
No. 16-3522

In the
United States Court of Appeals
for the **Seventh Circuit**

ASHTON WHITAKER, by his mother and next friend,
Melissa Whitaker,

Plaintiff-Appellee,

v.

KENOSHA UNIFIED SCHOOL DISTRICT NO. 1 BOARD
OF EDUCATION, et al.,

Defendants-Appellants.

Appeal from the United States District Court
for the Eastern Division of Wisconsin, No. 2:16-cv-00943-PP.
The Honorable **Pamela Pepper**, Judge Presiding.

**AMICI CURIAE BRIEF OF FORGE, INC.,
INDIANAPOLIS CHAPTER OF P-FLAG, INC.,
GENDERS & SEXUALITIES ALLIANCE NETWORK and
GENDER EXPANSIVE KIDS AND COMPANY
IN SUPPORT OF PLAINTIFF-APPELLEE AND AFFIRMANCE**

JULIA R. LISSNER
(*Counsel of Record*)
MEGAN M. KOKONTIS*
AKERMAN LLP
71 South Wacker Drive
46th Floor
Chicago, Illinois 60606
(312) 634-5700

SARA L. MANDELBAUM*
AKERMAN LLP
666 Fifth Avenue
20th Floor
New York, New York 10103
(212) 880-3800

*Application for Admission to this Circuit Pending

Attorneys for Amici Curiae
FORGE, Inc., Indianapolis Chapter of P-FLAG, Inc.,
Genders & Sexualities Alliance Network and
Gender Expansive Kids and Company



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INTERESTS OF *AMICI CURIAE*¹

FORGE Inc. is a national transgender anti-violence organization, founded in 1994, that is based in Wisconsin. Since 2009, FORGE has been federally funded to provide direct services to transgender, gender non-conforming, and gender non-binary survivors of sexual assault. Since 2011, FORGE has served as the only transgender-focused organization federally funded to provide training and technical assistance to providers around the country who work with transgender survivors of sexual assault, domestic and dating violence, and stalking. For the past two years, FORGE has sponsored a popular support group for Wisconsin parents of transgender and non-binary children and youth.

Indianapolis Chapter of P-FLAG, Inc. (“Indy PFLAG”) is a nonprofit organization that promotes the well-being of LGBT individuals and their families, friends, and allies through support, education, and advocacy. Indy PFLAG is a chapter of PFLAG, the nation’s largest family and ally organization, founded in 1972 with the simple act of a mother publicly supporting her gay son. Now, across the country, PFLAG has more than 400 chapters and 200,000 members and supporters.

Genders & Sexualities Alliance Network (“GSA Network”) is a national next-generation LGBTQ racial and gender justice organization that was founded in 1998.

¹ Counsel for *amici* obtained consent from counsel for all parties prior to filing this brief. No party or party’s counsel authored this brief in whole or in part or financially supported this brief, and no one other than *amici*, its members, or its counsel contributed money intended to fund preparing or submitting this brief.

GSA Network (previously known as Gay-Straight Alliance Network) empowers and trains trans, queer, and allied youth leaders to advocate, organize, and mobilize an intersectional movement for safer schools and healthier communities. GSA Network leads the National Association of GSA Networks, which unites 40 statewide networks of Gay-Straight Alliance clubs, and GSAs Unite, an online campaign and petition platform supporting youth organizers across the country. Youth participants in GSA Network programming have been active in advocating for school policies that affirm all students' right to access school facilities and activities consistent with their gender identities.

Gender Expansive Kids and Company ("GEKCO") is an Indianapolis-based confidential support group for gender expansive children ages 12 and under and their families. GEKCO was co-founded in 2015 by two parents of transgender students in response to requests that the Indiana Youth Group, Inc., a LGBTQ organization, was receiving for services for transgender children. GEKCO holds monthly meetings in the Central Indiana area to provide resources and support for the children and their families.

INTRODUCTION

Transgender students in Wisconsin, Illinois, Indiana, and throughout the country frequently experience harassment and discrimination in their everyday lives. One manifestation is policies that prohibit transgender students from using restrooms,

locker rooms, and other sex-segregated facilities that match their gender identities. The medical and scientific consensus is that such exclusionary policies cause stigma and social and psychological distress in transgender students. This brief shares stories of transgender students in Wisconsin, Illinois and Indiana that further support this conclusion.

The transgender students who attended schools with exclusionary policies had starkly different experiences from those students whose schools supported their transitions and their gender identities. Students who were not allowed to use facilities consistent with their gender identities – and, who, at most, were allowed to use inferior, segregated single-user facilities – felt stigmatized and ostracized, and suffered significant social, psychological, and educational setbacks. Their schools also failed to support them in other ways, such as failing to address bullying incidents and refusing to refer to the students using their preferred names and pronouns.

In contrast, students whose schools adopted inclusive policies had positive experiences after transitioning to their authentic selves and coming out as transgender. These supportive environments permitted the transgender students to excel and succeed, socially, psychologically and educationally.

Courts also have increasingly recognized the serious harms caused by stigmatizing and discriminating against transgender students. *Amici* urge this Court to follow suit and affirm the district court. Forcing transgender students to use facilities

that are inconsistent with their gender identities or else segregated single-user facilities violates the students' rights to be treated equally and to be free from sex discrimination. These exclusionary policies also forcibly "out" transgender students, potentially exposing them to additional harassment, violence, and discrimination.

ARGUMENT

I. Sex, Gender Identity, And Transgender Status

The medical and scientific consensus is that "sex" is not simply a matter of what is recorded on a birth certificate based on a doctor's evaluation of the baby's appearance at birth.² Sex is "not determined by any single criterion" and multiple factors are relevant, including "[h]ormonal sex," "secondary sex characteristics," "[p]ersonal sexual identity," and "gender," which "may be, or possibly may become, other than what is recorded on the person's birth certificate." *In re Heilig*, 816 A.2d 68, 73, 79 (Md. 2003).³ The gender identity of a transgender individual does not correspond to the sex

² See Nat'l Center for Transgender Equality, *Frequently Asked Questions About Transgender People*, at 1 (July 2016), available at http://www.transequality.org/sites/default/files/docs/resources/Understanding-Trans-Full-July-2016_0.pdf (hereinafter, "NCTE FAQs").

³ See also *Schroer v. Billington*, 577 F. Supp. 2d 293, 306-07 (D.D.C. 2008) (crediting testimony "accepted in the relevant scientific community" that there are multiple "factors that constitute a person's sex"); *In re Lovo-Lara*, 23 I&N Dec. 746, 753 (BIA 2005) ("reliance on the sex designation provided on an individual's original birth certificate is not an accurate way to determine a person's gender"); *Rentos v. Oce-Office Sys.*, No. 95-cv-7908, 1996 WL 737215, at *6 (S.D.N.Y. Dec. 24, 1996) (recognizing the "multitude of factors that the medical community has deemed to be relevant in identifying an individual's gender").

assigned to them at birth. *See* NCTE FAQs at 1-2.

There are 1.4 million transgender adults in the United States. *See id.* at 1. These individuals may realize their true gender identities at any time. *See id.* “Trying to repress or change one’s gender identity doesn’t work; in fact, it can be very painful and damaging to one’s emotional and mental health.” *Id.* During or after the realization that they are transgender, some transgender individuals suffer from gender dysphoria, a medical condition characterized by serious emotional distress caused by the difference between the gender they were thought to be at birth and the gender they know themselves to be. *See id.* at 5. Treatment often includes a social transition where the transgender individuals begin to live their lives in accordance with their gender identities. *See id.* Significantly, this transition process includes using gender-specific facilities, like bathrooms and locker rooms, as well as acceptance and recognition by their schools, work, families, and communities, in accordance with their gender identities. *See id.* “All major medical organizations in the United States recognize that living according to one’s gender identity is an effective, safe and medically necessary treatment for many people who have gender dysphoria.” *Id.*

II. Policies That Prohibit Treating Transgender Students In Accordance With Their Gender Identities Constitute Sex Discrimination And Cause Serious Harm.

A. Federal Law Protects Transgender Students From Discrimination.

Federal anti-discrimination laws, including Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments Act of 1972, and the Equal Protection Clause of the U.S. Constitution, flatly prohibit discrimination against transgender individuals based on their gender identities. Courts have long rejected a narrow definition of “sex” when addressing claims of sex discrimination. *See Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75, 79 (1998) (holding that same-sex sexual harassment constituted “sex discrimination” under Title VII because “statutory prohibitions often go beyond the principal evil to cover reasonably comparable evils,” regardless of whether it was a “principal concern[]” of the law); *Price Waterhouse v. Hopkins*, 490 U.S. 228, 250-52 (1989) (holding that sex discrimination includes not just discrimination based on one’s biological sex, but also based on one’s failure to conform to sex stereotypes).

In rejecting a narrow definition of “sex” under the laws prohibiting sex discrimination, courts have held that transgender plaintiffs may state claims for sex discrimination based on their transgender status. *See Glenn v. Brumby*, 663 F.3d 1312, 1316-17 (11th Cir. 2011) (recognizing that “[a] person is defined as transgender precisely because of the perception that his or her behavior transgresses gender stereotypes” and

“discrimination against a transgender individual because of her gender-nonconformity is sex discrimination, whether it’s described as being on the basis of sex or gender”); *Smith v. City of Salem*, 378 F.3d 566, 575 (6th Cir. 2004) (holding that “discrimination against a plaintiff who is transsexual . . . is no different from the discrimination directed against Ann Hopkins in *Price Waterhouse*”).⁴

B. Exclusionary Policies Cause Serious Harm To Transgender Students.

Exclusionary policies, like the restroom policy adopted by the Kenosha Unified School District, prohibit transgender students from living their lives consistently with their gender identities and cause real and lasting harm. “[W]hile being transgender is not in itself an illness, many transgender people need to deal with physical and mental health problems [such as gender dysphoria, anxiety, and depression] because of widespread discrimination and stigma.” NCTE FAQs at 5. “[T]hese conditions are not *caused* by having a transgender identity: they’re a result of the intolerance many transgender people have to deal with.” *Id.* at 6 (emphasis in original).

⁴ See also *U.S. Equal Empl’t Opportunity Comm’n v. Scott Med. Health Ctr., P.C.*, No. 16-cv-225, 2016 WL 6569233, at *5 (W.D. Pa. Nov. 4, 2016) (noting that “sex” is accorded a “broad interpretation” under federal civil rights statutes and citing cases applying sex discrimination protections to “harassment of a transgender individual”); *Schwenk v. Hartford*, 204 F.3d 1187, 1202 (9th Cir. 2000) (same); *Norsworthy v. Beard*, 87 F. Supp. 3d 1104, 1119 (N.D. Cal. 2015) (same); *Rumble v. Fairview Health Servs.*, No. 14-CV-2037, 2015 WL 1197415, at *2 (D. Minn. Mar. 16, 2015) (same); *Finkle v. Howard County*, 12 F. Supp. 3d 780, 788 (D. Md. 2014) (same), *aff’d* 640 F. App’x 245 (4th Cir. 2016); *Mitchell v. Axcán Scandipharm, Inc.*, No. Civ. A. 05-243, 2006 WL 456173 (W.D. Pa. Feb. 17, 2006) (same).

An affirming and supportive school environment is critical to helping transgender students live healthy and fulfilling lives. *See id.* at 6. Earlier this year, the National Education Association found that it is “essential to the health and well-being of transgender people for them to be able to live in accordance with their internal gender identity in all aspects of life and restroom usage is a necessary part of that experience.”⁵ The “stigma and isolation” of transgender students “contribute to and exacerbate [their] mental-health challenges” and “clearly impair [their] ability to focus on learning.” *Bd. of Educ. of Highland Local Sch. Dist. v. U.S. Dep’t of Educ.*, No. 16-cv-524, 2016 WL 5372349 (S.D. Ohio Sept. 26, 2016). In addition, “mistreatment in school ha[s] a lasting effect . . . and [is] correlated with a number of negative outcomes including higher rates of sex work, incarcerations, homelessness, smoking, drug and alcohol abuse, HIV and attempted suicide.”⁶

⁵ Nat’l Educ. Ass’n, *Legal Guidance on Transgender Students’ Rights*, at 24 (June 2016), available at https://www.nea.org/assets/docs/20184_Transgender%20Guide_v4.pdf.

⁶ Jaime M. Grant *et al.*, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, Nat’l Center for Transgender Equality, at 46 (2011), available at http://www.transequality.org/sites/default/files/docs/resources/NTDS_Report.pdf; see also S.E. James *et al.*, *The Report of the 2015 U.S. Transgender Survey*, Nat’l Center for Transgender Equality (2016), available at <http://www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf>.

C. Courts Have Recognized The Serious Harms Caused By Stigmatizing And Discriminating Against Transgender Students.

The U.S. Constitution prohibits minority groups from discrimination based on innate characteristics. The Supreme Court has recognized for decades that the stigma and mental harms associated with this discrimination can be devastating. *See Brown v. Bd. of Educ.*, 347 U.S. 483 (1954); *see also Heckler v. Mathews*, 465 U.S. 728 (1984).

Like other forms of discrimination based on innate characteristics, federal courts recognize that discrimination against transgender persons based upon expression of their gender identities and transgender status causes significant harm. *See G.G. v. Gloucester Cnty. Sch. Bd.*, 822 F.3d 709, 728 (4th Cir. 2016), *cert. granted in part*, 2016 WL 4565643 (U.S. Oct. 28, 2016) (No. 16-273) (citing expert testimony that “put[ting] [a transgender student] in the humiliating position of having to use a separate facility, thereby accentuating [the student’s] ‘otherness’” and contributing to the “shame of being singled out and stigmatized in [the student’s] daily life . . . is a devastating blow . . . and places [the student] at extreme risk for immediate and long-term psychological harm”). In particular, federal courts have held that discriminatory restroom access policies, like the policy of the Kenosha Unified School District, cause serious harm to transgender students. *See, e.g., Highland*, 2016 WL 5372349, at *14, 19 (granting preliminary injunction allowing transgender girl to use facilities consistent with her gender identity: the “stigma and isolation Jane feels when she is singled out and forced to use a separate bathroom contribute to and exacerbate her mental-health challenges”

and “clearly impair her ability to focus on learning”).⁷ *Amici* request that this Court follow suit and affirm the district court.

II. Stories From Transgender Students Regarding The Effects Of Discriminatory Policies And Practices On Their Lives

The following stories are from transgender students in Wisconsin, Illinois, and Indiana schools. Their experiences highlight that when transgender students are faced with exclusionary policies – like the policy challenged in this case – they suffer real harm that hampers their education and damages their mental, emotional, and social well-being. In contrast, transgender students’ academic potential and psychological and social health are dramatically improved when schools adopt inclusive policies that treat transgender students consistently with their gender identities in all respects.

A. Exclusionary Policies Significantly Impair Transgender Students’ Educational Experiences And Mental And Social Health.

The following transgender students faced school policies that prohibited them from living in accordance with their gender identities while at school, and caused them to suffer social, psychological, and educational setbacks. Their experiences are recounted below.

⁷ Moreover, courts have rejected privacy-based arguments, such as the claim made by the school district here, that the government should “protect” non-transgender students from having to share public spaces with transgender people, as an insufficient basis to justify discrimination. See *Dep’t of Fair Empl’t & Housing v. Am. Pac. Corp.*, No. 34-2013-00151153, 2014 WL 2178570, at *4 (Cal. Super. Ct. Mar. 13, 2014); *Highland*, 2016 WL 5372349, at *19; *Students v. U.S. Dep’t of Educ.*, No. 16-CV-4945, 2016 WL 6134121, at *30 (N.D. Ill. Oct. 18, 2016).

1. Mason of Oshkosh, Wisconsin

Mason is an 18-year-old transgender male who graduated from Oshkosh West High School in 2016 and currently is a freshman at University of Wisconsin – Lacrosse. Although Mason is still deciding his career path, he knows he would like to work in a field where he can help people because that makes him happy. In the meantime, Mason stays busy with many hobbies, including skiing, playing soccer and volleyball, writing, acting, fashion, and photography. A recent photo of Mason is below.



Though assigned female at birth, Mason has experienced feelings of maleness for as long as he can remember. He came out as transgender to his family and friends in eighth grade, and then to his teachers and administrators in early high school.

Mason's high school administration was not supportive of Mason's gender identity. There were not policies supporting transgender students, and Mason continued to use the girls' restroom because he feared getting in trouble and being bullied by other students if he tried to use the boys' restroom. In fact, when one of

Mason's friends, who is also a transgender male, used the boys' restroom, he received a detention and was told he was forbidden from using the boys' restroom.

Mason felt too afraid and anxious to continue to push to use the boys' restroom after witnessing what transpired with his friend. Mason was afraid of getting in trouble and was afraid of doing something that would make him unsafe at school. Mason also was afraid of causing trauma to other transgender students because he felt that, by publicizing the issue, he would cause backlash to himself and other transgender students. Mason also feared such a debate could even "out" other transgender students who were not yet comfortable vocalizing their gender identities.

Mason had the option to use two gender-neutral restrooms. These restrooms were not conveniently located to Mason's classrooms, and Mason did not feel comfortable using them. For gym class, Mason was forced to use a separate varsity locker room, rather than the boys' locker room. The varsity locker room was down a separate hallway and not all of the lights in the locker room turned on. Mason did not even know whether the doors locked. Mason felt ostracized and as though the school administration was treating him as a problem they would rather just push aside.

By the time Mason graduated, the school had changed several staff restrooms to gender-neutral restrooms that any student could use. Mason began to use these restrooms and found them to be an improvement over using the girls' restroom, where

he felt that his gender identity was completely on display. However, Mason still felt he was being “othered” and not treated equally to other students.

Mason faced other challenges in high school as well. Although many of Mason’s teachers used his preferred male name and pronouns, many of Mason’s classmates did not and Mason’s teachers often failed to correct those students. The school also failed to change Mason’s name in the official school records, so when a substitute teacher would take attendance, Mason would not be called by his preferred male name, thereby outing Mason to his classmates and the substitute teacher alike.

High school is stressful for any student, but all of these experiences created even higher levels of anxiety and stress for Mason. He has struggled with depression and anxiety, which he felt were exacerbated by his high school experience. The treatment by the school administration made Mason feel isolated and as though he did not belong.

Fortunately, Mason’s college experience has been somewhat better. The university administration is more conscious of transgender issues and has an anti-discrimination policy that specifically protects transgender students. Mason's college encourages students to use whatever restroom matches their gender identities. Now Mason feels safer using the men’s restroom, and he feels that his gender is confirmed when he does so.

Mason currently lives on campus in a suite with two other transgender students, and he uses the bathroom in the suite. However, Mason was assigned to the suite

without consulting him, and without being informed that he would have to pay an additional fee beyond other housing options. Next year, he hopes to live in a gender-neutral room in a traditional dorm or in a single room without having to pay an additional fee.⁸

2. J.R. of Milwaukee, Wisconsin

J.R. is a 17-year-old transgender male who is a sophomore at the Milwaukee High School for the Arts, part of the Milwaukee Public Schools system. Though assigned female at birth, J.R. has known he is male since a young age. He has been using a male name and male pronouns for the last several years and presenting himself as a boy. J.R. came out to his teachers and administration in early high school. He received a diagnosis of gender dysphoria at Children's Hospital of Wisconsin, where he has received treatment and therapy. He also takes hormones to treat his dysphoria.

At the beginning of the 2015-16 school year, J.R. transferred to the Milwaukee High School for the Arts. J.R.'s counselor at the Children's Hospital of Wisconsin made advance arrangements for the staff to use J.R.'s preferred male name and pronouns and for J.R. to use a separate staff restroom. However, the staff restroom is on the first floor, far away from his classes. J.R.'s school is three floors and J.R. does not have sufficient time to use the first floor restroom during the passing periods between classes. Rather than risk being late for class, J.R. arrives to class on time but has a special pass that

⁸ Source: January 5, 2017 Telephone Interview. Photograph included with permission.

allows him to leave in the middle of class to use the restroom. Unfortunately, this means that J.R. is forced to miss time in the classroom in order to use the restroom. J.R.'s only other alternative is to not use the restroom at all, which makes it difficult for him to concentrate in class.

For gym class, J.R. first used the boys' locker room to change when he arrived at the Milwaukee High School for the Arts. Neither J.R.'s gym teacher nor any of J.R.'s male classmates voiced any objections or discomfort to J.R. doing so. However, once the school principal learned that J.R. was using the boys' locker room to change, he forbade J.R. from continuing to do so and told him he had to use the girls' locker room.

However, J.R. is male and is known and accepted as male by his classmates and most school staff, and was therefore not comfortable using the girls' locker room. J.R. also felt he would make his female classmates uncomfortable if he used the girls' locker room.

As a result, J.R. stopped changing after gym class. J.R. had gym class first period, so he had to remain in his sweaty clothes for the rest of the day.

J.R.'s principal has confronted and stigmatized him in other ways, including repeatedly refusing to refer to J.R. by his preferred male name and male pronouns. This has caused J.R. significant pain, anxiety, and embarrassment, and he has gone home crying from school on multiple occasions. Although the school social worker and many of J.R.'s teachers and classmates are supportive and accepting, J.R.'s experiences with the school principal have made his high school experience feel like a daily struggle.

J.R. recently learned that his school changed its bathroom policy and, as J.R. understands it, he is now permitted to use the boys' bathroom. However, the school administration has not explained when the policy goes into effect and, given his prior negative experiences with the school principal, J.R. does not feel safe using the boys' restroom or locker room.⁹

3. Asher of the Western Suburbs of Milwaukee, Wisconsin

Asher is a 16-year-old transgender male in his junior year at a public high school in the western suburbs of Milwaukee. Asher enjoys drawing and making costumes and is involved with his school's Art Club. He hopes to incorporate his passion for art into a future career. A recent photo of Asher is below.



Though assigned female at birth, Asher realized that he identified as male in early 2016 and was prescribed hormones in July 2016. He came out at school in his

⁹ Source: January 11, 2017 Telephone Interview.

sophomore year in the Fall of 2016 and was the first openly transgender student at his high school.

Asher has been fortunate to have the support of his family, his guidance counselor, and a group of supportive LGBT friends at school. The school also changed his name to Asher on the official roster, and his teachers, for the most part, followed suit, by using his preferred male name and male pronouns. Asher believes that this kind of support is key to transitioning from female to male in a healthy fashion. However, the community that surrounds Asher's school has not been understanding or tolerant of his gender identity, and his guidance counselor has been barraged with angry, worried phone calls from parents, particularly when this issue was prominent in the news last year.

Asher's school has prohibited Asher from using the boys' locker room to change for gym class. Last year, Asher was given the option to change in a locked "closet," but he was not given the key and it was too difficult to access. As a result, Asher was relegated to the girls' locker room, which made him feel awkward, excluded, and isolated. This year, the school has given Asher a key to a different "closet" that he will use to change for gym class in the coming semester. However, Asher believes that he would do better in gym class if he could use the boys' locker room, as it would make him feel more accepted and less excluded.

Asher describes his school's restroom policy as "don't ask, don't tell," with some transgender students using the restrooms consistent with their gender identities without having discussed the matter with school officials. There is a gender-neutral, single-user bathroom at the school, but it is not easy to access during busy school hours. As a result, rather than use the school restrooms, Asher just "holds it in" and does not hydrate throughout the day.¹⁰

B. Supportive Policies And Administrations Dramatically Improve Transgender Students' Lives And Educational Experiences.

In stark contrast to Mason, J.R., and Asher, the following transgender students attended supportive schools. Administrations, among other things, adopted inclusive policies and supported their transgender students as they navigated their social and medical transitions. Their experiences are recounted below.

1. Olivia of Indianapolis, Indiana

Olivia is a 14-year-old transgender female who is a freshman at Franklin Center High School in Indianapolis. She is a member of the school's robotics team and is taking private tennis lessons in hopes of making the tennis team. A recent photo of Olivia is below.

¹⁰ Source: January 20, 2017 Telephone Interview. Photograph included with permission.



Though assigned male at birth, Olivia first realized that she identified as female when she was 6 or 7 years old and came out to her family and friends when she was 12. Olivia transitioned from male to female during the summer after seventh grade.

Prior to the start of her eighth grade year, Olivia and her family informed her middle school about her transition. The administration of Olivia's school, Franklin Township Middle School East, was very supportive. In particular, the administration held a special meeting for the teachers to educate them on how to support transgender students, including how to deal with any incidents of bullying. The administration also informed the teachers of Olivia's transition and that they should refer to her by her female name and use female pronouns. Although Olivia was not aware of a formal bathroom policy, Olivia felt that her middle school supported her using the girl's restroom, just like every other girl at her school. As a result of her supportive middle school administration, Olivia did not face any bullying or harassment from other

students. Her peers accepted her as a girl and treated her with respect. She also was nominated for the "Student of the Year" award.

Olivia has found her high school to be an equally supportive environment, which decreases her anxiety about her transition and allows her to focus on succeeding academically. Olivia is a strong student and has worked two grades ahead since she was in second grade. Currently, she is taking pre-AP classes as a freshman and has considered studying Nursing or Engineering in college.

Olivia's high school teachers and peers refer to her by her preferred female name and pronouns. Her high school administration also allows her to use the girls' restrooms and locker rooms. As far as she knows, none of the other students have voiced any objection to that use. For Olivia, the fact that transgender students are allowed to use facilities that match their gender identities does not harm other students' privacy because there are doors or curtains "and no one sees anything."

If Olivia was not allowed to use the girls' restrooms and locker rooms, she believes that she would feel "very angry, sad, and singled out." This would hamper her ability to succeed academically because she would be "scared, afraid, or worried about suffering from bullying and unequal treatment" at school.¹¹

¹¹ Source: January 25, 2017 Telephone Interview. Photograph included with permission.

2. Evie of the Western Suburbs of Chicago, Illinois

Evie is a 16-year-old transgender female in her sophomore year at a public high school in the western suburbs of Chicago. Evie is active in several after school activities, including French Club, Art Club, and Anime Club. She also enjoys playing video games, reading, and spending times with friends.

When Evie was 12 years old, before she came out as transgender, she began to act depressed, angry, and significantly less social. Her family tried several therapists, without success, in an effort to understand what was happening to her. At the end of eighth grade, Evie shared with her family that she was having suicidal thoughts. At that time, she also was diagnosed with extreme depression and social anxiety. As a result, Evie was admitted to a day facility for intensive outpatient treatment for six weeks. After the first day of treatment, Evie revealed to her family that she was transgender.

Evie's family was relieved to know the source of her pain and began to get the appropriate help to begin her transition from a male to a female. During her freshman year of high school, Evie started her transition with support from the Gender & Sex Development Program at the Ann & Robert H. Lurie Children's Hospital of Chicago. To foster a very gradual transition, for that first year Evie came out as transgender, Evie lived largely androgynously, with her family avoiding using any name or pronouns altogether as they gave her time to figure out what was best for her.

Starting in early 2016, Evie's family began calling her by her preferred female name, using female pronouns, and communicating with her high school about her upcoming transition to a female during her sophomore year. Prior to the start of the academic year, Evie's school administrators informed all of Evie's teachers that she is female and should be treated as such in all respects. This helped ease Evie's transition at school since she did not need to inform her teachers herself. Evie started her sophomore year with her new female name and authentic gender and did not experience any discrimination from her teachers or peers. Evie believes that this is due, in great part, to the supportive school administration and the fact that all her teachers were correctly addressing her when the academic year began. Evie feels that this support from her school helped ease her anxieties and allowed her to feel just like any other student.

Evie's high school, which has previously had transgender students, never prevented Evie from using the girls' restrooms and locker rooms. Even though Evie does not know whether there is any formal policy in place, it is clear to her that all students are allowed to use the restrooms and locker rooms that match their gender identities.

Currently, as a combined result of excellent therapy and support from her school administration, teachers, friends, and family, Evie has come out fully as a female and is living a typical teenage life. She is emotionally and physically healthy and does well academically and socially. Had Evie's school not been so supportive – and had they not

allowed her to use the girls' restrooms and locker rooms – Evie's transition would have been much more difficult. Evie believes that she would have felt horrible and likely would have experienced continued suicidal thoughts and a deepened depression.¹²

3. Livia of Shorewood, Wisconsin

Livia is a 26-year-old transgender female who graduated from Shorewood High School, outside of Milwaukee, Wisconsin. A recent photo of Livia is below.



Assigned male at birth, Livia did not begin living as a female until she was 22 years old. While in high school, Livia still presented herself as male, and this contributed to high school being a difficult and isolating experience for her. Out of fear of not being accepted as her authentic self, Livia skipped a lot of classes and tried to disappear and disassociate as a survival mechanism. At that time, Livia was not aware of whether her high school had any policies or practices supporting transgender students.

¹² Source: January 8, 2017 Telephone Interview.

However, in 2014, a few years after Livia graduated high school, the Shorewood School District adopted "*Nondiscrimination Guidelines Relating To Students Who Are Transgender And Students Nonconforming To Gender Stereotypes.*" The purpose of the guidelines is to ensure that all students are welcome and secure in Shorewood schools. The guidelines include a policy permitting transgender students to use the restrooms that correspond to their gender identities. Earlier this year, Shorewood's guidelines were favorably cited in a report from the U.S. Department of Education.¹³

Livia attended the meeting where the Shorewood school board voted to pass the nondiscrimination guidelines. She believes that her educational experience would have been more positive had these policies been in place when she was a student. Livia feels it is important that transgender students are given the option to use the restrooms and locker rooms that make them feel most comfortable. The absence of such policies and practices causes transgender students to feel that they are not equal to their peers and stigmatizes them. As Livia explains, respect for and acceptance of transgender individuals saves lives in this vulnerable community impacted by staggeringly high

¹³ See Shorewood School District, *U.S. Department of Education Recognizes Shorewood School District for Policies & Practices Supporting Transgender Students* (May 13, 2016), available at <http://www.shorewood.k12.wi.us/page.cfm?p=2480&newsid=1535>.

suicide rates. It is important to affirm the existence of transgender individuals and that they too are entitled to dignity inside and outside of schools.¹⁴

CONCLUSION

These stories demonstrate the very real impact that school policies – and, particularly, restroom and locker room policies – have on transgender students. When schools are unsupportive and exclusionary, transgender students struggle socially, medically, psychologically, and educationally. But when schools treat their transgender students consistently with their gender identities in all respects – including with respect to bathrooms and locker rooms – they have much better outcomes. The supportive schools fostered environments that enabled their transgender students to succeed in their educations and promoted their social and mental well-being. For these reasons, *amici* respectfully urge the Court to affirm the district court.

Dated: January 30, 2017

Respectfully submitted,

FORGE, Inc.,
Indianapolis Chapter of P-FLAG, Inc.,
Genders & Sexualities Alliance Network,
and Gender Expansive Kids and Company

By: /s/ Julia R. Lissner
Counsel for *Amici Curiae*

¹⁴ Source: January 20, 2017 Telephone Interview. Photograph included with permission.

Julia R. Lissner
Megan M. Kokontis*
AKERMAN LLP
71 South Wacker, 46th Floor
Chicago, Illinois 60606
Phone: (312) 634-5700
Fax: (312) 424-1900
julia.lissner@akerman.com
megan.kokontis@akerman.com

Sara L. Mandelbaum*
AKERMAN LLP
666 Fifth Avenue, 20th Floor
New York, New York 10103
Phone: (212) 880-3800
Fax: (212) 880-8965
sara.mandelbaum@akerman.com

**Application for Admission
to this Circuit Pending*