Hidden #MeToo Epidemic: Sexual Assault Against Bisexual Women</i> , Medium (Dec. 3, 2017)	21
Lauren de Valle, <i>Michigan School Resource Office Sentenced to 1 Year in Jail for Sexually Assaulting 3 High School Students</i> , CNN (Oct. 3 2019)	17
Leigh Ann Davis, <i>People with Intellectual Disabilities and Sexual Violence</i> , 2 The Arc	23
Maria Abenes, <i>Teens in America: How the COVID-19 Pandemic Is Shaping the Next Generation</i> , Psychiatric Times (Nov. 12, 2021)	12
Marilyn Elias, <i>The School-to-Prison Pipeline</i> , 43 Teaching Tolerance Mag. 38 (2013).....	9
Mary Ellen Flannery, <i>The School-to-Prison Pipeline: Time to Shut It Down</i> , NEAToday (Jan. 5, 2015).....	9

Maura McInerney & Amy McKlindon, <i>Unlocking the Door to Learning: Trauma-Informed Classrooms and Transformational Schools 5-6</i> (2014) ...	11-12
Meredith Deliso, <i>Florida Teen Body-Slammed by School Resource Officer 'Traumatized,' Family Says</i> , ABC News (Jan. 31, 2021).....	18
Mihir Zaveri, <i>Body Camera Footage Shows Arrest by Orlando Police of 6-Year-Old at School</i> , N.Y. Times (Feb. 27, 2020)	10
Milwaukee Community J., <i>NAACP Critical of Sen. Marco Rubio's Attempt to Disparage Broward County PROMISE Program</i> (Mar. 12, 2018)	2
NAACP, <i>Education Innovation</i>	3
NAACP, <i>NAACP Blast Texas High School Banning Deandre Arnold Hairstyle</i> (Jan. 28, 2020)	8
Nat'l Disability Rights Network, <i>School is Not Supposed to Hurt</i> (Mar. 2012).....	24
Nat'l Women's L. Ctr. & Girls for Gender Equity, <i>100 School Districts: A Call to Action for School Districts Across the Country to Address Sexual Harassment Through Inclusive Policies and Practices</i> (2021).....	17
Nat'l Women's L. Ctr. & NAACP Legal Defense & Educ. Fund, <i>Unlocking Opportunities for African American Girls: A Call to Action for Educational Equity</i> (2014)	14, 16, 17
Neal A. Palmer, Emily A Greytak & Joseph G. Kosciw, <i>Educational Exclusion</i> , GLSEN 33 (2016).....	21, 22
Phillip Atiba Goff et al., <i>The Essence of Innocence: Consequences of Dehumanizing Black Children</i> , 106 J. of Personality & Soc. Psych. 526 (2014).....	14
Rebecca Epstein, et al., <i>Data Snapshot: 2017-2018 National Data on School Discipline by Race and Gender</i> , Georgetown Ctr. for Poverty & Inequality (2020)	16, 17, 19
Rebecca Epstein, Jamilya J. Blake & Thalia González, <i>Girlhood Interrupted: The Erasure of Black Girls' Childhood</i> , Georgetown Law Ctr. on Poverty & Inequality (2018).....	15, 16
Reis Thebault, <i>Video Shows Police Officer Tackling an 11-Year-Old Girl He Accused of Being 'Disruptive' at School</i> , Wash. Post (Oct. 23, 2019)	10

Riya Saha Shah & Jean Strout, <i>Future Interrupted: The Collateral Damage Caused by Proliferation of Juvenile Records</i> , Juvenile L. Ctr. 9 (Feb. 2016).....	28
Robert Balfanz et al., <i>Sent Home and Put Off-Track: The Antecedents, Disproportionalities, and Consequences of Being Suspended in the Ninth Grade</i> (Dec. 12, 2012) (prepared for the National Conference on Race and Gender Disparities in Discipline, Johns Hopkins University)	27
Robert Balfanz, Vaughn Byrnes & Joanna Fox, <i>Sent Home and Put Off Track: The Antecedents, Disproportionalities, and Consequences of Being Suspended in the 9th Grade</i> , in CLOSING THE SCHOOL DISCIPLINE GAP 17 (Daniel Losen ed., 2015)	24
Roni Caryn Rabin, <i>How the Virus Unraveled Hispanic American Families</i> , N.Y. Times (Jun. 14, 2021)	20
Russell J. Skiba et al., <i>More Than a Metaphor: The Contribution of Exclusionary Discipline to a School-to-Prison Pipeline</i> , 47 <i>Equity & Excellence in Educ.</i> 546 (2014)	27
Sarah Aarthun and Holly Yan, <i>Student’s violent arrest caught on video; officer under investigation</i> , CNN (Oct. 27, 2015).....	18
Shefali Luthra, <i>Suicide Attempts Among Teen Girls Were Already High. The Pandemic Might Have Made It Worse.</i> , <i>The 19th</i> (Jun. 15, 2021)	29
Skowrya & Coccozza, <i>Blueprint for Change: A Comprehensive Model for the Identification and Treatment of Youth with Mental Health Needs in Contact with the Juvenile Justice System</i> , Nat’l Center for Mental Health and Juvenile Justice, (May, 2015)	23
Tara García Mathewson, <i>Some kids have returned to in-person learning only to be kicked right back out</i> , <i>The Hechinger Report</i> (Jan. 20, 2022)	12
The Ctr. for Civil Rights Remedies & The Am. Civil Liberties Union, <i>11 Million Days Lost: Race, Discipline, and Safety at U.S. Public Schools, Part 1</i> 4 (2018)	7, 14
<i>The Ending PUSHOUT Act: Fostering Safe Supportive, and Inclusive Schools for Girls of Color</i> , Nat’l Women’s L. Ctr. (Nov. 2021)	12
<i>The Jezebel Stereotype</i> , Ferris State University.....	16

Tom Jones, <i>Video Shows School Officer Slam Girl into Wall While Breaking Up Fight</i> , WSB-TV (Aug. 20, 2019).....	17
Trauma-Informed Schools, Nat’l Educ. Assoc.	12
U.S. Comm’n on Civil Rights, <i>Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities</i> 26 (2019)	27, 28
U.S. Dep’t of Educ., Office for Civil Rights, <i>2017-2018 Civil Rights Data Collection: The Use of Restraint and Seclusion on Children with Disabilities in K-12 Schools</i> 6-7 (2020).....	24, 25
<i>Which Students Are Arrested the Most? Policing America’s Schools: An Education Week Analysis</i> (2017).....	11
Yoji Cole, <i>Shaquanda Cotton, 14, is Sentenced in Texas to 7 Years in Prison for Pushing a Hall Monitor at Paris High School</i> , Parent Advocates	2

STATEMENT OF INTEREST OF *AMICI CURIAE*

The National Women’s Law Center (“NWLC”) fights for gender justice—in the courts, in public policy, and in society—working across issues that are central to the lives of women and girls. NWLC uses the law in all its forms to change culture and drive solutions to gender inequity. Since 1972, NWLC has worked to advance workplace justice, income security, educational opportunities, and health and reproductive rights for women and girls and has participated in a range of cases, including before this Court.¹ NWLC is committed to advocating for Black students and other students of color, LGBTQ students, students with disabilities, and students at the intersection of these identities.

The NAACP was founded in 1909 and is America’s oldest and largest civil rights organization. The principal objectives of the NAACP are to ensure the political, educational, social, and economic equality of all citizens; to achieve equality of rights and eliminate race prejudice among the citizens of the United States; and to remove all barriers of racial discrimination through the enactment and enforcement of federal, state, and local laws securing civil rights. NAACP has employed myriad strategies to address racially disparate discipline in and out of

¹ Pursuant to Fed. R. App. P. 29(a)(4)(E), counsel for *amici curiae* states that no counsel for a party authored the brief in whole or in part, and no person other than *amici curiae*, their members, or their counsel contributed money to fund the preparation or submission of this brief.

schools. NAACP has worked with DOJ to convince DOJ to sue the Meridian, Mississippi school district, judges, county, and state agencies, alleging that these actors are “engaging in a pattern and practice of conduct in which they routinely and systematically arrest and incarcerate children, including for minor school infractions, without even the most basic procedural safeguards, and in violation of these children’s constitutional rights.”² NAACP has also worked with Broward County Public Schools and partners to establish the Promise Program,³ urged Congress to address juvenile boot camps,⁴ spoken out against the disparate sentencing of a fourteen-year-old in Paris, Texas for pushing a hall monitor,⁵

² ACLU & NAACP, *Handcuffs on Success: The Extreme School Discipline Crisis in Mississippi Public Schools* (Jan. 2013), https://www.njjn.org/uploads/digital-library/Handcuffs-on-Success_Advancement-Project_ACLU_NAACP_Jan2013.pdf.

³ Milwaukee Community J., *NAACP Critical of Sen. Marco Rubio’s Attempt to Disparage Broward County PROMISE Program* (Mar. 12, 2018), <https://communityjournal.net/naacp-critical-of-sen-marco-rubios-attempt-to-disparage-broward-county-promise-program/>.

⁴ Adora Obi Nweze, President, Florida NAACP, Statement at the Oversight of State-Run Juvenile Correctional Facilities Known as “Boot Camps”: Hearing Before the Subcomm. on Crime, Terrorism, and Homeland Security of the H. Comm. on the Judiciary, 110th Cong. 110-127 (2007).

⁵ Yoji Cole, *Shaquanda Cotton, 14, is Sentenced in Texas to 7 Years in Prison for Pushing a Hall Monitor at Paris High School*, Parent Advocates, http://www.parentadvocates.org/nicecontent/dsp_printable.cfm?articleID=7303 (last visited March 18, 2022).

advocated for an end to the school-to-prison pipeline,⁶ and demanded that required education services be provided to juveniles in secure State facilities.⁷

The National Disability Rights Network (“NDRN”) is the non-profit membership organization for the federally mandated Protection and Advocacy (“P&A”) and Client Assistance Program (“CAP”) agencies for individuals with disabilities. The P&A and CAP agencies were established by the United States Congress to protect the rights of people with disabilities and their families through legal support, advocacy, referral, and education. There are P&As and CAPs in all 50 states, the District of Columbia, Puerto Rico, and the U.S. Territories (American Samoa, Guam, Northern Mariana Islands, and the U.S. Virgin Islands), and there is a P&A and CAP affiliated with the Native American Consortium which includes the Hopi, Navajo, and San Juan Southern Paiute Nations in the Four Corners region of the Southwest. Collectively, the P&A and CAP agencies are the largest

⁶ NAACP, *Education Innovation*, <https://naacp.org/issues/education-innovation>.

⁷ Erica L. Green, *NAACP requests federal investigation into juvenile justice education*, The Baltimore Sun (Nov. 6, 2015), <https://www.baltimoresun.com/maryland/bs-md-ci-juvenile-education-complaint-20151106-story.html>; see *Education – Juvenile Services Education System – Establishment, Powers, and Duties (S.B. 497)*, Maryland House of Delegates Judicial Proceedings Comm. (Feb. 17, 2021), https://mgaleg.maryland.gov/cmte_testimony/2021/jpr/1YCBqFOf1JII6OcPBaYbXH5iMcoY2k1dY.pdf.

provider of legally based advocacy services to people with disabilities in the United States.

The National Center for Youth Law (“NCYL”) is a non-profit law firm that works to build a future in which every child thrives and has a full and fair opportunity to achieve the future they envision for themselves. For five decades, NCYL has worked to protect the rights of low-income children to ensure they have the resources, support, and opportunities they need. One of NCYL’s priorities is to reduce the number of youth subjected to harmful practices of the juvenile legal system by disrupting the school-to-prison pipeline. NCYL has litigated to end unnecessary referrals to the juvenile legal system in numerous states and advocated at the federal, state, and local levels to reduce reliance on the juvenile and adult legal systems to address the needs of youth, including eliminating fines and fees, decriminalizing normal adolescent behavior, and improving children’s access to adequate developmentally-appropriate treatment. NCYL’s youth justice advocacy seeks to ensure that youth in trouble with the law are treated as adolescents—not as adults—and in a manner consistent with their developmental stage.

Given the above missions, NWLC, NAACP, NDRN, and NCYL, along with twenty-three additional *amici*, **submit this brief with the consent of all parties** in support of Plaintiffs-Appellees to underscore the severe harms South Carolina’s unconstitutional school disciplinary statutes have on its children, including on

particular groups of students as detailed herein. *Amici*'s collective knowledge on these issues will assist the Court in deciding this matter, and we urge the Court to uphold the district court's decision.

INTRODUCTION & SUMMARY OF ARGUMENT

South Carolina's Disorderly Conduct Law, S.C. Code Ann. §16-17-530, and Disturbing Schools Law, S.C. Code Ann. §16-17-420⁸ (the "challenged school disciplinary laws") criminalize children for behaving "in a disorderly or boisterous manner"⁹ and being "obnoxious."¹⁰ These disciplinary statutes with their highly subjective terms, funnel students into the criminal legal system, often for typical youth behavior, and leave children with criminal records. These statutes are enforced in discriminatory ways and, as detailed by Plaintiffs, disproportionately harm certain students including Black students and students with disabilities.

Plaintiffs-Appellees D.S., S.P. and the Carolina Youth Action Project ("CYAP"), and other students charged under the school disciplinary laws, filed suit against Alan Wilson, the Attorney General of South Carolina, claiming that the

⁸ Although, in 2018, the South Carolina legislature amended the Disturbing Schools law to no longer apply to students, the statute remains in this case because Plaintiffs seek to clear the records of students charged under both laws. Notably, Black students in South Carolina were charged over six times more than white students with disorderly conduct and four times more than white students with disturbing schools. Pl. Resp. Br. 13, citing JA 656 ¶ 19, JA 673 ¶ 19.

⁹ S.C. Code Ann. §16-17-530 (2019).

¹⁰ S.C. Code Ann. §16-17-420 (2019).

laws' vagueness rendered the laws unconstitutional. The District Court ruled for the students and among other relief, permanently enjoined the enforcement of the Disorderly Conduct law as applied to current students and permanently enjoined South Carolina from retaining juvenile records for students charged under the two laws. On February 11, 2022, the Defendant-Appellant appealed to the Fourth Circuit.

Amici submit this brief to highlight how these challenged school disciplinary laws criminalize schoolchildren's behavior, contribute to school pushout, and perpetuate the school-to-prison pipeline. *Amici* specifically highlight herein the ways these laws particularly harm Black students and other students of color, LGBTQ students, students with disabilities, and students at the intersections of these identities. The criminalization of children that is tied to these laws leads to a range of harmful consequences across students' lives. Instead of providing students with trauma-informed responses and addressing their social-emotional needs, these laws push students out of schools and into the criminal legal system.

ARGUMENT

I. Punitive and vague school disciplinary laws and school policing push students out of school and perpetuate the school-to-prison pipeline.

School disciplinary laws lead to school pushout and perpetuate the school-to-prison pipeline ("STPP"). School pushout refers to punitive discipline practices

that exclude students from class and push them out of school altogether.¹¹ School pushout is often caused by disciplinary practices, often known as “exclusionary discipline,” which include suspensions, expulsions, and arrests. Students lost over eleven million days of instruction in the 2015-2016 school year from out-of-school suspensions.¹² This exclusionary discipline was typically imposed for conduct like “disruption” or “disobedience.”¹³ School disciplinary laws, particularly vague ones, and the consequences for their violation are incredibly subjective and provide enormous discretion for officials to determine violations.¹⁴ These determinations

¹¹ Girls Inc., *What You Need to Know About School Pushout and How to Combat It*, <https://girlsinc.org/school-pushout-and-how-to-combat-it/> (last visited Feb. 25, 2022).

¹² The Ctr. for Civil Rights Remedies & The Am. Civil Liberties Union, *11 Million Days Lost: Race, Discipline, and Safety at U.S. Public Schools, Part 1* 4 (2018), https://www.aclu.org/sites/default/files/field_document/final_11-million-days_ucla_aclu.pdf [hereinafter *11 Million Days Lost*]. This number of lost instruction days is under-inclusive, accounting only for out-of-school suspensions and not in-school suspensions, expulsions, disciplinary transfers, or informal classroom removals.

¹³ Daniel J. Losen & Paul Martinez, *Lost Opportunities: How Disparate School Discipline Continues to Drive Differences in the Opportunity to Learn*, The Center for Civil Rights Remedies & Learning Policy Institute 3 (2020), <https://www.civilrightsproject.ucla.edu/research/k-12-education/school-discipline/lost-opportunities-how-disparate-school-discipline-continues-to-drive-differences-in-the-opportunity-to-learn/Lost-Opportunities-REPORT-v17.pdf>.

¹⁴ Even when states attempt to define behavioral expectations under school disciplinary laws, students still may not understand when their behavior will be disciplined, and school officials maintain broad enforcement discretion. Heather Steed et al., *By Using Vague Language to Define Misconduct, Many States Put Children at Risk for Unfair Disciplinary Action*, Child Trends (Mar. 10, 2022), <https://www.childtrends.org/publications/by-using-vague-language-to-define->

are often based on white cultural norms and typically harm Black students and other students of color.¹⁵

Schools that rely on exclusionary discipline do not experience decreased violent incidents, and the same behavior that was punished is often reinforced.¹⁶ Excessive exclusionary discipline interferes with students' education and well-being, leading to social isolation and not allowing students to learn from mistakes.¹⁷ Such exclusion erodes the trust between students and educators that is crucial to learning.¹⁸ Student disciplinary records are also cumulative; thus, students who face discipline for issues like tardiness that might be tied to challenges such as lacking reliable transportation or housing, may then face

misconduct-many-states-put-children-at-risk-for-unfair-disciplinary-action. The enormous discretion emerges in a variety of contexts. For example, Black students have been punished for wearing hairstyles that white school officials are uncomfortable with. See NAACP, *NAACP Blast Texas High School Banning Deandre Arnold Hairstyle* (Jan. 28, 2020), <https://naacp.org/articles/naacp-blast-texas-high-school-banning-deandre-arnold-hairstyle>.

¹⁵ See Coshandra Dillard, *The Weaponization of Whiteness in Schools*, 65 *Teaching Tolerance* 19 (2020), https://www.learningforjustice.org/sites/default/files/2020-09/Teaching-Tolerance-Magazine-65-Fall-2020_1.pdf [hereinafter *Weaponization of Whiteness*].

¹⁶ Elizabeth Pufall Jones et al., *Discipline and Disconnected: How Students Experience Exclusionary Discipline in Minnesota and the Promise of Non-Exclusionary Alternatives* 3 (2018), <https://gradnation.americaspromise.org/sites/default/files/d8/2018-07/Disciplined-and-Disconnected-Final.pdf>.

¹⁷ See *id.* at 2.

¹⁸ *Id.* at 2-3.

harsher discipline for additional infractions like “disorderly conduct” or “disruption.”¹⁹

The South Carolina Disorderly Conduct and Disturbing Schools statutes are precisely the type of laws that can lead to excessive and punitive classroom exclusion, promote school pushout, and criminalize students. These laws are often enforced by school-based police—school resource officers (“SROs”)—who then administer day-to-day discipline that is more appropriately handled by educators. This criminalizes expected student behavior, exacerbates discriminatory discipline, and perpetuates the STPP.

The STPP is the system of school policies and practices that funnel students into the criminal legal system.²⁰ The proliferation of punitive, usually vague laws, such as those challenged here, has perpetuated the STPP through school policing and referrals to law enforcement. They do so by allowing SROs broad discretion to arrest students for typical youth behavior—including behavior that might be a manifestation of a student’s disability. SROs in South Carolina have used that

¹⁹ See *Weaponization of Whiteness*, *supra* note 15, at 20.

²⁰ See, e.g., Mary Ellen Flannery, *The School-to-Prison Pipeline: Time to Shut It Down*, NEAToday (Jan. 5, 2015), <https://www.nea.org/advocating-for-change/new-from-nea/school-prison-pipeline-time-shut-it-down>; Marilyn Elias, *The School-to-Prison Pipeline*, 43 *Teaching Tolerance Mag.* 38, 39-40 (2013), <https://www.learningforjustice.org/magazine/spring-2013/the-school-to-prison-pipeline>.

broad discretion to criminally charge students for typical youth behaviors,²¹ such as not getting in the lunch line, Resp. Br. 10, and talking during a timeout, *id.* at 16.²² Similarly, law enforcement officers across the country have confronted or arrested students, particularly Black students,²³ for childlike behaviors, such as pointing *fingers* in the shape of a gun at age thirteen,²⁴ taking too much milk in the cafeteria at age eleven,²⁵ and throwing a tantrum at age six.²⁶ SROs have also criminally charged students for “wearing too much perfume, eating chicken nuggets from a classmate’s lunch tray, throwing Skittles at another student on the

²¹ As the district court highlighted, many behaviors that resulted in *criminal charges* under the challenged laws were among the *lowest level offenses* found in South Carolina schools’ codes of conduct—offenses that warranted minor discipline such as a verbal reprimand. *See* Resp. Br. 10-11, 32.

²² Consistent with the discriminatory patterns highlighted herein, the students in these examples were also Black students.

²³ As noted, we will address the harms suffered by Black students and other particular groups in more detail in Section II.

²⁴ Katie Shepherd, ‘*She was just mouthing off*’: 13-Year-Old Who Pointed a Finger Gun at Four Classmates Faces Felony Charge, Wash. Post (Oct. 11, 2019), <https://www.washingtonpost.com/nation/2019/10/11/year-old-finger-gun-felony-charges-kansas/>.

²⁵ Reis Thebault, *Video Shows Police Officer Tackling an 11-Year-Old Girl He Accused of Being ‘Disruptive’ at School*, Wash. Post (Oct. 23, 2019), <https://www.washingtonpost.com/education/2019/10/23/video-shows-police-officer-tackling-an-year-old-girl-he-accused-being-disruptive-school/>.

²⁶ Mihir Zaveri, *Body Camera Footage Shows Arrest by Orlando Police of 6-Year-Old at School*, N.Y. Times (Feb. 27, 2020), <https://www.nytimes.com/2020/02/27/us/orlando-6-year-old-arrested.html>.

school bus, doodling on a desk, and performing a science experiment without teacher approval.”²⁷

The challenged school disciplinary laws have increased police presence in South Carolina schools, resulting in high rates of student arrests, particularly of Black students. During the 2013-2014 school year, there were 1,956 arrests in South Carolina schools, ranking ninth in the U.S. for highest number of arrests and eighth for highest percentage of arrests based on total student enrollment.²⁸ To prevent students from being criminalized for youthful behavior, police must be kept out of schools²⁹ and day-to-day discipline. Instead, schools should provide trauma-responsive³⁰ resources in-house, including counselors, psychologists, and

²⁷ Amanda Merkwae, *Schooling the Police: Race, Disability, and the Conduct of School Resource Officers*, 21 Mich. J. Race & Law 147, 154 (2015).

²⁸ *Which Students Are Arrested the Most?* Policing America’s Schools: An Education Week Analysis (2017), <https://www.edweek.org/which-students-are-arrested-most-in-school-u-s-data-by-school#/overview>.

²⁹ Evidence directly shows that student arrest rates increase by at least three and a half times (and as much as eight times in certain states) with the presence of SROs. Am. C. L. Union, *Cops and No Counselors: How the Lack of School Mental Health Staff Is Harming Students* 18 (2019), https://www.aclu.org/sites/default/files/field_document/030419-acluschooldisciplinereport.pdf [hereinafter *Cops and No Counselors*].

³⁰ Being trauma-responsive includes adopting both “trauma-informed systems approaches” (understanding what happened to a child and shaping school climate to be sensitive to students’ needs) and “trauma-specific treatment interventions” (implementing evidence-based programs to promote trauma recovery). Maura McInerney & Amy McKlindon, *Unlocking the Door to Learning: Trauma-Informed Classrooms and Transformational Schools* 5-6, 11 (2014),

social workers.³¹ This is especially true as students continue grappling with the impact of the COVID-19 pandemic.

The pandemic has caused students to experience compounded stresses and trauma. Students feel scared and are missing social interactions, including critical milestones.³² Unsurprisingly, these feelings can manifest in classroom misbehavior.³³ Some schools have responded to pandemic-related misbehavior by increasing exclusionary discipline, in a more discriminatory manner than pre-pandemic levels.³⁴ South Carolina saw similar punitive responses to misbehavior during the pandemic, as over 1,000 youth were referred for Disorderly Conduct in

<https://www.elc-pa.org/wp-content/uploads/2015/06/Trauma-Informed-in-Schools-Classrooms-FINAL-December2014-2.pdf>.

³¹ *The Ending PUSHOUT Act: Fostering Safe Supportive, and Inclusive Schools for Girls of Color*, Nat'l Women's L. Ctr. (Nov. 2021), <https://nwlc.org/wp-content/uploads/2021/11/Ending-Pushout-FS.pdf>. *See also* Maria Abenes, *Teens in America: How the COVID-19 Pandemic Is Shaping the Next Generation*, *Psychiatric Times* (Nov. 12, 2021), <https://www.psychiatristimes.com/view/teens-in-america-how-the-covid-19-pandemic-is-shaping-the-next-generation>.

³² *Id.*

³³ *See, e.g.*, Kalyn Belsha, *Stress and Short Tempers: Schools Struggle with Behavior as Students Return*, *Chalkbeat* (Sept. 27, 2021), <https://www.chalkbeat.org/2021/9/27/22691601/student-behavior-stress-trauma-return>; *Trauma-Informed Schools*, Nat'l Educ. Assoc., <https://www.nea.org/professional-excellence/student-engagement/trauma-informed-schools> (last visited Mar. 8, 2022).

³⁴ Tara García Mathewson, *Some kids have returned to in-person learning only to be kicked right back out*, *The Hechinger Report* (Jan. 20, 2022), <https://hechingerreport.org/some-kids-have-returned-to-in-person-learning-only-to-be-kicked-right-back-out/>.

the 2019-2020 fiscal year, even though schools were operating virtually for much of this period. JA 329.

II. Black students and other students of color, LGBTQ students, students with disabilities, and students at the intersections of these identities are particularly harmed by school disciplinary laws and school policing, resulting in a range of negative consequences.

Black students and other students of color, LGBTQ students, students with disabilities, and students at the intersections³⁵ of these identities are disproportionately harmed by school disciplinary laws. The harms include both disruption to short-term classroom instruction and longer-term academic, social, and economic consequences throughout students' lives.

A. Black students and other students of color, LGBTQ students, students with disabilities, and students at the intersections of these identities are disproportionately harmed.

Black students and other students of color, LGBTQ students, students with disabilities, and students at the intersections of these identities are most targeted by laws and school policing that cause school pushout and perpetuate the STPP. The effects of explicit and implicit bias combined with broad disciplinary discretion

³⁵ Intersectionality, coined by Kimberlé Crenshaw, is a lens for seeing how various forms of inequality often operate together and exacerbate each other. The concept acknowledges that race inequality is not separate from inequality based on gender, class, sexuality, or immigrant status. Rather, some people are subject to all of these forms of inequality, and the experience is not just the sum of its parts. Katy Steinmetz, *She Coined the Term 'Intersectionality' Over 30 Years Ago. Here's What It Means to Her Today*, Time (Feb. 20, 2020), <https://time.com/5786710/kimberle-crenshaw-intersectionality/>.

result in discrimination and are compounded for students at the intersections of these identities.

(a) Punitive and vague school disciplinary laws significantly harm Black students and other students of color.

School officials often enforce disciplinary rules in ways that criminalize Black students.³⁶ For example, of the 11 million days of instruction students lost to suspensions in the 2015-2016 school year, Black students lost about five times the amount of instruction that white students lost.³⁷ Systemic and individual biases may lead an educator or SRO to see a particular behavior by Black students as disruptive.³⁸ For example, during the 2014-2015 academic year, Black students in South Carolina were charged with Disturbing Schools four times more than white

³⁶ See, e.g., Jason A. Okonofua et al., *When Policy and Psychology Meet: Mitigating the Consequences of Bias in Schools*, Science Mag (Oct. 16, 2020), <https://advances.sciencemag.org/content/advances/6/42/eaba9479.full.pdf>; Clifton B. Parker, *Teachers More Likely to Label Black Students as Troublemakers, Stanford Research Shows*, Stanford News (Apr. 15, 2015), <https://news.stanford.edu/news/2015/april/discipline-black-students-041515.html>;

³⁷ *11 Million Days Lost*, *supra* note 12, at 5.

³⁸ See, e.g., Phillip Atiba Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J. of Personality & Soc. Psych. 526 (2014), <https://www.apa.org/pubs/journals/releases/psp-a0035663.pdf>; Nat'l Women's L. Ctr. & NAACP Legal Defense & Educ. Fund, *Unlocking Opportunities for African American Girls: A Call to Action for Educational Equity* 5, 15-18 (2014), https://nwlc.org/wp-content/uploads/2015/08/unlocking_opportunity_for_african_american_girls_report.pdf [hereinafter *Unlocking Opportunities*]; see also Okonofua et al., *supra* note 36, at 2.

students. JA 49 ¶ 76. These numbers often result from an “adultification” bias that leads adults to see Black children as older and less innocent than their white peers.³⁹ When paired with policies that enable broad discretion in judging acceptable behavior, adultification bias leads educators to disproportionately punish Black students for the same behaviors that go unnoticed in white students.

When Black boys are adultified, they are more likely to be viewed as guilty of suspected misconduct.⁴⁰ Consequently, school officials punish Black boys more frequently or harshly for minor infractions.⁴¹ Plaintiff D.D., a Black boy, experienced this when he was presumed guilty and charged for making threatening statements on his social media accounts, despite school administrators presenting no evidence or conducting an investigation. *Kenny v. Wilson*, No. 2:16-CV-2794-MBS, 2021 WL 4711450, at *3 (D.S.C. Oct. 8, 2021).

Despite also facing intense discrimination in enforcement of school disciplinary rules, the experiences of Black girls are often left out in conversations about school climate. School disciplinary rules are often embedded with and

³⁹ Rebecca Epstein, Jamilia J. Blake & Thalia González, *Girlhood Interrupted: The Erasure of Black Girls' Childhood*, Georgetown Law Ctr. on Poverty & Inequality (2018), <https://www.law.georgetown.edu/poverty-inequality-center/wp-content/uploads/sites/14/2017/08/girlhood-interrupted.pdf> [hereinafter *Girlhood Interrupted*], at 1-6.

⁴⁰*Id.* at 1.

⁴¹ For example, nearly one-in-five Black boys are suspended at least once each year, making them the most likely group to face suspensions. See Civil Rights Data Collection, <https://ocrdata.ed.gov/> (last visited March 23, 2022).

enforced in a manner that promotes both racial and gender biases.⁴² School officials often perceive Black girls as too “loud,” “defiant,” and “hypersexual”⁴³—whereas white girls are often associated with “docility” and “modesty.”⁴⁴ As such, many educators perceive Black girls as less deserving of protection and more deserving of punishment. Compared to white girls, Black girls are over four times more likely to be suspended or expelled and over five times more likely to be transferred for disciplinary reasons.⁴⁵ When school officials act on adultification bias, they are more likely to discipline Black girls for minor, subjective offenses,⁴⁶

⁴² See “... and they cared”: *How to create better, safer learning environments for girls of color*, Nat’l Women’s L. Ctr. & The Educ. Trust (Aug. 2020), https://nwlc.org/wp-content/uploads/2020/08/FINAL_NWLC_EDTrust_Guide.pdf [hereinafter “...and they cared”].

⁴³ *Id.* at 1; see also *Girlhood Interrupted*, *supra* note 39, at 1 (finding educators adultify Black girls as young as age 5).

⁴⁴ *Girlhood Interrupted*, *supra* note 32, at 5-6; see also *The Jezebel Stereotype*, Ferris State University, <https://www.ferris.edu/HTMLS/news/jimcrow/jezebel/index.htm> (last visited Mar. 14, 2022).

⁴⁵ Rebecca Epstein, et al., *Data Snapshot: 2017-2018 National Data on School Discipline by Race and Gender*, Georgetown Ctr. for Poverty & Inequality (2020), <https://genderjusticeandopportunity.georgetown.edu/wp-content/uploads/2020/12/National-Data-on-School-Discipline-by-Race-and-Gender.pdf> [hereinafter Georgetown Data Snapshot]; see also “...and they cared”, *supra* note 42, at 2.

⁴⁶ See “...and they cared”, *supra* note 42, at 4; Adaku Onyeka-Crawford, Kayla Patrick & Neena Chaudhry, *Let Her Learn: Stopping School Pushout for Girls of Color*, Nat’l Women’s Law Ctr., 13-15 (2017), https://nwlc.org/wp-content/uploads/2017/04/final_nwlc_Gates_GirlsofColor.pdf; *Unlocking Opportunities*, *supra* note 38, at 18.

such as defiance, “talking back,” or for just acting like girls.⁴⁷ School officials are also more likely to blame Black girls who experience harassment⁴⁸ and punish them for defending themselves. For example, Plaintiff D.S., a Black girl, was charged with Disturbing Schools for defending herself against other students.

Resp. Br. 9.

Black girls are also harmed at greater rates by police in schools. In the 2017-2018 school year, Black girls were three times more likely to be referred to law enforcement and four times more likely to be arrested at school than white girls.⁴⁹ Black girls are frequently targeted for physical and sexual abuse by SROs,⁵⁰ such as when an SRO flipped a Black girl over in her desk and dragged her across the

⁴⁷ See Emily Shugerman, *After 12-Year-Old Black Girls Say They Were Strip-Searched, Turmoil in N.Y. School District*, The Daily Beast (Jan. 30, 2019), <https://www.thedailybeast.com/after-12-year-old-black-girls-say-they-were-strip-searched-turmoil-in-ny-school-district>. (The girls alleged they were strip-searched for drugs for acting “hyper” and “giddy.”)

⁴⁸ See, e.g., “...and they cared”, *supra* note 42, at 11; *Unlocking Opportunities*, *supra* note 38, at 25; Nat’l Women’s L. Ctr. & Girls for Gender Equity, *100 School Districts: A Call to Action for School Districts Across the Country to Address Sexual Harassment Through Inclusive Policies and Practices* 6-7 (2021), <https://nwlc.org/wp-content/uploads/2021/01/100-school-districts-1.12.21-vF.pdf>.

⁴⁹ Georgetown Data Snapshot, *supra* note 45.

⁵⁰ See, e.g., Lauren de Valle, *Michigan School Resource Office Sentenced to 1 Year in Jail for Sexually Assaulting 3 High School Students*, CNN (Oct. 3 2019), <https://www.cnn.com/2019/10/03/us/michigan-officer-sentenced-sexual-assault/index.html>; Tom Jones, *Video Shows School Officer Slam Girl into Wall While Breaking Up Fight*, WSB-TV (Aug. 20, 2019), <https://www.wsbtv.com/news/local/newton-county/video-shows-school-officer-slam-girl-into-wall-while-breaking-up-fight/977763035/>.

classroom for not surrendering her phone at Spring Valley High School⁵¹—serving in many ways as an impetus for this case. In 2021, an SRO body-slammed Taylor Bracey, a 16-year-old Black girl, onto a concrete floor and knocked her unconscious.⁵² Days later, an SRO tased a fifteen-year-old Black girl at another school.⁵³ If these are the incidents captured on video, one can only imagine the abuse that goes uncaptured. Black girls also report that when they speak out against school police abuse, they are punished. For example, former Plaintiff Niya Kenny was charged with Disturbing Schools for trying to document the SRO violently arresting the girl he flipped over at Spring Valley. Resp. Br. 14.

Other students of color are also harmed by punitive and vague school disciplinary laws. In the 2015-2016 school year, Black and Latinx students

⁵¹ Sarah Aarthun and Holly Yan, *Student's violent arrest caught on video; officer under investigation*, CNN (Oct. 27, 2015), <https://www.cnn.com/2015/10/26/us/south-carolina-spring-valley-high-school-student-video/index.html>.

⁵² Meredith Deliso, *Florida Teen Body-Slammed by School Resource Officer 'Traumatized,' Family Says*, ABC News (Jan. 31, 2021), <https://abc7ny.com/florida-teen-body-slammed-school-resource-officer-slams-girl-police-slam-taylor-bracey/10183813/>.

⁵³ Adam Poulisse & Q McCray, *School Resource Officer Who Used Taser on Eustis High School Student Not Facing Discipline, Student Arrested*, WFTV9 ABC (Jan. 28, 2021), <https://www.wftv.com/news/video-school-resource-officer-who-used-taser-eustis-high-school-student-not-facing-discipline-student-arrested/1c766f6a-bc91-47bd-bc21-ff2598339eee/>.

comprised 40% of national school enrollment but 58% of school-based arrests.⁵⁴ A 2021 study “found that increases in offenses and exclusionary reactions due to increased SRO presence were most evident for Black and Hispanic as opposed to [w]hite students.”⁵⁵

Girls of color, including those of Hispanic, Asian, Native Hawaiian, Pacific Islander, and Native American backgrounds, also face discriminatory discipline⁵⁶ and school policing,⁵⁷ and this has resulted in devastating consequences, including death. In September 2021, a school safety officer⁵⁸ in California shot at Manuela “Mona” Rodriguez, who had complied with the officer’s directives.⁵⁹ The shot left Mona brain-dead, and her family took the eighteen-year-old off life support days later.

⁵⁴ Advancement Project & Alliance for Educational Justice, *We Came to Learn: A Call to Action for Police-Free Schools* 40 (2018), <http://advancementproject.org/wp-content/uploads/WCTLweb/index.html#page=1>.

⁵⁵ Crosse et al., *Are Effects of School Resource Officers Moderated by Student Race and Ethnicity?*, *Crime & Delinquency* (2021).

⁵⁶ Georgetown Data Snapshot, *supra* note 45.

⁵⁷ *Id.*

⁵⁸ In some jurisdictions, “school safety officer” is used as another term for a school resource officer.

⁵⁹ Jonathan Edwards, *A school safety officer shot a fleeing teen. He has been fired and police have opened a homicide investigation*, *Wash. Post* (Oct. 8, 2021), <https://www.washingtonpost.com/nation/2021/10/08/long-beach-schools-officer-shooting>.

The harms faced by Black students and other students of color have only worsened following the pandemic.⁶⁰ For example, “Black and Hispanic youth were more likely to have lost a parent or a family member to COVID-19.”⁶¹ Black and Latina girls were more likely than white girls to take on caregiver responsibilities at home.⁶² Black girls took on additional responsibilities in their communities in connection with protest movements for racial equality during the pandemic.⁶³ Students of color are also disproportionately impacted by pandemic-related

⁶⁰ *Id.*; see also Hamida Labi, Monique Lin Luse & Kesha Moore, *Position on Reopening and Operating Schools During the COVID-19 Pandemic*, NAACP Legal Defense Fund (Sept. 15, 2021), <https://www.naacpldf.org/wp-content/uploads/2021-09-15-Schools-Reopening-7.pdf>.

⁶¹ Alisha Haridasani Gupta, ‘*No Time to Be a Child*’, N.Y. Times (Sept. 25, 2021), <https://www.nytimes.com/2021/09/25/us/young-girls-caregiving-covid.html>; Ken Downey Jr., *Black children disproportionately affected by parental deaths from COVID-19*, Healio (Apr. 5, 2021), <https://www.healio.com/news/primary-care/20210405/black-children-disproportionately-affected-by-parental-deaths-from-covid19>; Roni Caryn Rabin, *How the Virus Unraveled Hispanic American Families*, N.Y. Times (Jun. 14, 2021), <https://www.nytimes.com/2021/06/14/health/coronavirus-hispanic-california.html>; Chelsea Cirruzzo, *Nearly 40,000 Children Have Lost a Parent to Covid-19*, U.S. News (Apr. 7, 2021), <https://www.usnews.com/news/health-news/articles/2021-04-07/nearly-40-000-children-have-lost-a-parent-to-covid-analysis-shows>.

⁶² See Gupta, *supra* note 61.

⁶³ Alliyah Allen et al., *Black Girls During the Pandemic and Protest, A Long Walk Home*, <https://www.alongwalkhome.org/covid-19-report> (last visited Mar. 11, 2022).

stress,⁶⁴ which, as explained above, may manifest in classroom misbehavior—contributing to the ongoing crisis of the over-criminalization of students of color.

(b) Punitive and vague school disciplinary laws also significantly harm LGBTQ students.

School disciplinary laws are also enforced in a manner that severely harms LGBTQ students. LGBTQ students can face stereotypes that cast them as “hypersexual, deviant, and immoral”⁶⁵ and thus “deserving” of mistreatment.⁶⁶ School officials often rely on stereotypes when responding to harassment of or misconduct by LGBTQ students by singling them out for punishment more than their cisgender and heterosexual peers.⁶⁷

Often, educators refuse to intervene when LGBTQ students experience bullying or, when they do intervene, unilaterally discipline LGBTQ students for

⁶⁴ See Alliance for Girls, *Uniting Isolated Voices: Girls and Gender-Expansive Youth During COVID-19* 25 (July 2021), https://www.alliance4girls.org/wp-content/uploads/UnitingIsolatedVoices_FINAL_ForUpload.pdf.

⁶⁵ Gillian R. Chadwick, *Reorienting the Rules of Evidence*, 39 *Cardozo L. Rev.* 2115, 2118 (2018), <http://cardozolawreview.com/heterosexism-rules-evidence>.

⁶⁶ Laura Dorwart, *The Hidden #MeToo Epidemic: Sexual Assault Against Bisexual Women*, Medium (Dec. 3, 2017), <https://medium.com/@lauramdorwart/the-hidden-metoo-epidemic-sexualassault-against-bisexual-women-95fe76c3330a>.

⁶⁷ Neal A. Palmer, Emily A Greytak & Joseph G. Kosciw, *Educational Exclusion*, GLSEN 33 (2016) https://www.glsen.org/sites/default/files/2019-11/Educational_Exclusion_2013.pdf.

defending themselves.⁶⁸ This pattern makes apparent that the stigma associated with being LGBTQ alone is a risk factor for being pushed into the STPP.⁶⁹

The challenged school disciplinary laws allow for great discretion, leaving room for bias to influence enforcement against LGBTQ students. This makes LGBTQ students—who are already more likely to be referred to law enforcement for offending school policies⁷⁰—especially vulnerable to excessive enforcement of these laws. Further, the impact of these harmful stereotypes about LGBTQ youth is exacerbated if a student occupies multiple marginalized identities. For example, a Black LGBTQ student will face discrimination tied to stereotypes relating both to LGBTQ individuals and to Black students—creating an especially high risk of criminalization for LGBTQ students of color.

(c) Punitive and vague school disciplinary laws also significantly harm students with disabilities.

Students with disabilities also face biases in educational settings, resulting in higher rates of discipline and referral to law enforcement.⁷¹ During the 2017-2018

⁶⁸ See *id.* at 11 (1 in 10 LGBTQ+ students are punished for reporting bullying to faculty).

⁶⁹ See GLSEN, *supra* note 67, at 1 xii.

⁷⁰ GLSEN, *supra* note 67, at 28.

⁷¹ Daniel J. Losen, Paul Martinez & Grace Hae Rim Shin, *Disabling Inequity: The Urgent Need for Race-Conscious Resource Remedies*, Civil Rights Project, The Center for Civil Rights Remedies, UCLA 6 (March 22, 2021) <https://www.civilrightsproject.ucla.edu/research/k-12-education/special->

school year, students with disabilities served under the Individuals with Disabilities Education Act (“IDEA”) on average lost forty-one days of instruction per 100 students enrolled due to suspensions, while students without disabilities lost nineteen days of instruction per 100 students enrolled.⁷² Students with disabilities are also funneled into the STPP. Studies indicate that 65-70% of youth in the criminal legal system meet the criteria for a disability, a rate that is over three times higher than that of the general population.⁷³

Students with disabilities, particularly intellectual disabilities, are stereotyped as less “credible”⁷⁴ and are often viewed as “disruptive” in the classroom solely because their behavior does not conform to what is viewed as typical.⁷⁵ Black students with disabilities are especially likely to be targeted for

education/disabling-inequity-the-urgent-need-for-race-conscious-resource-remedies/final-Report-03-22-21-v5-corrected.pdf.

⁷² *Id.*

⁷³ Skowrya & Coccozza, *Blueprint for Change: A Comprehensive Model for the Identification and Treatment of Youth with Mental Health Needs in Contact with the Juvenile Justice System*, Nat’l Center for Mental Health and Juvenile Justice, (May, 2015), http://www.ncmhjj.com/wpcontent/uploads/2013/07/2007_Blueprint-for-Change-Full-Report.pdf; *Better Solutions for Youth with Mental Health Needs in the Juvenile Justice System*, The Mental Health and Juvenile Just. Collaborative for Change, 1,7 (2014), <http://cfc.ncmhjj.com/wp-content/uploads/2014/01/Whitepaper-MentalHealth-FINAL.pdf>.

⁷⁴ Leigh Ann Davis, *People with Intellectual Disabilities and Sexual Violence*, 2 The Arc, <https://www.thearc.org/document.doc?id=3657> (Mar. 2011).

⁷⁵ See, e.g., L. Kate Mitchell, *We Can’t Tolerate That Behavior in This School: The Consequences of Excluding Children with Behavioral Health Conditions and the Limits of the Law*, 41 N.Y.U. Rev. L. & Soc. Change 407, 422 (2017) (citing

harsh, exclusionary discipline and policing.⁷⁶ For example, Plaintiff D.S., a Black girl with disabilities, was suspended and charged as an adult with Disturbing Schools despite being only seventeen and asserting that she was attacked by two other girls—a manifestation of adultification bias against Black girls and the stereotype of students with disabilities lacking credibility. *Kenny v. Wilson*, No. 2:16-CV-2794-MBS, 2021 WL 4711450, at *5 (D.S.C. Oct. 8, 2021).

Although restraint and seclusion practices⁷⁷ can cause trauma, harm, and even death,⁷⁸ school disciplinary laws have increased these practices in school policing, and they are used against students with disabilities more often than their peers. School districts are legally obligated to provide behavioral supports and services to assist students with disabilities before incidents occur. Restraints and seclusion are often employed when these supports were not provided as required.

Robert Balfanz, Vaughn Byrnes & Joanna Fox, *Sent Home and Put Off Track: The Antecedents, Disproportionalities, and Consequences of Being Suspended in the 9th Grade*, in CLOSING THE SCHOOL DISCIPLINE GAP 17, 21 (Daniel Losen ed., 2015)).

⁷⁶ See Losen, Martinez & Shin, *Disabling Inequity*, *supra* note 71.

⁷⁷ Restraint involves “restricting a student’s ability to freely move [their] torso, arms, legs, or head,” and seclusion refers to involuntary confinement in isolation. U.S. Dep’t of Educ., Office for Civil Rights, *2017-2018 Civil Rights Data Collection: The Use of Restraint and Seclusion on Children with Disabilities in K-12 Schools* 6-7 (2020), <https://www2.ed.gov/about/offices/list/ocr/docs/restraint-and-seclusion.pdf> [hereinafter U.S. Dep’t of Educ. Restraint and Seclusion Report].

⁷⁸ Nat’l Disability Rights Network, *School is Not Supposed to Hurt* (Mar. 2012), https://www.ndrn.org/images/Documents/Resources/Publications/Reports/School_is_Not_Supposed_to_Hurt_3_v7.pdf.

During the 2017-2018 school year, students with disabilities served under the IDEA made up only 13% of total student enrollment nationwide but comprised 80% of students subjected to physical restraint; 41% of students subjected to mechanical restraint; and 77% of students subjected to seclusion.⁷⁹

These statistics are particularly striking given that students with disabilities have additional legal protections intended to prevent removal for behavior that is a manifestation of their disabilities. A school district may not remove a child eligible under the IDEA or Section 504 of the Rehabilitation Act of 1973 long-term without determining if the act was a manifestation of their disability—and even then, the district must provide services and supports to address the behavior, and educational services while removed from school.⁸⁰

B. The harms caused by school pushout and the school-to-prison pipeline can lead to negative short- and long-term academic, social-emotional, and economic consequences.

When students with one or more marginalized identities are forced to interact with the criminal legal system, they face short-term harms such as loss of critical classroom instruction and are also more likely to face significant lifelong disadvantages. In addition to the trauma of arrest and prosecution that can never be undone, students forced into the STPP also face severe collateral consequences.

⁷⁹ U.S. Dep't of Educ. Restraint and Seclusion Report, *supra* note 77, at 6-7.

⁸⁰ See 34 CFR § 300.530 & § 300.320 (a)(4).

In the short-term, exclusionary discipline can seriously disrupt students' classroom instruction and their participation in extracurricular activities, such as removal from driver's education programs and ineligibility for athletics, music programs, or other school activities—resulting in loss of future opportunities like college scholarships. Exclusionary discipline and policing negatively impact academic performance and students' social-emotional wellbeing. When students are regularly surveilled and criminalized, they report feeling powerless, stifled,⁸¹ and anxious from being under constant suspicion.⁸² Exclusionary discipline and policing fracture school relationships and communicate to students that they are unwelcome and unsafe, creating a negative school climate and diminishing academic engagement.⁸³ Such was the case for Plaintiff D.D., who was pushed out of school, lost his love for learning and honor roll status, and experienced a severe decrease in social-emotional wellbeing. *Kenny v. Wilson*, No. 2:16-CV-2794-MBS, 2021 WL 4711450, at *4-5 (D.S.C. Oct. 8, 2021). Moreover, students with a single suspension are less likely to graduate from high school, threatening severe,

⁸¹ Jason P. Nance, *Student Surveillance, Racial Inequalities, and Implicit Racial Bias*, 66 Emory L.J. 765, 788 (2017).

⁸² Jen Weiss, *Scan This: Examining Student Resistance to School Surveillance*, in *Schools Under Surveillance* 213, 215 (Torin Monahan & Rodolfo D. Torres eds., 2010).

⁸³ See, e.g., Emily K. Weisburst, *Patrolling Public Schools: The Impact of Funding for School Police on Student Discipline and Long-Term Education Outcomes* 20 (2018), <https://strategiesforyouth.org/sitefiles/wp-content/uploads/2019/10/PatrollingPublicSchools.pdf>.

negative, long-term career and economic consequences.⁸⁴ Merely *attending* a school with high suspension rates increases the likelihood of future interactions with the criminal legal system.⁸⁵ Conversely, schools with lower suspension rates are correlated to higher rates of graduates enrolling in four-year colleges.⁸⁶

In the longer-term, a juvenile record can pose barriers to obtaining higher education.⁸⁷ Sixty-six percent of public and private colleges collect criminal legal information from applicants for admissions.⁸⁸ Other collateral consequences of school-based arrests and related juvenile records include a doubled likelihood of

⁸⁴ See, e.g., Russell J. Skiba et al., *More Than a Metaphor: The Contribution of Exclusionary Discipline to a School-to-Prison Pipeline*, 47 *Equity & Excellence in Educ.* 546 (2014), <https://eric.ed.gov/?id=EJ1045755>; Robert Balfanz et al., *Sent Home and Put Off-Track: The Antecedents, Disproportionalities, and Consequences of Being Suspended in the Ninth Grade* (Dec. 12, 2012) (prepared for the National Conference on Race and Gender Disparities in Discipline, Johns Hopkins University), <https://www.civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/state-reports/sent-home-and-put-off-track-the-antecedents-disproportionalities-and-consequences-of-being-suspended-in-the-ninth-grade/balfanz-sent-home-ccrr-conf-2013.pdf>; Jasmine Tucker & Kayla Patrick, *What Happens When Girls Don't Graduate from High School?*, Natl Women's Law Ctr. (2017), https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2017/09/final_nwlc_2017WhenGirlsDontGraduat.pdf.

⁸⁵ "...and they cared", *supra* note 42, at 2.

⁸⁶ *Id.*

⁸⁷ Joy Radice, *The Juvenile Record Myth*, 106 *Georgetown L. J.* 365, 387 (2018).

⁸⁸ U.S. Comm'n on Civil Rights, *Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities* 26 (2019), <https://www.usccr.gov/pubs/2019/06-13-Collateral-Consequences.pdf>.

dropping out,⁸⁹ heightened barriers to receiving federal financial assistance for college,⁹⁰ a higher chance of involvement in the criminal legal system,⁹¹ and reduced employment and military service opportunities.⁹²

These short- and long-term negative consequences make it critical to end the use of vague, exclusionary discipline laws that are unconstitutional and perpetuate the STPP, and for the Court to allow for full expungement of records for students in South Carolina who were illegally criminalized under such laws.

CONCLUSION

In addition to the traumas of exclusionary discipline and police interactions detailed above, students are still facing the traumas and anxieties of learning

⁸⁹ American Civil Liberties Union, *Bullies in Blue: The Origins and Consequences of School Policing* 30 (Apr. 2017),

https://www.aclu.org/sites/default/files/field_document/aclu_bullies_in_blue_4_11_17_final.pdf. Studies show that contact with the court alone, regardless of a conviction, can increase a high school student's chances of dropping out. Justice Policy Institute, *Education Under Arrest: The Case Against Police in Schools* 17 (2011),

http://www.justicepolicy.org/uploads/justicepolicy/documents/educationunderarrest_fullreport.pdf.

⁹⁰ U.S. Comm'n on Civil Rights, *supra* note 88.

⁹¹ Riya Saha Shah & Jean Strout, *Future Interrupted: The Collateral Damage Caused by Proliferation of Juvenile Records*, *Juvenile L. Ctr.* 9 (Feb. 2016), https://jlc.org/sites/default/files/publication_pdfs/Future%20Interrupted%20-%20final%20for%20web_0.pdf.

⁹² Justice Policy Institute, *supra* note 89 at 17.

through a pandemic,⁹³ and millions of students attend schools with police officers but no counselors.⁹⁴ *Amici* have submitted this brief to highlight the multiple groups of students harmed by states that enforce school disciplinary laws like the ones challenged in this case.

For the foregoing reasons, *amici* ask the Fourth Circuit to affirm the district court's holding that the Disturbing Schools Law, S.C. Code Ann. §16-17-420, and the Disorderly Conduct Law as applied to schoolchildren, S.C. Code Ann. § 16-17-530, are unconstitutionally vague and in violation of the Due Process Clause, as well as its order directing expungement of the relevant records of students subject to arrest and prosecution under these laws.

Dated: March 23, 2022
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Respectfully submitted,

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⁹³ The Centers for Disease Control and Prevention data found a dramatic surge in hospitalizations for suicide attempts of teenage girls during the pandemic—an already high-risk population for self-harm. Between February and March 2021, “weekly emergency room visits for teenage girls suspected of attempting suicide were up by more than 50 percent compared with the number of visits in the same time span in 2019 to 2020.” Shefali Luthra, *Suicide Attempts Among Teen Girls Were Already High. The Pandemic Might Have Made It Worse.*, The 19th (Jun. 15, 2021), <https://19thnews.org/2021/06/teen-girls-attempted-suicide-risk-pandemic/>.

⁹⁴ See *Cops and No Counselors*, *supra* note 29.

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Counsel for *amici curiae* certifies that on March 23, 2022, I electronically filed the foregoing with the Clerk of Court of the United States Court of Appeals for the Fourth Circuit by using the CM/ECF system.

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