

No. \_\_\_\_\_

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In the  
**Supreme Court of the United States**

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GLOUCESTER COUNTY SCHOOL BOARD,

*Applicant,*

v.

G.G., by and through his mother, DEIRDRE GRIMM,

*Respondent.*

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**RESPONSE TO APPLICATION TO  
EXTEND TIME TO FILE A PETITION FOR WRIT OF CERTIORARI**

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**Directed To The Honorable John G. Roberts, Jr.  
Chief Justice Of The United States And Circuit Justice For The United  
States Court Of Appeals For The Fourth Circuit**

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To the Honorable John G. Roberts, Jr., Chief Justice of the United States  
and Circuit Justice for the United States Court of Appeals for the Fourth Circuit:

G.G., by and through his mother, Deirdre Grimm, submits the following  
Response to the Application to Extend Time to File a Petition for Writ of Certiorari  
filed by the Gloucester County School Board (the “Board”).

In its earlier application to recall and stay the Fourth Circuit’s mandate in  
this case and to stay the preliminary injunction issued by the District Court, the  
Board represented to this Court that “[t]he School Board intends to file its certiorari  
petition by the current due date of August 29, 2016.” Stay App. 2. On July 29,  
2016, the Board filed its reply brief without giving any indication that it no longer  
intended to file a petition for certiorari on August 29, 2016. Based on the Board’s  
representations, this Court granted the Board’s request and issued a stay “pending  
the *timely* filing and disposition of a petition for a writ of certiorari.” *Gloucester Cty.  
Sch. Bd. v. G.G. ex rel. Grimm*, No. 16A52, 2016 WL 4131636, at \*1 (U.S. Aug. 3,  
2016) (emphasis added). Justice Breyer wrote separately to explain that he voted to  
grant the application “as a courtesy” “[i]n light of the facts that four Justices have  
voted to grant the application, . . . that we are currently in recess, and that granting  
a stay will preserve the status quo (as of the time the Court of Appeals made its  
decision) until the Court considers the forthcoming petition for certiorari.” *Id.* at \*1  
(Breyer, J., concurring).

Having obtained the requested stay, the Board now seeks an extension of  
time based on scheduling orders issued in another case in which the Board’s counsel

are also involved. See *Carcano v. McCrory*, No. 1:16-cv-00236 (M.D.N.C.); *United States v. North Carolina*, No. 1:16-cv-00425 (M.D.N.C.).<sup>1</sup> But the Board already knew about the relevant scheduling orders when it filed its reply brief on July 29, 2016, seeking a stay from this Court. The consolidated scheduling order for discovery was entered on July 25, 2016 (ECF 107), and the parties submitted a proposed briefing schedule for the United States’ preliminary injunction motion on July 26, 2016 (ECF No. 112). If those scheduling orders altered the Board’s intention to file its petition for certiorari by August 29, 2016, the Board should have informed this Court when it filed its reply.<sup>2</sup>

The Board has had ample time to prepare its petition for certiorari and has no excuse for delaying until the last minute. On June 7, 2016, the Board filed a motion asking the Fourth Circuit to stay its mandate, in which the Board stated that it intended to petition for certiorari by August 29, 2016. *G.G. v. Gloucester County School Bd*, No. 15-2056, ECF No. 91. In its petition for an extension of time, the Board provides no explanation for why its counsel did not begin the drafting process in June or July in light of potentially competing obligations in different cases. If anything, counsel for the Board should already have a head start in the

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<sup>1</sup> ACLU attorneys are likewise involved in both cases, as counsel for G. and for the plaintiffs in *Carcano*.

<sup>2</sup> Moreover, the scheduling orders entered in *Carcano* and *North Carolina* demonstrate that the Board will be far more “awash in discovery activities” (Pet. App. 2) from August 29, 2016, to September 28, 2016, than it is now. Under the scheduling order, fact depositions will take place from August 15, 2016 through September 23, 2016, and expert depositions will take place from September 5, 2016, through October 7, 2016.

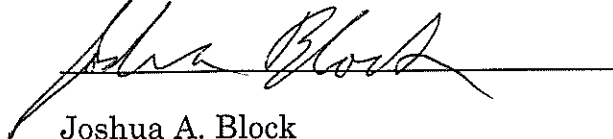
drafting process because they addressed the reasons for granting *certiorari* as part of their stay application.

G. experiences irreparable harm each day the School Board's policy forces him to use separate single-stall restrooms that no other student is required to use. G. experiences painful urinary tract infections as a result of trying to avoid the humiliation of using separate restrooms. Pet. App. App'x A at 40 (Davis, J., concurring). And uncontested expert testimony states that "[t]he shame of being singled out and stigmatized in his daily life every time he needs to use the restroom is a devastating blow to G.G. and places him at extreme risk for immediate and long-term psychological harm placing G.G. at risk for accruing lifelong psychological harm." *Id.* at 39 (Davis J., concurring).

The Board's request for extension of time is particularly harmful to G. because it increases the chances that the preliminary injunction will be mooted by his graduation before it even goes into effect. G. may be able to graduate a semester early on January 26, 2017. G.'s graduation would not moot the entire case or require vacatur of the Fourth Circuit's decision because he also has claims for damages. But he would nevertheless graduate without being able to experience the benefits of the injunction—and the equal treatment—he sued to obtain.

For all these reasons, the Application to Extend Time to File a Writ for Petition for *Certiorari* should be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joshua A. Block", is written over a horizontal line.

Joshua A. Block

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Dated: August 15, 2016