

24-6072

**United States Court of Appeals
for the Tenth Circuit**

ANDREW BRIDGE, et al.,

Plaintiffs-Appellants,

v.

OKLAHOMA STATE DEPARTMENT OF EDUCATION, et al.,

Defendants-Appellees.

On Appeal from the United States District Court
for the Western District of Oklahoma
Case No. 5:22-CV-787, The Honorable Judge Jodi Dishman

**BRIEF FOR STATES OF NEW YORK, WASHINGTON,
CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE,
HAWAII, ILLINOIS, MAINE, MARYLAND, MASSACHUSETTS,
MINNESOTA, NEVADA, NEW JERSEY, OREGON, AND RHODE
ISLAND, AND THE DISTRICT OF COLUMBIA AS AMICI CURIAE
IN SUPPORT OF APPELLANTS AND REVERSAL**

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INTERESTS OF THE AMICI STATES

In this case, plaintiffs-appellants Andrew Bridge, Mark Miles, and Sarah Stiles—all transgender students attending public schools in Oklahoma—seek an injunction against enforcement of Oklahoma Senate Bill 615. The Act categorically bars transgender students from using sex-separated school restrooms consistent with their gender identity. The district court erroneously dismissed the complaint, concluding that the Act comports with the Equal Protection Clause and Title IX of the Education Amendments of 1972. Pursuant to Federal Rule of Appellate Procedure 29(a)(2), the States of New York, Washington, California, Colorado, Connecticut, Delaware, Hawai‘i, Illinois, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, Oregon, Rhode Island, and the District of Columbia, file this brief as amici curiae in support of plaintiffs-appellants.

Amici States strongly support the right of transgender people to live with dignity, be free from discrimination, and have equal access to education, government-sponsored opportunities, and other incidents of life, including equal access to school restrooms. Discrimination on the basis of one’s transgender status causes tangible economic, educational, physical, and emotional harms. To prevent these injuries, many amici States have adopted

policies aimed at combatting discrimination against transgender people. Amici submit this brief to describe their experiences with administering such policies—including policies that maintain sex-separated restrooms while allowing transgender students to use such restrooms on an equal basis with other students of the same sex. As amici’s experiences show, ensuring transgender people have access to public facilities consistent with their gender identity—including access to common restrooms—benefits all, without compromising safety or privacy.

The amici States also share a strong interest in seeing that federal law is properly applied to protect transgender people from discrimination. This appeal does not challenge the authority of a State or a local school district to assign bathrooms based on sex, although that is how the district court mischaracterized the issue. *See Bridge v. Oklahoma State Dep’t of Educ.*, No. CIV-22-00787, 2024 WL 150598, at *6 (W.D. Okla. Jan. 12, 2024). Rather, this case challenges an Oklahoma statute that excludes transgender students from the restroom corresponding with their gender identity based on their sex assigned at birth. The Act violates Title IX by denying transgender girls and boys access to the same common restrooms that other girls and boys may use. Further, because the Act fails to

advance any legitimate interest, such as protecting public safety or personal privacy, its only function is to stigmatize a particular group, which violates equal protection.

ARGUMENT

I. PROTECTING TRANSGENDER PEOPLE FROM DISCRIMINATION CONFERS WIDE SOCIETAL BENEFITS WITHOUT COMPROMISING THE PRIVACY OR SAFETY OF OTHERS

Over 1.6 million people in the United States—including approximately 300,000 youth between the ages of thirteen and seventeen—identify as transgender.¹ Unfortunately, transgender people often experience discrimination that impairs their physical and mental health, curtails their economic prospects, and ultimately limits their ability to realize their potential and participate fully in society. To combat such discrimination, States began providing civil rights protections for transgender people over a quarter century ago. At least twenty-three States and the District

¹ Jody L. Herman et al., Williams Inst., *How Many Adults and Youth Identify as Transgender in the United States? 1* (2022). (For authorities available online, full URLs appear in the table of authorities. All URLs were last visited on July 19, 2024.)

of Columbia,² and at least 374 municipalities,³ now offer express protections against discrimination based on gender identity in areas such as education, housing, public accommodations, and employment.⁴

² **California:** Cal. Civ. Code § 51(b), (e)(5) (public accommodations); Cal. Educ. Code §§ 220 (education), 221.5(f) (education and school athletic participation); Cal. Gov’t Code §§ 12926(o), (r)(2), 12940(a), 12949 (employment); *id.* § 12955 (housing); Cal. Penal Code §§ 422.55, 422.56(c) (hate crimes). **Colorado:** Colo. Rev. Stat. § 24-34-301(7) (definition); *id.* § 24-34-402 (employment); *id.* § 24-34-502 (housing); *id.* § 24-34-601 (public accommodations). **Connecticut:** Conn. Gen. Stat. § 10-15c (schools); *id.* § 46a-51(21) (definition); *id.* § 46a-60 (employment); *id.* § 46a-64 (public accommodations); *id.* § 46a-64c (housing). **Delaware:** Del. Code Ann. tit. 6, § 4501 (public accommodations); *id.* tit. 6, § 4603(b) (housing); *id.* tit. 19, § 711 (employment). **Hawai‘i:** Haw. Rev. Stat. § 489-2 (definition); *id.* § 489-3 (public accommodations); *id.* § 515-2 (definition); *id.* § 515-3 (housing). **Illinois:** 775 Ill. Comp. Stat. 5/1-102(A) (housing, employment, access to financial credit, public accommodations); *id.* 5/1-103(O-1) (definition). **Iowa:** Iowa Code § 216.2(10) (definition); *id.* § 216.6 (employment); *id.* § 216.7 (public accommodations); *id.* § 216.8 (housing); *id.* § 216.9 (education). **Kansas:** Kansas Hum. Rts. Comm’n, *Kansas Human Rights Commission Concurs with the U.S. Supreme Court’s Bostock Decision* (Aug. 21, 2020) (advising that Kansas laws prohibiting discrimination based on “sex” in “employment, housing, and public accommodation” contexts “are inclusive of LGBTQ and all derivatives of ‘sex’”). **Maine:** Me. Rev. Stat. Ann. tit. 5, § 4553(9-C) (definition); *id.* § 4571 (employment); *id.* § 4581 (housing); *id.* § 4591 (public accommodations); *id.* § 4601 (education). **Maryland:** Md. Code Ann., State Gov’t § 20-304 (public accommodations); *id.* § 20-606 (employment); *id.* § 20-705 (housing); Md. Code Ann., Educ. § 26-704 (schools). **Massachusetts:** Mass. Gen. Laws ch. 4, § 7, fifty-ninth (definition); *id.* ch. 76, § 5 (education); *id.* ch. 151B, § 4 (employment, housing, credit); *id.* ch. 272, §§ 92A, 98 (public accommodations) (as amended by Ch. 134, 2016 Mass. Acts). **Michigan:** Mich. Comp. Laws § 37.2102(1). **Minnesota:** Minn. Stat. § 363A.03(44),
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(50) (definitions); *id.* § 363A.08 (employment); *id.* § 363A.09 (housing); *id.* § 363A.11 (public accommodations); *id.* § 363A.13 (education). **Nevada:** Nev. Rev. Stat. §§ 118.075, 118.100 (housing); *id.* §§ 613.310(4), 613.330 (employment); *id.* §§ 651.050(2), 651.070 (public accommodations). **New Hampshire:** N.H. Rev. Stat. Ann. § 354-A:2(XIV-e) (definition); *id.* § 354-A:6 (employment); *id.* § 354-A:8 (housing); *id.* § 354-A:16 (public accommodations); *id.* § 354-A:27 (education). **New Jersey:** N.J. Stat. Ann. § 10:5-5(rr) (definition); *id.* § 10:5-12 (public accommodations, housing, employment); *id.* § 18A:36-41 (directing issuance of guidance to school districts permitting transgender students “to participate in gender-segregated school activities in accordance with the student’s gender identity”). **New Mexico:** N.M. Stat. Ann. § 28-1-2(Q) (definition); *id.* § 28-1-7(A) (employment); *id.* § 28-1-7(F) (public accommodations); *id.* § 28-1-7(G) (housing). **New York:** N.Y. Exec. Law §§ 291, 296 (education, employment, public accommodations, housing). **Oregon:** Or. Rev. Stat. § 174.100(4) (definition); *id.* § 659.850 (education); *id.* § 659A.006 (employment, housing, public accommodations). **Pennsylvania:** 43 Pa. Stat. § 953; 16 Pa. Code § 41.206 (employment, housing, public accommodations). **Rhode Island:** 11 R.I. Gen. Laws § 11-24-2 (public accommodations); 28 R.I. Gen. Laws §§ 28-5-6(11), 28-5-7 (employment); 34 R.I. Gen. Laws §§ 34-37-3(9), 34-37-4 (housing). **Utah:** Utah Code Ann. § 34A-5-106 (employment); *id.* § 57-21-5 (housing). **Vermont:** Vt. Stat. Ann. tit. 1, § 144 (definition); *id.* tit. 9, § 4502 (public accommodations); *id.* tit. 9, § 4503 (housing); *id.* tit. 21, § 495 (employment). **Washington:** Wash. Rev. Code Ann. § 28A.642.010 (education); *id.* § 49.60.030(1)(a)-(e) (employment, public accommodations, real estate transactions, credit transactions, and insurance transactions); *id.* § 49.60.040(27) (definition); *id.* § 49.60.180 (employment); *id.* § 49.60.215 (public accommodations); *id.* § 49.60.222 (housing). **District of Columbia:** D.C. Code § 2-1401.02(12A) (definition); *id.* § 2-1402.11 (employment); *id.* § 2-1402.21 (housing); *id.* § 2-1402.31 (public accommodations); *id.* § 2-1402.41 (education).

³ Movement Advancement Project, *Local Nondiscrimination Ordinances* (current as of July 12, 2024).

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The experiences of amici States and other jurisdictions show that policies and practices that ensure equal access to public facilities for transgender people—including access to common restrooms consistent with their gender identity—promote safe and inclusive school environments that benefit all.

A. Transgender Youth Face Pervasive and Harmful Discrimination That Causes Them Serious Physical, Mental, Emotional, and Academic Harms.

Transgender youth experience high levels of discrimination, violence, and harassment in school.⁵ In the 2022 U.S. Transgender Survey (USTS), over three quarters (80%) of adult respondents who were known or

⁴ The Supreme Court has confirmed that longstanding federal law similarly prohibits employment discrimination based on gender identity. See *Bostock v. Clayton Cnty.*, 590 U.S. 644, 660-62 (2020).

⁵ Joseph G. Kosciw et al., GLSEN, *The 2021 National School Climate Survey: The Experiences of LGBTQ+ Youth in Our Nation's Schools* xxvii, 84 (2022); see also GLSEN, *Improving School Climate for Transgender and Nonbinary Youth: Research Brief 1* (2021); Michelle M. Johns et al., *Transgender Identity and Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High School Students — 19 States and Large Urban School Districts, 2017*, 68 *Morbidity & Mortality Wkly. Rep.* 67, 67-70 (2019).

perceived as transgender in grades K-12 reported negative experiences at school, including being harassed or attacked.⁶

In another 2022 survey of LGBTQ+ teenagers, nearly two in three (62.6%) transgender and gender-expansive youth respondents reported being “teased, bullied, or treated badly” at school in the prior year, and more than half (55.6%) of such youth reported being victimized specifically due to their sexual identity, gender identity, and/or gender expression.⁷ In the same survey, nearly six in ten (56.9%) of LGBTQ+ youth respondents reported being verbally or physically harassed at least once in the prior thirty days.⁸ Students subject to such discrimination, violence, and harassment have reported feeling less connected to their schools, and less of a sense of belonging, than other students.⁹ Transgender youth of color,

⁶ Sandy E. James et al., Nat’l Ctr. for Transgender Equal., *Early Insights: A Report of the 2022 U.S. Transgender Survey 22* (2024).

⁷ Human Rts. Campaign Found., *2023 LGBTQ+ Youth Report* (2023).

⁸ *Id.*

⁹ Kosciw et al., *The 2021 National School Climate Survey*, *supra*, at 88.

in particular, face unique difficulties as a result of their intersecting marginalized identities.¹⁰

Discrimination against transgender youth can have serious health consequences. Research has demonstrated that discrimination against LGBTQ people “increases the risks of poor mental and physical health.”¹¹ For example, LGBTQ students who experienced discriminatory policies or practices in school were found to have lower self-esteem and higher levels of depression than students who had not encountered such discrimination.¹² Half of transgender and nonbinary youth in a 2022 mental health survey reported having seriously considered attempting

¹⁰ Nhan L. Truong et al., GLSEN, *Erasure and Resilience: The Experiences of LGBTQ Students of Color* 3 (2020).

¹¹ What We Know Project, Cornell Univ., *What Does the Scholarly Research Say About the Effects of Discrimination on the Health of LGBT People?* (2019).

¹² Kosciw et al., *The 2021 National School Climate Survey*, *supra*, at 43; see also April J. Ancheta et al., *The Impact of Positive School Climate on Suicidality and Mental Health Among LGBTQ Adolescents: A Systematic Review* 2 (2021) (published at 37 J. Sch. Nursing 75).

suicide in the prior twelve months.¹³ Positive school climates, on the other hand, have been linked to lower suicidality in LGBTQ youth.¹⁴

Discriminatory bathroom policies in particular bring severe physical health risks for transgender youth. Almost three in four (72.9%) of the transgender students surveyed in one study had avoided school restrooms because they felt unsafe or uncomfortable.¹⁵ More than half (54%) of respondents in another study of transgender people reported negative health effects from avoiding public restrooms, such as kidney infections and other kidney-related problems.¹⁶ And a 2021 study found that denial of access to bathroom facilities significantly increased the odds of transgender

¹³ The Trevor Project, 2023 U.S. National Survey on the Mental Health of LGBTQ Young People 5 (2023).

¹⁴ Ancheta et al., The Impact of Positive School Climate, supra, at 7; see also Cady Stanton, As 'Don't Say Gay' and Similar Bills Take Hold, LGBTQ Youths Feel They're 'Getting Crushed', USA Today (updated May 11, 2022) (noting that LGBTQ youths in affirming schools were nearly 40% less likely to attempt suicide than LGBTQ youths in nonaffirming schools).

¹⁵ Kosciw et al., The 2021 National School Climate Survey, supra, at 89 fig. 3.13.

¹⁶ Jody L. Herman, Gendered Restrooms and Minority Stress: The Public Regulation of Gender and Its Impact on Transgender People's Lives, 19 J. Pub. Mgmt. & Soc. Pol'y 65, 75 (2013); see also Grimm v. Gloucester Cnty. Sch. Bd., 972 F.3d 586, 600, 603, 617 (4th Cir. 2020).

and/or nonbinary youth reporting depressive mood and attempting suicide—one in three youths who faced bathroom discrimination reported a suicide attempt in the past year.¹⁷

Discrimination in school settings also negatively affects educational outcomes. A 2021 survey showed that LGBTQ students who had experienced discriminatory policies and practices had lower levels of educational achievement, lower grade point averages, and lower levels of educational aspiration than other students.¹⁸ Discriminatory school climates have also been found to exacerbate absenteeism. A 2021 survey found that LGBTQ students who had experienced discrimination in their schools were almost three times as likely (43.3% versus 16.4%) to have missed school because they felt unsafe or uncomfortable.¹⁹

¹⁷ Myeshia Price-Feeney et al., *Impact of Bathroom Discrimination on Mental Health Among Transgender and Nonbinary Youth*, 68 J. of Adolescent Health 1142 (2021).

¹⁸ Kosciw et al., *The 2021 National School Climate Survey*, supra, at 35-36; see Emily A. Greytak et al., GLSEN, *Harsh Realities: The Experiences of Transgender Youth in Our Nation's Schools* 25, 27 fig. 15 (2009).

¹⁹ Kosciw et al., *The 2021 National School Climate Survey*, supra, at 36.

B. The Amici States’ Experiences Confirm That Protecting Transgender People from Discrimination Yields Broad Benefits Without Compromising Privacy or Safety, or Imposing Significant Costs.

Policies that allow transgender students to access facilities and activities consistent with their gender identity create school climates that enhance students’ well-being and facilitate their ability to learn.²⁰ For example, transgender students permitted to live consistently with their gender identity have mental health outcomes comparable to their cis-gender peers.²¹ And recently, the 2022 U.S. Transgender Survey found that 94% of adult transgender individuals reported being either “a lot more satisfied” (79%) or “a little more satisfied” (15%) after choosing to live at least some of the time consistent with their gender identity.²² These benefits redound to society as a whole because education advances not

²⁰ See, e.g., Br. of Amici Curiae Sch. Adm’rs from Thirty-One States & D.C. in Supp. of Resp’t (“Br. of Amici Curiae Sch. Adm’rs”) at 3-4, *Gloucester Cnty. Sch. Bd. v. G.G. ex rel. Grimm*, 580 U.S. 1168 (2017) (No. 16-273), 2017 WL 930055; Office of Elementary & Secondary Educ., U.S. Dep’t of Educ., *Safe & Supportive Schools* (May 30, 2023).

²¹ See Kristina R. Olson et al., *Mental Health of Transgender Children Who Are Supported in Their Identities*, 137 *Pediatrics* e20153223, at 5-7 (Mar. 2016); Br. of Amici Curiae Sch. Adm’rs at 4, *Gloucester Cnty. Sch. Bd.*, 580 U.S. 1168.

²² James et al., *2022 U.S. Transgender Survey*, *supra*, at 17.

only the private interests of students, but also prepares them to contribute to society—socially, culturally, and economically. *See, e.g., Brown v. Board of Educ.*, 347 U.S. 483, 493 (1954).

As noted above, at least twenty-three States, the District of Columbia, and 374 municipalities expressly provide civil rights protections to transgender people, and those protections often include requirements that transgender people be allowed to use restrooms consistent with their gender identity. These protections wholly comply with laws, such as Title IX, that allow separating restrooms by sex, *see* 20 U.S.C. § 1686. These policies maintain sex-separated spaces while allowing transgender people to use a facility that aligns with their gender identity—thus helping to ease the stigma transgender people often experience, with positive effects for their educational and health outcomes. Such policies promote compelling interests in “removing the barriers to economic advancement and political and social integration that have historically plagued certain disadvantaged groups.” *Roberts v. United States Jaycees*, 468 U.S. 609, 626 (1984). And those policies do so without threatening individual safety or privacy.

1. Nondiscriminatory restroom policies produce important benefits and pose no safety concerns.

Supportive educational environments increase success rates for transgender students. Such environments aim to limit harassment and bullying of transgender students, and data from national surveys show that more-frequently harassed transgender teenagers had significantly lower grade-point averages than other transgender students.²³

Policies supporting transgender students, including by allowing them to use common restrooms consistent with their gender identity, also can reduce the health risks facing those students. For example, a transgender boy in Virginia reported a painful urinary tract infection after being denied access to the boys' restroom at school.²⁴ And California adopted protections against gender-identity discrimination in schools to address documented harms suffered by transgender students, including students not drinking and eating during the school day to avoid restroom use.²⁵

²³ Ancheta et al., *The Impact of Positive School Climate*, supra, at 10-11; Kosciw et al., *The 2021 National School Climate Survey*, supra, at 35-36; see Greytak et al., *Harsh Realities*, supra, at 27 fig. 15.

²⁴ Grimm, 972 F.3d at 600, 603, 617.

²⁵ See Assemb. B. 1266, 2013-2014 Sess. (Cal. 2013); Assemb. Comm. on Educ., Bill Analysis for Assemb. B. 1266, supra, at 7; see also Alexa
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In States allowing transgender students to use bathrooms corresponding to their gender identity, public schools have reported no instances of transgender students harassing others in restrooms or locker rooms.²⁶ Indeed, the experiences of school administrators in thirty-one States and the District of Columbia show that public safety concerns—like those referenced by Oklahoma and the district court below—are unfounded, as are concerns that students will pose as transgender simply to gain improper restroom access.²⁷ In fact, Oklahoma reported no such incidents during all the months that Bridge and Miles used the school bathroom corresponding with their gender identity. *Bridge*, 2024 WL 150598, at *2, *6.

Ura, For Transgender Boy, Bathroom Fight Just Silly, Texas Trib. (June 14, 2016).

²⁶ *Alberto Arenas et al., 7 Reasons for Accommodating Transgender Students at School*, Phi Delta Kappan (Sept. 1, 2016); see *Beatriz Pagliarini Bagagli et al., Trans Women and Public Restrooms: The Legal Discourse and Its Violence*, 6 *Frontiers Socio.* 1, 8 (Mar. 31, 2021); see also *Amira Hasenbush et al., Gender Identity Nondiscrimination Laws in Public Accommodations: a Review of Evidence Regarding Safety and Privacy in Public Restrooms, Locker Rooms, and Changing Rooms*, 16 *Sexuality Rsch. & Soc. Pol’y* 70 (2019) (comparing criminal incident reports in localities with and without gender identity inclusive public accommodations nondiscrimination laws in Massachusetts).

²⁷ *Br. of Amici Curiae Sch. Adm’rs at 14-16, Gloucester Cnty. Sch. Bd.*, 580 U.S. 1168.

2. Nondiscriminatory restroom policies do not compromise personal privacy.

The amici States’ experiences show that nondiscriminatory policies have not harmed cisgender students’ privacy. The risk that students will see others’ intimate body parts, or have their intimate body parts seen by others, is not presented by ordinary restroom use. And in any event, concerns about the presence of others (whether or not transgender) can be addressed—and are being addressed—by increasing privacy options for all students, without singling out transgender people for stigmatizing differential treatment. See *infra* at 27 n.42.

School districts in the amici States have identified a variety of cost-effective options to maximize privacy for all users of restrooms and changing facilities while avoiding discrimination. In Washington State, where school districts are required to “allow students to use the restroom that is consistent with their gender identity consistently asserted at school,” schools must provide “[a]ny student—transgender or not—who has a need or desire for increased privacy, regardless of the underlying reason,” with “access to an alternative restroom (e.g., staff restroom, health

office restroom).”²⁸ This gives all students with privacy concerns “the option to make use of a separate restroom and have their concerns addressed without stigmatizing any individual student.”²⁹

Similar provisions apply to locker rooms. Students in Washington are allowed to participate in physical education and athletic activities “in a manner that is consistent with their gender identity.”³⁰ But rather than segregating transgender students, additional privacy is provided for any student who desires it, regardless of the underlying reason, by providing “a reasonable alternative changing area, such as the use of a private area (e.g., a nearby restroom stall with a door), or a separate changing schedule.”³¹

²⁸ Susanne Beauchaine et al., *Prohibiting Discrimination in Washington Public Schools* 30 (Wash. Off. of Superintendent of Pub. Instruction 2012); see also Washington State Hum. Rts. Comm’n, *Frequently Asked Questions Regarding WAC 162-32-060 Gender-Segregated Facilities* 3 (2016) (businesses need not “make any [structural] changes” or “add additional facilities,” but “are encouraged to provide private areas for changing or showering whenever feasible” and “may wish to explore installing partitions or curtains for persons desiring privacy”); Wash. Rev. Code Ann. § 28A.642.080 (requiring implementation by January 31, 2020).

²⁹ Beauchaine et al., *Prohibiting Discrimination*, supra, at 30.

³⁰ Id.; Washington Interscholastic Activities Ass’n, *2023-2024 Handbook* 37 (Oct. 10, 2023).

³¹ Beauchaine et al., *Prohibiting Discrimination*, supra, at 30-31; see also Providence Pub. Sch. Dist., *Nondiscrimination Policy: Transgender* (continued on the next page)

At least twelve other States and the District of Columbia offer similar guidance to help schools maximize privacy while complying with laws prohibiting gender-identity discrimination—for instance, by offering privacy curtains and separate restroom and changing spaces to all who desire them.³² None of these solutions requires remodeling or restructuring

and Gender Expansive Students 4 (n.d.) (student uncomfortable with gender-segregated facility may use “a safe and non-stigmatizing alternative,” such as a privacy partition or separate changing schedule).

³² **California:** California Sch. Bds. Ass’n, *Final Guidance: AB 1266, Transgender and Gender Nonconforming Students, Privacy, Programs, Activities & Facilities* 2 (2014). **Colorado:** Colorado Ass’n of Sch. Bds. et al., *Guidance for Educators Working with Transgender and Gender Nonconforming Students* 4-5 (n.d.). **Connecticut:** Connecticut Safe Sch. Coal., *Guidelines for Connecticut Schools to Comply with Gender Identity and Expression Non-Discrimination Laws* 9-10 (2012). **Illinois:** Illinois Dep’t of Hum. Rts., *Non-Regulatory Guidance: Relating to Protection of Transgender, Nonbinary, and Gender Nonconforming Students Under the Illinois Human Rights Act* 6-7 (2021); Illinois State Bd. of Educ., *Non-Regulatory Guidance: Supporting Transgender, Nonbinary and Gender Nonconforming Students* 10-11 (2020); Affirming & Inclusive Schs. Task Force, *Strengthening Inclusion in Illinois Schools* 19-21 (2020). **Maryland:** Maryland State Dep’t of Educ., *Providing Safe Spaces for Transgender and Gender Non-Conforming Youth: Guidelines for Gender Identity Non-Discrimination* 13-14 (2015). **Massachusetts:** Massachusetts Dep’t of Elementary & Secondary Educ., *Guidance for Massachusetts Public Schools: Creating a Safe and Supportive School Environment* (Oct. 28, 2021). **Michigan:** Michigan Dep’t of Educ., *State Board of Education Statement and Guidance on Safe and Supportive Learning Environments for Lesbian, Gay, Bisexual, Transgender, and Questioning (LGBTQ) Students* 5-6 (2016). **Minnesota:** Minnesota Dep’t of Educ., *A Toolkit for*

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restrooms, or otherwise investing in costly facility upgrades. As a spokeswoman for Texas’s Clear Creek Independent School District confirmed, that district, like many others, “ha[s] been successful in balancing the rights of all students without issue and offer[s] restrooms, showers and changing areas for students seeking privacy, regardless of their gender or gender identity.”³³ The experiences of school administrators in dozens of States across the country confirm that such policies can be implemented fairly, simply, and effectively.³⁴

Ensuring Safe and Supportive Schools for Transgender and Gender Nonconforming Students 10 (2017). **New Jersey:** New Jersey State Dep’t of Educ., *Transgender Student Guidance for School Districts* 7 (2018). **New York:** New York State Educ. Dep’t, *Creating a Safe, Supportive, and Affirming School Environment for Transgender and Gender Expansive Students: 2023 Legal Update and Best Practices* 22-24 (June 2023). **Oregon:** Oregon Dep’t of Educ., *Supporting Gender Expansive Students: Guidance for Schools* 24-26 (2023). **Rhode Island:** Rhode Island Dep’t of Educ., *Guidance for Rhode Island Schools on Transgender and Gender Nonconforming Students* 8-9 (2023). **Vermont:** Vermont Agency of Educ., *Continuing Best Practices for Schools Regarding Transgender and Gender Nonconforming Students* 6, 8 (2017). **District of Columbia:** District of Columbia Pub. Schs., *Transgender and Gender-Nonconforming Policy Guidance* 9 (2015).

³³ Ura, *For Transgender Boy*, supra (quotation marks omitted).

³⁴ See Br. of Amici Curiae Sch. Adm’rs at 17-21, *Gloucester Cnty. Sch. Bd.*, 580 U.S. 1168.

Inclusive policies such as these maintain sex-separated spaces. For example, the District of Columbia expressly requires that businesses “provide access to and the safe use of facilities that are segregated by gender” where nudity in the presence of others is customary, while also making accommodations for transgender individuals to use the facility “that is consistent with that individual’s gender identity or expression.”³⁵ And New York’s guidance for school districts explains how schools may accommodate transgender youth while maintaining sex-separated spaces.³⁶ Inclusive policies are thus entirely consistent with the provisions of Title IX permitting schools to maintain sex-separated facilities.³⁷

In fact, it is discriminatory restroom policies rather than inclusive ones that raise safety concerns. Policies that forbid transgender people from using restrooms aligned with their gender identity are more likely to create a needless risk of violence against transgender people, whose physical appearance may diverge from their sex assigned at birth and

³⁵ D.C. Mun. Regs. tit. 4, § 805.

³⁶ New York State Educ. Dep’t, *Creating a Safe, Supportive, and Affirming School Environment for Transgender and Gender Expansive Students*, supra, at 22-24.

³⁷ See 20 U.S.C. § 1686; 34 C.F.R. § 106.33 (2022).

who therefore are likely to be bullied and attacked, including in spaces like restrooms.³⁸ This concern is not hypothetical: an Oklahoma student, Nex Benedict, tragically died a day after a severe physical altercation in a school restroom earlier this year.³⁹ Policies and laws like the Act, which bar transgender individuals from using a restroom that aligns with their gender identity, are thus more likely to pose safety concerns than inclusive policies.

³⁸ See [Sandy E. James et al., Nat'l Ctr. for Transgender Equal., *The Report of the 2015 U.S. Transgender Survey* 225-27 \(2016\); see also Matt Pearce, *What It's Like to Live Under North Carolina's Bathroom Law If You're Transgender*, L.A. Times \(June 12, 2016\).](#)

³⁹ See [J. David Goodman and Edgar Sandoval, *Anti-Trans Policies Draw Scrutiny After 16-Year-Old's Death in Oklahoma*, N.Y. Times \(Feb. 21, 2024\).](#)

II. TITLE IX AND THE EQUAL PROTECTION CLAUSE PROHIBIT THE GENDER-IDENTITY DISCRIMINATION IN THIS CASE

A. Title IX Prohibits the Gender-Identity Discrimination in This Case.

In *Bostock v. Clayton County*, the Supreme Court concluded that gender identity discrimination is necessarily sex discrimination under Title VII of the Civil Rights Act of 1964, *see* 590 U.S. 644, 659-61, 666-70 (2020), and other Courts of Appeals have held that *Bostock* applies in the Title IX context as well.⁴⁰ (See cases cited below at 22-23.) As the Supreme Court explained in *Bostock*, discriminating against a person for being transgender is sex discrimination because “it is *impossible* to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.” *Id.* at 660 (emphasis added). For example, a person who is discriminated against for identifying as female simply because she was identified as male at birth is necessarily being discriminated against based on sex—i.e., she would not

⁴⁰ When determining whether conduct constitutes discrimination based on sex under Title IX, courts routinely look to and apply case law interpreting Title VII. *See, e.g., Davis ex rel. LaShonda D. v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 636, 651 (1999).

be treated differently than other females if not for the fact that her designated sex at birth was male. *Id.* In reaching its conclusion, the Supreme Court acknowledged that “transgender status” is a distinct concept from “sex,” but observed that sexual harassment and discrimination based on motherhood are also distinct concepts that, unquestionably, still qualify as sex discrimination. *Id.* at 661, 669.

Applying much the same reasoning as in *Bostock*, courts have repeatedly and correctly recognized that Title IX’s bar against sex discrimination prohibits local school districts from implementing policies that, like Oklahoma’s Act, bar transgender students from using the bathroom that aligns with their gender identity. As these courts have correctly explained, the discriminator is necessarily referring to an individual’s sex assigned at birth to deny access to a bathroom or other facility that aligns with their gender identity—in violation of Title IX. *See A.C. ex rel. M.C. v. Metropolitan Sch. Dist. of Martinsville*, 75 F.4th 760, 764 (7th Cir. 2023); *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 616-19 (4th Cir. 2020); *Whitaker ex rel. Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1046-50 (7th Cir. 2017); *Dodds v. United States Dep’t of Educ.*, 845 F.3d 217, 221-22 (6th Cir. 2016); *Grabowski v.*

Arizona Bd. of Regents, 69 F.4th 1110, 1116 (9th Cir. 2023); *see also Doe ex rel. Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 534-35 (3d Cir. 2018), *cert. denied*, 139 S. Ct. 2636 (2019); *but see Adams ex rel. Kasper v. School Bd. of St. Johns Cnty.*, 57 F.4th 791, 811 (11th Cir. 2022) (en banc).⁴¹

The district court’s holding here that Oklahoma’s law does not violate Title IX rests on a flawed legal argument that *Bostock* rejected. The district court mistakenly reasoned that Bridge, Miles, and Stiles could not prevail because Title IX expressly allows for sex-segregated bathrooms, and “sex” meant sex assigned at birth in 1972 when Title IX became law. *Bridge*, 2024 WL 150598, at *7-8. But, contemporaneous definitions are “just a starting point.” *Bostock*, 590 U.S. 644 at 656. “The question isn’t just what ‘sex’ meant, but what [the statute] says about it.” *Id.* Title IX prohibits public schools from treating people worse “on the basis of” sex. 20 U.S.C.

⁴¹ At least two Tenth Circuit district courts also have reached the same conclusion. *See Willey v. Sweetwater Cnty. Sch. Dist. No. 1 Bd. of Trs.*, 680 F. Supp. 3d 1250, 1290 (D. Wyo. 2023); *Dimas v. Pecos Indep. Sch. Dist. Bd. of Educ.*, 2022 WL 816501, at *4 (D.N.M. Mar. 17, 2022); *but see Kansas v. United States Dep’t of Educ.*, 2024 WL 3273285, at *11 (D. Kan. July 2, 2024).

§ 1681(a). And, gender identity discrimination is necessarily sex discrimination. *Bostock*, 590 U.S. at 660. Separating facilities based on “biological” sex necessarily targets transgender students for worse treatment than their cisgender peers because, by definition, only transgender students are barred from using the restroom that aligns with their gender identity.

As the Ninth Circuit recently explained, the Act’s classification based on “biological” sex is a form of proxy discrimination: the Act is “written with seemingly neutral criteria that are so closely associated with the disfavored group that discrimination on the basis of such criteria is, constructively, facial discrimination against the disfavored group.” *Hecox v. Little*, 104 F.4th 1061, 1078 (9th Cir. 2024) (quotation marks omitted); *see also Bob Jones Univ. v. United States*, 461 U.S. 574, 605 (1983) (“Although a ban on intermarriage or interracial dating applies to all races, decisions of this Court firmly establish that discrimination on the basis of racial affiliation and association is a form of racial discrimination.”). Under precedent established by the Supreme Court, such discrimination on the basis of gender identity is discrimination on the basis of sex. *See Bostock*, 590 U.S. at 660.

Indeed, neither Oklahoma nor the district court can explain its reasons for excluding transgender students from using the bathrooms that align with their gender identity without referencing the students' "sex" or conformity with it. *See* S.B. 615, 58th Legis., 2d Sess. (Okla. 2022) (referring to "male sex" and "female sex"); *Bridge*, 2024 WL 150598, at *6 (referring to "biological male[s]" and "girls."). The Act thus violates Title IX for the same reason as policies considered by the Fourth and Seventh Circuits: school policies requiring students to use the bathroom corresponding to their sex assigned at birth treat transgender students less favorably than other students because of their sex assigned at birth, and therefore discriminate based on sex. *See A.C.*, 75 F.4th at 769; *Grimm*, 972 F.3d at 616-19.

Bridge, Miles, and Stiles are not claiming that sex-separated restrooms are discriminatory; what is discriminatory is the Act's narrow definition of sex that treats them worse than their cisgender peers. In permitting "separate toilet, locker room, and shower facilities on the basis of sex," 34 C.F.R. § 106.33, Title IX's implementing regulation does not require separation of the enumerated facilities exclusively on "the physical condition of being male or female based on genetics and physiology, as identified

on the individual’s original birth certificate.” *Bridge*, 2024 WL 150598, at *2. Neither Title IX nor its implementing regulations define “sex” in such narrow terms. In fact, the common and legal definitions of “sex” when Title IX was enacted in 1972 were broader than “sex assigned at birth.” *See A.C.*, 75 F.4th at 770 (noting contemporaneous definitions of “sex” as including “all the attributes by which males and females are distinguished,” and “the character of being male or female”).

Title IX’s statutory language broadly prohibits discrimination on the basis of sex, 20 U.S.C. § 1681(a), and most Courts that have passed on this issue—including the U.S. Supreme Court—have recognized that discrimination based on gender identity is sex discrimination (see *supra* at 22-23). Oklahoma’s interpretation of 34 C.F.R. § 106.33 is contrary to the weight of that precedent and must fail.

Oklahoma needlessly denies *Bridge*, *Miles*, and *Stiles* something most people take for granted: the ability to use a public restroom consistent with one’s lived experience of one’s own gender. The Act singles out transgender students and forces them either to forgo restroom use or to choose between two other detrimental options: using common restrooms that do not align with their gender or using special single-user restrooms (i.e.,

those with no specific gender designation). The first option contravenes a core aspect of transgender people’s identities, subjects them to potential harassment and violence, and violates medical treatment protocols. The second option stigmatizes the person—for example, by “outing” individuals as transgender in settings where they could be exposed to danger or prefer to keep that information private—assuming that single-user restrooms are even available and equally convenient.⁴² By treating transgender students worse than similarly situated cisgender students, Oklahoma “discriminat[es] on the basis of transgender status[, which] is a form of sex-based discrimination,” *Hecox*, 104 F.4th at 1079; see *Bostock*, 590 U.S. at 660, and impermissible under Title IX, see *Grabowski*, 69 F.4th at 1116.

Title IX and its implementing regulations require Oklahoma to protect students from discrimination based on their transgender status, regardless of whether they are in a classroom, bathroom, or other location at

⁴² The same concerns are not posed by the privacy-enhancing measures described above (see *supra* at 15-18), which are available to all students who desire additional privacy. Such measures do not single out or stigmatize transgender students, and thus do not force students into the untenable choice presented by the kind of policy at issue here.

school. As the amici States’ successful experiences demonstrate (see *supra* at 19), schools may continue to have sex-separated restrooms while permitting transgender students to use the bathroom that matches their gender identity. And under those circumstances, female students still use the girls’ restrooms and male students still use the boys’ restrooms.

B. The Equal Protection Clause Prohibits the Gender-Identity Discrimination in This Case.

The Act contravenes the Equal Protection Clause for similar reasons. The Supreme Court has long made clear that equal protection prohibits government policies that serve only to express “negative attitudes” “or fear” toward people viewed as “different.” *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 448 (1985); *see also Nguyen v. Immigration & Naturalization Serv.*, 533 U.S. 53, 68 (2001) (the Equal Protection Clause bars a decision built on stereotypes and a “frame of mind resulting from irrational or uncritical analysis”). This Court has cautioned that although “[p]hysical differences between men and women . . . are enduring,” “[a]ny law premised on generalizations about the way women are—or the way men are—will fail constitutional scrutiny because it serves no important governmental objective.” *Free the Nipple-Fort Collins v. City of Fort Collins*, 916 F.3d 792, 801 (10th Cir. 2019) (quotation marks omitted).

Oklahoma’s Act falls squarely into this category. Neither Oklahoma nor the district court cited any evidence of transgender students engaging in behaviors that endanger the safety or infringe upon the privacy of others. Rather, the district court speculated that “any biological male could claim to be transgender and then be allowed to use the same restroom or changing area as girls,” and then posited without any evidence that such a scenario would present a “major safety concern.” *Bridge*, 2024 WL 150598, at *6. At the same time, the district court acknowledged that plaintiffs did not pose any safety concerns and that Bridge and Miles used the restroom corresponding to their gender identity for months without incident. *Id.* at *2, *6.

The district court’s hypothetical concerns are unfounded. Transgender females, including Stiles—like cisgender females—consistently, persistently, insistentlly identify as female for years. *Grimm*, 972 F.3d at 596; *Bridge*, 2024 WL 150598, at *3. By definition, cisgender males consistently, persistently, and insistentlly identify as male, not female. It is mere speculation that a law allowing use of a sex-segregated bathroom by persons not assigned that sex at birth would permit a cisgender male to access a female bathroom under the pretense that he is transgender. There is no

legitimate state interest in catering to such “vague, undifferentiated fears” and they cannot be used to “validate” a policy of different treatment. *City of Cleburne*, 473 U.S. at 449.

Even more, as noted above (at 15-18), the experiences of States and other jurisdictions with gender-inclusive policies directly contradict the district court’s assumption that such policies threaten the safety and privacy of cisgender students. Gender-inclusive policies provide solutions that *increase* privacy options for *all* students—e.g., separate bathroom or changing facilities, privacy curtains, or different use schedules—without singling out transgender people for stigmatizing differential treatment.

The district court’s decision is particularly harmful because it purportedly protects against speculative “harm” over actual harm. There is no evidence in the record of actual harm to cisgender students or even complaints by cisgender students about gender-inclusive facility policies. Categorical prohibitions, like the Act, that are untethered from evidence and the legislation’s purported goals improperly “perpetuate[] historic discrimination” against transgender individuals and “serve[] to ratify and perpetuate invidious, archaic, and overbroad stereotypes.” *Hecox*, 104 F.4th at 1088 (quotation marks omitted).

In contrast, as discussed above, the harms that gender discriminatory policies cause to transgender students—higher suicide rates, more days of missed school, lower grades, increased risk of depression, more kidney or urinary tract infections from avoiding going to the bathroom, and the deprivation of their constitutional rights, for example—are real, irreparable, and lasting. *See, e.g., Free the Nipple-Fort Collins*, 916 F.3d at 806; *Porretti v. Dzurenda*, 11 F.4th 1037, 1050 (9th Cir. 2021); *A.C.*, 75 F.4th at 774; *Dodds*, 845 F.3d at 221-22; *see also Hecox*, 104 F.4th at 1087-88. Under well-established constitutional analysis, such discrimination cannot withstand any level of equal protection scrutiny.

CONCLUSION

This Court should reverse the decision below.

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CERTIFICATE OF COMPLIANCE

I certify that according to the word count feature of the word processing program used to prepare this brief, the brief contains 6,399 words and complies with the typeface requirements and length limits of Rules 29, 32(a)(5)-(7) and the corresponding local rules.

Dated: July 19, 2024

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CERTIFICATIONS FOR REDACTIONS AND VIRUS SCAN

I certify that the electronic version of the foregoing brief prepared for submission via ECF complies with the following requirements:

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