

No. 22-1786

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

A.C., a minor child by his next friend, mother and legal guardian, M.C.,
Plaintiff-Appellee,

v.

METROPOLITAN SCHOOL DISTRICT OF MARTINSVILLE, and
FRED KUTRUFF, in his official capacity as Principal of John R. Wooden
Middle School
Defendants-Appellants.

On Appeal from the United States District Court for the
Southern District of Indiana, No. 1:21-cv-2965
The Honorable Tanya Walton Pratt, Chief Judge

**BRIEF FOR *AMICI CURIAE* ANTI-SEXUAL ASSAULT, DOMESTIC
VIOLENCE, AND GENDER-BASED VIOLENCE ORGANIZATIONS IN
SUPPORT OF PLAINTIFF-APPELLEE**

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Appellate Court No: 22-1786

Short Caption: A.C. by next friend, M.C. v. Metropolitan School District of Martinsville, et al.

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Attorney's Signature: /s/ Dimitri D. Portnoi Date: 08/02/2022

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Attorney's Signature: /s/ Kyle M. Grossman Date: 08/02/2022

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Brenda V. Smith, et al., <i>Policy Review and Development Guide: Lesbian, Gay, Bisexual and Intersex Persons in Custodial Settings</i> , 3rd ed., National Institute of Corrections (2016)	26

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C. Kruttschnitt, et al., <i>Estimating the Incidence of Rape and Sexual Assault</i> , National Research Council, National Academies Press (2014)	20
Cal. Dep’t of Corr. & Rehab., <i>Operations Manual</i> (Jan. 31, 2016)	25
Carlos Maza & Luke Brinker, <i>15 Experts Debunk Right-Wing Transgender Bathroom Myth</i> , Media Matters for America (Mar. 20, 2014).....	13
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Federal Bureau of Investigation, <i>Relationship of Victims to Offenders by Offense Category</i> (2019)	14
G.M. Herek, <i>Hate crimes and stigma-related experiences among sexual minority adults in the United States</i> , J. of Interpersonal Violence 24(1) (Jan. 2009)	24
Grace Hauck, <i>Anti-LGBT Hate Crimes Are Rising, the FBI says. But It Gets Worse</i> , USA Today (June 28, 2019)	19
Human Rights Campaign, <i>2021 Becomes Deadliest Year on Record for Transgender and Non-Binary People</i>	18
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J. Grant, et al., <i>Injustice at Every Turn: A Report of the National Transgender Discrimination Survey</i> , National Center for Transgender Equality (2011)	20
J.B. Woods, “ <i>Queering Criminology</i> ”: <i>Overview of the State of the Field, Handbook of LGBT Communities, Crime, and Justice</i> , D. Peterson and V. R. Panfil (eds.), Springer Sci. & Bus. Media (2013)	20
Jody L. Herman, <i>Gendered Restrooms and Minority Stress</i> , Williams Inst. (2013).....	21
Joe Garofoli, <i>Texan needs to be schooled in San Francisco on transgender rights</i> , S.F. Chron. (May 15, 2016)	13
Joe Hernandez, <i>Hate Crimes Reach The Highest Level In More Than A Decade</i> , NPR (Sept. 1, 2021)	19
Jon Levine, <i>Connecticut Woman Who Donated Hair to Cancer Patients is Victim of Transphobic Attack</i> , Yahoo Finance (May 17, 2016).....	23

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Jonathan McDougle, <i>California to House Transgender Inmates Based on Gender Identity</i> , CBS News (Oct. 7, 2020).....	25
Kathleen Basile, et al., <i>The National Intimate Partner and Sexual Violence Survey: 2016/2017 Report on Sexual Violence</i> , Nat’l Ctr. for Inj. Prevention & Control, Ctrs. for Disease Control & Prevention (2022)	15
Kim Shayo Buchanan, <i>Our Prisons, Ourselves: Race, Gender, and the Rule of Law</i> , Yale L. & Pol’y Rev. 29(1) (2010)	25
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National Center for Transgender Equality, <i>Public Accommodations</i>	11
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Planty, et al., <i>Female Victims of Sexual Violence, 1994-2010</i> , U.S. Dep’t of Just. (rev. May 2016).....	14
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Robert J. Cramer, et al., <i>Mental Health and Violent Crime Victims, Does Sexual Orientation Matter?</i> , Law & Hum. Behav. 36(2) (2012).....	18, 24

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Selin Gulgoz, et al., <i>Similarity in Transgender and Cisgender Children’s Development</i> , 116 Proc. Nat’l Acad. Sci. 22480 (2019)	10
Shane Kavanaugh, <i>Idaho Man Found Guilty of Hate Crime After Beating Transgender Woman Over Bathroom Use on Oregon Coast</i> , The Oregonian (Jan. 30, 2020).....	21
Sharon Smith, et al., <i>The National Intimate Partner and Sexual Violence Survey: 2016/2017 Report on Stalking</i> , Nat’l Ctr. for Inj. Prevention & Control, Ctrs. for Disease Control & Prevention (2022)	15
Tim Fitzsimmons, <i>Anti-LGBTQ hate crimes rose 3 percent in ’17, FBI finds</i> , NBC News (Nov. 14, 2018)	19
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Will Doran, <i>Equality NC director: No public safety risks in cities with transgender anti-discrimination rules</i> , PolitiFact N.C. (Apr. 1, 2016).....	15
Zoe Greenberg, <i>Sentenced to Abuse: Trans People in Prison Suffer Rape, Coercion, Denial of Medical Treatment</i> , Rewire (May 12, 2015).....	26
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STATEMENT OF INTEREST¹

Amici curiae anti-sexual assault and domestic violence organizations respectfully submit this brief in support of Appellee A.C. *Amici* are 26 organizations that advocate for victims of sexual assault, domestic violence, and other gender-based violence. The form of their advocacy varies, but their purpose is uniform: to eliminate sexual assault, domestic violence, and other gender-based violence, and to support and empower all survivors of these crimes.

As organizations that support, empower, and advocate for victims, *amici* reject the argument by the School District that its decision to prevent A.C. from using the restroom of his choice—which was found likely to violate both the Fourteenth Amendment’s Equal Protection Clause and Title IX of the Education Amendments Act of 1972—is necessary to protect the privacy and safety of other students.

There is no evidence that allowing transgender students to use the bathroom corresponding with their gender identity increases safety or privacy risks to non-transgender students. Without protection, transgender people face real risks to their safety. Transgender individuals, and the LGBTQ community generally, experience sexual assault, harassment, and abuse at higher rates than the rest of the population. By barring transgender students from bathrooms that do not correspond with their gender identity, decisions like those made by the School

¹ Both parties have consented to the filing of this brief. No party’s counsel authored any part of this brief nor did any party’s counsel or any other person contribute any money intended to fund this brief.

District increase the risk that both transgender people and people who are perceived as transgender will fall victim to the same type of violence and privacy intrusions that the School District and its *amici* claim they want to avoid. The Court should affirm the District Court's conclusion that the School District's discriminatory decision warrants a preliminary injunction because A.C. is likely to succeed on the merits and to experience irreparable harm otherwise.

STATEMENT OF THE ISSUES

Whether the District Court properly entered a preliminary injunction in this matter, allowing A.C. to use male restrooms, because:

A. He is likely to prevail on his claim that the School District's decision to bar him from the boys' restroom violates Title IX of the Education Amendments of 1972; and

B. He is likely to prevail on his claim that the School District's decision to bar him from the boys' restroom violates equal protection guarantees of the Fourteenth Amendment.

SUMMARY OF THE ARGUMENT

The argument by the School District that discrimination is necessary to protect students' safety and privacy has no basis in fact and contradicts the experience and expertise of *amici* who have worked for decades to eliminate sexual assault, domestic violence, and other gender-based violence.

Policies that deny transgender students access to bathrooms that correspond with their gender identity do nothing to reduce the incidence of privacy intrusions and sexual assault. Quite the opposite: these policies place transgender people—

who are victims of sexual assault, domestic violence, and other gender-based violence at higher rates than the rest of the population—in harm’s way. Proponents of such policies justify this increased risk to transgender people as the price of safety and privacy for non-transgender individuals. *E.g.*, Br. of Appellant at 16-17 (June 13, 2022); Br. of *Amici* Indiana and 20 Other States at 12-13 (June 21, 2022). Yet these policies achieve neither goal.

The School District has an unofficial policy (the “policy”) that permits transgender students to use the restroom that aligns with their gender identity on a “case-by-case” basis. Yet from the moment A.C. was enrolled at John R. Wooden Middle School, he was denied access to the boys’ restroom, and instead, was offered use of the school’s sole single-sex restroom. Because the single-sex restroom was located far from several of his classes, A.C. was tardy several times and began to experience anxiety, depression, and stigmatization. Eventually, A.C. began using the boys’ restroom in spite of the School District’s ban. During the three weeks he was able to do so, he reported feeling more comfortable and less anxious. Notably, there were no reported issues or complaints from A.C.’s classmates. It was not until a staff member saw A.C. using the boys’ restroom that it was reported to the School District’s administration.

A.C.’s three-week experience—using the bathroom corresponding with his gender identity without a problem—is consistent with the history of nondiscrimination protections for transgender people. Nondiscrimination protections have existed for decades across many jurisdictions. To date, seventeen

states, the District of Columbia, and more than 200 municipalities have enacted laws that prohibit discrimination based on gender identity and protect the right of transgender people to use facilities (including bathrooms) consistent with their gender identity. Such laws protect individuals who would otherwise risk safety and privacy to attend to the most basic of human needs. None of these jurisdictions has reported a rise in sexual violence or other public safety issues following the enactment of these laws.

The School District and its supporters offer no evidence that discriminatory policies protect students' safety—criminal laws preventing assault, battery, and sexual crimes already protect women, men, and children in bathrooms. Yet supporters of decisions to prevent transgender individuals from using the restroom of their choice, like that by the School District and its *amici*, make the baseless argument that students or others with criminal intent will use nondiscrimination laws to illegally access facilities in order to assault or invade the privacy of women and children. Neither the Equal Protection Clause nor Title IX protects criminal conduct or allows students to use nondiscrimination policies as a cover for otherwise prohibited behavior. In cases like the present one, it is school administrators who are in the best position to deal with these hypothetical students on a case-by-case basis.

In light of this background, *amici* submit this brief to aid the Court in discerning fact from fiction. Laws that discriminate based on transgender identity harm safety and intrude on privacy—not nondiscrimination laws protecting this

vulnerable minority. There is no evidence that offenders rely on nondiscrimination laws or policies to escape liability for their crimes. These fictions hinge on misconceptions about and prejudices against transgender people, and they are refuted by rigorous research and the experience of organizations that work with sexual assault survivors every day.

ARGUMENT

A.C. is a seventh grader at John R. Wooden Middle School (the “School”). *See A.C. v. Metro. Sch. Dist.*, No. 1:21-cv-02965-TWP-MPB (S.D. Ind. Feb. 1, 2022), Doc. No. 29-2, Decl. of M.C. ¶¶ 1-2; *id.*, Doc. No. 29-3, Decl. of A.C. ¶ 4. A.C. began middle school as the boy that he is. From the start, the School denied A.C. access to the boys’ restroom, and instead advised him that he could use the School’s sole single-sex restroom. Because this restroom was difficult to access, A.C. began using the boys’ bathrooms in spite of the School’s prohibition. For three weeks, A.C. used those restrooms without incident: Not a single student complained about A.C.’s use of the boys’ restroom, and the School has not reported instances of actual privacy or safety breaches during the three-week period. Decl. of A.C. ¶ 24. After a staff member reported that A.C. was violating School policy, A.C. was called in for a meeting with the School counselor, who advised him that he was prohibited under School policy from using the boys’ restroom, and that he would be punished if he continued to do so. *Id.* ¶ 25. A.C. was again forced to use the only gender-neutral bathroom available at the School and, as a result, experienced significant harm, including heightened anxiety, depression, and inability to focus on his school work. *Id.* ¶¶ 27-29.

In a thoughtful opinion, Chief Judge Tanya Walton Pratt of the Southern District of Indiana found that the safety and privacy concerns lodged by the School District were “entirely conjectural” and insufficient to demonstrate a potential harm to the School District. *A.C. v. Metro. Sch. Dist.*, No. 1:21-cv-02965-TWP-MPB, 2022 WL 1289352, at *7 (S.D. Ind. Apr. 29, 2022). “[T]he Court [did] not believe that granting A.C. access to the boys’ restroom threatens” individual privacy interests. *Id.* at *8. Chief Judge Pratt held that A.C. was likely to prevail on his Equal Protection and Title IX claims, and had demonstrated that he was likely to suffer irreparable harm absent injunctive relief.

The School District appealed, and continues to base its arguments in unfounded fears. In its appellate brief, without providing any further support, the School District asserts that its policy “serves important objectives of protecting the interests of students in using the restroom away from the opposite sex and shielding their bodies from exposure to the opposite sex.” Br. of Appellant at 16. It argues that separate facilities are necessary “in order to address privacy and safety concerns arising from the biological differences between males and females.” *Id.* at 2, 16. Its *amici* stoke fears about the “prying eyes of a member of the opposite sex.” Br. of *Amici* Indiana and 20 Other States at 13. And they similarly raise purported privacy and potential safety concerns, arguing that because teenage girls are subject to “adolescent vulnerability,” the School District was justifiably concerned about the potential of transgender females entering girls’ restrooms. *Id.* (“And of course, the school could not allow transgender males to use the boys’ bathroom

while prohibiting transgender females from doing the same”).

The School District and their *amici* make these claims without any foundation. As Chief Judge Pratt found, “[t]he School District’s concerns about the privacy of other students appears *entirely conjectural*.” *Metro. Sch. Dist.*, 2022 WL 1289352, at *7 (emphasis added). “No evidence was provided to support the School District’s concerns, and other courts dealing with similar defenses have also dismissed them as unfounded.” *Id.* Additionally, Chief Judge Pratt noted that “the School District’s concerns over privacy [were] undermined given that it has already granted permission for other transgender students to use the restroom of their identified gender, and it has presented *no evidence* of problems when the other transgender student[s] have used restrooms consistent with their gender identity.” *Id.* (emphasis added).

Academic research, empirical data, and the expertise and experience of *amici* refute the contention that denying transgender people access to facilities consistent with their gender identity makes anyone safer or denies them privacy. Rather, these policies work against their stated goals by increasing safety and privacy risks to transgender people.

I. BASELESS SAFETY AND PRIVACY CONCERNS DO NOT JUSTIFY DISCRIMINATION AGAINST TRANSGENDER STUDENTS.

The School District and its *amici* claim that reversal is required to protect the safety and privacy of students—in part because restrooms are places where “male and female students may have to expose their nude or partially nude body genitalia, and other private parts.” *Br. of Appellant* at 12 (citations omitted). The School

District argues that this creates privacy interests “broader than the risk of actual bodily exposure,” as there is an “intrusion created by mere presence.” *Id.* (citations omitted). However, as the District Court recognized, the School District has provided no evidence that students feel their privacy interests were violated. Moreover, multi-user public or workplace restrooms, like those at A.C.’s school, are not typically places where individuals have a high expectation of privacy. *See* Diana Elkind, *The Constitutional Implications of Bathroom Access Based on Gender Identity: An Examination of Recent Developments Paving the Way for the Next Frontier of Equal Protection*, 9 U. Pa. J. Const. L. 895, 925 (2007). In fact, restricting a transgender person’s use of restrooms corresponding with their identity can deprive them of their own right to privacy by outing them as transgender. *See* Human Rights Watch, *Shut Out: Restrictions on Bathroom and Locker Room Access for Transgender Youth in US Schools*, at 12-13 (Sept. 13, 2016) (recounting stories of transgender students who were “grill[ed]” about their actions for using alternative restrooms on campus).²

Additionally, the School District’s safety concerns are presumably also rooted in the fear that non-transgender men masquerading as women with lewd intent will use protections afforded by the Fourteenth Amendment and Title IX to circumvent criminal statutes. It and its *amici* argue that these concerns may be heightened because middle-school children are involved. *See, e.g.*, Br. of *Amici* Indiana and 20 Other States at 13 (noting that “[adolescent] vulnerability is especially heightened

² https://www.hrw.org/sites/default/files/report_pdf/uslgbttrans0916_web.pdf.

when teenage girls are involved”). Decisions like the one the School District made here supposedly prevent would-be criminals from gaining easier access to their victims.

Notably, the School District and its *amici* never explain *how* laws or policies preventing sex-based discrimination against transgender people result in an increased safety risk. In Indiana—and in every other state—criminal laws prohibiting assault, battery, and other sexual crimes already protect individuals when they use the restrooms at school or at any other place. Perhaps the School District believes that restricting access for transgender people will allow law enforcement or school officials to identify potential criminals before they enter sex-segregated facilities. Unless an enforcer is stationed at the bathroom door to check birth certificates—a solution the School District cannot realistically support—violations by strangers will rarely, if ever, be effectively uncovered. Transgender people are typically not recognized by others as members of their sex assigned at birth. These anti-transgender policies provide only symbolic assurance and not protection against assault while imposing real harm on transgender people or those perceived to be transgender.

In any event, nothing prevents law enforcement or school officials from removing anyone engaged in unlawful conduct from a bathroom. After all, *the conduct*—not a person’s gender identity or anatomy—is at issue. As explained in Part II, transgender-inclusive bathrooms have existed for years. Where they do, they have not been associated with any increase in sexual predation or violence.

Nor do inclusive restroom rules alter the private nature of sex-separated restrooms.

The School District's safety claims are even more perplexing in the context of Title IX. First, Title IX and the implementing regulation at issue here, 34 C.F.R. § 106.33, apply to students using school facilities. School officials tend to know who their students are, and they know which ones have publicly identified as transgender. *See* Decl. of M.C. ¶¶ 16-18 (describing the process by which A.C. and his mother informed teachers and administrators of A.C.'s gender and preferred pronouns). If the concern is that students will pretend to be transgender to gain access to otherwise off-limits facilities, or to "shield their bodies from exposure" to genitalia of the opposite sex, school officials are well positioned to deal with those students on a case-by-case basis. The School District has all the tools needed to address this potential misbehavior; there is no benefit added by discriminating against all transgender students. And the School District presented no evidence that this unlawful activity has ever occurred.

The privacy and safety arguments advanced in this case presumably rest on the false assumption that there is no way to distinguish transgender people from non-transgender male predators posing as transgender women. Not so. Gender identity is a deeply ingrained, innate characteristic that often manifests itself in early childhood. *See, e.g.,* Selin Gulgoz, et al., *Similarity in Transgender and Cisgender Children's Development*, 116 Proc. Nat'l Acad. Sci. 22480, 22482-84 (2019) (finding sample of 3-12-year-old transgender children strongly identified as members of their current gender group and their gender identity and preferences

generally did not differ from their cisgender siblings or cisgender control groups). The argument that non-transgender men will exploit nondiscrimination laws for criminal purposes thus misunderstands gender identity and incorrectly presupposes that nondiscrimination laws prevent law enforcement officers from carrying out their duties.

II. EXPERIENCE DEMONSTRATES THAT TRANSGENDER-INCLUSIVE BATHROOMS DO NOT INCREASE THE RISK OF SEXUAL VIOLENCE.

The experiences of over two hundred localities, seventeen states, and the District of Columbia show that nondiscrimination laws do not result in increased criminal activity in restrooms. Each of these jurisdictions has passed a nondiscrimination law permitting transgender individuals to use the facilities that correspond with their gender identity. *See* ACLU, *Know Your Rights: Transgender People and the Law*;³ National Center for Transgender Equality, *Public Accommodations*.⁴ The first of these laws has been in effect since 1993. *See* Minn. Stat. § 363A.11. None of these jurisdictions has reported a rise in sexual violence or other public-safety issues as a result of transgender individuals using the bathrooms, locker rooms, or other sex-segregated facilities that correspond with their gender identity. *Cf.* Michael Scherer, *Battle of the Bathroom*, *Time*, May 30, 2016, at 35 (“[T]here is not yet any anecdotal evidence that trans-friendly rules have been abused by predators, or that incidents of violence or sexual assault have

³ https://www.aclu.org/sites/default/files/field_pdf_file/lgbttransbrochurelaw2015electronic.pdf.

⁴ <http://www.transequality.org/know-your-rights/public-accommodations>.

increased.”).

When asked, public officials, members of law enforcement, and anti-sexual assault organizations from jurisdictions across the country with transgender-inclusive laws all state that they have not experienced any of the safety-related problems imagined by the School District.

A law enforcement official from Baltimore, for instance, stated in response to an email survey about negative safety effects of gender identity nondiscrimination laws that “[i]t’s the most ridiculous thing I’ve ever heard I’m more concerned in going to the bathroom about someone reaching under and trying to snatch my purse.” See Lou Chibbaro Jr., *Predictions of Trans Bathroom Harassment Unfounded*, Wash. Blade (Mar. 31, 2016).⁵ A school official in St. Paul, Minnesota noted that, in the more than 25 years since the Minnesota Human Rights Act was amended to protect transgender individuals, there was “no correlation between the Act and incidences of bullying or harassment.” Rachel Percelay, *17 School Districts Debunk Right-Wing Lies About Protections for Transgender Students*, Media Matters for America (June 3, 2015).⁶ The CEO of the Dallas Area Rape Crisis Center not only denied any problems, but noted that “those that cite this proposition as an ‘opportunity’ to victimize someone are simply doing so in ignorance; not understanding the mentality of perpetrators.” Carlos Maza & Rachel

⁵ <https://www.washingtonblade.com/2016/03/31/predictions-of-trans-bathroom-harassment-unfounded/>.

⁶ <https://www.mediamatters.org/sexual-harassment-sexual-assault/17-school-districts-debunk-right-wing-lies-about-protections>.

Percelay, *Texas Experts Debunk the Transgender “Bathroom Predator” Myth Ahead of HERO Referendum*, Media Matters for America (Oct. 15, 2015).⁷

Nor is there any support, statistical or sociological, for the proposition that public bathrooms must be singled out for additional protection against sexual assault at the expense of nondiscrimination protections for transgender people. A long-term analysis of data from the National Crime Victimization Survey suggests that more than two-thirds of sexual assaults of female victims occur either at or near the victim’s home or the home of the victim’s friend, relative, or acquaintance. See Michael Planty, et al., *Female Victims of Sexual Violence, 1994-2010*, U.S. Dep’t

⁷ <https://www.mediamatters.org/sexual-harassment-sexual-assault/texas-experts-debunk-transgender-bathroom-predator-myth-ahead-hero>; see also Carlos Maza & Luke Brinker, *15 Experts Debunk Right-Wing Transgender Bathroom Myth*, Media Matters for America (Mar. 20, 2014), <https://www.mediamatters.org/sexual-harassment-sexual-assault/15-experts-debunk-right-wing-transgender-bathroom-myth>; Rachel Percelay, *Florida Experts Debunk the Transgender “Bathroom Predator” Myth*, Media Matters for America (Jan. 12, 2016), <https://www.mediamatters.org/sexual-harassment-sexual-assault/florida-experts-debunk-transgender-bathroom-predator-myth>; Joe Garofoli, *Texan needs to be schooled in San Francisco on transgender rights*, S.F. Chron. (May 15, 2016), <http://www.sfchronicle.com/politics/article/Texan-needs-to-be-schooled-in-San-Francisco-on-7469979.php>; Michael Scherer, *Battle of the Bathroom*, Time, May 30, 2016; National Task Force to End Sexual and Domestic Violence Against Women, *National Consensus Statement of Anti-Sexual Assault and Domestic Violence Organizations in Support of Full and Equal Access for the Transgender Community* (Apr. 21, 2016), <https://www.scribd.com/doc/309946430/National-Consensus-Statement-of-Anti-Sexual-Assault-and-Domestic-Violence-Organizations-in-Support-of-Full-and-Equal-Access-for-the-Transgender-Commun>; Rachel Percelay, *National Expert: Anti-LGBT “Bathroom Predator” Fears Are “Very Misinformed,”* Media Matters for America (Apr. 21, 2016), <http://mediamatters.org/blog/2016/04/21/national-expert-anti-lgbt-bathroom-predator-fears-are-very-misinformed/210001>; Carlos Maza, *An Expert Explains Why the Right-Wing “Bathroom Predator” Myth Is Wrong and Dangerous*, Media Matters for America (Oct. 15, 2015), <http://mediamatters.org/blog/2015/10/15/an-expert-explains-why-the-right-wing-bathroom/206163>.

of Just. at 4 (rev. May 2016).⁸ Bathrooms are not, as some have suggested, fertile ground for such criminal conduct. Amirah Hazenbush, 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*, *Sexuality Rsch. & Soc. Pol'y* (2019) 16:70-83 at 70, published online July 23, 2018 (“Hazenbush Article”).⁹

The Hazenbush Article, the first of its kind, “sought to empirically assess whether reports of safety or privacy violations in public restrooms, locker rooms, and dressing rooms change in frequency in localities that have gender identity inclusive public accommodations nondiscrimination ordinances (GIPANDOs) as compared to matched localities without GIPANDOs.” *Id.* at 73. Using statistical modeling and public records requests, the study “found ***no evidence*** that privacy and safety in public restrooms change as a result of the passage of GIPANDOs.” *Id.* at 78.

Moreover, the vast majority of perpetrators are not strangers lying in wait in bathrooms, but rather someone who already knows the victim. *See* Planty, et al., *supra*, at 4 (concluding from National Crime Victimization Survey data that between 2005-2010, female victims knew 78 percent of rape or sexual assault perpetrators); Federal Bureau of Investigation, *Relationship of Victims to Offenders by Offense Category* (2019) (concluding that, in 2019, approximately 80 percent of

⁸ <http://www.bjs.gov/content/pub/pdf/fvsv9410.pdf>.

⁹ Counsel for *amici* can provide the Court a copy of this study at the Court’s request.

sex offenders were either a family member or otherwise known to the victim);¹⁰ accord Sharon Smith, et al., *The National Intimate Partner and Sexual Violence Survey: 2016/2017 Report on Stalking*, Nat'l Ctr. for Inj. Prevention & Control, Ctrs. for Disease Control & Prevention at 6 (2022)¹¹; Kathleen Basile, et al., *The National Intimate Partner and Sexual Violence Survey: 2016/2017 Report on Sexual Violence*, Nat'l Ctr. for Inj. Prevention & Control, Ctrs. for Disease Control & Prevention at 7-9 (2022).¹²

Nevertheless, *amici* are keenly aware that bathrooms—like any location—can be a site for sexual violence. See Will Doran, *Equality NC director: No public safety risks in cities with transgender anti-discrimination rules*, PolitiFact N.C. (Apr. 1, 2016) (confirming three convictions since 1999 of men in women's bathrooms for sexual crimes from reporter's searches).¹³ *Amici* are also sensitive to the fact that survivors of sexual assault and domestic violence may, based on their traumatic experiences, fear that sexual predators might hide behind transgender-inclusive nondiscrimination laws. The consequences of sexual assault, including post-traumatic stress disorder and severe anxiety, can profoundly impact how survivors engage with the outside world. Many of the undersigned *amici* work directly with survivors to help them navigate their daily lives after a sexual assault,

¹⁰ <https://ucr.fbi.gov/nibrs/2019/tables/data-tables>.

¹¹ <https://www.cdc.gov/violenceprevention/pdf/nisvs/nisvsStalkingReport.pdf>.

¹² <https://www.cdc.gov/violenceprevention/pdf/nisvs/nisvsReportonSexualViolence.pdf>.

¹³ <http://www.politifact.com/north-carolina/statements/2016/apr/01/chris-gro/equality-nc-director-no-public-safety-risks-cities/>.

and they recognize that increased fear and anxiety may persist for many years, and in many different types of spaces.

Amici point out, however, that such fears do not change the fact that nondiscrimination protections for transgender people do not compromise the safety of women. Additionally, transgender people, particularly survivors of sexual assault, also experience stress upon being forced to use bathrooms and other facilities that do not correspond with their gender identity—places where they know they are at increased risk of harassment and violence. *See* Lisa Rapaport, *Trans Teens Face Higher Risk When Schools Restrict Bathrooms*, Reuters (May 6, 2019) (reporting that a “survey of 3,637 trans and nonbinary teens in American middle and high schools found that more than one in four reported being sexually assaulted in the previous 12 months”).¹⁴ Indeed, school bathrooms and locker rooms are no exception. *See id.* (reporting that when “schools required students to use bathrooms and locker rooms based on their sex assigned at birth, transgender boys . . . were 26 percent more likely to experience sexual assault,” and “transgender girls . . . had more than twice the assault risk”). Transgender survivors are equally deserving of protection from this increased fear and anxiety, sexual assault, and other violent crimes. The School District’s discriminatory actions ignore this fact.

¹⁴ <https://www.reuters.com/article/us-health-youth-transgender/trans-teens-face-higher-sexual-assault-risk-when-schools-restrict-bathrooms-idUSKCN1SC1LR>.

III. THE SCHOOL DISTRICT'S ACTIONS INCREASE SAFETY RISKS TO TRANSGENDER STUDENTS.

A. Transgender Individuals Are More Likely to Be Victims of Sexual Assault and Other Crimes.

Actions like those taken by the School District do not prevent sexual assault and other crimes, but they do have a safety impact: increasing risks to transgender students.

Reported crimes against transgender people, including sexual assault and other sex crimes, are on the rise. In 2015, the National Coalition of Anti-Violence Programs reported that 26 percent of all reported incidents of anti-LGBTQ hate violence involved anti-transgender bias. See Emily Waters, et al., *Lesbian, Gay, Bisexual, Transgender, Queer and HIV-Affected Hate Violence in 2015*, National Coalition of Anti-Violence Programs at 21 (2016).¹⁵ Excluding the 49 lives lost at Pulse Nightclub in Orlando on June 12, 2016, there was still a 17 percent increase in LGBTQ hate violence homicides in 2016. Sixty-eight percent of these victims were transgender or gender nonconforming. See Emily Waters, et al., *Lesbian, Gay, Bisexual, Transgender, Queer and HIV-Affected Hate Violence in 2016*, National Coalition of Anti-Violence Programs at 9 (2017).¹⁶ In 2017, 52 percent of the victims of LGBTQ hate-violence homicides nationwide were transgender women. Emily Waters, et al., *Lesbian, Gay, Bisexual, Transgender, Queer and HIV-Affected Hate and Intimate Partner Violence in 2017*, National Coalition of Anti-Violence

¹⁵ https://avp.org/wp-content/uploads/2017/04/ncavp_hvreport_2015_final.pdf.

¹⁶ https://avp.org/wp-content/uploads/2017/06/NCAVP_2016HateViolence_REPORT.pdf.

Programs at 7 (2018) (“NCAVP 2017”).¹⁷ And the Human Rights Campaign reported that 2021 saw a record number of homicides of transgender and gender non-conforming individuals. Human Rights Campaign, *2021 Becomes Deadliest Year on Record for Transgender and Non-Binary People*.¹⁸

Sexual and gender minorities in the United States are exposed to staggeringly high levels of violence. Academic analysis of criminal data shows that “lesbian, gay, bisexual, and transgender (LGBT) victims were more likely to be victims of sexual assault” than others. Robert J. Cramer, et al., *Mental Health and Violent Crime Victims, Does Sexual Orientation Matter?*, *Law & Hum. Behav.* 36(2) (2012), at 87. These high rates of hate crimes, sexual assault crimes, and crimes of violence are well documented. *See, e.g.*, Andrew R. Flores, et al., *Victimization Rates and Traits of Sexual and Gender Minorities in the United States: Results from the National Crime Victimization Survey, 2017*, *Sci. Advances* (2020) (finding that LGBTQ individuals are nearly four times as likely to be subject to violent victimization, including rape, sexual assault, and aggravated simple assault)¹⁹; Beverly Tillery, et al., *Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Hate and Intimate Partner Violence in 2017*, National Coalition of Anti-Violence Programs at 7 (2018) (finding that transgender people were 52% of the victims of hate violence homicides and that transgender women who experience

¹⁷ <http://avp.org/wp-content/uploads/2019/01/NCAVP-HV-IPV-2017-report.pdf>.

¹⁸ <https://www.hrc.org/press-releases/2021-becomes-deadliest-year-on-record-for-transgender-and-non-binary-people>.

¹⁹ <https://www.science.org/doi/10.1126/sciadv.aba6910>.

intimate partner violence were nearly two and a half times more likely to experience sexual violence than non-transgender survivors).²⁰

Between 2014 and 2018, “the total number [of hate crimes motivated by anti-LGBTQ bias] increased every year.” Tim Fitzsimmons, *Anti-LGBTQ hate crimes rose 3 percent in '17, FBI finds*, NBC News (Nov. 14, 2018) (citing FBI 2017 Hate Crime Statistics).²¹ And in the last several years, crimes against transgender and nonbinary individuals have been on the rise. Grace Hauck, *Anti-LGBT Hate Crimes Are Rising, the FBI says. But It Gets Worse*, USA Today (June 28, 2019) (emphasizing that “[c]rimes motivated by gender identity . . . have generally risen since 2013,” and that “nearly half of transgender people experience sexual assault in their lifetime”)²²; Joe Hernandez, *Hate Crimes Reach The Highest Level In More Than A Decade*, NPR (Sept. 1, 2021) (explaining that the most recent FBI data shows a substantial increase in hate crimes, including crimes motivated by gender or gender identity)²³; Andrew R. Flores, et al., *Gender Identity Disparities in Criminal Victimization*, Williams Inst. (Mar. 2021) (transgender people are over four times more likely than cisgender people to experience violent victimization).²⁴

These disquieting statistics are likely just the tip of the iceberg. “Existing

²⁰ <http://avp.org/wp-content/uploads/2019/01/NCAVP-HV-IPV-2017-report.pdf>.

²¹ <https://www.nbcnews.com/feature/nbc-out/anti-lgbtq-hate-crimes-rose-3-percent-17-fbi-finds-n936166>.

²² <https://www.usatoday.com/story/news/2019/06/28/anti-gay-hate-crimes-rise-fbi-says-and-they-likely-undercount/1582614001/>.

²³ <https://www.npr.org/2021/08/31/1032932257/hate-crimes-reach-the-highest-level-in-more-than-a-decade>.

²⁴ <https://williamsinstitute.law.ucla.edu/publications/ncvs-trans-victimization/>.

official crime statistics, victim surveys, and self-report surveys provide a very limited glimpse of LGBTQ people’s victimization and offending because they exclude sexual orientation and gender identity as key variables” J.B. Woods, “*Queering Criminology*”: *Overview of the State of the Field, Handbook of LGBT Communities, Crime, and Justice*, D. Peterson and V. R. Panfil (eds.), Springer Sci. & Bus. Media at 18 (2013). And, even where sexual orientation and gender identity are studied, experts believe the existing statistics *underestimate* the actual rates of crimes against transgender people.²⁵ In other words, it is likely that LGBTQ individuals, and transgender people in particular, experience these crimes at higher rates than currently available statistics suggest.

²⁵ Transgender people underreport violence because they are more likely to be the victims of police violence than other survivors of sexual assault, domestic violence, and other gender-based violence. J. Grant, et al., *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, National Center for Transgender Equality at 6 (2011) (national survey of transgender individuals found that almost half of the respondents, 46 percent, were “uncomfortable seeking police assistance”), https://static1.squarespace.com/static/566c7f0c2399a3bdabb57553/t/566cbf2c57eb8de92a5392e6/1449967404768/ntds_full.pdf. In fact, transgender people have been found to be 3.1 times more likely to experience police violence and seven times more likely to experience physical violence in interactions with the police than other survivors of assault and abuse. *See* NCAVP 2017, *supra*, at 20. All sexual assault crimes are underreported, but this is especially problematic with transgender survivors. *See* C. Kruttschnitt, et al., *Estimating the Incidence of Rape and Sexual Assault*, National Research Council, National Academies Press (2014) at 37 (noting that 65 percent of all sexual assault crimes in the U.S. go unreported and that 13 percent of those crimes are not reported because of the belief that the police would not help); *see also* Christine R. Serpe & Kevin L. Nadal, *Perceptions of Police: Experiences in the Trans* Community*, 29 J. Gay & Lesbian Soc. Servs. at 280 (2017) (reporting that trans individuals “experienced significantly less positive perceptions of police than did cisgender” individuals).

B. Transgender People Experience Violence in Public Facilities with Staggering Frequency.

Transgender people experience far more violence than the population at large, even when compared with lesbian, gay, and bisexual individuals. Bathrooms in particular have become a common site of violence *against* transgender people. In a 2013 survey of transgender residents of Washington, D.C., for example, nearly 70 percent of all respondents reported that they had been verbally harassed or physically assaulted in public bathrooms. Jody L. Herman, *Gendered Restrooms and Minority Stress*, Williams Inst. (2013) at 71.²⁶ The findings of this study are also borne out in anecdotal reporting. *See* Tim Fitzsimmons, *Transgender Woman Killed in Puerto Rico After Using Women's Bathroom*, NBC News (Feb. 25, 2020) (a transgender woman was killed after she used the women's restroom at a McDonald's in Puerto Rico);²⁷ Shane Kavanaugh, *Idaho Man Found Guilty of Hate Crime After Beating Transgender Woman Over Bathroom Use on Oregon Coast*, The Oregonian (Jan. 30, 2020) (a man was convicted of a first-degree bias crime and second-degree assault for shattering a transgender woman's jaw and fracturing her skull after she used a woman's bathroom);²⁸ Christina Caron, *2 North Carolina Women Charged With Sexually Assaulting Transgender Woman in Bar*, N.Y. Times (Jan. 10, 2019) (two women were arrested for sexually assaulting a transgender

²⁶ <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Restrooms-Minority-Stress-Jun-2013.pdf>.

²⁷ <https://www.nbcnews.com/news/latino/transgender-woman-killed-puerto-rico-after-using-women-s-bathroom-n1142661>).

²⁸ <https://www.oregonlive.com/crime/2020/01/idaho-man-found-guilty-of-hate-crime-after-beating-transgender-woman-over-bathroom-use-on-oregon-coast.html>.

woman at a bar in Raleigh, N.C.);²⁹ Edecio Martinez, *Suspects in beating of transgender woman Chrissy Lee Polis could face hate crime charges*, CBS News (Apr. 26, 2011) (Chrissy Lee Polis, a 22-year-old Maryland transgender woman, was brutally attacked by two teenage girls when she attempted to use a McDonald's bathroom; the girls spit in her face, ripped her hair, threw her to the floor, and kicked her in her face while others stood by laughing);³⁰ *see also, e.g.*, Associated Press, *Report: Transgender teen attacked in bathroom of Northern California high school*, The Oregonian (Mar. 4, 2014) (student whose sex assigned at birth was female “but identifies as male, told officers he was leaving a boys’ bathroom at Hercules Middle/High School when three teenage boys pushed him inside a large stall and assailed him”).³¹

Prejudice and violence motivated by anti-transgender animus also threaten the safety of people who have been mistakenly identified as transgender in bathrooms. Non-transgender women have been victims of the anti-transgender animus that discriminatory policies encourage. For example, Aimee Toms, a 22-year-old non-transgender Connecticut woman who had recently donated her hair to cancer patients, was physically attacked when washing her hands in a Walmart bathroom because the assailant mistakenly thought she was transgender. *See* Jon Levine, *Connecticut Woman Who Donated Hair to Cancer Patients is Victim of*

²⁹ <https://www.nytimes.com/2019/01/10/us/transgender-woman-sexual-assault-nc.html>.

³⁰ <https://www.cbsnews.com/news/suspects-in-beating-of-transgender-woman-chrissy-lee-polis-could-face-hate-crime-charges/>.

³¹ https://www.oregonlive.com/today/2014/03/report_transgender_teen_attack.html.

Transphobic Attack, Yahoo Finance (May 17, 2016).³² In short, transgender people, and those mistakenly targeted by anti-transgender animus, are frequently victimized in bathrooms.

This violence is not, however, a basis for separating transgender students from their peers, as the School District has suggested. As explained below, stigmatizing policies that shut transgender students out of common restrooms exacerbate, rather than minimize, such safety risks.

C. Discriminatory Decisions Like the One Adopted by the School District Increase the Risk That Transgender Individuals Will Be the Victims of Sexual Assault and Other Crimes.

Amici spend every day addressing concerns related to sexual assault and other forms of gender-based violence. But singling out transgender identity as a means of addressing this concern only raises the risk that transgender people will be the victims of violence. Barring transgender people from facilities appropriate to their gender identity based on imagined safety concerns does nothing to mitigate such threats. It only gives credence to those who harbor prejudicial stereotypes casting transgender individuals as sexual deviants and predators. In this way, discriminatory policies increase the risk of violence and harassment in bathrooms by making them a space where people who harbor ill will toward transgender people feel entitled to enforce discriminatory rules on their own. Actions like those taken by the School District legitimize that animus, and both safety and privacy suffer.

Amici, academic commentators, and others who advocate against sexual

³² <https://sg.finance.yahoo.com/news/connecticut-woman-donated-hair-cancer-131400077.html>.

violence all recognize that such exclusionary policies are a cause of—not a solution to—transphobia that leads to violence. “[S]exual minority victimization experiences are hypothesized to be a function of society-induced stigma . . . [that is] continually reinforced through subtle and overt means such as anti-LGBT legislation” Cramer, et al., *supra*, at 87 (citing G.M. Herek, *Hate crimes and stigma-related experiences among sexual minority adults in the United States*, J. of Interpersonal Violence 24(1) at 54-74 (Jan. 2009)). In other words, uncertain policies that permit schools to foreclose access to restrooms like the balancing test adopted by the School District reinforce the prejudices the policy purportedly sought to address. *See* Br. of Appellant at 2-3 (“At the middle school level, the School District’s decision to consider these [factors] is based on . . . an effort to protect the privacy and safety of students.”). And such policies feed the prejudices that make sexual assault and violence in bathrooms a legitimate fear for many transgender people. *See Transgender Teens with Restricted Bathroom Access at a Higher Risk of Sexual Assault*, Harvard T.H. Chan School of Public Health (2019) (finding that 36 percent of transgender or nonbinary students with restricted bathroom or locker room access reported being sexually assaulted in the last 12 months).³³

One study investigating the relationship between transgender bathroom protections and criminal activity unequivocally finds that “fears of increased safety and privacy violations as a result of nondiscrimination laws are not empirically

³³ <https://www.hsph.harvard.edu/news/hsph-in-the-news/transgender-teens-restricted-bathroom-access-sexual-assault/>.

grounded.” Hazenbush Article, *supra*, at 70.

Statistics about the prison population, while not wholly analogous, are representative of the ways in which transgender individuals experience victimization compared to a general population. These surveys and studies support a clear conclusion: there is an elevated risk of sexual assault to transgender women required to use facilities inconsistent with their gender identity. “Correctional officers, courts, prisoners, advocates, and survey data agree: Gay, bisexual, transgender, and effeminate prisoners face greatly elevated risks of sexual abuse.” Kim Shayo Buchanan, *Our Prisons, Ourselves: Race, Gender, and the Rule of Law*, Yale L. & Pol’y Rev. 29(1) at 15 (2010); *see also generally Farmer v. Brennan*, 511 U.S. 825, 848 (1994) (recounting how the petitioner’s transgender status and feminine appearance alerted prison officials to the risk of sexual abuse).

A study of California state prison inmates found that transgender inmates are 13 times more likely to be sexually assaulted in prison; 59 percent reported sexual assault.³⁴ Valerie Jenness, et al., *Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault*, University of California,

³⁴ Recently, California officials have been responsive to concerns about transgender inmate safety, adopting a policy that permits transgender individuals to be housed according to their gender identity. Jonathan McDougle, *California to House Transgender Inmates Based on Gender Identity*, CBS News (October 7, 2020), <https://www.cbsnews.com/news/california-transgender-prison-inmates-gender-identity-housing/>; *see also* Cal. Dep’t of Corr. & Rehab., *Operations Manual* at 574 (Jan. 31, 2016), https://web.archive.org/web/20160328162355/http://www.cdcr.ca.gov/Regulations/Adult_Operations/docs/DOM/DOM%202016/2016_DOM.PDF.

Irvine, Center for Evidence-Based Corrections at 2 (2007).³⁵ Like many transgender inmates, this was the case for Janetta Johnson, a transgender woman who was forced into a men’s prison in California. She “experienced sustained sexual assault, including resorting to oral sex to avoid penetrative rape. She also endured harassment from guards” Zoe Greenberg, *Sentenced to Abuse: Trans People in Prison Suffer Rape, Coercion, Denial of Medical Treatment*, Rewire (May 12, 2015).³⁶ “[T]he American Psychological Association and the National Commission on Correctional Health Care have both issued statements recognizing that transgender inmates are at especially high risk of abuse and calling for their protection.” Brenda V. Smith, et al., *Policy Review and Development Guide: Lesbian, Gay, Bisexual and Intersex Persons in Custodial Settings*, 3rd ed., National Institute of Corrections at 7 (2016).³⁷ Forcing transgender individuals to use the bathroom corresponding with their sex assigned at birth, like forcing transgender women into men’s prisons, will only increase the risk that they will be the victims of assault.

Despite these facts, the School District cites safety and privacy as a key justification for exclusionary action against transgender students. It ignores the real risk that more harm, not less, will result from its proposals.

³⁵ http://ucicorrections.seweb.uci.edu/files/2013/06/PREA_Presentation_PREA_Report_UCI_Jenness_et_al.pdf.

³⁶ <https://rewire.news/article/2015/05/12/sentenced-abuse-trans-people-prison-suffer-rape-coercion-denial-medical-treatment/>.

³⁷ https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1055&context=fasch_rpt.

CONCLUSION

Discriminating against transgender people does not give anyone more control over their body or security. *Amici* welcome policies that will combat sexual assault, but the School District's actions and other policies like it do nothing to advance that goal. Instead, these rules mandate discrimination in response to unsubstantiated safety and privacy concerns. Nothing in the Constitution or Title IX protects criminal conduct or otherwise allows students to pretend to be transgender in order to assault or harass other students. And the transgender students most in need of protection from bullying, harassment, and assault are also the students most harmed by these policies. For these reasons, *amici* urge the Court to rely on the accumulated experience and knowledge of experts around the nation who have concluded that nondiscrimination protections for transgender students pose no safety threat to other students. These protections safeguard some of the most vulnerable students in the nation. For the foregoing reasons, we respectfully request that the Court affirm Chief Judge Pratt's conclusion that a preliminary injunction preventing the School District from discriminating against A.C. is warranted.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), I hereby certify that the foregoing brief of Anti-Sexual Assault, Domestic Violence, and Gender-Based Violence Organizations as *Amici Curiae* in Support of Plaintiff-Appellee complies with (1) the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) and Cir. R. 32(b) because it was written in Century Schoolbook 12-point font, and (2) the type-volume limitations contained in Cir. R. 29, because it contains 6,973 words, excluding those parts of the brief excluded from the word count under Federal Rule of Appellate Procedure 32(f).

/s/ Dimitri D. Portnoi

Dimitri D. Portnoi

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing brief of Anti-Sexual Assault, Domestic Violence, and Gender-Based Violence Organizations as *amici curiae* in support of Plaintiff-Appellee was electronically filed with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit on August 2, 2022 using this Court's CM/ECF system, and service was accomplished on counsel of record by that means.

I further certify that, pursuant to Circuit Rule 31(b), and upon notice of this Court's acceptance of the electronic brief for filing, fifteen paper copies of the brief with green covers and backing will be dispatched for delivery via Federal Express to:

Office of the Clerk
United States Court of Appeals for the Seventh Circuit
Everett McKinley Dirksen United States Courthouse
219 S. Dearborn Street
Room 2722
Chicago, IL 60604

/s/ Dimitri D. Portnoi

Dimitri D. Portnoi

APPENDIX: *AMICI CURIAE*

National Organizations	
1.	Asian Pacific Institute on Gender-Based Violence
2.	Black AIDS Institute
3.	Domestic Violence Legal Empowerment and Appeals Project
4.	FORGE, Inc.
5.	Futures Without Violence
6.	National Alliance to End Sexual Violence
7.	National Council of Jewish Women
8.	Sexual Violence Prevention Association
Statewide Organizations	
9.	Bridges Oregon
10.	Connecticut Alliance to End Sexual Violence
11.	Illinois Accountability Initiative
12.	Louisiana Foundation Against Sexual Assault
13.	Maryland Network Against Domestic Violence
14.	New York State Coalition Against Sexual Assault
15.	OutReach LGBTQ+ Community Center
16.	Standpoint
17.	Vermont Network Against Domestic and Sexual Violence
18.	Washington Coalition of Sexual Assault Programs
Local Organizations	
19.	Crisis Support Network
20.	Dove House Advocacy Services
21.	Los Angeles LGBT Center
22.	Project Safeguard
23.	Rape Crisis Center - Dane County
24.	Safehouse Progressive Alliance for Nonviolence
25.	SAGE Crisis Center of Chelan and Douglas Counties
26.	Vera House, Inc.