

No. 16-273

IN THE
Supreme Court of the United States

GLoucester County School Board,
Petitioner,

v.

G. G., BY HIS NEXT FRIEND AND MOTHER, DEIRDRE
GRIMM,
Respondent.

**On Writ of Certiorari to the United States
Court of Appeals for the Fourth Circuit**

**BRIEF OF AMICI CURIAE REAGAN
GREENBERG, ACHIM HOWARD, ALEXA
RODRIGUEZ, JEYMEE SEMITL, AVATARA
SMITH-CARRINGTON, SAVANNA WANZER, &
SAM WILLIAMSON IN SUPPORT OF
RESPONDENT**

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<i>Lawrence v. Texas</i> , 539 U.S. 558 (2003)	5, 6
<i>Obergefell v. Hodges</i> , 135 S. Ct. 2584 (2015)	5, 6, 33
<i>Planned Parenthood v. Casey</i> , 505 U.S. 833 (1992)	6

CONSTITUTION

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-----------------------	---

STATUTES & REGULATIONS

20 U.S.C. § 1681 (2012)	22
29 U.S.C. § 701 (2012)	22
42 U.S.C. § 2000d (2012)	22

OTHER AUTHORITIES

Amity L. Noltemeyer et al., <i>Disproportionality in Education and Special Education</i> (2012)	21
---	----

Angie Peifer, <i>The Purpose of Public Education and the Role of the School Board</i> , Nat'l Sch. Boards Ass'n (Aug. 19, 2014), http://www.nsba.org/sites/default/files/The%20Purpose%20of%20Public%20Education%20and%20the%20Role%20of%20the%20School%20Board_National%20Connection.pdf	21
Arnold H. Grossman et al., <i>Parents' Reactions to Transgender Youths' Gender Nonconforming Expression and Identity</i> , 18 J. of Gay & Lesbian Soc. Servs. 3 (2005)	22
Arnold H. Grossman & Anthony R. D'Augelli, <i>Transgender Youth</i> , 51 J. of Homosexuality 1 (2006)	25
Aron Macarow, <i>These Eleven Countries are Way Ahead of the U.S. on Trans Issues</i> , ATTN: (Feb. 9, 2015), http://www.attn.com/stories/868/transgender-passport-status	8
<i>Bodily Integrity</i> , Child Rights Int'l Network (last visited Jan. 26, 2017), https://www.crin.org/en/home/what-we-do/policy/bodily-integrity	7
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- Christin Scarlett Milloy, *Don't Let the Doctor Do This to Your Newborn*, Slate (June 26, 2014, 11:44 AM),
http://www.slate.com/blogs/outward/2014/06/26/infant_gender_assignment_unnecessary_and_potentially_harmful.html..... 12
- Colo. Dep't of Regulatory Agencies, Div. of Civil Rights, *Determination for Charge No. P20130034X* (2013) 38
- Dale Carpenter, *The Myth of a Transgender Stonewall*, IGF Culture Watch (Mar. 7, 2002),
<https://igfculturewatch.com/2002/03/07/the-myth-of-a-transgender-stonewall/> 17
- Emily A. Greytak et al., *Harsh Realities: The Experiences of Transgender Youth in Our Nation's Schools* (2009) 20, 24-26
- Gillian Frank, *The Anti-Trans Bathroom Nightmare Has Its Roots in Racial Segregation*, Slate (Nov. 10, 2015, 4:55 PM),
http://www.slate.com/blogs/outward/2015/11/10/anti_trans_bathroom_propaganda_has_roots_in_racial_segregation.html 18
- Homa Khaleeli, *Hijra: India's third gender claims its place in the law*, The Guardian (Apr. 16, 2014),
<https://www.theguardian.com/society/2014/apr/16/india-third-gender-claims-place-in-law> 8

- Issues: Nondiscrimination Law*, Nat'l Ctr. for Transgender Equal. (last visited Jan. 28, 2017), <http://www.transequality.org/issues/nondiscrimination-laws>..... 16
- Jamie M. Grant et al., *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* (2011)..... 17, 24-26
- Jody L. Herman, *Gendered Restrooms and Minority Stress: The Public Regulation of Gender and its Impact on Transgender People's Lives* (2013) 30
- John Boone, *9 Inspirational Stories of Transgender Kids & Their Supportive Parents*, ET (Apr. 23, 2015, 3:40 PM), http://www.etonline.com/news/163373_9_inspirational_stories_of_transgender_kids_their_supportive_parents/ 23
- Joli St. Patrick, *What You're Really Saying When You Misgender*, *The Body Is Not An Apology* (June 27, 2015), <https://thebodyisnotanapology.com/magazine/what-youre-really-saying-when-you-misgender/> 7
- Julie Bosman & Motoko Rich, *As Transgender Students Make Gains, Schools Hesitate at Bathrooms*, N.Y. Times (Nov. 3, 2015), https://www.nytimes.com/2015/11/04/us/as-transgender-students-make-gains-schools-hesitate-at-bathrooms.html?_r=0..... 30

- Julia Serano, *Psychology, Sexualization and Trans-Invalidations 2* (2009) 13, 14
- Julia Serano, *Whipping Girl: A Transsexual Woman on Sexism and the Scapegoating of Femininity* 161 (2d ed. 2016) 13, 14
- Liz Halloran, *Explaining Justice Kennedy: The Dignity Factor*, NPR (June 28, 2013, 2:42 PM), <http://www.npr.org/sections/thetwo-way/2013/06/27/196280855/explaining-justice-kennedy-the-dignity-factor> 5, 7
- Marcie Bianco, *Statistics Show Exactly How Many Times Trans People Have Attacked You in Bathrooms*, Mic (Apr. 2, 2015), <https://mic.com/articles/114066/statistics-show-exactly-how-many-times-trans-people-have-attacked-you-in-bathrooms#.FZQWrqT9M> 31
- Marcus Scott, *8-Year-Old Transgender Boy Performs Epic Coming Out Rap*, Latin Post (Nov. 12, 2014, 9:43 AM), <http://www.latinpost.com/articles/25680/20141112/8-year-old-transgender-boy-performs-epic-coming-out-rap.htm>..... 23
- Mark Joseph Stern, *Judge: Doctors Have “Religious Freedom” to Refuse to Treat Trans Patients, Women Who’ve Had Abortions*, Slate (Jan. 3, 2017, 1:03 PM), <http://www.slate.com/blogs/outward/2017/01/03/d>

- ctors_may_refuse_to_treat_transgender_patient
s_and_women_who_ve_had_abortions.html..... 15
- Mercedes Allen, *Trans History 101: Transgender
Expression in Ancient Times*, LGBTQ Nation
(Feb. 24, 2016),
[http://www.lgbtqnation.com/2016/02/trans-
history-101-transgender-expression-in-ancient-
times/3/](http://www.lgbtqnation.com/2016/02/trans-
history-101-transgender-expression-in-ancient-
times/3/)..... 9
- Michèle Finck, *The role of human dignity in gay
rights adjudication and legislation: a
comparative perspective*, 14 Int'l J. of Const. L. 26
(2016) 5
- Mission and Goals*, Gloucester Cty. Pub. Sch.,
[http://www.gets.gc.k12.va.us/SchoolBoard/Missio
nandGoals/tabid/56478/Default.aspx](http://www.gets.gc.k12.va.us/SchoolBoard/Missio
nandGoals/tabid/56478/Default.aspx) (last visited
Feb. 3, 2017) 23
- Morgan Zalot & Cydney Long, *I Felt Like I Was
Rejected': Student in Gender Transition Finds No
Place at NJ Catholic High School*, NBC10 (Sept.
12, 2016, 5:47 PM),
[http://www.nbcphiladelphia.com/news/local/Cam
den-Catholic-Transgender-Student-Boy-Denied-
Request-393169631.html](http://www.nbcphiladelphia.com/news/local/Cam
den-Catholic-Transgender-Student-Boy-Denied-
Request-393169631.html) 20
- Nat'l Ass'n of Sch. Psychologists, *Position
Statement: Safe Schools for Transgender and
Gender Diverse Students* (2014) 26

- Neela Ghoshal & Kyle Knight, *Rights in Transition: Making Legal Recognition of Transgender People a Global Priority*, Human Rights Watch (last visited Jan. 26, 2017), <https://www.hrw.org/world-report/2016/rights-in-transition> 7
- Nicholas Ray, *Lesbian, gay, bisexual and transgender youth: An epidemic of homelessness* (2006) 22
- Never Forget #024: Transwomen of Color Kickstarted the Gay Rights Movement (Stonewall)*, The Visibility Project (May 26, 2016), <http://www.thevisibilityproject.com/2016/05/26/never-forget-transwomen-of-color-kickstarted-the-gay-rights-movement-stonewall-uprising/> 17
- Richard Kluger, *Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality* (2004) 22
- Russell B. Toomey et al., *Gender-Nonconforming Lesbian, Gay Bisexual, and Transgender Youth: School Victimization and Youth Adult Psychosocial Adjustment* (2010) 26
- Sam Killerman, *30+ Examples of Cisgender Privilege* (2012) 10
- Terynn Boulton, *The Surprisingly Recent Time Period When Boys Wore Pink, Girls Wore Blue,*

and Both Wore Dresses, Today I Found Out (Oct. 17, 2014),
<http://www.todayifoundout.com/index.php/2014/10/pink-used-common-color-boys-blue-girls/>..... 12

Time in school: How does the U.S. compare?, Ctr. for Pub. Educ. (Dec. 2011),
<http://www.centerforpubliceducation.org/Main-Menu/Organizing-a-school/Time-in-school-How-does-the-US-compare> 23

Violence Against the Transgender Community in 2016, Human Rights Campaign (last visited Jan. 26, 2017), <http://www.hrc.org/resources/violence-against-the-transgender-community-in-2016>.... 10

W.E.B. Du Bois, *Black Reconstruction* (1935) 4

Zuleyka Zevallos, *Rethinking Gender and Sexuality: Case Study of the Native American “Two Spirit” People*, Other Sociologist (Sept. 9, 2013),
<https://othersociologist.com/2013/09/09/two-spirit-people/> 9

INTEREST OF AMICI CURIAE¹

Amici Curiae are transgender people and individuals whose gender identity may not fit the rigid categorization of male or female. *Amici* are predominantly people of color from the greater DC, Maryland, and Virginia area who have experienced hardship in navigating public spaces and seek to have their voices elevated in front of the Court. *Amici*, due to their race, income level, or current stage in life, have not been afforded the privilege of having their voices heard in front of the Court, yet are likely to be the most dramatically impacted by society's approach to transgender issues. They share deeply personal narratives in this brief that shed light on the lived experience of transgender people across the country navigating institutions that refuse to affirm their gender identities. *Amici* represent our loved ones, our family, our co-workers, and are, literally, our neighbors; they are human, and will continue to exist regardless of the outcome of this case.

Amici's narratives are powerful reminders of how society has failed to affirm transgender identities. They also demonstrate how simple it can be to make society more inclusive and the large impact that inclusivity has on the wellbeing of a

¹ Each party has consented to the filing of this brief, and copies of the consents have been lodged with the Clerk of the Court. Pursuant to this Court's Rule 37.6, *amici* states that this brief was not authored in whole or in part by counsel for any party and that no person or entity other than *amici* or its counsel made a monetary contribution intended to fund the preparation or submission of this brief.

transgender individual. The day-to-day working of a society structured to support only non-transgender identities is not just an inconvenience or burden, but an act of violence against transgender people in the United States.

Amici submit this brief in support of Respondent, in support of upholding the decision of the Fourth Circuit, and in support of affording all transgender people the basic right to human dignity and access to public accommodations.

SUMMARY OF ARGUMENT

Amici's lived experiences are the focal point of this brief's argument because the question of whether the transgender community will have equal access to places of public accommodation and in public institutions impacts the daily lives, dignity, education, and general wellbeing of millions of human beings.

A person's gender identity is an indispensable expression of themselves and a core component of human dignity. The Court has frequently explained that people have a fundamental liberty interest in human dignity, and that an individual denied dignity is deprived of the chance to be who they are. Because society is structured to accommodate non-transgender identities, in ways large and small, it conveys the message that transgender people do not have a place in public life unless they acquiesce to their gender assigned at birth and force themselves to live out a gender identity not their own. This refusal to accord transgender people basic human

dignity is not a mere inconvenience but rather an act of psychological—and often physical—violence that forces transgender men and women to turn themselves inside out in order to perform even the most basic of public acts that non-transgender people routinely take for granted: walking out the door, shopping at a store, using a public bathroom.

Perhaps nowhere is the evidence of lack of accommodation clearer than in educational institutions, which should serve as supportive learning environments for all students but are currently failing to provide such a space for transgender students. Transgender students are more likely than non-transgender students to experience isolation and violence, creating a hostile climate that negatively impacts their educational and life outcomes. The bathroom policy here is one example of how school policies can exacerbate the negative climate for transgender students by refusing to affirm a student's gender identity or treat them with dignity. *Amici* share their lived experiences of using bathrooms in schools to shed light on the impact that their school climates have had on them.

Looking back over the African American experience at the conclusion of the Civil War, W.E.B. Du Bois wrote that the choice we faced as a society was either to understand that “the Negro in America and in general is an average and ordinary human being, who under given environment develops like other human beings” or to “regard[] the Negro as a distinctly inferior creation, who can never successfully take part in modern civilization

and whose emancipation and enfranchisement were gestures against nature”² This Court faces a similar choice: to understand transgender people as human beings who, given the chance, will live out their lives as others do, or as beings who cannot peaceably take part in public life.

Amici respectfully submit that transgender people are not asking for a new right but rather an acknowledgment that they are here, have always been here, will always be here, and deserve equal dignity and simple respect.

ARGUMENT

I. A PERSON’S GENDER IDENTITY IS AT THE CORE OF HUMAN DIGNITY.

A. Human dignity includes a liberty interest in living out one’s true gender identity rather than the one assigned by accident of birth.

This is the right to live and the right to breathe, and the right to use the bathroom.

Jeymee Semiti, Black, Age 27,
Washington, DC

Human dignity recognizes that every individual has intrinsic moral worth and is deserving of respect, autonomy, and

² W.E.B. Du Bois, *Black Reconstruction* (1935).

empowerment.³ In at least the last decade, this Court’s constitutional jurisprudence has called upon the vocabulary and philosophy of human dignity to “translate socio-cultural change into legal change,”⁴ and to humanize those of us who for too long were not part of “We the People.”⁵

Through four historic civil rights rulings, from *Romer* in 1996 to *Obergefell* in 2015, the Court has narrated a deep concern for human dignity. In these opinions, the Court repeatedly refers to the “right to human dignity,” and suggests that an individual is deprived of such a right when unable to “manifest his or her own personality” or “obtain his or her own self-fulfillment.”⁶ In *Lawrence*, the Court struck down the prohibition of sodomy by saying that one is “touching upon the most private human conduct, sexual behavior, and in the most

³ See *Obergefell v. Hodges*, 135 S. Ct. 2584, 2597 (2015) (holding that “liberties extend to certain personal choices central to individual dignity and autonomy, including intimate choices that define personal identity and beliefs”); see also *Lawrence v. Texas*, 539 U.S. 558, 575 (2003) (granting “equality of treatment and the due process right to demand respect for conduct protected by the substantive guarantee of liberty”).

⁴ Michèle Finck, *The role of human dignity in gay rights adjudication and legislation: a comparative perspective*, 14 Int’l J. of Const. L. 26, 28 (2016).

⁵ U.S. Const. pmb.

⁶ Liz Halloran, *Explaining Justice Kennedy: The Dignity Factor*, NPR (June 28, 2013, 2:42 PM), <http://www.npr.org/sections/thetwo-way/2013/06/27/196280855/explaining-justice-kennedy-the-dignity-factor>.

private of places, the home.”⁷ The Court emphasized the right of persons to “enter upon relationships in the confines of their homes,”⁸ characterizing sodomy laws as dismissive of the dignity of gay men and a violation of their right to bodily integrity.

Obergefell highlighted dignity in the bond between “two men or two women who seek to marry” and the “autonomy to make such profound choices.”⁹ The Court articulated its concern for the exclusion of individuals from institutions based on “intimate choices that define personal identity and beliefs.”¹⁰ The Court asserted that it “demeans gay and lesbians for the State to lock them out of a central institution of the Nation’s society,” and deprives a person of “individual dignity and autonomy.”¹¹ The Court’s plea for “equal dignity in the eyes of the law”¹² manifested in more than just the inclusion of gays and lesbians in one of the oldest institutions of society, calling for a stronger acknowledgement of what it means to treat someone with humanity.

“At the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life.”¹³ Gender identity and expression are some of the

⁷ 539 U.S. at 567.

⁸ *Id.* at 558.

⁹ 135 S. Ct. at 2599.

¹⁰ *Id.* at 2597.

¹¹ *Id.* at 2589.

¹² *Id.* at 2608.

¹³ *Planned Parenthood v. Casey*, 505 U.S. 833, 851 (1992).

most intimate aspects of a person’s identity, and yet, transgender people are denied the affirmation of their gender identity that is commonplace to non-transgender individuals. The universal recognition of transgender identities is consistent with the notion that *nonconsensually* assigning a gender to a newborn baby dictates how that individual grows to navigate male and female identities. As the Child Rights International Network defines it, bodily integrity is “the right of each human being, including children, to autonomy and self-determination over their own body.”¹⁴ A fundamental aspect of affirming the dignity and worth of transgender people is to recognize a person by the gender with which they identify.¹⁵ An individual is stripped of the right to “manifest [their] own personality”¹⁶ when they are misgendered¹⁷ in the eye of the public, a form of violence sanctioned by the state based on rigid standards of masculinity and femininity. However, the right to identify with a gender that does not

¹⁴ *Bodily Integrity*, Child Rights Int’l Network (last visited Jan. 26, 2017), <https://www.crin.org/en/home/what-we-do/policy/bodily-integrity>.

¹⁵ Neela Ghoshal & Kyle Knight, *Rights in Transition: Making Legal Recognition of Transgender People a Global Priority*, Human Rights Watch (last visited Jan. 26, 2017), <https://www.hrw.org/world-report/2016/rights-in-transition>.

¹⁶ Halloran, *supra*.

¹⁷ Joli St. Patrick, *What You’re Really Saying When You Misgender*, The Body Is Not An Apology (June 27, 2015), <https://thebodyisnotanapology.com/magazine/what-youre-really-saying-when-you-misgender/> (defining misgendering as the act of “referring to someone by the pronouns or honorifics of a gender that is not theirs”).

match the one assigned at birth has only recently gained attention in the United States, lagging far behind other countries.¹⁸ This lack of protection has created numerous obstacles for transgender people to fit into centuries-old non-transgender frameworks institutionalized within society, as compared to other societies in which gender identity has been sufficiently severed from the gender assigned at birth.

The idea that an individual's gender assigned at birth may not match their gender identity is, of course, not new. And, while this brief is a narrative of the present-day lived experience of transgender Americans and not a catalogue of the history of transgender people, the story of transgender people is as old and universal as the story of humanity itself. Hijras, the transgender community in India, "have been a part of South Asia's culture for thousands of years."¹⁹ "Early Indonesian societies had transgender figures in religious functions," and "in ancient China, the shih-niang wore mixed-gender ceremonial

¹⁸ Aron Macarow, *These Eleven Countries are Way Ahead of the U.S. on Trans Issues*, ATTN: (Feb. 9, 2015), <http://www.attn.com/stories/868/transgender-passport-status> ("[N]on-binary, trans, and intersex Americans are still waiting for the US government to recognize the complexity of gender identity.").

¹⁹ Homa Khaleeli, *Hijra: India's third gender claims its place in the law*, *The Guardian* (Apr. 16, 2014), <https://www.theguardian.com/society/2014/apr/16/india-third-gender-claims-place-in-law>.

clothing.”²⁰ In the late 1500s, several females in the Tupinambá tribe in Brazil “lived as men, hunted and went to war.”²¹ In the early 20th century, Native Americans used the term “two-spirit” to embody the sense of constant transformation of sex, gender, and gender roles.²² This label allowed individuals to “live their lives beyond conventional binaries” and “shift their gender position.”²³ There have been transgender people since the beginning of time and they exist, openly or not, accepted or not, across virtually all cultures.

By equating gender with anatomy and then segregating based on anatomy, we cause harm to people who are nonconforming with that framework, and a form of gender policing begins to occur. In a setting like a public restroom where genitalia is covered by clothing, cues like facial hair, a strong jawline, or an Adam’s apple act as proxies for anatomical criteria that are unseen in social interaction. In order to escape scrutiny, a man or woman bears the burden of matching very specific, subjective ideas of what it means to be “male” or “female,” and those whose appearance even slightly deviates from that description will

²⁰ Mercedes Allen, *Trans History 101: Transgender Expression in Ancient Times*, LGBTQ Nation (Feb. 24, 2016), <http://www.lgbtqnation.com/2016/02/trans-history-101-transgender-expression-in-ancient-times/3/>.

²¹ *Id.*

²² Zuleyka Zevallos, *Rethinking Gender and Sexuality: Case Study of the Native American “Two Spirit” People*, *Other Sociologist* (Sept. 9, 2013), <https://othersociologist.com/2013/09/09/two-spirit-people/>.

²³ *Id.*

trigger anti-transgender laws. This results in individuals, transgender or not, being policed in bathrooms. Therefore, with the refusal to accept an individual as the gender identity they align with, we endanger transgender women and men and non-transgender women and men alike.

Transgender individuals in particular, though, are forced to live in violent conditions and navigate violent systems when their gender identity is not affirmed socially and legally. In 2016 alone, at least twenty-one transgender people were “fatally shot, stabbed and killed by other violent means,”²⁴ and this figure does not fully capture the harassment, bodily injury, and microaggressions that members of the transgender community face on a daily basis. For transgender people, everyday tasks such as going grocery shopping, where their driver’s license is scrutinized in validating a credit card, or going to a clothing store and being refused service when the clothes they wish to purchase do not match their perceived gender identity, make them highly susceptible to violence.²⁵

Human dignity is at the core of this case. While this is not a constitutional case, the Court’s reliance on human dignity bears repeating as its decision here so obviously implicates it. Transgender people are people and are deserving of

²⁴ *Violence Against the Transgender Community in 2016*, Human Rights Campaign (last visited Jan. 26, 2017), <http://www.hrc.org/resources/violence-against-the-transgender-community-in-2016>.

²⁵ See Sam Killerman, *30+ Examples of Cisgender Privilege* (2012).

treatment that upholds basic values of human dignity. For transgender people, a right to human dignity is the right to be accepted for who they are, to be valued, respected, and ethically treated, irrespective of their gender identity. For transgender people of all ages, recognizing that their gender does not match the gender they were assigned at birth is an enormous burden to carry when the institutions they navigate refuse to affirm their true identity. The ability to self-determine what gender best aligns with their identity, and then be acknowledged as such, is at the crux of bodily integrity.

B. The reality of transgender people's lives is a daily reminder that virtually everything in the world is organized in a way that tells them that their identity is not normal.

I often tell people that my body has been inextricably linked to violence since birth. On its face, this statement appears to be overdramatic. People begin to dissect and regurgitate a list of my privileges in attempts to ease their guilt, while simultaneously stripping me of my voice. You see, the violence I speak of is not that which we have been socialized to naturally fear but instead one that is systemically normalized. This is the type of violence that is often disregarded and negated because conversations around privilege

*and oppression are uncomfortable and
for many, irrelevant.*

Avatara Smith-Carrington, Black,
Age 24, Baltimore, MD

Upon birth, an infant is designated a gender of either male or female.²⁶ The infant then spends their youth adhering to socially constructed guidelines on how to present themselves as male or female.²⁷ Their forms of identification—birth certificate, driver’s license, passport, etc.—reflect the gender assigned at birth. In public forums, they face gender-segregated choices, such as joining a male or female soccer league, or becoming a boy scout or a girl scout, and those decisions are

²⁶ Christin Scarlett Milloy, *Don't Let the Doctor Do This to Your Newborn*, Slate (June 26, 2014, 11:44 AM), http://www.slate.com/blogs/outward/2014/06/26/infant_gender_assignment_unnecessary_and_potentially_harmful.html (“When the doctor holds your child up to the harsh light of the delivery room, looks between its legs, and declares his opinion: It's a boy or a girl, based on nothing more than a cursory assessment of your offspring's genitals.”).

²⁷ Terynn Boulton, *The Surprisingly Recent Time Period When Boys Wore Pink, Girls Wore Blue, and Both Wore Dresses*, Today I Found Out (Oct. 17, 2014), <http://www.todayifoundout.com/index.php/2014/10/pink-used-common-color-boys-blue-girls/> (“Of course, today for many in the Western world, girls wear pink dresses and boys wear blue pants. Period. This curious phenomenon is so firmly entrenched that if you tried to dress a two year old boy in a pink dress, regardless of the child perhaps having a traditionally male hair style with male-centric accessories hinting that your toddler is a boy, absolutely no one would think they were looking at a male child until you told them.”).

pressured by what is written on a piece of paper handed to them at birth. This standardized, presumptive process is a much more oppressive system to navigate for those whose gender identity does not align with the gender assigned at birth.

Transgender people face a complicated reality in great part because, from time immemorial, clinicians and academics have made transgender individuals the “objects of their inquiry,”²⁸ using language that at times implicitly but far more often explicitly burdens transgender people with the mark of being “abnormal.” Transgender people live in a society where “people must be willing to be pathologized” in order to have their gender identity socially and legally affirmed.²⁹ Society today deems transgender people’s gender identities, expressions, and sex “less natural and less legitimate” than those of non-transgender people.³⁰ Transgender people are expected to carry not only medical prognosis, but also a physical appearance that passes as “male” or “female” in the eyes of non-transgender people.

Even among well-meaning people, non-transgender attributes are “simply taken for granted” and “assumed to be natural or normal.”³¹ Although the assessment of a person’s gender, for

²⁸ Julia Serano, *Whipping Girl: A Transsexual Woman on Sexism and the Scapegoating of Femininity* 161 (2d ed. 2016) [hereinafter *Whipping Girl*].

²⁹ Julia Serano, *Psychology, Sexualization and Trans-Invalidations* 2 (2009) [hereinafter *Trans Invalidations*].

³⁰ *Id.* at 3.

³¹ *Id.*

the majority of people, tends to be in agreement with that person's gender identity, this is not the lived experience of transgender people. Most non-transgender people "remain oblivious to the subjective nature of gendering, primarily because they themselves have not regularly had the experience of being misgendered."³² One need look no further than the *amici curiae* briefs filed after the Petitioner filed its brief, such as the one by Safe Spaces for Women, to see evidence of a world in which the only "normal" perspective is that of non-transgender individuals. When calling specific attention to violence against women by men, counsel for Safe Spaces for Women did not include transgender women in their efforts to "ensur[e] that the voices of women who have suffered sexual abuse are heeded when policies are made that may directly affect their physical, emotional, and psychological well-being."³³ This is a silencing of transgender identities and voices.

Because of the assumptions created by our non-transgender frameworks, non-transgender individuals draw the conclusion that everyone they meet is also non-transgender.³⁴ The mentality of assuming everyone you meet is non-transgender trickles into every aspect of life, from casual interactions with people on the street, to how coworkers address each other in the workplace. As such the majority of people are blind to the

³² *Id.* at 164.

³³ Br. of *Amicus Curiae* Safe Spaces for Women Supporting Neither Party 2.

³⁴ *Whipping Girl, supra*, at 161.

struggles of transgender people, and the legitimacy of the struggle transgender people living in the United States face is obfuscated by that blindness. When people come out as transgender, many healthcare providers,³⁵ employers, and educational institutions perpetuate violence against them by refusing to affirm their gender identity. When this lack of affirmation takes the form of exclusion—cutting off transgender individuals from work, health services, classes, or other essential structures—there can be no question that such exclusion is an act of violence. Even when transgender people are able to access non-affirming institutions, they are left with two options: (1) perform an identity that is not their own, which strips them of human dignity; or (2) defy the institution and face punishment, which is quite literally violent. Forcing a transgender individual into performing their gender assigned at birth forces that individual to live in a skin that is not their own. The inability of a transgender person to be acknowledged as the gender identity they align with forces individuals to live in violence.

³⁵ See Mark Joseph Stern, *Judge: Doctors Have “Religious Freedom” to Refuse to Treat Trans Patients, Women Who’ve Had Abortions*, Slate (Jan. 3, 2017, 1:03 PM), http://www.slate.com/blogs/outward/2017/01/03/doctors_may_refuse_to_treat_transgender_patients_and_women_who_ve_had_abortions.html (discussing a court’s ruling blocking a U.S. Department of Health and Human Services regulation that prevented doctors from discriminating against transgender patients on the basis that it violated the “religious freedom” of doctors and insurance companies who view transitioning genders as “evil”).

C. The lived experiences of transgender people illustrate how today's society strips them of human dignity in a manner similar to other historically marginalized groups.

If you can't use the bathroom at your work, you can't go to work, and if you can't go to work, you can't pay bills. If you can't pay bills, you won't have a place to live . . . [N]ot being able to use the bathroom at work renders you homeless. It is a downward spiral into death.

Jeymee Semiti, Black, Age 27,
Washington, DC

Although it seems obvious that every human being should be treated with dignity, this has not been a reality for the transgender community. Rampant discrimination still exists against the transgender community³⁶ with regards to education, employment, health, family life and public accommodation, and the ability to use the bathroom just touches the surface of the myriad of

³⁶ In the 2016 National Transgender Discrimination Survey, of the trans individuals surveyed, “26% lost a job due to bias, 50% were harassed on the job, 20% were evicted or denied housing, and 78% of trans students were harassed or assaulted.” *Issues: Nondiscrimination Law*, Nat'l Ctr. for Transgender Equal. (last visited Jan. 28, 2017), <http://www.transequality.org/issues/non-discrimination-laws>.

hardship faced on a daily basis.³⁷ Further, despite the diversity of gender expression that has existed for centuries in the United States, transgender people have historically faced a unique set of challenges in accessing institutions and public accommodations. Shortly after the Civil Rights Movement in 1969, riots at the Stonewall Inn began where the LGBTQ (Lesbian, Gay, Bisexual and Transgender) community “as a group forcefully and vocally asserted their rights.”³⁸ However, largely left out of the gay rights narrative are the voices of those who spearheaded the riot: transgender women of color such as Marsha P. Johnson and Sylvia Rivera.³⁹ Even historic LGBTQ establishments such as The Stonewall Inn had exclusionary practices regarding transgender individuals, rendering them with no sanctuary to express their gender safely.⁴⁰

The roots of transgender discrimination, especially in the context of bathrooms, unnervingly mirror the roots of Jim Crow. White Americans of the World War II era “began employing the idea

³⁷ See Jamie M. Grant et al., *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* (2011).

³⁸ *Never Forget #024: Transwomen of Color Kickstarted the Gay Rights Movement (Stonewall)*, The Visibility Project (May 26, 2016), <http://www.thevisibilityproject.com/2016/05/26/never-forget-transwomen-of-color-kickstarted-the-gay-rights-movement-stonewall-uprising/>.

³⁹*Id.*

⁴⁰ Dale Carpenter, *The Myth of a Transgender Stonewall*, IGF Culture Watch (Mar. 7, 2002), <https://igfculturewatch.com/2002/03/07/the-myth-of-a-transgender-stonewall/>.

that social equality for African-Americans would lead to sexual danger for white women in bathrooms.”⁴¹ The “racially and sexually charged image of bathrooms” that followed specifically targeted black people and their use of public accommodations, and is now employed to depict transgender people as sources of sexual danger.⁴² In the same way that segregation allowed “white women [to] refuse to share bathrooms with black women,” unsupported fears of transgender people have enabled the promulgation of the notion that “civil rights protections sexually endanger women and children in public bathrooms.”⁴³ For the vast majority of *amici*, transgender people of color, these policies represent a continuation of their exclusion from basic public facilities.

⁴¹ Gillian Frank, *The Anti-Trans Bathroom Nightmare Has Its Roots in Racial Segregation*, Slate (Nov. 10, 2015, 4:55 PM), http://www.slate.com/blogs/outward/2015/11/10/anti_trans_bathroom_propaganda_has_roots_in_racial_segregation.html.

⁴² Frank, *supra*.

⁴³ Frank, *supra*.

II. EDUCATIONAL INSTITUTIONS SHOULD BE SUPPORTIVE LEARNING ENVIRONMENTS FOR ALL STUDENTS, YET THEY ARE CURRENTLY FAILING TO PROVIDE SUCH A SPACE FOR TRANSGENDER STUDENTS.

The future of some of this is the question of why is there this legal obsession with needing to have a legal gender for everyone? Why can't we ensure that there is essentially what some people have done around disability issues—why not think about universal design; why not think about everyone having access to facilities; why does everything have to be segregated or binary? I don't see that that's necessary. I think there will always be people who, at least in the near future, will want certain sex-segregated or gender-segregated spaces. But allowing trans people to access spaces they identify with is important.

Anonymous

The American history of anti-discrimination legislation for educational institutions illustrates the mandate that schools must be a place where all students have an equal opportunity to learn and develop. This mandate is threatened when a particular subgroup of students is targeted with violence, isolation, and rejection from their peers,

teachers, and community. Transgender students are experiencing such threats. Many schools are currently failing to provide transgender students with a safe school environment and imposing policies—such as the bathroom policy here—that refuse to recognize a transgender student’s gender identity.⁴⁴ Transgender students currently fear for their safety in schools, and these bathroom policies further stigmatize them as illegitimate.⁴⁵ If schools continue to ignore the need to provide all students (regardless of gender identity) with a supportive educational environment, the current hostile environment for transgender students will persist and exacerbate the disparate educational and life outcomes for transgender students.

A. As an institution where students spend their formative years, schools must provide a space where all students can learn and develop without fear of discrimination or isolation.

[E]veryone who works in a school setting should be trained, because trans people are humans. We exist and we are part of the school system. Since

⁴⁴ See, e.g., Emily A. Greytak et al., *Harsh Realities: The Experiences of Transgender Youth in Our Nation’s Schools* 39–42 (2009); Morgan Zalot & Cydney Long, *‘I Felt Like I Was Rejected’: Student in Gender Transition Finds No Place at NJ Catholic High School*, NBC10 (Sept. 12, 2016, 5:47 PM), <http://www.nbcphiladelphia.com/news/local/Camden-Catholic-Transgender-Student-Boy-Denied-Request-393169631.html>.

⁴⁵ See Greytak et al., *supra*, at x–xii, 48.

we are part of the population, we should train people to respect us as human beings. [Teachers should know] that [being trans] is not a wishy-washy choice or a lifestyle. It is intrinsic. It is innate. It is part of who they are, and by not accepting who they are, you are basically saying they should kill themselves and that they should not exist. The fundamental principle is treating them as humans and as they appear and as they come in this world, no matter who they are. Identity is not negotiable.

Jeymee Semiti, Black, Age 27,
Washington, DC

Whether the purpose of education is helping students fulfill their potential, preparing them with skills to engage in the democratic process, or teaching them critical thinking and social skills,⁴⁶ the means by which those purposes are achieved are beyond doubt: Education should be provided fairly, equitably, and inclusively.⁴⁷ That schools should not be a place of discrimination but rather a place open to all was not only recognized by this

⁴⁶ See, e.g., Angie Peifer, *The Purpose of Public Education and the Role of the School Board*, Nat'l Sch. Boards Ass'n (Aug. 19, 2014),

http://www.nsba.org/sites/default/files/The%20Purpose%20of%20Public%20Education%20and%20the%20Role%20of%20the%20School%20Board_National%20Connection.pdf.

⁴⁷ Amity L. Noltemeyer et al., *Disproportionality in Education and Special Education* 3 (2012).

Court in *Brown v. Board of Education*,⁴⁸ which represented “nothing short of a reconsecration of American ideals,”⁴⁹ but also explicitly codified in Title IV of the Civil Rights Act of 1964,⁵⁰ which prohibited discrimination in public schools on the basis of race, color, or national origin. The right to have a supportive educational environment has continued to expand through federal legislation.⁵¹

Accepting transgender students for who they are while in school is vital in guaranteeing that educational institutions are supportive for all students. Indeed, schools may be the only available place of refuge for transgender students; while some parents are supportive, many parents reject their transgender children, abuse them, refuse to act to protect them in schools, and/or kick them out of their family homes.⁵² Thus, providing transgender students with a place of refuge, even if just for part of the day, is valuable for their own development and protection. In addition,

⁴⁸ 347 U.S. 483, 495 (1954).

⁴⁹ Richard Kluger, *Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality* 713 (2004).

⁵⁰ 42 U.S.C. § 2000d (2012).

⁵¹ See generally 20 U.S.C. § 1681 (2012) (prohibiting schools receiving federal funding from discriminating against children on the basis of their sex); 29 U.S.C. § 701 (2012) (prohibiting schools receiving federal funding from discriminating against children with disabilities).

⁵² See Nicholas Ray, *Lesbian, gay, bisexual and transgender youth: An epidemic of homelessness* 2 (2006); Arnold H. Grossman et al., *Parents' Reactions to Transgender Youths' Gender Nonconforming Expression and Identity*, 18 J. of Gay & Lesbian Soc. Servs. 3, 12 (2005).

transgender youth are coming out at earlier ages,⁵³ and if schools refuse to recognize their gender identity, these students will have to spend even greater amounts of time being yoked with a gender identity not their own.⁵⁴

Moreover, Gloucester County Public Schools has dedicated itself to “creating and sustaining an environment that emphasizes education and embraces diversity.”⁵⁵ So the law and the school board are *both* “dedicated” to providing for a safe, educational environment by not allowing for arbitrary discrimination against students simply because they identify a certain way. The same dedication must include protection of all students regardless of gender identity, even if their gender identity does not match the one assigned at birth.

⁵³ See, e.g., John Boone, *9 Inspirational Stories of Transgender Kids & Their Supportive Parents*, ET (Apr. 23, 2015, 3:40 PM),

http://www.etonline.com/news/163373_9_inspirational_stories_of_transgender_kids_their_supportive_parents/; Marcus Scott, *8-Year-Old Transgender Boy Performs Epic Coming Out Rap*, Latin Post (Nov. 12, 2014, 9:43 AM), <http://www.latinpost.com/articles/25680/20141112/8-year-old-transgender-boy-performs-epic-coming-out-rap.htm>.

⁵⁴ See *Time in school: How does the U.S. compare?*, Ctr. for Pub. Educ. (Dec. 2011), <http://www.centerforpubliceducation.org/Main-Menu/Organizing-a-school/Time-in-school-How-does-the-US-compare> (finding that American students are required to spend between 175 and 180 days at school).

⁵⁵ *Mission and Goals*, Gloucester Cty. Pub. Sch., <http://www.gets.gc.k12.va.us/SchoolBoard/MissionandGoals/tabid/56478/Default.aspx> (last visited Feb. 3, 2017).

B. By failing to provide transgender students with supportive learning environments, schools are negatively impacting the educational and life outcomes of transgender students because young transgender students are more likely than non-transgender students to experience exclusion, harassment, and victimization.

The gender identities of transgender students are frequently rejected by both peers and adults, resulting in higher levels of verbal and physical harassment, assault, and isolation for transgender students in K–12.⁵⁶ Nearly nine out of ten transgender students (87%) have been verbally harassed (*e.g.*, called names or received threats) because of their gender expression, with less than a fifth of the transgender students reporting that school personnel intervened in such situations.⁵⁷ Moreover, over half of transgender students experienced physical harassment (*e.g.*, pushed or shoved) and over a quarter experienced physical assault (*e.g.*, punched, kicked, or injured with a weapon) at school because of their gender expression.⁵⁸ Transgender students also experience sexual and electronic harassment, have rumors and lies spread about them, are excluded or left out by

⁵⁶ See Grant et al., *supra*; Greytak et al., *supra*.

⁵⁷ Greytak et al., *supra*, at 12, 19.

⁵⁸ *Id.* at 20.

other students, and have their property damaged or stolen.⁵⁹

Moreover, transgender students have experienced direct harassment not just from their peers, but also from their teachers and school administrators. More than a third of transgender students in one survey reported hearing a teacher or school staff make homophobic, sexist, and otherwise harmful remarks about a student's gender expression.⁶⁰ In another survey, eight percent of transgender students reported that a teacher or school staff member physically or sexually assaulted them.⁶¹ These violent practices deprive transgender students of any safe space at school.

A hostile school environment for transgender students has several deleterious effects on their educational development and attainment. As one New York City focus group noted, “[a]ttending school was reported to be the most traumatic aspect of growing up” for transgender students.⁶² Transgender students are more likely to skip class or school due to safety concerns, causing them to miss important class time that should otherwise be spent providing them with an education.⁶³ Unsurprisingly, transgender students who have experienced some form of harassment or assault

⁵⁹ *Id.* at 23.

⁶⁰ *Id.* at 12.

⁶¹ Grant et al., *supra*, at 38.

⁶² See Arnold H. Grossman & Anthony R. D’Augelli, *Transgender Youth*, 51 *J. of Homosexuality* 1, 122 (2006).

⁶³ See Greytak et al., *supra*, at 16–17.

have significantly lower grade point averages and are less likely to have educational aspirations to pursue post-secondary education.⁶⁴

Beyond these educational impediments, living in a hostile climate can increase the risk of or exacerbate a transgender student's depression, substance abuse, or suicidal behavior. According to the National Association of School Psychologists, "neither having a transgender identity nor being perceived as gender diverse is a disorder, and . . . efforts to change a person's gender identity are ineffective, harmful, and discriminatory."⁶⁵ Transgender students' gender nonconformity and experience of school victimization specifically put them at risk of both depression and low life satisfaction.⁶⁶ Moreover, transgender students who experience physical assault in a school setting are more likely to attempt suicide.⁶⁷ Thus, the lack of a safe environment at school not only negatively impacts the transgender student's educational outcomes but also the trajectory of their mental and physical health into adulthood.

⁶⁴ See *id.* at 26–27.

⁶⁵ Nat'l Ass'n of Sch. Psychologists, *Position Statement: Safe Schools for Transgender and Gender Diverse Students* 1 (2014).

⁶⁶ See Russell B. Toomey et al., *Gender-Nonconforming Lesbian, Gay Bisexual, and Transgender Youth: School Victimization and Youth Adult Psychosocial Adjustment* (2010).

⁶⁷ Grant et al., *supra*, at 33.

C. The bathroom policy at issue exacerbates the lack of security and negative climate transgender students experience in schools.

[W]hat's in a bathroom? How can a place where humans turn to multiple times a day, to relieve themselves, become a liberatory tool for trans and gender non-conforming people? Well it's quite simple, when institutions show support for marginalized communities by creating space for them, people take notice and people change.

Avatara Smith-Carrington, Black,
Age 24, Baltimore, MD

[A] person has to be safe for whatever restroom they pick to use and education is very important. There needs to be more stories on television and the news where people make this mistake of making trans people feel unsafe. If there is no consequence, people will keep thinking it's okay.

SaVanna Wanzer, Black, Age 54,
Washington, DC

Not allowing a transgender student to use the bathroom that corresponds to their gender identity contributes to the negative and violent school climate that transgender students currently live in. This policy takes a simple everyday task and turns it into an issue that puts a transgender

student on display to the school and the community, subjecting them to potential ridicule, harassment, and isolation. After the Gloucester County School Board adopted its new transgender restroom policy, G.G. felt he had been “stripped of his privacy and turned into a public spectacle.”⁶⁸ G.G. has been referred to as a “girl,” “young lady,” and “freak,” and compared to a “dog” wanting to “urinate on fire hydrants.”⁶⁹ The nurse’s restroom and the separate single-stall restrooms are reminders that the school sees and treats him as “different.”⁷⁰ As a result, he has purposefully avoided drinking liquids and repeatedly developed painful urinary tract infections, which are distracting him from focusing on his education.⁷¹ *Amici* can understand and relate to G.G.’s struggle over his bodily functions while at school.

During the ten-minute break for [a two-hour] class, I got up to use the restroom (as did several other students from the class). I entered the men’s room with the other students and everything was normal. As I was leaving, another student from class was entering the men’s restroom. When he saw me, he stopped in the doorway, backed out of the doorway to look at the sign by the door (to confirm that it was, in fact, the men’s room) and then

⁶⁸ J.A. at 72–73.

⁶⁹ J.A. at 72.

⁷⁰ J.A. at 73–74.

⁷¹ J.A. at 74.

looked back at me. He proceeded to do this several times while a number of my other classmates looked on. . . . [T]hat affected me when I went back to class. I found it extremely difficult to focus and remain engaged. My embarrassment over what happened, and my embarrassment that so many of my classmates witnessed the questioning of my identity and my masculinity, affected me emotionally and academically. Because schools fail to validate students' identities as a general principle, students do not learn to accept their classmates for who they are.

Reagan Greenberg, White, Age 24,
Baltimore, MD

I remember asking the teacher "Where is the bathroom?" and she always reminded me there is a really quiet bathroom that I could go use. I was like "Wait, I want to use the regular bathroom, not just the 'quiet' bathroom." She knew I was a transgender person, and I believe her intention wasn't bad at all. But at the same time she was reminding me that I was different in her eyes. It was really awkward.

Alexa Rodriguez, Salvadoran, Age 40
Prince George's County, MD

G.G. and *amici*'s stories illustrate the stigma and burden attached to not being able to use the school bathroom that corresponds to their gender identity. Not accepting a transgender person's gender identity—regardless of whether it is in an invidious (calling them hurtful names) or a benign (telling them to use a “quiet” bathroom) way—is an act of social violence with harmful consequences on their wellbeing and their education.

The opposing party and its supporting *amici* have heavily focused on the privacy that non-transgender students have in their nude bodies against the opposite gender—a concern not implicated by this bathroom policy. But even moving beyond bathrooms, the argument for privacy is based on an erroneous and fear-driven assumption that transgender students want to invade the privacy of others. Transgender people, including G.G. and *amici*, are not looking to invade anybody else's privacy when they enter a bathroom. They are in the bathroom to do what everyone else is in there to do: take care of their business.⁷² If anything, transgender individuals are more at risk of having their privacy invaded by verbal threats or physical violence in bathrooms than their non-transgender counterparts.⁷³ Moreover, by focusing

⁷² Julie Bosman & Motoko Rich, *As Transgender Students Make Gains, Schools Hesitate at Bathrooms*, N.Y. Times (Nov. 3, 2015), https://www.nytimes.com/2015/11/04/us/as-transgender-students-make-gains-schools-hesitate-at-bathrooms.html?_r=0.

⁷³ Compare Jody L. Herman, *Gendered Restrooms and Minority Stress: The Public Regulation of Gender and its Impact on Transgender People's Lives* 71 (2013) (finding 68%

only on the concerns of non-transgender students, this approach fails to account for how the policy affected G.G.'s own privacy and wellbeing. The rationale that schools need to only protect a non-transgender student's privacy is unjustified and ignores the lived experiences of G.G. and other transgender students across the country.

Transgender students are equally deserving as non-transgender students of a safe environment at their schools, but this bathroom policy is just one of many barriers that prevent transgender students from fully accessing educational institutions.

of transgender survey participants experienced verbal harassment and 9% experienced physical assault in gender-segregated public restrooms), *with* Marcie Bianco, *Statistics Show Exactly How Many Times Trans People Have Attacked You in Bathrooms*, Mic (Apr. 2, 2015), <https://mic.com/articles/114066/statistics-show-exactly-how-many-times-trans-people-have-attacked-you-in-bathrooms#.FZQWrqT9M> (finding zero reports of transgender people attacking others in public restrooms).

III. ACKNOWLEDGING THAT A TRANSGENDER INDIVIDUAL SHOULD NOT BE FORCED TO CARRY THE BURDEN OF A GENDER IDENTITY NOT THEIR OWN DOES NOT REQUIRE ARTICULATION OF A NEW RIGHT, ONLY A RECOGNITION THAT TRANSGENDER PEOPLE EXIST, HAVE ALWAYS EXISTED, WILL ALWAYS EXIST, AND ARE DESERVING OF HUMAN DIGNITY AND SIMPLE RESPECT.

- A. Transgender individuals are not demanding a new right but rather asking for an acknowledgment that they exist in American society.**

Each day I encounter signs that my existence is not accepted in our world. It may be as simple as the “Dear Sir/Madam” emails addressed to my school’s journal or as insidious as someone knowingly misgendering me. It may be as ubiquitous as the bathrooms stubbornly maintaining their dichotomous spaces, and as heartless as the school administrator who said if I had time to study in the library, I had time to walk across the building to use the gender-neutral restrooms. Yet, when others make space for my identity and help build a congruence between my sense of self

and my given place in the world, my heart could soar out of my chest. The debilitating fear of in-class participation is replaced by a proud answer when a professor refers to me as “Mx.” with the same facility that she calls other students “Mr.” or “Ms.” I start to believe that I could work a full day without apprehension when an employer shows an openness to using my pronouns. Perhaps I will always feel driven to work harder to prove my worth and my sanity, but if legal authorities demonstrate a commitment to accepting non-binary and trans identities, then maybe I can finally find peace.

Sam Williamson, White, Age 26,
Baltimore, MD

While *Obergefell* extended the right to marry to the LGBTQ community, the Court famously proclaimed that “[t]he Constitution promises liberty to all within its reach, a liberty that includes certain specific rights that allow persons, within a lawful realm, *to define and express their identity.*”⁷⁴ This is not a question of transgender people asking for a *right*, as they already have the right to live in a manner that corresponds with their gender identity. Rather, the question is whether society will *affirm* their gender identity and, if not, what level of violence transgender

⁷⁴ 135 S. Ct. at 2593 (emphasis added).

people of all ages will have to endure. Violence, both physical and symbolic, is committed against the transgender community on a daily basis.

Mis-gendering is violence. Not having adequate access to restrooms that affirms one's gender . . . is violence. Being routinely denied opportunities because your body is read as an anomaly . . . is violence. Shrinking and folding into yourself because you have internalized that hate that chips away at your performance of gender . . . is violence.

Avatara Smith-Carrington, Black,
Age 24, Baltimore, MD

Misgendering causes suicidal thoughts. The biggest issue [for me] was people refusing to use the right pronouns, and it really messed me up psychologically. I take antidepressants now because of that. I am actually on disability benefits now because of that. It is hard for me to actually be in public now. It really messes you up.

Jeymee Semiti, Black, Age 27,
Washington, DC

I remember one time I was with my friends at McDonalds near my house I was presenting female at this time. I tried to use the bathroom. The security guard was reading the newspaper in the corner near the

bathroom, and he hit my foot with the paper and said, "You know which bathroom to use." He was calling me sir and telling me that the law in the United States says males need to use the male bathroom. And I said, "Excuse me, do I look like a male to you?" Even after talking to the managers, nothing happened. At the end of the night I was just leaving with my head down because I felt like nobody supported me, not even the law.

Alexa Rodriguez, Salvadoran, Age 40,
Prince Georges County, MD

When I first started "T" [(testosterone)], I was still going into the women's restroom because I was uncomfortable with going into the men's restroom. One time, this lady came in behind me and said, "Sir! Sir!" I was ignoring her and going into the women's restroom because I was still not comfortable with that label yet. The next thing I know, the janitor comes in and says, "You can't be in here. What are you doing in the women's restroom? We have reports that you were bothering and accosting somebody." So that is what made me stop going into the women's restroom. But in the men's restroom, there was once this man who didn't say anything, but he just stood over me. He was looking at me, and he

made me feel uncomfortable to be in there as well.

Devon Tensley, Black, Age 48,
Washington, DC

The case before the Court addresses which bathroom a transgender boy can use. But the bigger policy implication is whether all institutions and public accommodations will be accepting of the transgender population, or whether they will continue to be sites where transgender people are treated differently. The decision to validate or not validate a transgender person's existence within institutions will have an impact on their lives and society generally.

When I entered law school, I had yet to change my name legally. For the first nine months until I legally changed my name, and still today, I have to send an email to all of my professors telling them that I am a transgender man and that my name and gender may not match the school's records for me. So many of my professors have been supportive and validating. This has been a huge fear for me because, coming out as transgender, especially to someone who holds so much authority and influence, is a very daunting thing. And the support that I received from these professors really helped in my success at school. Conversely, not being supported by my

professors has had a hugely negative impact on my academic performance and my mental state in general. I have [been] misgendered by a number of professors, and students, both in private and during class. The embarrassment and discomfort that accompanies an experience like this is devastating to me. When I hear someone misgendering me, it is as if glass is shattering all around me. It makes staying focused and present difficult, and it makes motivating myself to do my work that much harder.

Reagan Greenberg, White, Age 22,
Baltimore, MD

If the Court decides to uphold the bathroom policy here, transgender people will be required, if they want acceptance in American society, to use segregated facilities (*i.e.*, the quiet hidden bathroom) or to suppress the gender innate to their identity.

B. The burden of performing a gender identity that is not yours is unimaginably cruel.

We are not going to change – it is not like we chose this, we did not choose to be born.

Jeymee Semiti, Black, Age 27,
Washington, DC

Preventing transgender students from accessing the bathroom that aligns with their gender identity is an outright rejection of their personhood. Efforts to limit access to facilities in public schools and universities may be promulgated under the semblance of protecting children, when, in actuality, all students are hurt by this gender policing. Such policies heighten levels of violence and harassment within schools, and often remove transgender students from participation in activities with their peers. If transgender students cannot be accommodated in schools, all students are impacted by this failure. Coming to terms with gender dysphoria and dissonance with one's gender assigned at birth is even more difficult when the environment one is coming out in is not only unsupportive, but also encouraging of invalidating the gender identity of transgender youth. Burdening a transgender student to carry a gender identity that is not their own "while performing one of the most essential human functions constitutes severe and pervasive treatment, and creates an environment that is objectively and subjectively hostile, intimidating or offensive."⁷⁵

Concerns articulated by those in favor of "bathroom policies" operate under the assumption that an individual would *choose* to carry the astronomical mental and physical burden of performing a gender identity that is not their own. But as *amici's* narratives illustrate, the only choice they are making is to live their lives openly and

⁷⁵ Colo. Dep't of Regulatory Agencies, Div. of Civil Rights, *Determination for Charge No. P20130034X*, at 12 (2013).

faithfully to the gender identity that is innate to their being.

For every decision that I make, I consider how being transgender will affect the outcome[:] I take classes with professors who I know will respect my gender identity. I choose to go to restaurants that I know have either single-stall or gender-neutral bathrooms. I plan how much liquid to drink when I know access to a safe and comfortable restroom may not be readily available to me.

Reagan Greenberg, White, Age 22,
Baltimore, MD

I think that right now my feelings on this whole thing as far as G.G. is concerned is to request the Court to look at human rights more so than any specific right. G.G. needs to be treated as an individual and as a human being, and to say that he has to go to a female bathroom when that is not how he perceives himself to be, that is violence against him.

Achim Howard, Black, Age 46,
Washington, DC

CONCLUSION

Transgender people are deprived of human dignity when society misgenders them or otherwise refuses to validate their gender identity.

Preventing transgender people from using the bathroom that corresponds to their gender identity is just one of many instances of such deprivation. The foregoing narratives are painful reminders of the societal obstacles that transgender individuals currently have to navigate, and why institutional invalidation is an act of violence against them. Withholding validation of a transgender person's gender identity compromises their human dignity and labels them as "different" and "unworthy" of the validation that non-transgender individuals regularly receive. Transgender people are in every sense of the phrase, a part of "We the People." Nothing the Court decides will alter this fact of life but the Court's decision does have the power to change whether as human beings transgender people will be treated with dignity and respect.

For the foregoing reasons, *amici* respectfully request that the Court affirm the decision of the Court of Appeals for the Fourth Circuit.

Respectfully submitted,

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