

No. 15-2056

**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**

**UNOPPOSED MOTION FOR LEAVE TO FILE BRIEF OF AMICI
CURIAE IN SUPPORT OF APPELLANT**

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Gender Benders, GLSEN, GSA Network, iNSIDEoUT, Evie Priestman, ROSMY,

granting this motion this Court will allow *Amici* to present the interests of

CERTIFICATE OF SERVICE

I hereby certify that the foregoing motion was served on all parties or their counsel through the CM/ECF system.

Dated: October 28, 2015

s/ David Dinielli

David Dinielli

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**BRIEF OF AMICI CURIAE GENDER BENDERS ET AL.
IN SUPPORT OF PLAINTIFF-APPELLANT AND URGING REVERSAL**

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Counsel for Amici Curiae

*Gender Benders, GLSEN, GSA Network, iNSIDEoUT, Evie Priestman, ROSMY,
Time Out Youth, and We Are Family*

**STATEMENT REGARDING CONSENT TO FILE, AUTHORSHIP, AND
MONETARY CONTRIBUTIONS**

No party opposes the filing of this brief. Pursuant to Rule 29(c) of the Federal Rules of Appellate Procedure, Amici Curiae state that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than Amici Curiae or their counsel made a monetary contribution to its preparation or submission.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(c), *Amici Curiae* Gender Benders; GLSEN; GSA Network; iNSIDEoUT; ROSMY; Time Out Youth; and We Are Family state that they have no parent corporations, and no publicly held company owns any stock in any of *Amici*.

Dated: October 28, 2015

Respectfully submitted,

s/David Dinielli

David Dinielli

Rick Mula

SOUTHERN POVERTY LAW CENTER

Attorneys for Amici Curiae

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INTERESTS AND IDENTITIES OF AMICI CURIAE

Amici include one transgender high school student and seven public interest organizations whose professional employees have served and supported transgender youth. *Amici* have witnessed firsthand the harms of policies that exclude transgender students from the restroom matching their gender identity. Relying on their extensive experience and expertise, *Amici* respectfully request that this Court reverse the judgment of the trial court below.

Evie Priestman is a sixteen-year-old transgender boy who attends Wakefield High School in Arlington County, Virginia. He recently delivered a TEDx talk in Arlington, Virginia about how the Arlington community is unique in its acceptance of kids with all kinds of differences, including gender. TEDx Arlington, <http://tedxarlington.com/speakers-2/evie-priestman/> (last visited Oct. 28, 2015). He has also been featured in a New York Times editorial series called Transgender Today. *Evie Priestman*, N.Y. Times, <http://www.nytimes.com/interactive/projects/storywall/transgender-today/stories/evie-priestman> (last visited Oct. 28, 2015).

Gay, Lesbian & Straight Education Network (“GLSEN”) is the leading national education organization focused on ensuring safe schools for all students. Founded in 1990, GLSEN strives to ensure that each member of every school community is valued and respected regardless of sexual orientation or gender

INTRODUCTION AND SUMMARY OF ARGUMENT

The District Court failed to appreciate the harm G. and other transgender students experience as a result of their schools' exclusionary restroom policies (policies that prohibit transgender students from using the restroom that matches their gender identity) and identified G.'s claims of hardship as "largely unsubstantiated." JA 163. However, *Amici's* narratives substantiate G.'s claims and illuminate the practical effects of exclusionary restroom policies on the day-to-day lives of transgender boys and girls as they stand in line in the cafeteria, walk to classes with friends, and carefully plan whether and when they will use the restroom that day.

Exclusionary restroom policies cause irreparable harm by (1) stigmatizing transgender students; (2) failing to provide transgender students with realistic access to any restroom; (3) forcing transgender students to take extreme measures to avoid the restroom altogether; and (4) obstructing treatment for gender dysphoria. Stigma may lead to a host of secondary consequences, causing transgender students to internalize negative messages about themselves, experience serious mental health conditions including depression and suicidality, endure increased harassment, and struggle to maintain positive social relationships. Delaying or avoiding restroom use—a common consequence of exclusionary restroom policies—also is harmful, causing transgender students to suffer

discomfort and infection that distracts them from learning. These harms are compounded by the social context in which exclusionary restroom policies operate. In our nation's public schools, transgender students are common targets of harassment and discrimination. By contrast, restroom policies that permit transgender students to use the restroom matching their gender identity treat transgender students equally and enable them to stay in school and thrive. Under these policies, transgender students have the same educational opportunities as others.

ARGUMENT

I. Exclusionary Restroom Policies Harm Transgender Students

A. Exclusionary Restroom Policies Stigmatize Transgender Students

Exclusionary restroom policies stigmatize transgender students by singling them out for restrictions that are not imposed upon non-

(3) to endure increased harassment; and (4) to struggle to maintain positive social relationships.

1. Stigma Causes Transgender Students To Internalize Negative

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place for him. He was told he could use the girls' restroom or the nurse's restroom. He felt singled out by having to use the restroom in the nurse's office. He wasn't able to go to gym class. He avoided the restroom altogether. He wouldn't drink water because he never felt safe going to the restroom at school. He developed a urinary tract infection because he was holding his urine for so long." Telephone

injured with a weapon) in the past year because of their gender expression. Joseph G. Kosciw et al., GLSEN, *The 2013 National School Climate Survey* 23 (2014), available at http://www.glsen.org/sites/default/files/2013%20National%20School%20Climate%20Survey%20Full%20Report_0.pdf.

Besides marking transgender students as different, exclusionary restroom policies can directly cause transgender students to physically navigate the school building in a way that exposes them to harassment. Nathan Smith, Director of Public Policy at GLSEN, explained: “Constantly being late walking back to class or having to rush across school to use a single-stall restroom opens the door to harassment whether it’s a ‘you’re not good enough’ kind of harassment or ‘you’re not really a boy’ kind of harassment.” Telephone Interview with Nathan Smith, Dir. of Pub. Policy, GLSEN (Oct. 1, 2015) [hereinafter GLSEN Interview].

4. Stigma Caused by Exclusionary Restroom Policies Impairs

Transgender Students’ Social Relationships

Exclusionary restroom policies further stigmatize transgender students by causing them to feel isolated from their peers at school. Melissa Moore, Executive Director of We Are Family, discussed a transgender girl in South Carolina who is very popular and prohibited from using the girls’ restroom: “The restroom is a social hub, and it’s a stigmatizing thing. There is a rumor going around the school that she’s a boy, so that’s causing her a lot of stress.” We Are Family Interview.

Evie Priestman, a transgender male sixteen-year-old living in Virginia, further explained how exclusionary restroom policies can dissolve social bonds: “Usually the men’s and women’s restroom are close to each other. So if you’re hanging out with your friends and need to take a restroom break, you can normally all go together. But that’s not the case when you’re forced to use a gender neutral restroom. You have to walk to a different part of the building, and you feel left out. Your peers are going to one part of the building while you’re going to a different part of the building.” Telephone Interview with Evie Priestman, Junior, Wakefield High School, Arlington Cnty., Va. (Oct. 6, 2015) [hereinafter Priestman Interview].

B. Exclusionary Restroom Policies Deny Transgender Students

Meaningful Access to Any Restroom

No matter which restroom transgender students use in schools that enforce exclusionary restroom policies, they risk negative consequences. When transgender students use gender-neutral restrooms at these schools, they may be outed,¹ harassed, or late to class. When transgender students use the restroom that matches the sex they were assigned at birth at these schools, they experience severe psychological distress and harassment by other students. And transgender

¹ “Outing” transgender individuals means publicizing the inconsistency between their gender identities and the sex they were assigned at birth.

students at these schools are simply prohibited from using the right restroom—the restroom that matches their gender identity. By contrast, transgender students who attend schools with inclusive restroom policies report positive experiences when they use the restroom that matches their gender identity. *See infra* Part III.

1. The Gender-Neutral Restroom Is Not a Realistic Option for Transgender Students at Schools with Exclusionary Restroom Policies Because They Are Frequently Outed, Harassed, or Late to Class When They Use It

Amici provided multiple examples of transgender students who are outed fiP <</MCID 2

Besides

classes. At my high school we had four minutes between classes. If there's only one gender-neutral restroom on your campus and it's far away, then that student is at a disadvantage." GLSEN Interview.

Fear of tardiness can also lead to harm. Two transgender boys in Virginia, both age fifteen or sixteen, avoided using the restroom because they lacked sufficient time between classes to avoid being late. As a result they both developed urinary tract infections ("UTI"). Telephone Interview with Beth Panilaitis, Exec. Dir., ROSMY (Oct. 5, 2015) [hereinafter ROSMY Interview]. A transgender boy in Charleston, South Carolina has similarly suffered UTIs after refraining from using a distant gender-neutral restroom for fear that he would miss something important in class. Wearefamilychs, *Live5TransStories*, YouTube (Oct. 8, 2015), <https://www.youtube.com/watch?v=zqCt9bVg0gk&feature=youtu.be> (view beginning at 10:55).

2. The Restroom That Matches the Sex Transgender Students Were Assigned at Birth Is Not a Realistic Option for Transgender Students Because It Conflicts with Their Gender and Exposes Them to Harassment and Violence

When transgender students try to use the restroom matching the sex they were assigned at birth, they experience severe distress and harassment from other students, just like any students would if they tried to use a restroom that did not

match their gender. Amy Glaser, Co-Founder of iNSIDEoUT, reported the experience of an eighteen-year-old transgender male in Raleigh, North Carolina: “I

fasting, dehydrating themselves, and “holding it in” all day, which can lead to discomfort as well as infection. These measures cause physical harm and impair students’ prospects for academic success. Some transgender students

These experiences are not uncommon, both nationally and in the Fourth Circuit. Ginna Brelsford, Co-Executive Director of GSA Network, discussed a young transgender man's experience in California: "He wouldn't drink water because he never felt safe going to the restroom at school. He developed urinary tract infections because he was holding his urine for so long." GSA Network Interview.

The Executive Director of ROSMY identified "at least one or two youth in Virginia who have gotten urinary tract infections because of not being able to get to the gender-neutral restroom when it is so far away from class." ROSMY Interview.

The Director of School Outreach at Time Out Youth, explained the experiences of transgender youth in North Carolina: "Many trans[gender] youth do not use the restroom at all. They drink and eat very little to prevent the need to use the restroom." Time Out Youth Interview.

Ivy Hill, Co-Founder of Gender Benders, discussed a fifteen-year-old transgender boy in South Carolina who sometimes avoids eating or drinking all day in order to avoid the restroom. Gender Benders Interview.

2. *Avoiding the Restroom Impairs Transgender Students' Academic Performance and Contributes to High Rates of School Drop-Out Among Transgender Youth*

Lack of access to a realistic restroom option in schools with exclusionary restroom policies impairs transgender students' academic success by shifting the focus of their school experience from education to the restroom and contributes to high rates of school drop-out among transgender youth. In one study, a transgender boy reported that his school's exclusionary restroom policy "distracted him in class both because of his need to remain continent in the face of physical discomfort and his anxiety about finding an available restroom at the end of the class period." Herman, *supra*, at 75. The interviewee explained: "The [restrooms] in the guidance office are supposed to be unisex, but they're still marked men/women, so I don't feel comfortable using the one marked women and then I have to wait an hour before I can try going there again . . . There's not always a line, but we only have ten minutes between classes, so if the restroom is occupied, I don't have any time to wait. It's also not easy to leave during class, which means I would have to go back at the end of class." *Id.* at 74-75.

Todd Rosendahl, Director of School Outreach at Time Out Youth, related a similar narrative. A transgender boy in one high school reported that he did not use the school restroom even once in the past three years. Time Out Youth Interview.

The effort he took to avoid the restroom all day did not make it any easier for him to focus on his education.

Rosendahl also noted that transgender youth skip school and drop out of school, in part because of exclusionary restroom policies. *Id.* He explained that many transgender youth are pushed out of hostile school environments and pursue GEDs instead. *Id.* He identified three transgender

D. Exclusionary Restroom Policies Obstruct Medically Necessary Treatment for Gender Dysphoria

Prohibiting transgender students from using the restroom that corresponds to their gender identity impairs medically necessary treatment for gender dysphoria, the medical diagnosis for “discomfort or distress that is caused by a discrepancy between a person’s gender identity and that person’s sex assigned at birth.” Eli Coleman et al., World Prof’l Ass’n for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People* 5 (7th ed. 2012), available at http://www.wpath.org/site_page.cfm?pk_association_webpage_menu=1351. Under the WPATH Standards of Care, the widely recognized treatment protocol for gender dysphoria,² support for

² Wylie C. Hembree et al., *Endocrine Treatment of Transsexual Persons: An Endocrine Society Clinical Practice Guideline*, 94 J. of Clinical Endocrinology Metabolism 3132 (2009), available at [http://press.endocr.5\(a\)3.8nd \[\(5.il\)8.3\(BBBBBBvtu d8](http://press.endocr.5(a)3.8nd [(5.il)8.3(BBBBBBvtu d8)

II. Exclusionary Restroom Policies Operate in Negative School Climates

The social context in which exclusionary restroom policies operate compounds their negative effects. Transgender students at schools with exclusionary restroom policies are stigmatized and deprived of meaningful access to the restroom, and the impact of these serious harms is often magnified by the intensely negative climates that many transgender students already face in school. Data from national studies of LGBT youth reveals the gravity of the situation.

Nationally, LGBT youth experience high rates of harassment in school. Kosciw, *supra*, at xvi. Among LGBT youth, transgender youth face the highest rates of harassment. In the largest completed study of the experiences of transgender people, “[f]ully 61% of respondents who expressed a transgender identity or [gender-nonconformity] at school reported considerable abuse because of their identity/expression.” Jaime M. Grant et al., National Center for Transgender Equality and National Gay and Lesbian Task Force, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* 35 (2011).

Transgender students in Virginia are no exception. More than half of LGBT students in Virginia regularly hear negative remarks about transgender people. GLSEN, *School Climate in Virginia* 1 (2014), available at <http://www.glsen.org/sites/default/files/GLSEN%202013%20Virginia%20State>

%20Snapshot.pdf. And more than eight in ten regularly hear other students in their school make negative remarks about how someone expressed their gender, such as comments about someone not acting feminine or masculine enough. *Id.*

LGBT students in Virginia report hearing biased language not only from their peers, but also from school staff. *Id.* One in four regularly hears school staff make negative remarks about someone's gender expression. *Id.*

Students in Virginia additionally report that harassment of LGBT students sometimes turns physical. *Id.* According to data from GLSEN, ten percent of LGBT students in Virginia are physically assaulted (e.g., punched, kicked, or injured with a weapon) based on the way they expressed their gender. *Id.*

Data from another survey confirms GLSEN's findings. Virginian respondents to a national survey of transgender individuals reported the following: "Those who expressed a transgender identity or [gender-nonconformity] while in grades K-12 reported alarming rates of harassment (74%), physical assault (35%) and sexual violence (23%)[.] Harassment was so severe that it led 11% to leave a school in K-12 settings or leave higher education[.]" National Center for Transgender Equality and National Gay and Lesbian Task Force, *Findings of the National Transgender Discrimination Survey: Virginia Results 1* (2011), available at http://www.transequality.org/sites/default/files/docs/resources/ntds_state_va.pdf.

State-specific data that GLSEN and other organizations have gathered confirms a prevailing atmosphere of hostility towards transgender students throughout the Fourth Circuit.³ In South Carolina, about seventy percent of LGBT students regularly hear negative remarks about transgender people, and about fifteen percent are physically assaulted based on the way they expressed their gender. GLSEN, *School Climate in South Carolina 1* (2014), available at <http://www.glsen.org/sites/default/files/GLSEN%202013%20South%20Carolina%20State%20Snapshot.pdf>. The Co-Founder of Gender Benders discussed two transgender students in South Carolina whose experiences support the data GLSEN gathered: “One transgender student, a fifteen-year-old transgender boy who is forced to use a gender neutral restroom, avoids eating and drinking all day. He’s been called ‘he-she,’ ‘dyke,’ and ‘tranny.’ Another transgender student, a seventeen-year-old transgender girl, avoid9(t)813(t,)ay

In North Carolina, more than sixty percent of LGBT students hear negative remarks about transgender people, and over ten percent are physically assaulted based on the way they express their gender. GLSEN, *School Climate in North Carolina 1* (2014), available at <http://www.glsen.org/sites/default/files/GLSEN%202013%20North%20Carolina%20State%20Snapshot.pdf>. North Carolinian respondents to the National Transgender Discrimination Survey reported similar data: “Those who expressed a transgender identity or [gender-nonconformity] while in grades K-12 reported alarming rates of harassment (88%) [and] physical assault (28%) [.] Harassment was so severe that it led 8% to leave a school in K-12 settings or leave higher education[.]” National Center for Transgender Equality and National Gay and Lesbian Task Force, *Findings of the National Transgender Discrimination Survey: North Carolina Results 1* (2011), http://www.transequality.org/sites/default/files/docs/resources/ntds_state_nc.pdf.

In Maryland, nearly sixty percent of LGBT students regularly hear negative remarks about transgender people, and five percent report being physically assaulted based on the way they express their gender. GLSEN, *School Climate in Maryland 1* (2014), available at <http://www.glsen.org/sites/default/files/GLSEN%202013%20Maryland%20State%20Snapshot.pdf>. Maryland respondents to the National Transgender Discrimination Survey reported the following: “Those who expressed a transgender identity or [gender-nonconformity] while in grades

K-12 reported alarming rates of harassment (81%), physical assault (38%) and sexual violence (16%).] Harassment was so severe that it led 6% to leave a school in K-12 settings or leave higher education[.]” National Center for Transgender

dysphoria. Needlessly, exclusionary restroom policies play a major role in creating school climates that deny transgender students equal educational opportunities and erect discriminatory barriers to their academic achievement, physical health, and social success.

III. Inclusive Restroom Policies Help To Ensure Transgender Students Stay in School and Achieve Academic Success

In marked contrast to transgender students who face exclusionary restroom policies, transgender students who are treated equally and permitted to use the same restrooms used by other students of their gender are much more likely to stay in school and fare significantly better in school than those who are not. One transgender student in Virginia lived under both policies, and his academic performance demonstrated their effect. The Executive Director of ROSMY explained: “His grades were good early in high school, but there was a huge drop in his grades when he was coming out partly because he was still using the girls’ restroom. Ultimately, he was allowed to use the boys’ restroom, and he ended up having a good amount of support in the school, earning all As and Bs his senior year.” ROSMY Interview. This transgender student flourished when he was permitted to use the restroom matching his gender identity.

The Director of Public Policy at GLSEN confirmed the benefits of inclusive restroom policies: “Students who go to schools with inclusive policies, staff

training, and access to the restrooms they choose have a better experience than those who go to schools [with exclusionary restroom policies]. Students in the latter type of schools have lower GPAs, feel less safe, and are less connected to their school community.” GLSEN Interview.

The Co-Executive Director of GSA Network provided additional support: “Youth have said [that inclusive restroom policies have]

school and concentrate on my education more than my safety. Being allowed to be

myself in the most basic human ways (using the restroom) was co(f)12.2(ra)3.6usnd resoom sho

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equally and permitted to use the same restroom used by other students of their gender are much more likely to stay in school, thrive, and succeed.

AMICI CURIAE'S CERTIFICATE OF COMPLIANCE

CERTIFICATE OF SERVICE

I hereby certify that the foregoing motion was served on all parties or their counsel through the CM/ECF system.

Dated: October 28, 2015

s/ David Dinielli

David Dinielli