No. 15-2056

In the

United States Court of Appeals

for the

Fourth Circuit

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

Plaintiff-Appellant,

– v. –

GLOUCESTER COUNTY SCHOOL BOARD,

Defendant-Appellee.

On Appeal from the United States District Court for the Eastern District of Virginia, Newport News Division
No. 4:15-cv-54

BRIEF OF NATIONAL WOMEN'S LAW CENTER, *ET AL.*, AS *AMICI CURIAE* IN SUPPORT OF APPELLANT

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INTEREST OF *AMICI CURIAE*

The National Women's Law Center is a nonprofit legal organization that is dedicated to the advancement and protection of women's legal rights and the expansion of women's opportunities. Since 1972, the Center has worked to secure equal opportunity in education for girls and women through full enforcement of the Constitution and laws prohibiting discrimination. The Center has participated in numerous cases involving gender discrimination before this Court and the courts of appeals. Descriptions of the other *amici* are included in an appendix to this brief.

Amici submit this brief because the policy at issue—which bars a transgender boy from using the same restroom facilities as other boys—rests on the same sort of discriminatory stereotyping that historically has been used to justify discrimination against women in schools and the workplace. Accordingly, *amici*'s perspective and experience in addressing such issues may assist the Court in resolving this case.[1]

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Title IX rests, in substantial part, on the rejection of gender stereotypes—that is, on rejection of the insistence that an individual's behavior and appearance must match the stereotype associated with his or her gender.

[1] Pursuant to Fed. R. App. P. 29(a)(2), *amici* state that no counsel for a party authored this brief in whole or in part and that no person other than *amici* or their counsel made a monetary contribution to its preparation or submission. All parties have consented to the filing of this brief.

That is precisely the sort of stereotyping that underlies the policy challenged in this case: Defendant's requirement that G.G. use a separate restroom facility from the other boys ("the Restroom Policy") is based on a discriminatory stereotype about what it means to be male.

The Restroom Policy relegates transgender students to a separate facility, while permitting all other students to use facilities that correspond to their gender identity. This differential treatment is a form of sex discrimination. It is well established that statutory references to "sex" encompass more than a person's sex assigned at birth. Courts have firmly rejected rules governing workplaces and schools that turn on reproductive anatomy. And forbidding this form of discrimination against transgender students is necessary to fulfill the purpose of Title IX, which Congress enacted with the broad goal of eradicating gender discrimination in educational programs.

Against this background, defendant's contention that it adopted its restrictive policy to protect students', and particularly cisgender women students', privacy interests is unavailing. That sort of protective pretext has historically been advanced to justify discriminatory policies, and is grounded in the very sorts of harmful stereotypes that civil rights laws are designed to overcome. Such pretexts, for example, have long been asserted in defense of rules that kept women out of certain jobs and racial minorities out of public facilities. In the last several decades, however, the courts have approached

such "protective" rules with the skepticism they deserve, and have struck them down. The same probing review—and outcome—is warranted here.

ARGUMENT

I. DISCRIMINATION AGAINST TRANSGENDER INDIVIDUALS IS SEX DISCRIMINATION.

A. Discrimination against transgender individuals for their nonconformity to sex stereotypes constitutes sex discrimination.

Defendant argues that its Restroom Policy reflects the anatomical differences between men and women (Appellee's Supp. Br. 1), and therefore is not sex discrimination. As discussed below, however, categorically pinning an individual's sex only to their sex identified at birth is a prohibited form of sex discrimination.

It is settled that rules prohibiting discrimination on the basis of "sex" are premised, in substantial part, on rejection of the "insist[ence] that [individuals] match[] the stereotype associated with their group . . . ." *Price Waterhouse v. Hopkins*, 490 U.S. 228, 251 (1989) (plurality opinion). As the Supreme Court has explained:

> [I]n forbidding employers to discriminate against individuals because of their sex, Congress intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes. An employer who objects to aggressiveness in women but whose positions require this trait places women in an intolerable and impermissible catch 22: out of a job if they behave aggressively and out of a job if they do not.

Id. (internal quotation marks and citation omitted); *see also id.* at 272-73 (O'Connor, J., concurring in the judgment); *Nevada Dep't of Human Res. v. Hibbs*, 538 U.S. 721, 735-37 (2003); *Lewis v. Heartland Inns of Am., L.L.C.*, 591 F.3d 1033, 1041-42 (8th Cir. 2010); *Nichols v. Azteca Rest. Enter., Inc.*, 256 F.3d 864, 875 (9th Cir. 2001); *Higgins v. New Balance Athletic Shoe, Inc.*, 194 F.3d 252, 261 n.4 (1st Cir. 1999).

Like courts addressing Title VII claims, courts addressing Title IX claims treat sex stereotyping of men and women as a form of sex discrimination.[2] For example, in an oft-cited Title IX case where a male student who wore an earring, had long hair, and quit the football team was harassed by classmates with homophobic slurs and violence, the court found sufficient evidence to support the conclusion that the harassment was motivated by the plaintiff's perceived "failure to conform to stereotypical gender expectations." *Theno v. Tonganoxie Unified Sch. Dist. No. 464*, 394 F. Supp. 2d 1299, 1304-06 (D. Kan. 2005). Specifically, the court pointed to evidence that "plaintiff did not conform to his peers' stereotypical expectations concerning how a teenage boy should act" and classmates harassed him "in an effort to debase and derogate his masculinity." *Id.* at 1307.

Similarly, in *Doe v. Brimfield Grade School,* the court permitted a student's Title IX claim against his school district to proceed where he alleged

[2] Courts frequently look to Title VII case law when interpreting Title IX. *See Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 616 n.1 (1999).

that, in response to his reports of harassment, administrators urged him to "stop acting like a little girl." 552 F. Supp. 2d 816, 823 (C.D. Ill. 2008). The court reasoned that the school had allowed the harassment to "continue based on the stereotypical perception that John was 'not man enough.'" *Id.*; *see also Wolfe v. Fayetteville, Ark. Sch. Dist.*, 648 F.3d 860, 867 (8th Cir. 2011); *Pratt v. Indian River Cent. Sch. Dist.*, 803 F. Supp. 2d 135, 152 (N.D.N.Y. 2011); *Montgomery v. Indep. Sch. Dist. No. 709*, 109 F. Supp. 2d 1081, 1092 (D. Minn. 2000).

The U.S. Department of Justice and U.S. Department of Education's Office for Civil Rights, responsible for administrative enforcement of Title IX, also interpret Title IX's broad prohibition on sex discrimination to encompass harassment of boys and girls based on sex stereotypes. At the conclusion of a joint investigation by the agencies into Minnesota's Anoka-Hennepin School District, the two agencies entered into a consent decree with the school district to address long-standing harassment of both boys and girls who did not conform to gender stereotypes. Letter from Debbie Osgood, Dir., Office for Civil Rights, U.S. Dep't of Educ., to Dennis Carlson, Superintendent, Anoka-Hennepin Sch. Dist. 3 (Mar. 15, 2012). According to the Office for Civil Rights, "[f]emale students reported being called 'manly,' 'guy,' or 'he-she'; male students reported being called 'girl,' and 'gay boy,' and being told, 'you're a guy, act like it.'" *Id.*

Discrimination against transgender individuals rests in large part on just this sort of stereotyping—the view that a transgender student like G.G. is not a "real" boy because he does not conform to stereotypes about what it means to be male. Title IX would not permit a school to force a cisgender boy who identifies as male, but does not conform to stereotypes of masculinity, to use a separate restroom. Such a rule would be struck down under Title IX for relying on impermissible sex stereotyping. Similarly, the Restroom Policy in this case violates Title IX because it is premised on stereotypical expectations of what it means to be a boy; in defendant's view, G.G. is both perceived as "not male enough" or not a "real" boy—and therefore should not be treated as male—but also as acting "too male" for his sex identified at birth. In both circumstances, a student is singled out and excluded because his gender expression and his sex identified at birth are not in accord with social expectations.

Courts consistently have recognized discrimination against transgender people as impermissible sex stereotyping. *See, e.g.*, *Glenn v. Brumby*, 663 F.3d 1312, 1320 (11th Cir. 2011) ("[A] government agent violates the Equal Protection Clause's prohibition of sex-based discrimination when he or she fires a transgender . . . employee because of his or her gender nonconformity."); *Barnes v. City of Cincinnati*, 401 F.3d 729, 737 (6th Cir. 2005) (condemning demotion of male transgender police officer for not "conform[ing] to sex stereotypes concerning how a man should look and behave" as violative of Title VII); *Smith v. City of Salem*, 378 F.3d 566, 572 (6th Cir. 2004) (con-

demning suspension of a transgender firefighter "based on [her] failure to conform to sex stereotypes by expressing less masculine, and more feminine mannerisms and appearance" as violative of the Equal Protection Clause and Title VII); *Schwenk v. Hartford*, 204 F.3d 1187, 1201 (9th Cir. 2000) (discrimination against "anatomical male[] whose outward behavior and inward identity did not meet social definitions of masculinity" is actionable sex discrimination under Title VII). This case falls squarely within that tradition.

B. Discrimination against transgender individuals because they are transgender is inherently discrimination "on the basis of sex."

Defendant's Restroom Policy constitutes discrimination based on transgender status because G.G. is denied access to the common boys' restrooms while other boys are not. On the face of it, this discrimination against someone because he is transgender is "related to sex or ha[ving] something to do with sex." *Fabian v. Hosp. of Cent. Conn.*, 172 F. Supp. 3d 509, 527 (D. Conn. 2016) (citation omitted). Under such a policy, transgender people are treated differently because their gender identity and sex identified at birth no longer match. Accordingly, not extending Title IX's protection to a student who has undergone a gender transition would be "blind . . . to the statutory language itself." *Schroer v. Billington*, 577 F. Supp. 2d 293, 307 (D.D.C. 2008).

Petitioner's discriminatory Restroom Policy cannot be saved on the theory that it is not specifically directed at disfavoring women or men as a group. As the court in *Schroer v. Billington* explained:

> Imagine that an employee is fired because she converts from Christianity to Judaism. Imagine too that her employer testifies that he harbors no bias toward either Christians or Jews but only "converts." That would be a clear case of discrimination "because of religion." No court would take seriously the notion that "converts" are not covered by the statute. Discrimination "because of religion" easily encompasses discrimination because of a *change* of religion.

577 F. Supp. 2d at 306. By analogy, discrimination "because of . . . sex" encompasses discrimination because of a change of sex. *Id.* (ellipses added by the court); *see also Fabian*, 172 F. Supp. 3d at 527 (holding that anti-transgender discrimination is prohibited by Title VII, in part based on *Schroer* analogy).

C. Reproductive anatomy does not determine identity or social role.

By the same token, the Supreme Court has long recognized that, under anti-discrimination rules like Title VII and Title IX, reproductive anatomy does not determine an individual's role in society. *Cf.* Appellee's Supp. Br. 23-28 (defining sex as primarily determined by reproductive capacity). This principle is fundamental to sex equality.

In *Int'l Union, United Auto., Aerospace & Agric. Implement Workers v. Johnson Controls, Inc.*, 499 U.S. 187, 206 (1991), for example, the Court held

that employees' pregnancies or capacities to become pregnant in the future were not valid bases upon which to exclude the employees from factory work that might pose a risk to a fetus. *See also Kocak v. Cmty. Health Partners of Ohio, Inc.*, 400 F.3d 466, 470 (6th Cir. 2005) (applicant "cannot be refused employment on the basis of her potential pregnancy"). In doing so, the Court made clear that the social meaning ascribed to reproductive anatomy—in the case of *Johnson Controls*, that people with childbearing capacity are unfit for certain types of traditionally masculine work—is not a permissible basis for discrimination. *See* Reva Siegel, *Reasoning from the Body: A Historical Perspective on Abortion Regulation and Questions of Equal Protection*, 44 Stan. L. Rev. 261, 281 (1992) ("As history amply demonstrates, claims about women's bodies can in fact express judgments about women's roles."). As the Court explained, the employer in question was wrong to treat every person with a womb as first and foremost a future mother rather than a worker: "It is no more appropriate for the courts than it is for individual employers to decide whether a woman's reproductive role is more important to herself and her family than her economic role." *Johnson Controls*, 499 U.S. at 211.

Similarly, the insight that anatomy will carry different meaning for different people underlies broader pregnancy discrimination jurisprudence beyond the specific questions presented in *Johnson Controls*. People manage the impact of childbearing and childrearing on the rest of their lives in different ways. The Supreme Court thus has noted that it is impermissible to ig-

nore these individual distinctions and rely instead on sweeping stereotypes. For example, employers are prohibited from assuming that employees who have recently given birth will be too consumed by their parenting duties to make good workers. *Phillips v. Martin Marietta Corp.*, 400 U.S. 542, 544 (1971). Nor may an employer conclude, without a doctor's judgment rooted in evidence, that a pregnant employee will be unable to fulfill all job responsibilities. *E.g.*, *Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632, 644 (1974); *Maldonado v. U.S. Bank*, 186 F.3d 759, 768 (7th Cir. 1999); *Deneen v. Nw. Airlines, Inc.*, 132 F.3d 431, 435-36 (8th Cir. 1998). On the other side of the coin, a woman's *lack* of childbearing capacity is not a valid basis upon which to discriminate. *Hall v. Nalco Co.*, 534 F.3d 644, 649 (7th Cir. 2008).

These cases share an incontrovertible principle: Reproductive organs are not determinative of who a person is. To the contrary, free decisions about reproductive anatomy and capacity are among "the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy." *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 851 (1992). Just like the worker in the Johnson Controls factory, young transgender people must be free to shape their own destinies and decide the meaning of their own bodies.

II. PROTECTING TRANSGENDER STUDENTS IS NECESSARY TO FULFILL TITLE IX'S GOAL OF ERADICATING DISCRIMINATION BASED ON GENDER IN EDUCATIONAL PROGRAMS.

Title IX's text and fundamental purpose compel a broad reading of the statute that invalidates defendant's Restroom Policy. The statute—which uses general and expansive language—was passed with the broad purpose of eradicating gender discrimination in educational programs. The Supreme Court's long-standing recognition of this broad purpose (*e.g.*, *N. Haven Bd. of Educ. v. Bell* 456 U.S. 512, 521 (1982)) rests on the expressed goals of its drafters and principal sponsors, who regarded the statute as a comprehensive effort to combat sex-based obstacles, especially discriminatory stereotypes.

A. Congress intended Title IX to be a comprehensive prohibition on all forms of sex discrimination in all aspects of education.

1. Congress designed Title IX to enact a broad, comprehensive effort against all forms of sex discrimination in education.

Title IX was intended to serve as a part of the larger effort to eradicate gender discrimination in society writ large. In introducing Title IX, Senator Birch Bayh, its principal sponsor, presented a bold goal: the drafters intended the "impact of this amendment" to be "far-reaching" (118 Cong. Rec. 5808 (1972) (statement of Sen. Bayh)),[3] as it was "designed to root out, as thor-

[3] The Court has noted that "Senator Bayh's remarks, as those of the sponsor of the language ultimately enacted, are an authoritative guide to the statute's construction." *N. Haven Bd. of Educ.*, 456 U.S. at 526-27.

oughly as possible at the present time, the social evil of sex discrimination in education" (*id.* at 5804).

In introducing Title IX's predecessor bill, Senator Bayh represented it as a "forward step . . . in protecting equal rights for all Americans." 117 Cong. Rec. 30,404 (1971) (statement of Sen. Bayh); *see also Discrimination Against Women: Hearings Before the H. Special Subcomm. on Educ. of the Comm. on Educ. and Labor on Section 805 of H.R. 16098*, 91st Cong., 2d Sess. 439 (1970) [1970 Hearings] (statement of Daisy K. Shaw, Dir. of Educ. & Vocational Guidance of N.Y.C.) (stating that the ultimate goal of the measures is "an open society, one which offers equal opportunity and freedom of choice to all").[4]

Translating this broad goal into the educational context, Senator Bayh premised Title IX's precursor bill on the principle that "educational opportunity should not be based on sex" (117 Cong. Rec. 30,406 (1971) (statement of Sen. Bayh)), and represented its purpose as ensuring "equal access for women and men students to the educational process and the extracurricular activities in a school . . . ." *Id.* at 30,407. Similarly, in introducing Title IX, Senator Bayh stated as its goal:

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[4] The 1970 Hearings involved a bill introduced in the House of Representatives by Representative Edith Green that sought to add "sex" to Title VI of the Civil Rights Act of 1964. They provide relevant legislative history because, as the Supreme Court has recognized, Title IX grew out of these hearings. *N. Haven Bd. of Educ.*, 456 U.S. at 523 n.13; *seeCannon v. Univ. of Chicago*, 441 U.S. 677, 694 n.16 (1979).

> [T]he essential guarantees of equal opportunity in education for men and women . . . an equal chance to attend the schools of their choice, to develop the skills they want, and to apply those skills with the knowledge that they will have a fair chance to secure the jobs of their choice with equal pay for equal work.

118 Cong. Rec. 5808 (1972) (statement of Sen. Bayh). He emphasized that the provision was meant to combat "sex discrimination" in "all facets of education." *Id.* at 5803 (statement of Sen. Bayh).[5]

Representative Edith Green, who introduced the bill that ultimately became Title IX in the House of Representatives, envisioned the same goal, acknowledging that sex discrimination constitutes "psychological warfare" against individuals regardless of gender, and expressing her support for the measures adopted in Title IX as "necessary to insure equal rights, equal opportunities, and equal status for human beings of both sexes." 1970 Hearings at 269 (statement of Rep. Green). In line with this broad purpose, Title IX was intended to address discrimination in all forms.

The Supreme Court has long recognized Congress's broad purpose in enacting Title IX and the courts' corresponding need to interpret the statute expansively to effectuate that purpose. More than thirty years ago, for example, in *North Haven Board of Education v. Bell*, the Court recognized that to

[5] Congress, it is true, did not intend to eliminate separate restroom facilities for men and women. *See generally* 118 Cong. Rec. 5807 (1972) (statement of Sen. Bayh); 117 Cong. Rec. 30,407 (1971) (statement of Sen. Bayh). That separate facilities may be provided for each gender, however, says nothing about whether transgender students may be forced by an educational institution to act in accord with the sex assigned at their birth.

"give [Title IX] the scope that its origins dictate, we must accord it a sweep as broad as its language." 456 U.S. at 521. In 2005, the Court noted that "'[d]iscrimination' is a term that covers a wide range of intentional unequal treatment; by using such a broad term, Congress gave the statute a broad reach." *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 175 (2005).[6] The expansive language used by Congress in Title IX therefore invites courts to apply the anti-discrimination laws to circumstances beyond the factual context before the legislators at the time of enactment—like discrimination against transgender individuals.

To be sure, Congress did not specifically have transgender students in mind in enacting Title IX. *See* Appellee's Supp. Br. 29. But as the Supreme Court has observed in analogous circumstances, "whether the Congress that enacted" Title IX "specifically intended the Act to cover" transgender students "is not determinative." *Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 147 (2000); *see also Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 185 (1978) ("It is not for [the Court] to speculate, much less act, on whether Congress would have altered its stance had the specific events of this case been anticipated.").

In *Oncale v. Sundowner Offshore Servs., Inc.*, for example, Justice Scalia wrote for a unanimous Court that "statutory prohibitions often go beyond

the principal evil to cover reasonably comparable evils, and it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed." 523 U.S. 75, 79 (1998). As a result, even though "[m]ale-on-male sexual harassment in the workplace was assuredly not the principal evil Congress was concerned with when it enacted Title VII," the broad language of Title VII extended to that "reasonably comparable evil." *Id.* *See also Gonzales v. Oregon*, 546 U.S. 243, 288 (2006) (Scalia, J., dissenting) ("We have repeatedly observed that Congress often passes statutes that sweep more broadly than the main problem they were designed to address."). Discrimination against transgender students is a "reasonably comparable evil" to the forms of sex discrimination discussed by Congress at the time of Title IX's passage, and thus is covered by the statute's sweeping language. "[T]he fact that a statute can be 'applied in situations not expressly anticipated by Congress does not demonstrate ambiguity. It demonstrates breadth.'" *Pa. Dep't of Corr. v. Yeskey*, 524 U.S. 206, 212 (1998) (quoting *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 499 (1985)).

2. In enacting Title IX, Congress was particularly concerned with eradicating sex stereotyping.

In enacting Title IX, Congress was specifically concerned with eradicating pernicious sex stereotyping in education. When introducing Title IX, Senator Bayh expressly recognized that sex discrimination in education is based on "stereotyped notions," like that of "women as pretty things who go to col-

lege to find a husband, go on to graduate school because they want a more interesting husband, and finally marry, have children, and never work again." 118 Cong. Rec. 5804 (1972) (statement of Sen. Bayh). Title IX was therefore necessary to "change [these] operating assumptions" so as to combat the "vicious and reinforcing pattern of discrimination" based on these "myths." *Id.*

The recognition of stereotypes as a core problem motivating sex discrimination in education also permeated the 1970 Hearings that led to the adoption of Title IX. Numerous individuals testified to the harmfulness of stereotypes—in particular, those regarding gender roles—in perpetuating inequality. *See*, *e.g.*, 1970 Hearings at 7 (statement of Myra Ruth Harmon, President, Nat'l Fed'n of Bus. & Prof'l Women's Clubs, Inc.); *id.* at 135 (statement of Wilma Scott Heide, Comm'r, Pa. Human Rel. Comm'n); *id.* at 436 (statement of Daisy K. Shaw, Dir. of Educ. & Vocational Guidance of N.Y.C.); *id.* at 662 (statement of Frankie M. Freeman, Comm'r, U.S. Comm'n on Civil Rights); *id.* at 364 (statement of Pauli Murray, Professor, Brandeis Univ.).

III. ARGUMENTS REGARDING THE VULNERABILITY OF WOMEN HAVE HISTORICALLY BEEN USED TO JUSTIFY DISCRIMINATION AND DEFEND EXCLUSIONARY POLICIES, AND COURTS ROUTINELY HAVE REJECTED SUCH ARGUMENTS OVER THE LAST SEVERAL DECADES.

Against this background, defendant maintains that its Restroom Policy—which the record shows interfered with G.G.'s ability to obtain the benefits of a public education—was adopted with the goal of "'providing a safe

learning environment for all students and . . . protect[ing] the privacy of all students.'" Appellee's Supp. Br. 12.

This argument is meritless. Protective pretexts have long been used to justify discriminatory policies, and are grounded on the very sorts of harmful stereotypes that civil rights laws were designed to overcome. In particular, restrooms and other sex-segregated environments have been a special focus of policies grounded on protective pretexts. The Restroom Policy falls squarely within this long tradition. The Supreme Court, and other courts, have repeatedly, and correctly, rejected these pretextual justifications for disfavoring women and other disadvantaged groups.

A. Discriminatory rules ostensibly designed to protect women have long reflected both stereotype and pretext.

Historically, law and policymakers have offered the pretext of protecting women as an excuse to discriminate against women and other disfavored groups. In the employment context, states routinely passed laws that barred women from certain professions with the ostensible aim of protecting their health and welfare. And after *Brown v. Board of Education*, 347 U.S. 483 (1954), states frequently justified policies that perpetuated racial segregation on the ground that such restrictions were necessary to protect women. Restrooms and similar sex-segregated environments were a particular focus of these discriminatory rules. A review of this history shows some striking par-

allels to the rationales offered in support of defendant's Restroom Policy here, providing further grounds for rejecting the policy.

1. Discriminatory rules with protective pretexts have historically been imposed in a variety of contexts.

The pretext of protecting women has historically been used not only to exclude women from the workplace and educational opportunities, but also to further a segregationist agenda.

In the nineteenth and earlier part of the twentieth centuries, laws that barred women from certain professions were frequently justified by their ostensible intent to protect women's health and welfare. In *Muller v. Oregon*, 208 U.S. 412 (1908), for example, the Supreme Court famously held that the State had a valid and over-riding interest in women-protective laws because "continuance for a long time on her feet at work . . . tends to injurious effects upon the body, and, as healthy mothers are essential to vigorous offspring, the physical well-being of woman becomes an object of public interest and care . . . ." *Id.* at 421. In tune with the times, the Court accepted this rationale, concluding that "some legislation to protect [women] seems necessary to secure a real equality of right." *Id.* at 422. Laws based on this sort of protective rationale continued to be enacted, and affirmed, over the next fifty years. *See, e.g.*, *Goesaert v. Cleary*, 335 U.S. 464, 466 (1948) (finding law's justification—"that the oversight assured through ownership of a bar by a barmaid's husband or father minimizes hazards that may confront a barmaid

without such protecting oversight"—was "entertainable"), disapproved by *Craig v. Boren*, 429 U.S. 190 (1976).

The impetus to protect women—specifically, white women—similarly served as justification for segregationist policies, many of which were rooted in anti-miscegenation sentiment. *See generally* Reginald Oh, *Interracial Marriage in the Shadows of Jim Crow: Racial Segregation as a System of Racial and Gender Subordination*, 39 U.C. Davis L. Rev. 1321, 1348 (2006) ("With regards to white women, racial segregation operated as a paternalistic restriction on their liberties. It sought to 'protect' white women from 'succumbing' to their sexual desires for black men."). For example, schools forced to integrate racially after *Brown* started to consider sex-segregated schooling to avoid interracial interactions between the sexes. *See generally* Serena Mayeri, *The Strange Career of Jane Crow: Sex Segregation and the Transformation of Anti-Discrimination Discourse*, 18 Yale J.L. & Human. 187, 192-93 (2006) ("But in the post-*Brown* era, sex-segregated schooling became salient in a different way: as a palliative for white Southern fears that racially mixed schools would lead down a slippery slope toward interracial marriage and social equality.").

2. Restrooms, have been a particular focus of these discriminatory rules.

In both the employment and education contexts, restrooms and similar sex-segregated environments played a special role. The first laws separating

restrooms according to sex were part of a nationwide practice of protecting women in the workplace, where they were seen as especially vulnerable. And after *Brown*, states tried to validate the continued segregation of public restrooms by pointing to supposedly heightened rates of venereal disease among black communities.

As increasing numbers of women entered the workforce, states declared it within their traditional powers to regulate health and safety through laws that separated restrooms by gender, usually adding such restrictions to new or existing protective legislation. *See, e.g.*, Act of May 25, 1887, ch. 462 § 13, 1887 N.Y. Laws 575; 1893 Pa. Laws, no. 244, 276; 1919 N.D. Laws, ch. 174, 317; 1913 S.D. Sess. Laws, ch. 240, 332; 887 Mass. Acts 668 ch. 103 § 2; *see also* Terry S. Kogan, *Sex-Separation in Public Restrooms: Law, Architecture, and Gender*, 14 Mich. J. Gender & L. 1, 15-16 (2007). Scholars have seen such restroom laws largely as rooted in the outdated and misogynistic idea that women were "especially vulnerable when they ventured into the public realm." *Id*. at 54; *see also* Louise M. Antony, *Back to Androgeny: What Bathrooms Can Teach Us About Equality*, 9 J. Contemp. Legal Issues 1, 4-7 (1998); Richard A. Wasserstrom, *Racism, Sexism, and Preferential Treatment: An Approach to the Topics*, 24 UCLA L. Rev., 581, 593-94 (1977).

Sex-separation of restrooms also served to further entrench race segregation in these spaces. Even after *Brown*, states continued to invoke protective purposes to legitimate the continued segregation of public restrooms. *See*,

e.g., *Turner v. Randolph*, 195 F. Supp. 677, 679-80 (W.D. Tenn. 1961) ("In an apparent effort to support the ordinance as a reasonable and valid exercise of the police power, the defendants introduced proof at the hearing showing that the incidence of venereal disease is much higher among Negroes in Memphis and Shelby County than among members of the white race."). Desegregated restrooms were framed as a public health threat, particularly for girls in school. *See, e.g.*, Phoebe Godfrey, *Bayonets, Brainwashing, and Bathrooms: The Discourse of Race, Gender, and Sexuality in the Desegregation of Little Rock's Central High*, 62 Ark. Hist. Q. 42, 64 (2003).

In this respect, defendant's Restroom Policy resembles race segregation laws: it uses the pretext of protecting the "right kind" of women—cisgender women under the Restroom Policy, like the white women ostensibly protected by segregation laws—from others deemed undesirable or polluting. These rules rely on stereotypes of who is a "good" woman deserving of protection, and who must be excluded.

B. The Supreme Court has routinely rejected these protective rationales for gender discrimination over the last several decades.

In more recent times, the Supreme Court has closely scrutinized exclusionary laws that rest on the rationale of protecting women. "Traditionally, such discrimination was rationalized by an attitude of 'romantic paternalism' which, in practical effect, put women, not on a pedestal, but in a cage." *Frontiero v. Richardson*, 411 U.S. 677, 684 (1973) (plurality opinion). The

Court in *Frontiero* held that such "gross, stereotyped distinctions between the sexes" are insupportable as a basis for public policy. *Id.* at 685.

Subsequently, the Court has made clear that exclusionary policies purportedly designed to protect women or other groups often do not serve that purpose in reality—and instead operate principally to disadvantage the disfavored groups. In *Johnson Controls*, for example, the Court addressed an employer's self-described "fetal-protection policy" that excluded "fertile female employee[s] from certain jobs" because of an expressed "concern for the health of the fetus." 499 U.S. at 190. Noting that the effect of the rule was the blanket exclusion of women from those jobs, the Court found the employer's policy to be both discriminatory against women (*see id.* at 197-200) and inconsistent with Title VII because it was unrelated to "job-related skills and aptitudes" (*id.* at 201). The employer's "professed moral and ethical concerns about the welfare of the next generation" did not justify disparate treatment. *Id.* at 206.

Notably, in reaching this conclusion, the Court harked back to its decision in *Mueller*, observing that "[c]oncern for a woman's existing or potential offspring historically has been the excuse for denying women equal employment opportunities." 499 U.S. at 211. *See also Dothard v. Rawlinson*, 433 U.S. 321, 335 (1977) ("In the usual case, the argument that a particular job is too dangerous for women may appropriately be met by the rejoinder that it is

the purpose of Title VII to allow the individual woman to make that choice for herself.").

Courts have also recently rejected laws that use a pretextual interest in women's health to limit their reproductive choice. *See, e.g.*, *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292, 2316 (2016) (holding that abortion laws justified as protections for women's health and safety violated women's liberty when the burdens they imposed outweighed their benefits); *Planned Parenthood of Wis., Inc. v. Schimel*, 806 F.3d 908, 920 (7th Cir. 2015) (holding that the right to abortion could not be abridged "on the basis of spurious contentions regarding women's health"), *cert. denied*, 136 S. Ct. 2545 (2016).

C. Defendant's Restroom Policy rests on a protective pretext and does not hold up to a probing factual inquiry.

Defendant's brief has very little to say in defense of its stated rationale for adopting the Restroom Policy: it contents itself with repeating that it seeks "'to protect the privacy of all students.'" Appellee's Supp. Br. 12. This is a rationale that could have been offered, in nearly identical terms, to justify many now-discredited, and unlawful, policies that discriminated based on gender or race.

Here, too, the justification fails. Defendant's privacy concerns are speculative and not grounded in fact. Moreover, defendant has failed to appropriately account for the privacy and health interests of G.G. and other

transgender students. In reality, the only effect of defendant's resolution is to exclude and discriminate.

1. Defendant's Restroom Policy does not advance legitimate purposes.

For the reasons discussed above, the articulation of a protective or otherwise benign purpose cannot shield discriminatory laws or policies from searching review to determine whether those laws or policies actually serve the stated purpose. To the contrary, it is the Court's responsibility to engage in such a searching, fact-based review and strike down laws that invent a problem to "solve" as a mask for discrimination. *See, e.g.*, *Whole Woman's Health*, 136 S. Ct. at 2301, 2309-18. This approach would reveal that defendant's Rest-room Policy is not actually protective of women or schoolchildren. Instead, it stigmatizes transgender students, putting their safety and health at risk without justification.

To begin with, defendant has failed to show how cisgender students would be at risk by allowing G.G. to use the boys' restrooms, which he did without incident for seven weeks in 2014. Complaint at 32, *G.G. v. Gloucester Cty. Sch. Bd.*, 2015 WL 4086446 (E.D. Va) (No. 4:15cv54). Additionally, as G.G. informed the district court, in every other public space he uses the male restroom without incident. *Id.* at 25. Hypothetical privacy concerns that lack any basis in fact are not enough to justify discrimination.

Unsurprisingly, research has confirmed that privacy and safety concerns regarding the use of public restrooms by transgender individuals are wholly unsubstantiated. *Shut Out: Restrictions on Bathroom and Locker Room Access for Transgender Youth in US Schools*, Human Rights Watch (Sept. 13, 2016), www.hrw.org/report/2016/09/13/shutout/restrictions-bathroom-and-locker-room-access-transgender-youth-us-schools ("[T]here is no evidence that allowing transgender students to choose bathroom or locker room facilities that correspond to their gender identity puts other students at risk."); Rachel E. Moffitt, *Keeping the John Open to Jane: How California's Bathroom Bill Brings Transgender Rights Out of the Water Closet*, 16 Geo. J. Gender & L. 475, 500 (2015).

On the other hand, individuals who do want to enter bathrooms for invidious reasons are not deterred by the sign on the door—meaning that it is a fiction to suggest that conforming use of restrooms to gender identity will suddenly open restroom doors to predators. *See, e.g.*, 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 n.170 (2007).

2. Policies that exclude transgender students from sex-segregated restrooms injure those students.

In addition, defendant has failed to properly account for G.G.'s own privacy and health concerns. "[G]irls and women who encountered G.G. in fe-

male restrooms would react negatively because they perceived G.G. to be a boy"; "in eighth and ninth grade, girls would tell him 'this is the girls' room' and . . . tell him to leave." Complaint at 46, *G.G. v. Gloucester*, 2015 WL 4086446. Yet the school's insistence that G.G. use a single-stall unisex bathroom stigmatizes G.G., sending a message to his classmates that he is aberrant and dangerous. *Id.* at 48. Exclusion from the boys' restroom thus "inflicts severe and persistent emotional and social harms on G.G." *Id.* at 50. It also is physically harmful; G.G. has developed urinary tract infections from holding his urine so as to avoid using the unisex restroom, which G.G. finds stigmatizing because he is the only one that does use it. *Id.* at 48-49.

G.G.'s experiences are consistent with those of transgender students across the country. Research indicates that many transgender students excluded from the restrooms that correspond to their gender identity simply avoid urinating while they are at school, leading to serious health risks including kidney damage and urinary tract infections. National Center for Transgender Equality, *The Report of the 2015 U.S. Transgender Survey* 130-37 (Dec. 2016), *available at* https://perma.cc/M7MQ-ZQ52 ("NCTE Survey"). Exclusion from the proper restroom may also lead to severe mental distress and a risk of suicide. *Bd. of Educ. of the Highland Local Sch. Dist. v. U.S. Dep't of Educ.*, 2016 WL 5372349, at *14 (S.D. Ohio Sept. 26, 2016).

Moreover, "[w]hen schools require transgender girls to use the men's room or force transgender boys to use the women's room, they put them at

risk of physical, verbal, or sexual assault from other students or adults." Human Rights Watch, *supra*, https://www.hrw.org/report/2016/09/13/shut-out/restrictions-bathroom-and-locker-room-access-transgender-youth-us-schools. This increased danger compounds the already high risk of violence at the hands of classmates and teachers that transgender students face at school—violence that renders them in particular need of Title IX's protections against sex-based harassment. *See Franklin v. Gwinnett Cty. Pub. Sch.*, 503 U.S. 60, 76 (1992) (recognizing that Title IX's prohibition on sex discrimiantion encompasses sex-based harassment); NCTE Survey 2 ("The majority of respondents who were out or perceived as transgender while in school (K–12) experienced some form of mistreatment, including being verbally harassed (54%), physically attacked (24%), and sexually assaulted (13%) *because they were transgender*.").

In sum, the stigmatizing practice of bathroom exclusion does not stop violence, but rather causes it.

For these reasons, and those explained at length by G.G., defendant's Restroom Policy does not hold up to factual scrutiny. The challenged policy's only real purpose and effect is to discriminate against transgender students like G.G. Historically, flimsy protective rationales of the sort offered here by defendant have been used to curtail disfavored groups' access to public facilities. In modern times, courts have consistently seen through these pretexts

and held that they cannot stand. The Court should do so again here and reject defendant's arguments.

CONCLUSION

The decision of the District Court should be reversed.

Respectfully submitted,

/s/ *Charles A. Rothfeld*

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C), undersigned counsel certifies that this brief:

(i) complies with the type-volume limitation of Rule 32(a)(7)(B) because it contains 6,494 words, including footnotes and excluding the parts of the brief exempted by Rule 32(a)(7)(B)(iii); and

(ii) complies with the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6) because it has been prepared using Microsoft Office Word 2007 and is set in Century Schoolbook font in a size equivalent to 14 points or larger.

Dated: May 15, 2017 /s/ *Charles A. Rothfeld*

CERTIFICATE OF SERVICE

I hereby certify that that on May 15, 2017, I filed the foregoing Brief of National Women's Law Center, *et al.*, as *Amici Curiae* in Support of Appellant via the CM/ECF system and served the foregoing via the CM/ECF system on all counsel who are registered CM/ECF users.

Dated: May 15, 2017 /s/ *Charles A. Rothfeld*

APPENDIX

DESCRIPTIONS OF THE *AMICI CURIAE*

A Better Balance: The Work & Family Legal Center

A Better Balance is a national legal advocacy organization dedicated to promoting fairness in the workplace and helping employees meet the conflicting demands of work and family. Through its legal clinic, A Better Balance provides direct services to low-income workers on a range of issues, including employment discrimination based on pregnancy and/or caregiver status. A Better Balance is also working to combat LGBTQ discrimination—including bathroom access rights for transgender people— through its national LGBTQ Work-Family project. A Better Balance is committed to ensuring the health, safety, and security of all LGBTQ individuals and families.

Center for Reproductive Rights

The Center for Reproductive Rights is a global advocacy organization that uses the law to advance reproductive freedom as a fundamental right that all governments are legally obligated to respect, protect, and fulfill. In the U.S., the Center's work focuses on ensuring that all people have access to a full range of high-quality reproductive health care. Since its founding in 1992, the Center has been actively involved in nearly all major litigation in the U.S. concerning reproductive rights, in both state and federal courts, including most recently, serving as lead counsel for the plaintiffs in *Whole*

Woman's Health v. Hellerstedt, 136 S. Ct. 2292 (2016), in which the U.S. Supreme Court reaffirmed the constitutional right to access legal abortion. As a rights-based organization, the Center has a vital interest in protecting individuals endeavoring to exercise their fundamental rights free from restrictions based on gender stereotypes.

Futures Without Violence

Futures Without Violence (FUTURES) is a national nonprofit organization that has worked for over thirty years to prevent and end violence against women and children around the world. Futures Without Violence mobilizes concerned individuals, children's groups, the justice system, allied professionals, women's rights, civil rights, and other social justice organizations to join the campaign to end violence through public education/prevention campaigns, public policy reform, model training, advocacy programs, and organizing.

FUTURES joins with other non-profit public interest groups in an amicus curiae brief to the U.S. Supreme Court in *Gloucester County School Board v. G.G.* because FUTURES has an interest in preserving Title IX protections that safeguard against gender-based discrimination. FUTURES has worked with colleges and universities around the nation to assist educational entities to enhance responses to sex discrimination in the school and to prevent discrimination based on gender at all levels of the educational system.

Girls Inc.

Girls Inc. inspires all girls to be strong, smart, and bold. Girls Inc. is a nonprofit, nonpartisan organization with over 80 local affiliates that provide primarily after-school and summer programming to approximately 150,000 girls ages 5-18 in 30 U.S. states and in Canada. Our comprehensive approach to whole girl development equips girls to navigate gender, economic, and social barriers and grow up healthy, educated, and independent. These positive outcomes are achieved through three core elements: *people*—trained staff and volunteers who build lasting, mentoring relationships; *environment* —girls-only, physically and emotionally safe, where there is a sisterhood of support, high expectations, and mutual respect; and *programming*—research-based, hands-on and minds-on, age-appropriate, meeting the needs of today's girls. Informed by girls and their families, we also advocate for legislation, policies, and practices to increase opportunities for all girls. Girls Inc. strongly supports Title IX, and central to our mission is the belief that girls have the right to be themselves and resist gender stereotypes.

Harvard Law Gender Violence Policy Workshop

The Harvard Law Gender Violence Program engages students in academic study and policy work to combat campus sexual assault, domestic violence, and other forms of gender-based harassment and discrimination. Diane Rosenfeld, Director of the Gender Violence Program and Lecturer on Law, is

a preeminent scholar, Title IX expert, and public speaker who engages in Title IX reform through legal policy advising, training, and education around the world. She has successfully represented a number of sexual assault survivors in lawsuits against their universities. The students in the Gender Violence Policy Workshop work on a number of campus sexual assault and domestic violence prevention efforts. The Program supports the right of all transgender students to be treated equally, with dignity and respect, by their school boards.

Know Your IX

Know Your IX is a non-profit organization dedicated to ending sexual and gender violence against students. Run by students and young alumni who are themselves survivors, Know Your IX provides legal education, resources, guidance, trainings, and other support for students across the country. The organization also conducts policy advocacy to ensure young people can learn free from sexual abuse. Transgender students are at startling high risk of experiencing sexual harassment and violence in school. For this reason, Know Your IX advocates to ensure transgender students are fully protected by Title IX and empowered to stand up for their rights.

Legal Aid at Work (formerly Legal Aid Society – Employment Law Center)

Legal Aid at Work (formerly Legal Aid Society – Employment Law Center) is a non-profit public interest law firm whose mission is to protect, preserve, and advance the employment and education rights of individuals from traditionally under-represented communities. LAAW has represented plaintiffs in cases of special import to communities of color, women and girls, recent immigrants, individuals with disabilities, the LGBT community, and the working poor. LAAW has litigated a number of cases under Title IX of the Education Amendments of 1972 as well as Title VII of the Civil Rights Act of 1964. LAAW has appeared in discrimination cases on numerous occasions both as counsel for plaintiffs, *see, e.g., National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101 (2002); *U.S. Airways, Inc. v. Barnett*, 535 U.S. 391 (2002); and *California Federal Savings & Loan Ass'n v. Guerra*, 479 U.S. 272 (1987) (counsel for real party in interest), as well as in an amicus curiae capacity. *See, e.g., U.S. v. Virginia*, 518 U.S. 515 (1996); *Harris v. Forklift Systems*, 510 U.S. 17 (1993); *International Union, UAW v. Johnson Controls*, 499 U.S. 187 (1991); *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989); *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986). LAAW's interest in preserving the protections afforded to employees and students by this country's antidiscrimination laws is longstanding.

National Council of Jewish Women

The National Council of Jewish Women (NCJW) is a grassroots organization of 90,000 volunteers and advocates who turn progressive ideals into action. Inspired by Jewish values, NCJW strives for social justice by improving the quality of life for women, children, and families and by safeguarding individual rights and freedoms. NCJW's Resolutions state that NCJW resolves to work for "Laws, policies, programs, and services that protect every child from abuse, neglect, exploitation, bullying, and violence and provide equal rights for individuals and couples of any and all sexual orientation, gender identity, and gender expression." Consistent with our Principles and Resolutions, NCJW joins this brief.

National Organization for Women (NOW) Foundation

The National Organization for Women (NOW) Foundation is a 501 (c)(3) entity affiliated with the National Organization for Women, the largest grassroots feminist activist organization in the United States with chapters in every state and the District of Columbia. NOW Foundation is committed to advancing equal education opportunity, among other objectives, and works to assure that women and LGBTQIA persons are treated fairly and equally under the law. As an education and litigation organization dedicated to eradicating sex-based discrimination, NOW Foundation is opposed to the use of sex-stereotypes for discriminating against transgender persons.

National Women's Political Caucus

The National Women's Political Caucus is a pro-choice, multi-partisan grassroots organization, dedicated to increasing women's participation in the political process by recruiting, training and electing pro-choice women candidates. NWPC works to eliminate all forms of gender discrimination, including discrimination based on sexual orientation and gender identity. We remain committed to supporting equal rights for the transgender community, so that their voices may be amplified, securing their health, safety, and equality.

New Voices for Reproductive Justice

New Voices for Reproductive Justice is a grassroots Human Rights organization for women of color, led by and about women of color, with offices in Pennsylvania and Ohio. New Voices' mission is to build a social change movement dedicated to the health and well-being of Black women and girls. New Voices defines Reproductive Justice as the human right of all women and people to control their bodies, sexuality, gender and gender identity, work and reproduction - as well as how they form families. For the last thirteen years, New Voices has served over 75,000 women of color through leadership development, community organizing, public policy advocacy, culture change, civic engagement, grassroots activism and political education. In 2015, New Voices founded the Lorde-Baldwin Leadership Institute, a leadership development program for queer and transgender people of color to define

the needs of the broader LGBTQIA+ community in the Greater Pittsburgh Region. In 2009, New Voices was a vocal policy advocate for the passage of the Allegheny County Non-Discrimination ordinance that would protect the civil rights of LGBTQIA+ residents in housing, employment and public accommodations. New Voices advocated for passage of a statewide non-discrimination bill in 2014 that would amend the Pennsylvania Human Relations Act to expand protection from discrimination to sexual orientation and gender identity or expression. New Voices worked with the City of Pittsburgh to re-establish the Mayor's Advisory Council on LGBTQIA+ Affairs beginning in 2015, and the council was re-launched in January 2017. New Voices currently serves on Pittsburgh's Affirmatively Furthering Fair Housing Task Force Gender and Sexual Orientation Subcommittee, a convening of advocates and city officials seeking to identify and redress barriers to affordable housing in Pittsburgh for LGBTQIA+ individuals.

Public Justice

Public Justice is a national public interest law firm that pursues high impact lawsuits to combat social and economic injustice, protect the Earth's sustainability, and challenge predatory corporate conduct and government abuses. Public Justice has long worked to secure educational equity for students through lawsuits designed to enforce their rights under the Constitution and anti-discrimination laws. For example, Public Justice has represent-

ed students seeking gender equity in interscholastic and intercollegiate sports, as well as students who were denied equal educational opportunities because of gender-based harassment or sexual violence suffered at school. Public Justice has a strong interest in ensuring that all students, including transgender students, have access to education in a safe, supportive, and nondiscriminatory learning environment. Transgender students experience higher rates of discrimination, harassment, and sexual violence than their peers. Public Justice is opposed to policies that stigmatize transgender students and increase their risk of suffering discrimination, harassment, and violence at school.

Stop Sexual Assault in Schools

SSAIS is a nonpartisan, nonprofit organization dedicated to proactively addressing the issue of sexual harassment and discrimination that impacts K-12 students and schools. SSAIS provides students, schools, and other organizations with resources so that the right to an equal education is not compromised by sexual harassment, sexual assault, and gender discrimination. SSAIS has provided legal assistance to students and their families, assistance to students and their families handling media inquiry, and has developed educational tools such as instructional videos to educate students and their families about their Title IX rights. Transgender students are at high

risk for sexual victimization, and that risk is exacerbated by discriminatory school policies that stigmatize transgender students.

The National Crittenton Foundation

TNCF was founded in 1883 and its mission is to advance the health, economic security and civic engagement of girls and young women impacted by violence, adversity and trauma. Our twenty-six agencies provide services in 31 states and the District of Columbia supporting more than 135,000 girls and young women a year. As such, we represent thousands of marginalized young women across the country, some of who identify as transgender. The court's decision in this case has the potential to directly impact the young people we support in many ways, and we believe extensive experience in identifying and addressing discrimination rooted in sexism and in the denial of civil rights based on the unwillingness of systems and institutions to accept the expressed gender identity of girls and boys

Women's Law Project

The Women's Law Project is a non-profit women's legal advocacy organization with offices in Philadelphia and Pittsburgh, Pennsylvania. Its mission is to create a more just and equitable society by advancing the rights and status of all women throughout their lives. Since 1974, WLP has engaged in high-impact litigation, public policy advocacy, and education challenging discrimination rooted in gender stereotypes. WLP represented amici curiae in

Prowel v. Wise Business Forms, 579 F.3d 285 (3d Cir. 2009), to ensure full enforcement of Title VII's protection against sex discrimination in the workplace for a litigant who suffered harassment based on gender stereotyping. WLP was also instrumental in passage of the Allegheny County Human Relations Ordinance, which prohibits discrimination in employment, public accommodations, and housing based on sex, gender identity, and gender expression. From 2012 to 2016, WLP represented Rainbow Alliance, an LGBTQA-student group, in litigation filed under Pittsburgh's Fair Practices Ordinance challenging the University of Pittsburgh's gendered facilities policies. WLP currently serves on the Pennsylvania Department of Health's Transgender Health Workgroup, a convening of Pennsylvania advocates and government officials seeking to improve access to comprehensive health care for transgender and gender nonconforming people.

Women's Sports Foundation

The Women's Sports Foundation (WSF) is a nonprofit educational organization dedicated to expanding opportunities for girls and women to participate in sports and fitness and to creating an educated public that supports gender equity in sports. The WSF distributes grants and scholarships to female athletes and girls' sports programs, answers hundreds of inquiries per year concerning Title IX and other women's sports related questions, and

administers award programs to increase public awareness about the achievements of girls and women in sports.