

**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 FOR THE CITY AND COUNTY OF SAN
FRANCISCO, THE CITY OF NEW YORK, AND 29
OTHER JURISDICTIONS AND MAYORS AS *AMICI
CURIAE* IN SUPPORT OF RESPONDENT**

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INTEREST OF *AMICI CURIAE*¹

Amici cities and counties are home to a substantial portion of the Nation's 1.4 million transgender adults.² While many Americans have only recently become familiar with transgender members of our communities, neither transgender people nor transgender identities are new in American life. Transgender individuals are our classmates, our neighbors, and our coworkers, yet many face a daily reality marked by exclusion and violence. *Amici* share a strong interest in protecting members of our communities from mistreatment – an interest that has led many of the *amici* cities and counties to enact laws and implement policies that bar discrimination against transgender individuals. *Amici* unite in the common goal of ensuring that transgender people may live in our communities with dignity and respect, free from daily stigma and barriers to participation in society.

Amici submit this brief to relate their experiences implementing laws that prohibit discrimination against transgender individuals, including, in some instances,

¹ Pursuant to Supreme Court Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *amici* and their counsel made a monetary contribution to its preparation or submission. Counsel for Petitioner's letter consenting to the submission of *amicus* briefs has been filed with the Clerk's Office. Counsel for Respondent has consented to the filing of this *amicus* brief.

² Jan Hoffman, *Estimate of U.S. Transgender Population Doubles to 1.4 Million Adults*, N.Y. Times (June 30, 2016), https://www.nytimes.com/2016/07/01/health/transgender-population.html?_r=1.

measures that expressly recognize the right of all community members to use restrooms and other sex-segregated facilities consistent with their gender identity. *Amici's* decades of experience in implementing such policies confirm that they serve only to make our communities safer and more inclusive, and are an important bulwark in preventing discrimination against transgender people.



SUMMARY OF ARGUMENT

Amici have long observed the importance of protecting their transgender residents from the type of discrimination that Petitioner seeks to institutionalize: exclusion from facilities and accommodations on the basis of unfounded fears and outdated stereotypes about masculinity, femininity, and sexual characteristics. *Amici*, along with scores of other localities, have adopted laws forbidding this exclusion and protecting transgender individuals from discrimination in places of public accommodation, in workplaces, in healthcare facilities, and in many other areas. These laws are consistent with nearly three decades of jurisprudence under federal antidiscrimination law protecting transgender people and others whose gender presentation varies from stereotypical assumptions. That body of law confirms that policies like the one at issue here – prohibiting a transgender student from using the school restroom that matches his gender identity – violate the nondiscrimination mandate of Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681. Title

IX guarantees transgender students like Gavin Grimm the right to use restrooms consistent with their gender identity – a right currently enjoyed by their non-transgender classmates.

Amici's experience refutes Petitioner's speculative assertions that ensuring transgender students equal access to restrooms consistent with their gender identity will erode social privacy norms, threaten public safety, and reinforce sex stereotyping. Br. 39. None of these imagined consequences have materialized in the many years that *amici* have been enforcing their anti-discrimination laws. To the contrary, *amici* have found that their laws promote the very interests that Petitioner claims the Fourth Circuit's decision impedes. Providing transgender people access to bathrooms, locker rooms, healthcare facilities, and similar public accommodations on the basis of their gender identity enhances public safety by reducing the threat of violence transgender people face when they are forced to use facilities that do not accord with their public presentation of gender. *Amici* have administered laws allowing for such access – and protecting against discrimination – without having to resort to the policing of gender presentation that Petitioner forecasts. And *amici's* inclusive policies have enhanced privacy for *all* persons by creating additional private restrooms and individual changing areas.

Petitioner's efforts to exclude transgender people from Title IX's protection threaten to undermine many years of work by *amici* and other localities to protect

transgender students, workers, and residents; to increase cultural awareness and understanding of transgender rights; and to integrate our transgender brothers and sisters into the broader community. Transgender people continue to suffer from discrimination and marginalization at much higher rates than other groups. Petitioner’s narrow conception of Title IX would place yet another obstacle in the path to full participation in public life for transgender people. *Amici* urge this Court to affirm the court of appeals’ judgment and hold that Title IX guarantees equal access to education for Gavin and other transgender students.

◆

ARGUMENT

I. Petitioner’s Restroom Policy Violates Title IX.

A. Protecting Transgender Students from Discrimination Under Title IX Accords with the Longstanding Interpretation of Similar Text in Title VII.

Title IX “broadly prohibits” any recipient of federal education funding “from subjecting any person to ‘discrimination’ ‘on the basis of sex.’” *Johnson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 173 (2005) (quoting 20 U.S.C. § 1681). Courts consistently interpret this provision with reference to the parallel prohibition of sex discrimination under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a)(1). See, e.g., *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629, 651 (1999).

Title VII precedent recognizes that sex discrimination includes discrimination on the basis of a person's failure to conform to gender stereotypes, and rejects the notion that sex discrimination can be based only on "biological" characteristics. Cf. Resp. Br. 35-36 & n.26. The court of appeals' decision is consistent with this long-standing precedent.

Nearly thirty years ago, the Court confirmed in *Price Waterhouse v. Hopkins* that Title VII's proscription against discrimination on the basis of sex includes discrimination because of an individual's nonconformity with stereotypes regarding appropriate masculine or feminine behavior or appearance. 490 U.S. 228, 252 (1989) (plurality opinion); see also Resp. Br. 35-37. The Court explained that an employer who discriminates because of "sex stereotyping . . . has acted on the basis of gender" in violation of Title VII. *Price Waterhouse*, 490 U.S. at 250. Thus, Title VII's antidiscrimination provision "encompasses both sex – that is, the biological differences between men and women – *and* gender." *Schwenk v. Hartford*, 204 F.3d 1187, 1202 (9th Cir. 2000).

In the wake of *Price Waterhouse*, lower courts widely recognized that discrimination on the basis of transgender status is a form of impermissible sex stereotyping under Title VII. For instance, the Sixth Circuit held that a transgender employee stated a discrimination claim under Title VII against her employer, which had tried to force her to resign after she began expressing her female gender identity in the workplace. *Smith v. City of Salem*, 378 F.3d 566,

572-73 (2004). The court held that this constituted “discrimination based on a failure to conform to stereotypical gender norms” that was no different from that which *Price Waterhouse* forbade. *Id.* at 573.

Similarly, the Eleventh Circuit affirmed a grant of summary judgment in favor of a transgender woman on her claim that she had been denied equal protection on the basis of sex when her government employer fired her for publicly transitioning from male to female. *Glenn v. Brumby*, 663 F.3d 1312, 1314 (2011). In doing so, the court found this discrimination to be rooted in gender stereotypes and suggested that discrimination directed at a person because of his or her transgender status would always offend Title VII. *Id.* at 1321. The court reasoned that “[a] person is defined as transgender precisely because of the perception that his or her behavior transgresses gender stereotypes. . . . There is thus a congruence between discriminating against transgender . . . individuals and discrimination on the basis of gender-based behavioral norms,” which *Price Waterhouse* made clear is unlawful. *Id.* at 1317.

Numerous other state and federal courts have construed Title VII, and similarly worded federal statutes prohibiting sex discrimination, as forbidding discrimination against transgender people.³ These decisions

³ See, e.g., *Barnes v. City of Cincinnati*, 401 F.3d 729, 737-38 (6th Cir. 2005); *Lopez v. River Oaks Imaging & Diagnostic Grp., Inc.*, 542 F. Supp. 2d 653, 660 (S.D. Tex. 2008); cf. *Rosa v. Park W. Bank & Trust Co.*, 214 F.3d 213, 215-16 (1st Cir. 2000) (holding

recognize that disparate treatment directed at transgender people often flows from the lack of alignment between their gender identity and stereotypes about individuals who share their sex assigned at birth. See *Schwenk*, 204 F.3d at 1201. *Price Waterhouse* teaches that discrimination against transgender people, rooted in sex stereotypes, is a form of discrimination based on sex.

The same understanding should apply under the parallel antidiscrimination provision in Title IX, a statute that shares Title VII’s fundamental goal of ending the enforcement of traditional sex stereotypes. In enacting Title VII, and “forbidding employers to discriminate against individuals because of their sex, Congress intended to strike at the entire spectrum of disparate treatment . . . resulting from sex stereotypes.” *Los Angeles Dep’t of Water & Power v. Manhart*, 435 U.S. 702, 707 n.13 (1978). Likewise, Title IX seeks to remove barriers to educational equality that grow out of stereotypical assumptions about women’s need for higher education, interest in certain occupations, or likelihood to contribute to the workforce. See U.S. Dep’t

that under *Price Waterhouse*, a bank’s refusal to give a loan application to a plaintiff dressed in “traditionally feminine attire” because such “attire did not accord with his male gender” stated a sex discrimination claim under the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691 *et seq.*); *Schwenk*, 204 F.3d at 1202 (holding that under *Price Waterhouse*, a transgender prisoner’s allegations that a guard targeted her for assault because she “was a man who ‘failed to act’ like one” stated a claim under the Civil Rights Remedies for Gender-Motivated Violence Act, 42 U.S.C. § 13981).

of Educ., *Title IX: 25 Years of Progress* (1997).⁴ These assumptions are not rooted in biology but instead in gender norms. Thus, both provisions work to eradicate barriers created by sex stereotyping, and both must be construed to prohibit discrimination based on it.

B. Denying Transgender People Equal Access to Restrooms Is a Form of Sex Discrimination.

Policies like the one at issue in this case discriminate on the basis of sex under Title IX. Such policies single out transgender students for less favorable treatment by precluding them, unlike all other members of their school communities, from using facilities consistent with their gender identity.

These exclusionary policies run afoul of federal law because they reinforce harmful and limiting “socially-constructed gender expectations,” *Schwenk*, 204 F.3d at 1202, regarding how an individual’s gender identity or expression should align with his or her sex assigned at birth. Just as an employer impermissibly perpetuates sex stereotypes when it refuses to promote a woman whose gender expression is insufficiently “feminine[],” *Price Waterhouse*, 490 U.S. at 235, so too do schools discriminate on the basis of sex when they bar transgender individuals from using sex-segregated facilities consistent with their gender identity. In both instances, individuals are penalized because their

⁴ <https://www2.ed.gov/pubs/TitleIX/part3.html#road>.

gender identity or expression does not fulfill social expectations based on stereotypes associated with their sex assigned at birth. See, e.g., *Glenn*, 663 F.3d at 1316; *Barnes*, 401 F.3d at 729; *Smith*, 378 F.3d at 575.

These policies uniquely burden transgender students. Students who are not transgender may use public restrooms without having to prove that they are using the facility consistent with their sex assigned at birth. Those students may take for granted that they are permitted to use restrooms that coincide with their gender identity, for the sole reason that their gender identity happens to align with their sex assigned at birth. Under policies like Petitioner's, only transgender students, whose gender identity and sex assigned at birth do not align, are denied this basic freedom. Such policies thus penalize a discrete minority of individuals whose sex does not correspond to their gender identity. See *Raytheon Co. v. Hernandez*, 540 U.S. 44, 52 (2003) (explaining that disparate treatment occurs when the decision maker "simply treats some people less favorably than others because of . . . sex").

The harm these discriminatory policies cause cannot be remedied by allowing transgender students to use single-stall facilities. Requiring transgender students to use different facilities than other students is a form of "separate but equal" treatment that imposes significant burdens on those students. Exclusion from appropriate restrooms denies transgender students the equal access to education that Title IX guarantees. It visibly marks them as different from their peers, thereby exposing them to increased risk of violence

and harassment; it also requires them to miss class and activity time to visit bathrooms that may not be conveniently located. Resp. Br. 29-30. Title IX's nondiscrimination mandate will not be fulfilled unless transgender students have equal access to the facilities where they belong.

II. Prohibiting Discrimination Against Transgender People Furthers, Not Hampers, Cities' and Counties' Interests in Promoting Public Safety and Inclusivity.

Petitioner and its *amici* rely on unfounded speculation to argue that allowing transgender students equal access to school facilities consistent with their gender identity will lead to negative consequences such as compromising the privacy interests of other students and enticing sexual predators to use bathrooms to commit sex crimes. They further assert that equal-access policies are unworkable in practice. See Pet. Br. 37; Br. of Pub. Safety Experts 5-17; Br. of Concerned Women for Am. 5-10. Indeed, the claims here replay a familiar strategy of those who seek to impede progress towards fuller realization of our Nation's fundamental ideals by warning of a parade of imagined horrors unsupported by any evidence. See, e.g., Br. of *Amicus Curiae* Public Advocate of the U.S. et al. in Support of Respondents, *Obergefell v. Hodges*, Nos. 14-556, 14-562, 14-571, and 14-574 at 26-38 (arguing that same-sex marriage will lead to the "legalization of

multiple-partner and incestuous marriage,” drive “people of biblical faith . . . from public office,” and “undermin[e] the created male-female order”).

Such speculation is refuted by decades of actual experience among *amici* in prohibiting discrimination against transgender people in public accommodations. Many cities and counties long ago guaranteed transgender people access to restrooms and other sex-segregated facilities according to their gender identity. In particular, the experiences of San Francisco and New York City with implementing transgender-inclusive policies – in schools and in virtually every other aspect of public life – demonstrate that the concerns of Petitioner and its *amici* are unfounded.

A. San Francisco, New York City, and Other Jurisdictions Have a Record of Experience in Combating Discrimination Against Transgender People.

1. *Amici* are, and have historically been, home to large and vibrant transgender communities that have contributed to civic life in innumerable ways, including through civil rights advocacy. In 1959, the first known transgender resistance against arbitrary police arrest occurred at a donut shop in downtown Los Angeles. City of L.A., Dep’t of City Planning, Office of Historic Res., *SurveyLA LGBT Historic Context Statement* 17, 29, 60-61 (2014).⁵ Over fifty years ago, in 1966, “San

⁵ http://preservation.lacity.org/sites/default/files/LGBT%20Historic%20Context%202014-14_0.pdf.

Francisco’s Tenderloin [neighborhood] became a national hub for early transgender activism and social services” following the Compton’s Cafeteria uprising. Nat’l Park Serv., Dep’t of the Interior, *LGBTQ America: A Theme Study of Lesbian, Gay, Bisexual, Transgender and Queer History* 10-26 (Megan E. Springate, ed. 2016);⁶ see also S.F., Cal., Bd. of Supervisors, Res. No. 170131, introduced Jan. 31, 2017 (proposing establishment of the Compton’s Cultural District to “recognize the historical and present contributions of the community and neighborhood”).⁷ Three years later, transgender women of color led the seminal rebellion at the Stonewall Inn in New York City. See *LGBTQ America: A Theme Study of Lesbian, Gay, Bisexual, Transgender and Queer History* at 10-26 & n.70.

Informed by the activism of their residents, San Francisco, New York City, and other localities have been prohibiting discrimination against transgender people for decades. Over forty years ago, Minneapolis, Minnesota became the first jurisdiction to provide transgender people with legal protections from discrimination, including in public accommodations, employment, and housing. See Minneapolis, Minn., Ordinance of 12-30-75 (current version at Minneapolis, Minn., Code of Ordinances, tit. 7, chs. 139 & 141 (2006)). In the years that followed, dozens of cities followed suit.

⁶ <https://www.nps.gov/subjects/lgbtqheritage/upload/lgbtqtheme-transgender.pdf>.

⁷ <https://sfgov.legistar.com/LegislationDetail.aspx?ID=2952180&GUID=67D7BB06-7AE0-4550-856E-CCD55D22F9A1&Options=ID|Text|&Search=170131>.

See, e.g., L.A., Cal., Ordinance 152,458 (July 8, 1979) (current version at L.A., Cal., Mun. Code §§ 49.70 *et seq.*); J. of the Proceedings of the City Council of Chi., Ill., p. 96031 (Nov. 6, 2002)⁸ (current version at Chi., Ill., Mun. Code § 2-160-070); Seattle, Wash., Ordinance 119628 (Aug. 31, 1999)⁹ (current version at Seattle, Wash., Mun. Code §§ 3.14.910, 3.14.931); Seattle, Wash., Mun. Code §§ 14.06.010 *et seq.*; Phila., Pa., Bill No. 010719 (May 29, 2002)¹⁰ (current version at Phila., Pa., City Code § 1100 *et seq.*).

Today, more than 200 cities and counties explicitly prohibit discrimination against transgender people in public accommodations, such as restaurants, hotels, retail stores, hospitals, government offices, and restrooms. Nat'l Ctr. for Transgender Equality, *Transgender People and Access to Public Accommodations 1* (2014).¹¹ Additionally, at least 225 cities and counties across the United States prohibit discrimination against transgender workers in both public and private employment contexts. Human Rights Campaign, *Cities and Counties with Non-Discrimination Ordinances that Include Gender Identity* (2016).¹² Many cities also

⁸ <http://chicityclerk.com/legislation-records/journals-and-reports/journals-proceedings>.

⁹ http://clerk.ci.seattle.wa.us/~legislativeItems/Ordinances/Ord_119628.pdf.

¹⁰ <http://legislation.phila.gov/attachments/7137.pdf>.

¹¹ http://www.transequality.org/sites/default/files/docs/kyr/PublicAccommodations_September2014.pdf.

¹² <http://www.hrc.org/resources/cities-and-counties-with-non-discrimination-ordinances-that-include-gender>.

have laws prohibiting discrimination in housing. See, e.g., L.A., Cal., Mun. Code § 49.73; Chi., Ill., Mun. Code §§ 5-8-010 *et seq.*; Phila., Pa., City Code §§ 1101 *et seq.*; Seattle, Wash., Mun. Code §§ 14.08.010 *et seq.* These local antidiscrimination laws ensure that transgender people have the right not to be refused entry, participation, or services based on their status as transgender or gender nonconforming; to be free from harassment; and to dress and present themselves in a manner consistent with their gender identity.

2. In 1993, San Francisco voters enacted Proposition L, which protected city employees from workplace discrimination due to their transgender status. See Office of the Registrar of Voters, City and Cty. of S.F., *San Francisco Voter Information Pamphlet and Sample Ballot, Nov. 2, 1993 Consolidated General Election* 121.¹³ The next year, the San Francisco Human Rights Commission reported the results of its investigation into discrimination against transgender people. See S.F. Human Rights Comm’n, *Investigation into Discrimination Against Transgendered People* (Jamison Green, principal author, 1994).¹⁴ The report found that “[then-]existing laws and policies often undermine[d] the dignity and privacy of” the City’s thousands of transgender residents representing “every demographic group: every race, every class, every culture, [and] every sexual orientation.” *Id.* at 44. In response to the

¹³ http://sfpl.org/pdf/main/gic/elections/November2_1993short.pdf

¹⁴ http://sf-hrc.org/sites/default/files/Documents/HRC_Publications/Articles/Investigation_into_Discrimination_Against_Transgendered_People.pdf

report, San Francisco amended its Human Rights Ordinance to expressly prohibit discrimination in employment, housing, and public accommodations on the basis of “a person’s various individual attributes as they are understood to be masculine or feminine.”¹⁵ S.F., Cal., Ordinance 433-94 (Dec. 30, 1994) (current version at S.F., Cal., Admin. Code § 12A and S.F., Cal., Police Code art. 33), codified at S.F., Cal., Admin. Code § 12A.3(a).

Thus, like Title VII and other federal antidiscrimination statutes, San Francisco’s ordinance prohibits discrimination against both transgender and non-transgender people who “fail[] to act and appear according to expectations defined by gender.” *Glenn*, 663 F.3d at 1316. It thereby guarantees that “[a]ll people have an equal and binding right to the access and safe use of those facilities that are segregated by sex.” S.F. Human Rights Comm’n, *Compliance Rules and Regulations Regarding Gender Identity Discrimination* 5(F)(1) (2003) (“S.F. Human Rights Comm’n, *Compliance Rules and Regulations*”).¹⁶ Accordingly, discrimination in public accommodations includes denying

¹⁵ San Francisco has since extended such antidiscrimination protections to cover: (1) long-term care facilities, S.F., Cal., Police Code § 3304.1, added by Ordinance 47-15 (Apr. 16, 2015); (2) home delivery services, S.F., Cal., Police Code § 3305.1, added by Ordinance 217-96 (May 30, 1996); and (3) persons who associate with members of a protected class, S.F., Cal., Police Code § 3305.2, added by Ordinance 222-02 (Nov. 15, 2002).

¹⁶ <http://sf-hrc.org/compliance-guidelines-prohibit-gender-identity-discrimination>.

transgender people access to restrooms and other single-sex facilities that are “consistent with and appropriate to their gender identity.” *Id.* at 5(A), see also *id.* at 4(C). The San Francisco Board of Supervisors has found that “[s]uch discrimination foments strife and unrest, and it deprives the City and County of the fullest utilization of its capacities for development and advancement.” S.F., Cal., Police Code § 3302.

San Francisco’s Unified School District likewise aims to protect transgender students as part of its mission “to ensure that every student has equal access to all components of their educational program.” S.F., Cal., Bd. of Educ. Admin. Reg. R5163a at 1 (“SFUSD Reg.”) (last updated 2013).¹⁷ School staff are directed to protect transgender and gender-nonconforming students from discrimination and harassment; to address students with the name and pronoun corresponding to their gender identity; and to permit students to participate in sex-segregated activities “in accordance with their gender identity.” *Id.* at 2-3. Importantly, staff must permit students “access to the restroom that corresponds to their gender identity as expressed by the student and asserted at school.” *Id.* at 2.

3. New York City has also long recognized the rights of transgender individuals. As an extension of that historic recognition, in 2002 the City Council enacted the Transgender Rights Act, which amended the

¹⁷ This document, and similar materials cited in this brief without an accompanying URL citation, are on file with the San Francisco City Attorney’s Office.

New York City Human Rights Law to ensure protection for individuals whose “gender and self-image do not fully accord with the legal sex assigned to them at birth.” N.Y.C., N.Y., Local Law No. 3 (2002) (codified at N.Y.C., N.Y., Admin. Code § 8-102(23)). That law has prohibited discrimination based on gender identity, gender expression, and transgender status ever since. More recently, the City’s Commission on Human Rights issued legal enforcement guidance to clarify that refusing to allow individuals to use single-sex restroom and locker room facilities consistent with their gender identity constitutes discrimination under the Act. See N.Y.C. Comm’n on Human Rights, *Legal Enforcement Guidance on Discrimination on the Basis of Gender Identity or Expression: Local Law No. 3; N.Y.C. Admin. Code § 8-102(23)* (rev. June 28, 2016).¹⁸

New York City also affords these protections to transgender students in public schools. Since 2014, the City’s Department of Education has maintained its Transgender and Gender Nonconforming Student Guidelines, instructing school officials how to “promote the educational and social integration of transgender and gender nonconforming students and ensure a safe learning environment free from discrimination.” N.Y.C. Dep’t of Educ., *Transgender and Gender Nonconforming Student Guidelines* (2017) (“Guidelines”).¹⁹ The Guidelines, which were recently updated, emphasize

¹⁸ https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/GenderID_InterpretiveGuide_2015.pdf.

¹⁹ <http://schools.nyc.gov/RulesPolicies/TransgenderStudentGuidelines/default.htm>.

the right of students to “have their gender identity recognized and respected by their school community.” *Ibid.* They thus prohibit discrimination and harassment of transgender students, require school officials to use transgender students’ preferred names and pronouns consistently asserted at school, and direct schools to offer support for transgender and transitioning students and their families. *Ibid.* The Guidelines also guarantee students “access to facilities (restrooms, locker rooms or changing rooms) consistent with their gender identity” and bar schools from requiring a student to use a sex-segregated facility “that conflicts with the student’s gender identity.” *Ibid.*

Petitioner suggests that there would be no practicable way for schools to “manag[e] access” to restrooms and locker rooms if transgender students were permitted to use the facilities consistent with their gender identity. Br. 37. New York City has found the opposite to be true. Indeed, teachers, staff, and students have embraced these policies. And the head of the Department of Education’s Office of Safety and Youth Development, which works with schools to establish integrated safety policies, is aware of no reports of voyeurism or harassment of students in bathrooms or other sex-segregated facilities as a result of abuse of the policy. Extensive training of teachers and meetings with parents about gender issues and the Guidelines have facilitated successful implementation.

New York City has adopted similar equal-access policies in other settings. All city agencies must comply with the City’s “Single-Sex Facility Policy.” N.Y.C. Office of

the Mayor, Exec. Order No. 16 (March 7, 2016).²⁰ Under this policy, employees of city agencies and members of the public visiting city buildings must be permitted to use the single-sex facility that is consistent with their gender identity or expression, without being required to show identification, medical documentation, or other proof of gender. The policy also requires city agencies to provide staff with training on transgender diversity and inclusion. The New York City Police Department (“NYPD”) trains officers in the contours of the policy, and instructs them that the policy does not permit the commission of crimes such as “peeping,” harassment, or stalking within sex-segregated facilities. NYPD, *LGBT Sensitivity and Gender Identity Handout* (2016).

Although the Single-Sex Facility Policy was issued fairly recently, New York City agencies have been implementing equal-access policies for years. For example, since 2006, New York City’s Department of Homeless Services has had a policy of assigning clients to shelters based on their gender identity. N.Y.C. Dep’t of Homeless Servs., Procedure No. 06-1-31, *Transgender/Intersex Clients* (Jan. 31, 2006).²¹ And since 2009, the Human Resources Administration, the City’s social services agency, has maintained a policy of “equal access” to its services for transgender individuals, and instructed staff that transgender clients must be allowed to use sex-segregated “restrooms,

²⁰ https://www1.nyc.gov/assets/cchr/downloads/pdg/E016_Single-sex_City_facilities.pdf.

²¹ <http://www.coalitionforthehomeless.org/wp-content/uploads/2014/07/transgender-intersex-clients-DHS-policy-06-1-31.pdf>.

locker rooms, and other essential services” consistent with their gender identity. N.Y.C. Human Res. Admin., Procedure No. P-09-22, *Serving Transgender, Transsexual and Gender Nonconforming Individuals* (Dec. 23, 2009).²² Similarly, in 2012, the NYPD implemented changes to its Patrol Guide requiring officers to respect the gender identity and expression of transgender and gender-nonconforming people when addressing, processing, searching, and housing those individuals. NYPD, *LGBT Sensitivity and Gender Identity Handout* (2016).

B. Local Experience Proves that Antidiscrimination Laws Protecting Transgender People Are Easily Administered and Create No Threat to Public Safety.

Amici’s experiences administering these equal-access laws and policies have left them confident that ensuring transgender people access to restrooms that are safe and appropriate does not create any safety risk to others. *Amici’s* experiences have likewise proved that no practical problems arise from protecting transgender people from discrimination. Rather, *amici* have found these policies are easy to administer and promote greater social inclusion.

1. People in San Francisco access the vast majority of city-administered, sex-segregated facilities on

²² <https://srhp.org/files/HRA%20Serving%20Transgender%20Transsexual%20and%20Gender%20Nonconforming%20Individuals.pdf>.

the basis of their self-asserted gender identity. For example, the San Francisco Recreation and Parks Department administers over 200 parks in the City, in addition to recreation centers, pools, and sports facilities. Golden Gate Park, the centerpiece of San Francisco’s park system, has ten different bathrooms throughout and hosts well over ten million visitors annually. Even smaller parks, such as Dolores Park in the Mission District, can see ten thousand visitors on a busy day. Visitors simply use the restroom facility in these parks that is appropriate for them based on their self-identification.

Unlike policies that attempt to assign individuals to bathrooms based on sex assigned at birth, equal-access policies like San Francisco’s require no policing of gender and are easy to administer. The compliance guidelines governing implementation of San Francisco’s ordinance prohibit “requiring proof of an individual’s gender . . . except in situations where all persons are asked to verify their gender.” S.F. Human Rights Comm’n, *Compliance Rules and Regulations* at 5(B). This provision is rarely, if ever, invoked as there are very few instances in which *every* member of the public – including non-transgender people whose gender identity coincides with their sex assigned at birth – is asked to verify his or her gender.

In sex-segregated facilities where nudity is unavoidable, such as locker rooms at pools, San Francisco has adopted special guidelines that allow users to tender proof of gender, which may include “a letter from a City department, community-based organization,

healthcare provider, or counselor.” S.F. Human Rights Comm’n, *Compliance Rules and Regulations* at 5(F)(3). Access to and use of these facilities “may not be denied to any individual with an identification that designates the gender they are asserting.” *Id.* at 5(F)(2). Where an individual does not voluntarily show such identification, that person is not denied access to the facility; rather, “reasonable accommodations shall be made to integrate the individual into the facility that corresponds with the [individual’s] gender identity.” *Ibid.* Reasonable accommodations have included the installation of shower curtains and individual changing stalls in public locker rooms.

San Francisco’s public-accommodations protections extend beyond access to bathrooms and locker rooms, guaranteeing transgender people “the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any business establishment or public accommodation.” S.F., Cal., Police Code § 3305(a)(1). Public-accommodations protections cover, for example, the provision of health care, where an individual’s biological sex characteristics can be relevant. Accordingly, San Francisco’s Department of Public Health provides access to health services and facilities on the basis of actual individual needs, rather than strictly on the basis of a person’s sex assigned at birth.

For example, where gender identity is most relevant, such as in single-sex group counseling sessions or residential treatment facilities, individuals access services based on gender identity. For medical services

that pertain to sex organs, such as prostate exams or pap smears, individuals access services based on anatomy. Transgender people in hospitals are offered private rooms to prevent them from being exposed to invasive questioning or inconsiderate treatment from potential roommates; if they decline, they are assigned to shared rooms based on gender identity. These policies have proven straightforward to administer.

2. Nor has New York City encountered problems in administering its similar policies. The New York City Human Rights Law requires that individuals be permitted to use single-sex facilities and participate in single-sex programs consistent with their gender identity, regardless of their sex assigned at birth. N.Y.C., N.Y., Local Law No. 3 (2002) (codified at N.Y.C., N.Y., Admin. Code § 8-102(23)). Covered entities that regularly require a form of identification for a legitimate business reason may continue to do so. Those entities may request identification to corroborate a person's identity, but may not subject transgender or gender-nonconforming people to disproportionate scrutiny. *Ibid.*

In the few instances where implementation of New York City's transgender-inclusive policies has produced some initial tensions, those issues have subsided quickly. The City's Parks Department initially received some complaints in response to new signs placed in facilities advising users of the right of all individuals to access the restroom or locker room consistent with their gender identity or gender expression. The complaints were unrelated to any allegations of

harassment or abuse of the policy. Following these initial concerns, park officials have received few complaints and seen smooth implementation of the policy. Where particular privacy concerns regarding bathrooms or locker rooms arise, the Parks Department's policy is to accommodate the complaining party – when possible, by providing that person with an alternative room, such as a family changing room. Thus, while implementation of equal-access policies for transgender people remains a work in progress, the City and its residents continue to learn from experience how best to address privacy concerns when they arise.

3. It has been the experience of both San Francisco and New York City that discrimination against transgender people – including denials of access to public accommodations such as restrooms – as well as any anxiety or concerns about providing transgender people with equal access, are effectively reduced through community education. This accords with the San Francisco Human Rights Commission's finding "that most situations in which people experience discomfort or have a fear of confrontation [related to a given individual's gender identity or expression] can be addressed so that all individuals are treated with dignity and the law is not violated." S.F. Human Rights Comm'n, *Compliance Rules and Regulations* at 7.

Accordingly, to further San Francisco's goal of eliminating discrimination against transgender people, many city departments give and receive transgender cultural competency training. The San Francisco Police Department ("SFPD") has incorporated such training

into its police academy and has policies governing appropriate interaction with transgender community members to eliminate biased policing, harassment, and retaliation. SFPD, Dep't Bulletin A 13-258, *Standards for Interaction with Transgender Communities* (2013); see also SFPD, Roll Call Training Lesson No. 252-03. The SFPD is required to conduct its duties in a manner "free from bias" against transgender people. SFPD, Gen. Order 5.17 (2011).²³ Similarly, the San Francisco Sheriff's Department dedicates four hours of mandatory continuing education a year to transgender cultural competency. S.F. Sheriff's Dep't, Trainer's Manual, Gender Awareness Training 2016-2017. Additionally, the Department of Public Health requires any person with patient contact who works for or contracts with it to receive a "Trans 101" training. Although trainers have heard concerns expressed during such trainings that laws and policies ensuring equal access to transgender people could lead to discomfort on the part of non-transgender people, such fears have not been realized.

New York City has also led efforts to reduce the harassment and violence directed toward the transgender community by providing extensive transgender cultural competency training for municipal employees. See, e.g., NYPD, *LGBT Sensitivity and Gender Identity Handout* (2016); N.Y.C. Dep't of Educ., *Respect for All: Training Content* (2017).²⁴ Additionally, city agencies

²³ <https://sanfranciscopolice.org/sites/default/files/FileCenter/Documents/27231-DGO%205.17%20-%20rev.%2005-04-11.pdf>.

²⁴ [http://schools.nyc.gov/RulesPolicies/RespectforAll/EducatorResources/TrainingContent/default.htm?WBCMODE=.](http://schools.nyc.gov/RulesPolicies/RespectforAll/EducatorResources/TrainingContent/default.htm?WBCMODE=)

direct transgender individuals to tailored support services, including anti-violence programs, job training, and post-incarceration services. See Office of the N.Y.C. Comptroller, *LGBTQ Guide of Services and Resources* (2016).²⁵

4. Petitioner suggests that inclusive policies for transgender people cannot be implemented without resort to the sort of sex-based stereotyping that federal law forbids. Br. 39. In fact, *amici* have found the opposite to be true: equal-access policies can be more readily and fairly administered, without resort to impermissible stereotypes, than policies that preclude transgender individuals from using the facilities consistent with their gender identity.

Exclusionary policies necessarily require that government enforcement officials rely on, and perpetuate, gender stereotypes. Those officials cannot feasibly stop and demand identification from every individual using a sex-segregated facility; nor may they physically inspect individuals to determine their sex.²⁶ Thus, to enforce such a policy, officials would have to identify potential violators based on their perceived conformity

²⁵ https://comptroller.nyc.gov/wp-content/uploads/documents/LGBTQ_Guide_2016.pdf.

²⁶ In any event, neither enforcement method would effectively achieve Petitioner's goal of excluding transgender men from men's restrooms and transgender women from women's restrooms. Many transgender individuals have government-issued identification that reflects their gender identity, rather than their sex assigned at birth. Furthermore, some transgender people have their external anatomy that accords with their gender identity while some non-transgender people do not.

to gender stereotypes. But such government activity runs afoul of basic antidiscrimination principles by singling out for heightened scrutiny those individuals who fail to conform to gender stereotypes. Exclusionary policies also empower private citizens to patrol sex-segregated facilities in reliance on gender stereotypes.

Amici have seen the negative effects of this sort of stereotyping firsthand. For example, in 2007, before New York City enacted its equal-access policy, Khadijah Farmer was ejected by a bouncer from the women's restroom of a restaurant. Jennifer 8. Lee, *Woman Wins a Settlement Over Her Bathroom Ouster*, N.Y. Times (May 14, 2008).²⁷ Farmer is not transgender, yet was removed from the women's restroom because "she looked too much like a man." *Ibid.* Such incidents take place in cities across the country. See, e.g., CBS Detroit, *Woman Mistaken For Man Files Lawsuit After Being Pursued In Restroom* (June 11, 2015).²⁸ These episodes demonstrate the perils of administering a policy that demands reliance on gender stereotypes for its enforcement, rather than allowing all people to use the facility consistent with their gender identity.

Moreover, as the court of appeals noted below, policies that allow transgender students to use sex-segregated facilities consistent with their gender identity avoid many practical difficulties presented by exclusionary policies like Petitioner's. See Pet. App.

²⁷ <http://www.nytimes.com/2008/05/14/nyregion/14gender.html>.

²⁸ <http://detroit.cbslocal.com/2015/06/11/woman-mistaken-for-man-files-lawsuit-after-being-pursued-in-restroom/>.

20a. For instance, policies that reduce sex to physical anatomy fail to properly account for persons who have undergone gender-confirming (*i.e.*, sex-reassignment) surgery, who are intersex, who have an X-X-Y sex chromosome, or who have “lost genitalia in an accident.” *Ibid.* In *amici*’s experience, policies allowing individuals to choose for themselves which sex-segregated facilities best align with their gender identity avoid these many difficulties.

5. *Amici*’s lengthy experience also confirms that the public-safety and privacy concerns Petitioners and its *amici* raise are unfounded. Collectively, *amici* cities and counties have extended nondiscrimination protections to transgender people for over four decades, and fears about predators taking advantage of local nondiscrimination statutes have not materialized. *Amici*’s experience implementing local laws that prohibit discrimination on the basis of gender identity demonstrates that these laws have neither led to public-safety harms nor impaired the privacy of people using public accommodations.

Despite decades of experience in implementing antidiscrimination laws and policies, San Francisco has not encountered the types of privacy and public-safety concerns that Petitioner and its *amici* envision. The San Francisco Recreation and Parks Department

has not received any complaints arising out of a transgender person using a restroom or other sex-segregated facility, or any complaints of a sexual predator falsely asserting a gender identity in order to gain access to a restroom. Neither the SFPD nor the San Francisco Sheriff's Department has any record of complaints regarding transgender individuals accessing public restrooms, or of sexual predators using antidiscrimination laws as a ruse to access such facilities.

New York City's experience is similar. Since the adoption of policies guaranteeing equal access for transgender individuals, New York City has experienced no discernible increase in public-safety incidents in public accommodations. Not only has the City seen no increase in harassment by transgender individuals against others, but it also has experienced no increase in harassment by non-transgender individuals in those facilities. Further, the NYPD reports no rise in the incidence of harassment or assault in public restrooms and similar facilities since the policy was implemented.

These observations are consistent with the experiences of police departments across the country, which agree that there have been no reports of sexual assault by a transgender person – or a person posing as one – resulting from state or local antidiscrimination statutes. See, e.g., Katy Steinmetz, *Why LGBT Advocates Say Bathroom "Predators" Argument Is a Red Herring*,

TIME (May 2, 2016);²⁹ Lou Chibbaro, Jr., *Predictions of Trans Bathroom Harassment Unfounded*, Washington Blade (Mar. 31, 2016)³⁰ (collecting statements from police departments in Washington, D.C., Baltimore, Maryland, Montgomery County, Maryland, and Prince George’s County, Maryland that no such assaults have occurred); Yezmin Villarreal, *N.C. Police Will Not Enforce Anti-LGBT House Bill 2*, The Advocate (May 11, 2016)³¹ (reporting that local police departments in Raleigh, Chapel Hill, Greensboro, and Asheville, North Carolina have not had “a single complaint filed”); Erin Beck, *Bathroom Predator Myth Has Real Effect On Transgender People’s Lives*, Charleston Gazette Mail (May 8, 2016)³² (noting that Huntington, West Virginia “Police Chief Joe Ciccarelli said there has been no uptick in sexual violence” associated with antidiscrimination protections for transgender residents).

The speculative concerns raised by the self-styled Public Safety Experts and others thus find no support in the lengthy experience of *amici* cities and counties. Petitioner’s *amici* focus on the risk posed by non-transgender male sex offenders who may abuse inclusive policies to obtain access to female victims in

²⁹ <http://time.com/4314896/transgender-bathroom-bill-male-predators-argument/>.

³⁰ <http://www.washingtonblade.com/2016/03/31/predictions-of-trans-bathroom-harassment-unfounded/>.

³¹ <http://www.advocate.com/transgender/2016/5/11/north-carolina-police-will-not-enforce-anti-lgbt-house-bill-2>.

³² <http://www.wvgazettemail.com/news/20160508/bathroom-predator-myth-has-real-effect-on-transgender-peoples-lives>.

restrooms and other facilities. They list what they term “relevant incidents” of voyeurism or exhibitionism in public restrooms and changing facilities – all drawn from news articles, without further substantiation – but fail to demonstrate any link between inclusive policies like those *amici* cities and counties have adopted and the incidents listed in the briefs. *E.g.*, Br. of Pub. Safety Experts 9-13; Br. of Concerned Women for Am. Br. 8-9.

Inevitably, some people may commit offenses in sex-segregated facilities. But transgender-inclusive policies simply do not grant license to non-transgender male sex offenders to pretend to be transgender to engage in misconduct in women’s facilities. *Amici* have found that equal-access policies protect all people from discrimination based on gender identity and expression, and any person – transgender or non-transgender, straight or gay – who harms another or invades their privacy remains subject to arrest and prosecution. Accepting the arguments of Petitioner’s *amici* would improperly allow the rogue actions of a handful of wrongdoers to undermine the rights of over a million Americans. See Andrew R. Flores, et al., *How Many Adults Identify as Transgender In the United States?* 3 (2016).³³

³³ <http://williamsinstitute.law.ucla.edu/wp-content/uploads/How-Many-Adults-Identify-as-Transgender-in-the-United-States.pdf>.

C. Local Experience Further Shows that Addressing Discrimination in Restroom Access Can Enhance Privacy for All.

Petitioner and its *amici* are also mistaken that equal-access policies infringe on the privacy interests of persons who are not transgender. *Amici* cities and counties have had no difficulty protecting the privacy of all users of public restrooms and other facilities. Indeed, *amici*'s experience confirms that inclusive policies enhance privacy across the board and therefore benefit all members of our communities.

1. A number of cities and counties afford privacy to all individuals, regardless of whether they are transgender, by mandating availability of private facilities, such as single-stall restrooms and curtained dressing areas. Since as early as 2006, cities such as New York, San Francisco, Philadelphia, Washington, D.C., Seattle, Portland, Austin, and West Hollywood have adopted laws requiring that existing single-stall restrooms be designated gender neutral. See, *e.g.*, Office of the N.Y.C. Comptroller, Bureau of Policy & Research, *Restrooms for All: A Plan to Expand Gender Neutral Restrooms in NYC 2-3* (2015) (“*Restrooms for All*”) (surveying laws in jurisdictions including Austin, Philadelphia, and West Hollywood);³⁴ S.F., Cal., Police Code § 3305.3; D.C. Mun. Regs. Rule 4-802; Seattle, Wash., Mun. Code § 14.07.030; Casey Parks, *Portland Converts 600 Restrooms to Gender-Neutral, “All User,”*

³⁴ https://comptroller.nyc.gov/wp-content/uploads/documents/Gender_Neutral_Bathrooms.pdf.

Oregon Live (Sept. 22, 2016).³⁵ In San Francisco, the broader availability of single-stall, gender-neutral facilities was adopted “to ensure that people of all genders have safe bathroom access.” S.F. Human Rights Comm’n, *Compliance Rules and Regulations* at 5(F)(1). Although transgender people may choose to access these facilities to avoid the risk of “being denied access, verbally harassed, or physically assaulted” in multiple-user sex-segregated facilities, the City’s policy is clear: “no one should be required to use an all-gender toilet facility because of their gender identi[t]y.” *Id.* at 1(c), (e).

Some cities require the inclusion of single-stall restrooms in new construction, while other cities, such as New York and San Francisco, mandate only that all existing single-stall restrooms be made available to persons of all genders. See *Restrooms for All* at 2-3; S.F., Cal., Police Code § 3305.3; Josh Dawsey, *NYC Mayor Signs Gender-Neutral Bathroom Law*, Wall Street Journal (June 28, 2016).³⁶ These efforts have proved easy to implement and have carried only minimal financial burden. *Restrooms for All* at 2-3. And they provide additional benefits by enhancing privacy for all members of the community. As the San Francisco Board of Supervisors has determined, “[a]ll-gender facilities . . . provide universal access for families with

³⁵ http://www.oregonlive.com/portland/index.ssf/2016/09/portland_converts_600_restroom.html.

³⁶ <https://www.wsj.com/articles/nyc-mayor-signs-gender-neutral-bathroom-law-1467157734>.

small children, people with disabilities who rely on personal care assistance from an attendant or family member, and seniors who require assistance or supervision.” S.F., Cal., Ordinance 53-16 § 1(e) (Apr. 12, 2016).³⁷

2. Such accommodations are particularly beneficial in schools. San Francisco Unified School District has made single-stall restrooms available for “any student who desires increased privacy, regardless of the underlying reason,” and endeavors to make accommodations in locker rooms – such as private areas or separate changing schedules – to address the needs and privacy concerns of all students. SFUSD Reg. at 2-3. New York City’s Department of Education likewise has a policy of offering “reasonable alternative arrangements,” such as “a single occupancy restroom, use of a private area, or a separate changing schedule.” N.Y.C. Dep’t of Educ., *Transgender and Gender Nonconforming Student Guidelines* (2017). Transgender students are not required to avail themselves of alternative arrangements; nor are such options available to only transgender students. Rather, alternative arrangements are offered to “any student who expresses a need or desire for increased privacy” and are “provided in a non-stigmatizing way.” *Ibid.* Other cities, including Los Angeles, have designated single-stall restrooms gender neutral in schools and have also begun making multiple-stall restrooms gender neutral. L.A. Unified Sch. Dist., Policy Bulletin No. BUL-62241, *Transgender*

³⁷ www.sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances16/o0053-16.pdf.

Students – Ensuring Equity and Nondiscrimination 5-6 (2014);³⁸ see also Sonali Kohli, *This School Is Opening the First Gender-Neutral Bathroom in Los Angeles Unified*, L.A. Times (Apr. 14, 2016).³⁹ In implementing these inclusive policies, *amici* have found that many students – including students who are not transgender, but may nevertheless be sensitive about their body shape, weight, or appearance – appreciate additional privacy. For example, after their equal-access policy for transgender students in schools had been in effect for nine years, the Los Angeles Unified School District reported that it “solves problems. It doesn’t create them.” Luke Brinker, *One Month Later: How California’s Transgender Student Law is Affecting Public Schools*, EqualityMatters (Jan. 31, 2014).⁴⁰

D. Petitioner’s Conception of Title IX Would Undermine Critical Protections for Transgender People, Who Already Face Marginalization.

Petitioner’s understanding of Title IX should be rejected not only because it is ill-founded and inconsistent with precedent, but also because it is dangerous. Under Petitioner’s interpretation, federal antidiscrimination law

³⁸ http://notebook.lausd.net/pls/ptl/docs/PAGE/CA_LAUSD/FLDR_ORGANIZATIONS/FLDR_GENERAL_COUNSEL/BUL-6224.1%20TRANSGENDER%20POLICY,%2008-15-14%20-%20ADDED%20ED%20CODE%20221%205.PDF.

³⁹ <http://www.latimes.com/local/education/la-me-edu-gender-neutral-bathroom-20160413-snap-htmlstory.html>.

⁴⁰ <http://equalitymatters.org/blog/201401310002>.

would sanction and even invite the stigmatization and unequal treatment of transgender students in the institutions most central to their lives. That view threatens to undermine decades of work by *amici* and others to protect transgender people from discrimination. In the experience of *amici*, local antidiscrimination laws are necessary to enable transgender people to participate as full members of society, and are fully compatible with protection of the public. Local laws prohibiting discrimination against transgender individuals are important means of protecting them from the harm and violence that they have disproportionately experienced – often as a result of the fact that they do not conform to stereotypes about how men and women are supposed to act and appear.

1. Without policies guaranteeing equal access for transgender people, the simple act of using a public restroom can expose them to harassment, violence, and even arrest. By way of illustration, in 2005 and 2006 – before New York City adopted its current policy permitting transgender individuals to use the restroom consistent with their gender identity – a 70-year-old transgender woman was arrested three times for using the women’s restroom in Grand Central Terminal. *Metro Briefing*, N.Y. Times (Mar. 1, 2006).⁴¹ A different transgender woman was stopped by five guards in a Manhattan shopping mall and “encircled . . . in a very menacing and hostile” manner when she attempted to

⁴¹ <http://www.nytimes.com/2006/03/01/nyregion/metro-briefing.html>.

use the women's restroom. Nicholas Confessore, *Transgender Group Reaches Agreement on Restrooms*, N.Y. Times (Apr. 2, 2005).⁴² And yet another transgender woman was stopped by a security guard when she used a women's restroom while taking the Graduate Record Examination in a Manhattan office building. *Ibid.*

The possibility that using a public restroom will lead to an encounter like these has a particularly devastating effect on transgender individuals' well-being. In 2016 alone, fifty-nine percent of transgender individuals reported avoiding bathrooms at work, at school, and in public places for fear of confrontation. Nat'l Ctr. for Transgender Equality, *Harassment of Transgender People in Bathrooms and Effects of Avoiding Bathrooms* (2016).⁴³ Further, thirty-one percent reported avoiding drinking or eating so they did not have to use the restroom; twenty-four percent had someone question their presence in a bathroom; nine percent were denied access to a restroom; and eight percent contracted infections due to restroom avoidance. *Ibid.* These data substantiate *amici's* belief that protecting transgender people from discrimination in restrooms and other sex-segregated facilities remains vital to the well-being of the community. Without confidence that one can safely and timely access a restroom, full participation in public life is not possible.

⁴² <http://www.nytimes.com/2005/04/02/nyregion/transgender-group-reaches-agreement-on-restrooms.html>.

⁴³ <https://static1.squarespace.com/static/54f76238e4b037666096d8f4c/t/5782a8d9197aeaa57b589608/1468180715744/USTS-Preliminary-Findings-July-2016-2.pdf>.

2. As important as they are, laws barring discrimination in public accommodations address only one aspect of the exclusion and harassment that transgender members of our communities face on a daily basis. Unfortunately, many of the findings that motivated San Francisco to adopt its equal-access laws remain true today: “persons who are perceived to be transgender[] are considered by some as less than human and therefore assumed to be fair game for objectification, violence, and discrimination. Hate violence is perpetrated against transgender[] persons as much as, if not more than, any other group.” S.F. Human Rights Comm’n, *Investigation into Discrimination Against Transgendered People* at 44. The tens of thousands of transgender and gender-nonconforming individuals who live in our cities are among our most vulnerable residents. Crime statistics show that transgender individuals are disproportionately more likely to fall victim to violence in public facilities such as bathrooms. Transgender people also face staggeringly high rates of poverty, harassment, violence, and poor health, as well as discrimination in housing and employment.

The 2015 National Transgender Discrimination Survey reveals that transgender people suffer pervasive mistreatment and discrimination in every aspect of life, ranging from education and employment to housing and health. Nat’l Ctr. for Transgender Equality, *The Report of the 2015 U.S. Transgender Survey* at

2-3 (2016).⁴⁴ Survey respondents reported high levels of harassment and violence in schools: a majority reported experiencing some form of mistreatment in grades K-12 because they were transgender, including being verbally harassed (fifty-four percent), physically attacked (twenty-four percent), and sexually assaulted (thirteen percent). *Id.* at 9. Seventeen percent of respondents reported experiencing harassment so severe that they had to leave school altogether. *Ibid.* In the workplace, thirty percent of respondents with a job reported various forms of mistreatment, ranging from being fired, denied promotion, or verbally, physically, or sexually assaulted at work. *Id.* at 11. The survey's findings also reveal the enormous toll of stigma and discrimination against transgender persons. Forty percent of respondents have attempted suicide in their lifetime, a rate that is nearly nine times the rate of attempted suicide for the overall U.S. population (4.6 percent). *Id.* at 8.⁴⁵

Despite the dire exclusion, harassment, and discrimination experienced by transgender people, Petitioner asks this Court to enshrine in Title IX a rigid

⁴⁴ <http://www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf>.

⁴⁵ Data from the San Francisco Human Rights Commission – which is charged with enforcing the City's public accommodations laws – bear on these statistics. Since July 2012, the San Francisco Human Rights Commission has received fourteen formal complaints of public accommodations discrimination from transgender people. This does not include the significantly higher volume of inquiries involving allegations of discrimination that are not formally lodged.

conception of sex that disregards their very existence and defines individuals exclusively by the sex assigned to them at birth. Petitioner's understanding of Title IX is unmoored from precedent, unsupported by any evidence, and contrary to *amici's* extensive experience providing similar protections to their transgender residents. Petitioner's position would interfere with *amici's* efforts to promote inclusion of transgender individuals and would endorse stigma against, and diminished dignity for, transgender people across our Nation. Petitioner's arguments thus threaten even more significant harm to an already marginalized group. *Amici* urge the Court to reject Petitioner's attempt to entrench discrimination against transgender people in federal law.



CONCLUSION

Amici respectfully request that this Court affirm the Fourth Circuit's judgment.

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