No. 16-273

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 OF AMICI CURIAE IMPACT FUND, BAY AREA LAWYERS FOR INDIVIDUAL FREEDOM (BALIF), AND 45 BAR ASSOCIATIONS AND NON-PROFIT LEGAL AND ADVOCACY ORGANIZATIONS IN SUPPORT OF RESPONDENT

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INTEREST OF AMICI CURIAE[1]

This brief is submitted by the Impact Fund, Bay Area Lawyers for Individual Freedom, and forty-five bar associations and non-profit legal and advocacy organizations as Amici Curiae.

The Impact Fund is a non-profit legal foundation that provides strategic leadership and support for impact litigation to achieve economic and social justice. The Impact Fund provides funding, offers innovative training and support, and serves as counsel for impact litigation across the country. The Impact Fund has served as counsel in a number of major civil rights cases, including cases challenging employment discrimination, lack of access for those with disabilities, and violations of fair housing laws. Through its work, the Impact Fund seeks to use and support impact litigation to achieve social justice for all communities.

Bay Area Lawyers for Individual Freedom ("BALIF") is a bar association of about 500 lesbian, gay, bisexual, and transgender ("LGBT") members of the San Francisco Bay Area legal community. As the nation's oldest and one of the largest LGBT bar associations, BALIF promotes the professional interests of its members and the legal interests of the LGBT community at

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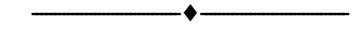
[1] Pursuant to this Court's Rule 37.6, counsel for Amici Curiae certify that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than Amici Curiae, their members, or their counsel made a monetary contribution to its preparation or submission. The parties have consented to the filing of this brief.

large. To accomplish this mission, BALIF actively participates in public policy debates concerning the rights of LGBT people. For more than thirty years, BALIF has appeared as amicus curiae in cases where it believes it can provide valuable perspective and argument that will inform court decisions on matters of broad public importance.

Additional Amici include a broad array of forty-five organizations, including national, state, local, and minority bar associations and national and local non-profit legal and advocacy organizations, listed in the Appendix. Each organization supporting this amicus brief is dedicated to ensuring that its constituents and all others in this country, including LGBT people, receive equal treatment under the law.



SUMMARY OF ARGUMENT

Amici write separately to highlight the law establishing the rights of transgender people to be free from sex discrimination under the plain language of federal civil rights laws, which is critical to the Court's understanding of this case. At least since this Court's decision in *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989), there has been a growing national consensus that discriminating against transgender people because of their (1) perceived failure to conform to gender stereotypes; (2) gender identity, a component of sex; and/or (3) gender transition is unlawful sex discrimination. Today, a wealth of authority provides that discrimination

against transgender individuals constitutes sex discrimination. It is now recognized with "near-total uniformity" that the approach of earlier, pre-*Price Waterhouse* decisions excluding transgender people from protection against sex discrimination "has been eviscerated." *Glenn v. Brumby*, 663 F.3d 1312, 1318 n.5 (11th Cir. 2011) (quoting *Smith v. City of Salem*, 378 F.3d 566, 573 (6th Cir. 2004)).

A further key issue in this case – the interaction between the facilities language in Title IX, 20 U.S.C. §§ 1681, 1686, and 34 C.F.R. § 106.33 – already has been explained authoritatively by Respondent in an analysis with which Amici agree. Amici focus this brief on the general principle that federal prohibitions on sex discrimination incorporate discrimination against transgender individuals in a variety of contexts.

ARGUMENT

I. This Court Has Repeatedly Ruled That Decision-Making Based on Sex Stereotypes Is Sex Discrimination.

In its Brief, Petitioner Gloucester County School Board ("the School Board") advocates for an interpretation of "sex" under Title IX that is determined by physiology, based on its depiction of the text and history of Title IX. Brief of Petitioner ("Pet'r's Br.") 25-43. Such an interpretation ignores the relevant statutory and constitutional law that indicates that the word

"sex" as used in protective civil rights statutes, including Title IX, is not so limited.

In the long, shared history of Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and the Equal Protection Clause of the Fourteenth Amendment,[2] the Supreme Court has repeatedly explored what it means to discriminate "because of sex" or "on the basis of sex." Nearly forty years ago, in the context of Title VII, this Court observed that it was "well recognized that employment decisions cannot be predicated on mere 'stereotyped' impressions about the characteristics of males or females." *City of L.A., Dep't of Water & Power v. Manhart*, 435 U.S. 702, 707 (1978).[3]

A decade later, in the watershed case *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989), a plurality of this

[2] *See, e.g.*, *G.G. ex rel. Grimm v. Gloucester Cty. Sch. Bd.*, 822 F.3d 709, 718 (4th Cir. 2016) ("We look to case law interpreting Title VII of the Civil Rights Act of 1964 for guidance in evaluating a claim brought under Title IX." (citing *Jennings v. Univ. of N.C.*, 482 F.3d 686, 695 (4th Cir. 2007)), *mandate recalled and stay granted*, 136 S. Ct. 2442 (2016), *cert. granted*, 137 S. Ct. 369 (2016); *Bauer v. Lynch*, 812 F.3d 340, 350 (4th Cir. 2016) (recognizing that same principles inform analysis of both Title VII and Equal Protection Clause claims); *Jennings*, 482 F.3d at 695 (citing *Davis v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629, 651 (1999); *Franklin v. Gwinnett Cty. Pub. Sch.*, 503 U.S. 60, 75 (1992)).

[3] The School Board quotes the Court's preceding statement that "[t]here are both real and fictional differences between men and women." Pet'r's Br. 35 (quoting *Manhart*, 435 U.S. at 707). However, as described above, the Court ultimately concluded that whatever these "real and fictional differences" may be, distinctions could not be made based on gender stereotypes. *Manhart*, 435 U.S. at 707.

Court declared that Title VII's prohibition on differential treatment of employees "because of . . . sex" meant "gender must be irrelevant to employment decisions," *id.* at 240 (plurality opinion). The Court observed:

> [W]e are beyond the day when an employer could evaluate employees by assuming or insisting that they matched the stereotype associated with their group, for "'[i]n forbidding employers to discriminate against individuals because of their sex, Congress intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes.'"

Id. at 251 (second alteration in original) (quoting *Manhart*, 435 U.S. at 707 n.13 (quoting *Sprogis v. United Air Lines, Inc.*, 444 F.2d 1194, 1198 (7th Cir. 1971))). The plurality concluded that when Price Waterhouse denied Ann Hopkins a promotion in part because she did not appear sufficiently feminine, it acted "because of" sex. *See id.* at 241, 250-51; *see also id.* at 258-61 (White, J., concurring) (writing separately on employer's burden of proof); *id.* at 261-62 (O'Connor, J., concurring) (describing Price Waterhouse as "knowingly giving substantial weight to an impermissible criterion").

The Supreme Court has invoked sex stereotyping at least twice more as actionable sex discrimination under Title VII and the Equal Protection Clause. First, in striking down Virginia Military Institute's men-only admissions policy as violating the Constitution's guarantee of equal protection, the Court noted that

"generalizations about 'the way women are,' estimates of what is appropriate for *most women*," did not justify excluding women "outside the average description." *United States v. Virginia*, 518 U.S. 515, 550 (1996).

Then, in *Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75 (1998), the Court held that same-sex sexual harassment is actionable sex discrimination under Title VII, *id.* at 82. In doing so, the Court recognized, "[S]tatutory prohibitions often go beyond the principal evil to cover reasonably comparable evils, and it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed." *Id.* at 79; *see also J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 139 n.11 (1994) ("We have made abundantly clear in past cases that gender classifications that rest on impermissible stereotypes violate the Equal Protection Clause, even when some statistical support can be conjured up for the generalization.").

As set forth below, since *Price Waterhouse*, these principles have led Circuit and district courts to conclude that discrimination against transgender people based on a perceived failure to conform to gender-based stereotypes is unlawful sex discrimination.

II. Following *Price Waterhouse*, Nearly All Circuit and District Courts to Consider the Issue Have Held That Sex Stereotyping of Transgender People Is a Form of Sex Discrimination.

A. Four Circuits Have Recognized That Sex Stereotyping of Transgender People Is Unlawful Sex Discrimination.

Price Waterhouse made clear that individuals who fail to conform to sex stereotypes are protected by laws prohibiting sex discrimination. The First, Sixth, Ninth, and Eleventh Circuits have relied on the *Price Waterhouse* plurality opinion and subsequent cases to conclude that transgender individuals can establish sex discrimination claims when they are targeted for their perceived failure to conform to sex stereotypes.

In *Schwenk v. Hartford*, 204 F.3d 1187 (9th Cir. 2000), the Ninth Circuit applied *Price Waterhouse* and concluded that sex stereotyping of transgender people is prohibited sex discrimination. Plaintiff Schwenk, a transgender woman incarcerated in a state prison for men, sued a prison guard and prison officials under the Gender Motivated Violence Act, 42 U.S.C. § 13981, for attempted rape by the named guard, 204 F.3d at 1192-93. The panel concluded that the prison guard's crime was committed "because of gender," looking to Title VII case law, including "the logic and language of *Price Waterhouse*."[4] *Id.* at 1201, 1202. It explained:

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[4] "Congress intended proof of gender motivation under the [Gender Motivated Violence Act] to proceed in the same way that

> What matters, for purposes of this part of the *Price Waterhouse* analysis, is that in the mind of the perpetrator the discrimination is related to the sex of the victim: here, for example, the perpetrator's actions stem from the fact that he believed that the victim was a man who "failed to act like" one. . . . Discrimination because one fails to act in the way expected of a man or woman is forbidden . . . .

Id. at 1202.

Later that year, the question came before the First Circuit in *Rosa v. Park W. Bank & Trust Co.*, 214 F.3d 213 (1st Cir. 2000), a lawsuit claiming discriminatory lending because the defendant bank had refused to provide a loan application to a customer, Lucas Rosa, who the loan officer believed was not dressed in accordance with his gender, *id.* at 214. The district court granted the defendant bank's motion to dismiss, holding "the [Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f,] does not prohibit discrimination based on the manner in which someone dresses," 214 F.3d at 214. The First Circuit reversed and remanded, holding that the plaintiff may be able to assert a valid claim for sex discrimination arising from the fact that the loan officer turned the plaintiff away "because she thought that Rosa's attire did not accord with his male gender." *Id.* at 215; *see id.* at 216.

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proof of discrimination on the basis of sex or race is shown under Title VII." *Schwenk*, 204 F.3d at 1200-01.

The Sixth Circuit shortly followed suit in *Smith v. City of Salem*, 378 F.3d 566 (6th Cir. 2004). Jimmie Smith, a transgender employee of the city fire department was suspended after beginning to transition to a more feminine appearance and disclosing a diagnosis of gender identity disorder (now known as gender dysphoria) and plans for treatment. *Id*. at 568. The panel reversed the district court's order dismissing the plaintiff's claims and remanded, holding that a transgender employee can state a sex discrimination claim under Title VII based on a failure to conform to sex stereotypes. *Id.* at 572.

A year later, the Sixth Circuit confirmed its position in *Barnes v. City of Cincinnati*, 401 F.3d 729 (6th Cir. 2005), when it affirmed a jury verdict in favor of Philecia Barnes, a transgender police officer alleging demotion based on a failure to conform to male stereotypes, *id.* at 733. Relying on its previous holding in *Smith*, the court concluded that the plaintiff stated a claim for sex discrimination under Title VII based on her "failure to conform to sex stereotypes." *Id.* at 737 ("By alleging that [Smith's] failure to conform to sex stereotypes concerning how a man should look and behave was the driving force behind defendant's actions, Smith stated a claim for relief pursuant to Title VII's prohibition of sex discrimination." (citing *Smith*, 378 F.3d at 573, 575)); *see also Dodds v. U.S. Dep't of Educ.*, ___ F.3d ___, No. 16-4117, 2016 WL 7241402, at *2 (6th Cir. Dec. 15, 2016) ("Sex stereotyping based on a person's gender non-conforming behavior is impermissible discrimination." (quoting *Smith*, 378 F.3d at 575)).

The Eleventh Circuit joined the growing national consensus with its 2011 decision in *Glenn v. Brumby*, 663 F.3d 1312 (11th Cir. 2011), an equal protection case. Vandiver Elizabeth Glenn, a transgender employee of the Georgia General Assembly's Office of Legislative Counsel, brought a claim alleging sex discrimination under the Equal Protection Clause after she was terminated because of her gender transition. *Id.* at 1313-14. While employed, Ms. Glenn informed her supervisor that she would be proceeding with a gender transition, changing her legal name, and coming to work as a woman. *Id.* at 1314. She was subsequently terminated because her employer felt her "intended gender transition was inappropriate, that it would be disruptive, that some people would view it as a moral issue, and that it would make Glenn's coworkers uncomfortable." *Id.*

In affirming the grant of summary judgment in favor of Ms. Glenn, the Eleventh Circuit observed, "A person is defined as transgender precisely because of the perception that his or her behavior transgresses gender stereotypes." *Id.* at 1316. The court interpreted *Price Waterhouse* to hold that "Title VII barred not just discrimination because of biological sex, but also gender stereotyping – failing to act and appear according to expectations defined by gender." *Id.* (citing *Price Waterhouse*, 490 U.S. at 250-51 (plurality opinion); *id.* at 258-61 (White, J., concurring); *id.* at 272-73 (O'Connor, J., concurring)). Relying on the long line of Circuit and district court cases preceding it, the court held, "[D]iscrimination 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. Indeed, several circuits have so held." *Id.* at 1317 (citing and discussing *Schwenk*, 204 F.3d at 1198-1203; *Rosa*, 214 F.3d at 215-16; *Smith*, 378 F.3d at 569, 572; *Barnes*, 401 F.3d 729). The court went on to hold, "All persons, whether transgender or not, are protected from discrimination on the basis of gender stereotype. . . . An individual cannot be punished because of his or her perceived gender non-conformity." *Id.* at 1318-19; *see also Chavez v. Credit Nation Auto Sales, LLC*, 641 F. App'x 883, 883 (11th Cir. 2016) (per curiam) ("Sex discrimination includes discrimination against a transgender person for gender nonconformity." (citing *Glenn*, 663 F.3d at 1316-17)).

Only one Circuit has reached a contrary result after *Price Waterhouse*, and while its ultimate reasoning is flawed, it was nevertheless correct in its language that transgender individuals are protected against sex stereotyping under Title VII. In *Etsitty v. Utah Transit Authority*, 502 F.3d 1215 (10th Cir. 2007), Krystal Etsitty, a transgender employee of the Utah Transit Authority, filed a claim of sex discrimination after she was terminated for using female public restrooms maintained by the Utah Transit Authority, *id.* at 1219-20. The panel "assume[d], without deciding," that a transgender employee could bring a claim of discrimination "because of sex" under Title VII based on his or her failure to conform to sex stereotypes, and that she had therefore satisfied her prima facie burden under the burden-shifting framework established in

McDonnell-Douglas Corp. v. Green, 411 U.S. 792, 802-05 (1973). *Etsitty*, 502 F.3d at 1224. The panel went on to affirm the district court's grant of summary judgment to the employer, however, because it concluded that Ms. Etsitty had not raised a genuine issue of material fact as to whether the Utah Transit Authority's asserted legitimate, nondiscriminatory reason for her termination (fear of liability) was pretext. *Id.* at 1227.

On whether the defendant articulated a legitimate, nondiscriminatory reason, the panel concluded:

> Because an employer's requirement that employees use restrooms matching their biological sex does not expose biological males to disadvantageous terms and does not discriminate against employees who fail to conform to gender stereotypes, UTA's proffered concern over restroom usage is not discriminatory on the basis of sex.

Id. at 1225. In reaching this conclusion, the Tenth Circuit relied upon a narrow interpretation of "sex," which has been rejected by its sister circuits. Specifically, the panel assumed that "sex" does not "encompass[] anything more than male and female," which the court viewed in terms of "biological male" and "biological female." *Id.* at 1222 & n.2. No other federal appeals court has adopted this position after *Price Waterhouse*.

Before this Court decided *Price Waterhouse* in 1989, three Circuit courts – the Seventh, Eighth, and Ninth Circuits – held that Title VII does not prohibit sex discrimination against transgender employees.

Ulane v. E. Airlines, Inc., 742 F.2d 1081, 1084-87 (7th Cir. 1984); *Sommers v. Budget Mktg., Inc.*, 667 F.2d 748, 750 (8th Cir. 1982) (per curiam); *Holloway v. Arthur Andersen & Co.*, 566 F.2d 659, 664 (9th Cir. 1977). But *Price Waterhouse* changed the landscape. As the Eleventh Circuit made clear in *Glenn*:

> [S]ince the decision in *Price Waterhouse*, federal courts have recognized with near-total uniformity that "the approach in *Holloway*, *Sommers*, and *Ulane* . . . has been eviscerated" by *Price Waterhouse*'s holding that "Title VII's reference to 'sex' encompasses both the biological differences between men and women, and gender discrimination, that is, discrimination based on a failure to conform to stereotypical gender norms."

Glenn, 663 F.3d at 1318 n.5 (quoting *Smith*, 378 F.3d at 573).

The Ninth Circuit has explicitly recognized that *Holloway* was overruled by *Price Waterhouse. Schwenk*, 204 F.3d at 1201 ("The initial judicial approach taken in cases such as *Holloway* has been overruled by the logic and language of *Price Waterhouse*."). Neither the Seventh nor Eighth Circuit have had the opportunity to explicitly revisit the application of Title VII to transgender employees, but both Circuits have recognized the change in law after *Price Waterhouse*. *See, e.g.*, *Hussain v. Fed. Express Corp.*, 657 F. App'x 591, 594 (7th Cir. 2016) ("Title VII forbids an employer to base a hiring decision on a candidate's ability to fit a stereotype of her national origin, or her inability to fit

a stereotype of a different national group or gender." (citing *Price Waterhouse*, 490 U.S. at 251)); *Lewis v. Heartland Inns of Am., L.L.C.*, 591 F.3d 1033, 1038-39 (8th Cir. 2010) ("Other circuits have upheld Title VII claims based on sex stereotyping subsequent to *Price Waterhouse*." (citing *Chadwick v. WellPoint, Inc.*, 561 F.3d 38 (1st Cir. 2009); *Back v. Hastings On Hudson Union Free Sch. Dist.*, 365 F.3d 107 (2d Cir. 2004); *Smith*, 378 F.3d 566; *Nichols v. Azteca Rest. Enters., Inc.*, 256 F.3d 864 (9th Cir. 2001))).

Thus, the overwhelming tide of Circuit court jurisprudence supports the conclusion that discrimination against transgender employees and students violates federal law, and all the Circuit cases following *Price Waterhouse* at least recognize that penalizing transgender people for failing to conform to sex stereotypes is actionable sex discrimination.[5]

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[5] Notably, not only did the Fourth Circuit ruling below join this consensus, but the dissent and district court (whose judgment was reversed) also relayed tacit agreement. Neither had a quarrel with the principle that sex discrimination under Title IX includes "gender identity" discrimination generally, disagreeing only in the facilities context. *See G.G.*, 822 F.3d at 737-38 (Niemeyer, J., concurring in part and dissenting in part); *G.G. ex rel. Grimm v. Gloucester Cty. Sch. Bd.*, 132 F. Supp. 3d 736, 744-46 (E.D. Va. 2015).

B. District Courts and the Equal Employment Opportunity Commission Have Similarly Recognized That Sex Stereotyping of Transgender People Is Unlawful Sex Discrimination.

In addition to the Circuit courts above, the overwhelming majority of courts at the district level to have considered the issue – including those rendering decisions in the absence of clear circuit precedent – confirm that sex stereotyping of transgender people is a form of sex discrimination. The District of Connecticut recently confirmed that sex stereotyping of transgender plaintiffs is a viable means of demonstrating sex discrimination under Title VII. *Fabian v. Hosp. of Cent. Conn.*, 172 F. Supp. 3d 509, 512, 523 (D. Conn. 2016). Dr. Deborah Fabian was on the verge of being hired as an on-call orthopedic surgeon at the Hospital of Central Connecticut, but the hospital declined to hire her after she disclosed her identity as a transgender woman and her intent to begin work as a woman. *Id.* at 512. In denying the hospital's motion for summary judgment, the court held:

> *Price Waterhouse* shows that gender-stereotyping discrimination *is* sex discrimination *per se*. That is, the plurality and concurrences do not create a fundamentally new cause of action, but rather rely on an understanding of the scope of Title VII's prohibition against discrimination "because of sex" that reaches

> discrimination based on stereotypical ideas about sex.

Id. at 522.

The District Court for the District of Columbia has held that a transgender plaintiff may successfully establish unlawful sex discrimination under Title VII based on both a sex stereotyping theory and a *per se*, "literal" sex discrimination theory, discussed below. *Schroer v. Billington*, 577 F. Supp. 2d 293, 300 (D.D.C. 2008); *see infra* Section III. Diane Schroer, a transgender job applicant who was offered a job at the Library of Congress when she presented as male, had the offer revoked after notifying the Library she intended to start work as a woman. 577 F. Supp. 2d at 295-99. Following a bench trial, the court concluded that Ms. Schroer had successfully proven that she was discriminated based on a sex stereotyping theory:

> Ultimately, I do not think that it matters for purposes of Title VII liability whether the Library withdrew its offer of employment because it perceived Schroer to be an insufficiently masculine man, an insufficiently feminine woman, or an inherently gender-nonconforming transsexual. One or more of [the decision-maker's] comments could be parsed in each of these three ways. . . . I would therefore conclude that Schroer is entitled to judgment based on a *Price Waterhouse*-type claim for sex stereotyping[ ]. . . .

Id. at 305.

The Southern District of Texas also affirmed the viability of the sex stereotyping theory for transgender plaintiffs alleging claims of sex discrimination. *Lopez v. River Oaks Imaging & Diagnostic Grp., Inc.*, 542 F. Supp. 2d 653, 660 (S.D. Tex. 2008). Plaintiff Izza Lopez, a transgender woman, completed the job application process for an administrative position at a private medical clinic and was offered the position, but had the job offer revoked after a background check showed that she was designated as male. *Id.* at 655-56. The court held, "Title VII is violated when an employer discriminates against any employee, transsexual or not, because he or she has failed to act or appear sufficiently masculine or feminine enough for an employer." *Id.* at 660 (quoting *Schroer v. Billington*, 525 F. Supp. 2d 58, 63 (D.D.C. 2007)).

Many other district courts have reached the same conclusion on civil rights protections for transgender individuals. *See, e.g.*, *Roberts v. Clark Cty. Sch. Dist.*, No. 2:15-cv-00388-JAD-PAL, 2016 WL 5843046, at *1 (D. Nev. Oct. 4, 2016) (concluding that school district's prohibition of transgender employee from using either the men's or women's restrooms "was based on precisely the sort of stereotyping that the Ninth Circuit has found Title VII to prohibit"); *Dawson v. H&H Elec., Inc.*, No. 4:14CV00583 SWW, 2015 WL 5437101, at *2-3 (E.D. Ark. Sept. 15, 2015) (departing from the Eighth Circuit's position in *Sommers* and noting that it is "well settled" that Title VII "prohibits an employer from taking adverse action because an employee's behavior or appearance fails to conform to gender

stereotypes"); *Rumble v. Fairview Health Servs.*, No. 14-cv-2037 (SRN/FLN), 2015 WL 1197415, at *2, 9-18 (D. Minn. Mar. 16, 2015) (also departing from the Eighth Circuit's position in *Sommers*, recognizing that "discrimination based on an individual's transgender status constitutes discrimination based on gender stereotyping," and concluding that the plaintiff alleged a plausible claim under Section 1557 of the Affordable Care Act, 42 U.SC. § 18116, of sex discrimination in the provision of medical care due to transgender status); *Finkle v. Howard Cty.*, 12 F. Supp. 3d 780, 788 (D. Md. 2014) (rejecting pre-*Price Waterhouse* case law and concluding "on the basis of the Supreme Court's holding in *Price Waterhouse*, and after careful consideration of its sister courts' reasoned opinions, . . . that Plaintiff's claim that she was discriminated against 'because of her obvious transgendered status' is a cognizable claim of sex discrimination under Title VII"); *Mitchell v. Axcan Scandipharm, Inc.*, No. Civ.A. 05-243, 2006 WL 456173, at *2 (W.D. Pa. Feb. 17, 2006) (finding transgender plaintiff properly alleged sex discrimination claims under Title VII and Pennsylvania law based on "facts showing that his failure to conform to sex stereotypes of how a man should look and behave was the catalyst behind defendant's actions").

Statutory interpretations by the Equal Employment Opportunity Commission ("EEOC") further complement the significant body of case law recognizing that discrimination against a transgender person based on a failure to conform to sex stereotypes is sex discrimination. In *Macy v. Holder*, EEOC DOC 0120120821

(2012), the EEOC reviewed the appeal of Mia Macy, a transgender woman who sought a position with the Bureau of Alcohol, Tobacco, Firearms, and Explosives, *id.* at *1. Ms. Macy discussed the position with the Bureau's local director while presenting as a man. *Id.* After the director confirmed that she had been accepted to fill the open position, pending a background check, Ms. Macy informed the third-party contractor that was handling the hiring that she was transitioning from male to female and would be changing her name. *Id.* Within days, she received an email stating that the position had been eliminated, although she later learned someone else had been hired for the position. *Id.* at *1-2. Relying on *Price Waterhouse* and the Circuit court opinions discussed above, the EEOC found in Ms. Macy's favor. *Id.* at *11. It concluded that "gender discrimination occurs any time an employer treats an employee differently for failing to conform to any gender-based expectations or norms." *Id.* at *6.

The EEOC reached the same conclusion in a case involving a transgender federal employee's access to restrooms consistent with her gender identity. Complainant Tamara Lusardi, a transgender woman and civilian employee of the Army, alleged she was discriminated against based on sex when the Army restricted her access to the women's multi-user restroom and referred to her by her former male name and by male pronouns. *Lusardi v. McHugh*, EEOC DOC 0120133395, at *1-3 (2015). In response to the employer's explanation that "co-workers would feel uncomfortable" with

Ms. Lusardi using the common women's restroom, the EEOC stated:

> [S]upervisory or co-worker confusion or anxiety cannot justify discriminatory terms and conditions of employment. Title VII prohibits discrimination based on sex whether motivated by hostility, by a desire to protect people of a certain gender, by gender stereotypes, or by the desire to accommodate other people's prejudices or discomfort.

Id. at *9. Similarly, here, the "hostility to G.G." by a few members of the public and unfounded concerns such as "non-transgender boys . . . com[ing] to school wearing dresses in order to gain access to the girls' restrooms," *G.G. ex rel. Grimm v. Gloucester Cty. Sch. Bd.*, 822 F.3d 709, 716 (4th Cir. 2016), *mandate recalled and stay granted*, 136 S. Ct. 2442 (2016), *cert. granted*, 137 S. Ct. 369 (2016), do not justify discriminating against transgender individuals, leaving them vulnerable to actual and imminent harm, and limiting their access to public spaces. Federal law does not permit the Gloucester County School Board to discriminate in order "to accommodate other people's prejudices or discomfort." *Lusardi*, EEOC DOC 0120133395, at *9.

III. Courts Also Recognize That Differential Treatment of Transgender Individuals Based on Gender Identity or Gender Transition Is a Form of Unlawful Sex Discrimination.

Sex stereotyping is just one form of sex discrimination. Courts and the EEOC have determined that

discrimination based on a person's gender identity and/or gender transition, even in the absence of evidence of sex stereotyping, is unlawful sex discrimination. *See, e.g.*, *Fabian*, 172 F. Supp. 3d at 527 ("Similarly, discrimination on the basis of gender stereotypes, or on the basis of being transgender, . . . is literally discrimination 'because of sex.'"); *Macy*, EEOC DOC 0120120821, at *10 (noting that sex stereotyping "is simply one means of proving sex discrimination" and acknowledging there are "different ways of describing sex discrimination" against a transgender person).

Because gender identity is a component of sex, discrimination against a transgender person – who is defined as such precisely because his or her gender identity does not match the sex given to the person at birth – constitutes sex discrimination. In *Schwenk*, the Ninth Circuit recognized that "sex" includes an individual's "sexual identity" or, as more commonly known, "gender . . . identity." *Schwenk*, 204 F.3d at 1201-02 (recognizing that conduct motivated by an individual's "gender or sexual identity" is because of "gender," which is "interchangeable" with "sex"). The Ninth Circuit rejected the view adopted by earlier, pre-*Price Waterhouse* cases that had excluded "gender" from the meaning of "sex" in Title VII and instead concluded that "under *Price Waterhouse*, 'sex' under Title VII encompasses both sex – that is, the biological differences between men and women – *and* gender." *Id.* at 1202. *Schwenk* was correct to do so. After all, if one's dress, hairstyle, and make-up usage constitute aspects of sex – as *Price Waterhouse* confirms that they do – then

they also constitute aspects of gender identity, which gives rise to those outward expressions of sex. *Cf. Smith*, 378 F.3d at 575; *Schroer*, 577 F. Supp. 2d at 306.

Title VII's protections do not rise or fall depending upon whether particular sex-related characteristics are "biological . . . or socially-constructed." *Schwenk*, 204 F.3d at 1201. Both are protected. Scientific evidence shows that gender identity itself has biological roots. *See, e.g.*, Aruna Saraswat et al., *Evidence Supporting the Biologic Nature of Gender Identity*, 21 Endocrine Practice 199, 199-202 (2015) (comprehensively reviewing scientific literature regarding biological origins of gender identity, including studies of neuroanatomy and genetic factors). It is thus a mistake to make broad assumptions about what precisely constitutes "biological gender." In any event, case law already shows that gender identity is a component of "sex," no matter what its origins.

Discrimination based on gender transition is also necessarily based on sex. *Schroer*, 577 F. Supp. 2d at 308 ("[T]he Library's refusal to hire Schroer after being advised that she planned to change her anatomical sex by undergoing sex reassignment surgery was *literally* discrimination 'because of . . . sex.' "). Courts have found a change in religion to provide an apt analogy. Firing an employee because she converts from Christianity to Judaism "would be a clear case of discrimination 'because of religion.' " *Id.* at 306; *see Bd. of Educ. of the Highland Local Sch. Dist. v. U.S. Dep't of Educ.*, ___ F. Supp. 3d ___, No. 2:16-CV-524, 2016 WL 5372349, at *12 n.8 (S.D. Ohio Sept. 26, 2016) (quoting *Schroer*, 577

F. Supp. 2d at 306); *Fabian*, 172 F. Supp. 3d at 527 (quoting *Schroer*, 577 F. Supp. 2d at 306). Even if the employer "harbors no bias toward either Christian or Jews but only 'converts[,]' . . . [n]o court would take seriously the notion that 'converts' are not covered by [Title VII]." *Schroer*, 577 F. Supp. 2d at 306; *accord Macy*, EEOC DOC 0120120821, at *11 (quoting *Schroer*, 577 F. Supp. 2d at 306). Similarly, a school can treat girls and boys equally as a general matter but nonetheless unlawfully discriminate against those who undergo a change in gender.

IV. The Gloucester County School Board's Policy Discriminates Against Transgender Students On the Basis of Their Failure to Conform to Sex Stereotypes, Their Gender Identity, and/or Their Gender Transition.

By requiring G.G. and other transgender students to use restrooms according to their "biological genders" – *i.e.*, the sex listed on their birth certificates – rather than facilities consistent with their gender identity, the Gloucester County School Board's policy singles out and punishes transgender students because of their perceived failure to conform to sex stereotypes, their gender identity, and/or their gender transition. The policy codifies sex stereotyping by punishing those who are perceived as diverging from stereotypical gender norms – *i.e.*, those whose gender identity and corresponding behavior are inconsistent with the sex listed on their birth certificates. The policy further targets transgender students based on their gender

identity and gender transition by prohibiting them from using restrooms consistent with their gender identity. In G.G.'s case, he may only use the girls' restroom (which is inconsistent with his gender identity and his psychologist's recommendation that he live as a boy in all aspects of his life) or a single-stall unisex restroom (which singles him out as a transgender student). *G.G.*, 822 F.3d at 716-17. Meanwhile, non-transgender students are permitted the comfort and security of using the restroom consistent with their gender identity because their gender identity is consistent with the sex listed on their birth certificates.

The Fourth Circuit properly concluded that G.G. stated a claim for sex discrimination under Title IX, reversed the dismissal of his Title IX claim, and vacated the denial of a preliminary injunction. *Id.* at 714-15. While the majority did not directly address the Gloucester County School Board's policy as unlawful sex discrimination, Senior Judge Davis wrote in his concurrence that the Fourth Circuit "would be on sound ground in granting the requested preliminary injunction on the undisputed facts in the record" because of the bounty of circuit authority on this issue:

> In light of the weight of circuit authority concluding that discrimination against transgender individuals constitutes discrimination "on the basis of sex" in the context of analogous statutes and our holding here that the Department's interpretation of 34 C.F.R. § 106.33 is to be given controlling weight, G.G.

> has surely demonstrated a likelihood of success on the merits of his Title IX claim.

Id. at 727 (Davis, J., concurring) (citing *Price Waterhouse*, 490 U.S. at 250-51; *Glenn*, 663 F.3d at 1316-19; *Smith*, 378 F.3d at 573-75; *Rosa*, 214 F.3d at 215-16; *Schwenk*, 204 F.3d at 1201-02).

The Fourth Circuit panel reached the appropriate outcome in light of the broad judicial consensus that policies and practices targeting transgender people because of their perceived failure to conform to gender stereotypes, gender identity, and/or gender transition are unlawful sex discrimination.

CONCLUSION

For the reasons above, Amici urge this Court to affirm the Fourth Circuit's order reversing in part and vacating in part the district court's judgment, and remanding to the district court.

Respectfully submitted,

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LIST OF AMICI

Advocates for Children of New York, Inc. (AFC) is a legal services organization that has worked with low-income families for over forty years to secure quality and equal public education services for children in New York City. AFC provides a range of direct services, including through free individual education advocacy on cases and an education helpline. AFC also works on institutional reform of educational policies and practices through advocacy and litigation.

The **Alameda Contra Costa Trial Lawyers Association (ACCTLA)** was established in 1970 in San Leandro, California, to serve the trial lawyers in Alameda and Contra Costa counties through education, networking, business development, and liaisons with the local judges and courts as well as other bar associations. To bridge the gap between past and future, ACCTLA's Board of Governors includes 25 practicing trial attorneys and all of its past presidents. ACCTLA has always advocated for its members at the local, state, and national levels, and our members have successfully advocated for changes in the courts. ACCTLA believes in equal access and justice for all.

The **AIDS Legal Referral Panel (ALRP)** provides legal services to people living with HIV/AIDS in the San Francisco Bay Area. ALRP is committed to ensuring justice for our clients in facing discrimination. Since roughly 80% of ALRP's clients are LGBT, discrimination against LGBT people directly impacts our clients.

Asian Americans Advancing Justice | Los Angeles (Advancing Justice-LA) is the nation's largest legal and civil rights organization for Asian Americans, Native Hawaiians, and Pacific Islanders. As part of its mission to advance civil rights, Advancing Justice-LA is committed to challenging discrimination in all its pernicious forms, and has championed equal rights for the lesbian, gay, bisexual, and transgender community.

The **Asian American Bar Association of the Greater Bay Area (AABA)** is one of the largest Asian American bar associations in the nation and one of the largest minority bar associations in the State of California. From its inception in 1976, AABA and its attorneys have been actively involved in civil rights issues and community service. AABA members filed an amicus brief in the *Regents of the University of California v. Bakke* affirmative action case, filed a successful petition overturning the conviction of Fred Korematsu in the landmark *Korematsu v. United States* case, worked on the successful campaign to release Chol Soo Lee from prison, and were involved in efforts to release Wen Ho Lee and to unseal documents in his case. AABA is committed to fighting for the rights of minorities, including for the transgender, gay, lesbian, and bisexual community.

The **Bar Association of San Francisco (BASF)** is a nonprofit voluntary membership organization of attorneys, law students, and legal professionals in the San Francisco Bay Area. Founded in 1872, BASF enjoys the support of more than 7,300 individuals, law

firms, corporate legal departments, and law schools. Through its board of directors, its committees, and its volunteer legal services programs and other community efforts, BASF has worked actively to promote and achieve equal justice for all and oppose discrimination in all its forms, including, but not limited to, discrimination based on race, sex, disability, and sexual orientation. BASF provides a collective voice for public advocacy, advances professional growth and education, and attempts to elevate the standards of integrity, honor, and respect in the practice of law.

Since 1974, **Bet Tzedek** (Hebrew for "House of Justice") has advocated for low-income and vulnerable individuals throughout Southern California. Consistent with this mandate, Bet Tzedek provides free legal assistance to all eligible low-income residents, regardless of their racial, religious, or ethnic background. Bet Tzedek attorneys, advocates, and support staff, along with our vast network of volunteer and pro bono attorneys, are dedicated to using law and public policy to protect and promote equality and justice for all individuals. Among other things, Bet Tzedek seeks to support the health and wellbeing of low-income transgender and gender nonconforming individuals in Los Angeles through a transgender medical-legal partnership focused on alleviating individuals' health-harming legal needs and addressing systemic inequalities. Bet Tzedek strongly opposes laws and policies that legitimize discrimination against transgender persons.

BiLaw is a group of professors and practitioners of law who specialize in gender and sexuality, including the discrimination faced by and the rights afforded to bisexuals, many of whom identify as bisexual. BiLaw has an interest in ensuring that all people living in the United States and subject to state law, including LGBT people and in this instance, especially transgender and gender non-conforming people, are treated fairly and equally, without prejudice based on their sex and gender identity. In its work supporting legal rights and representation of bisexuals, BiLaw's work supports a significant portion of the transgender community. Indeed, more transgender individuals – 25% – identify as bisexual than as lesbian, gay, or heterosexual.

The **California Employment Lawyers Association (CELA)** is an organization of over 1,200 attorneys who represent primarily plaintiffs in civil rights and other civil cases arising in the workplace. CELA helps its members protect and expand the legal rights of working women and men through litigation, education, and advocacy.

California Rural Legal Assistance, Inc. is a nonprofit legal aid organization dedicated to helping California's rural low-income individuals and their families, including vulnerable transgender youth and employees.

Centro Legal de la Raza (Centro Legal) was founded in 1969 to provide culturally and linguistically appropriate legal aid services to low-income, predominantly Spanish-speaking residents of the San Francisco

Bay Area. Centro Legal assists several thousand clients annually with support ranging from advice and referrals to full representation in court, in the areas of immigration, housing law, employment law, family law, and consumer protection. Centro Legal's Youth Law Academy also provides educational and career assistance to low-income Bay Area students. In addition, Centro Legal advocates for policies and practices on a state and national level to support our client and student communities. In providing such services, Centro Legal regularly represents members of the LGBT community, including clients seeking asylum or facing workplace or housing discrimination as a result of their gender identity or sexual orientation. Centro Legal therefore has a significant interest in protecting the Equal Protection and Due Process rights of the LGBT community.

The **Civil Rights Education and Enforcement Center (CREEC)** is a national nonprofit membership organization whose mission is to ensure that everyone can fully and independently participate in our nation's civic life without discrimination based on race, gender, disability, religion, national origin, sexual orientation, or gender identity. Based in Colorado and California, CREEC promotes its mission through education, advocacy, and litigation nationwide on a broad array of civil rights issues. As part of this mission, CREEC works to ensure that trans* individuals have equal rights in society, including education, public accommodations, and housing.

The **Dallas LGBT Bar Association** consists of approximately 55 lawyers, law students, paralegals, and related professional allies who share an interest in the laws that affect and protect the LGBTQ community. The Dallas LGBT Bar Association issues an electronic newsletter several times a month to nearly 200 subscribers on current topics of interest to the LGBTQ community and legal communities, and has over 1,300 Facebook followers. The Dallas LGBT Bar Association holds monthly luncheon meetings for its members where speakers provide continuing legal education on a broad range of topics affecting lawyers who represent LGBTQ clients. The Dallas LGBT Bar Association also holds networking events, has given scholarships to deserving law students, profiles its members on its website, and educates and promotes legal issues affecting the LGBTQ community.

Founded in 1978, the **East Bay La Raza Lawyers Association (EBLRLA)** is the county bar association of Latina/o lawyers in Alameda and Contra Costa counties in California. Affiliated with La Raza Lawyers of California, the EBLRLA is dedicated to expanding legal access to the Latina/o community, provides annual scholarships to Latina/o law students, supports Latina/o attorneys with a local professional network, and advocates for increased Latina/o representation in the judiciary. EBLRLA often participates in public policy debates regarding issues affecting the Latina/o community, including LGBT rights. The association appears as amicus curiae in cases where it believes it can provide valuable perspective to the court

and help inform court decisions on matters of public importance.

Equality California is the nation's largest statewide lesbian, gay, bisexual and transgender civil rights organization focused on creating a fair and just society. Equality California has hundreds of thousands of members and works to achieve and maintain full and lasting equality, acceptance, and social justice for all people in the diverse LGBT communities inside and outside of California. Equality California frequently participates in litigation in support of the rights of LGBT persons.

Equality Federation is the movement builder and strategic partner to state-based organizations advocating for lesbian, gay, bisexual, transgender, and queer (LGBTQ) people.

Equality Florida Institute (EQFLI) is the largest civil rights organization dedicated to securing full equality for Florida's lesbian, gay, bisexual, transgender, and queer community. Through grassroots organizing and public education, EQFLI is working to end LGBTQ discrimination, accelerate acceptance of all Floridians, make schools safe for LGBTQ students, and move equality forward by uprooting the hatred that fuels violence and bigotry in the Sunshine state.

Equality NC is North Carolina's largest nonprofit organization advocating for the rights of lesbian, gay, bisexual, transgender and queer individuals, with over 170,000 constituents and supporters. Originally founded in 1979 as the North Carolina Human Rights

Fund, Equality NC is dedicated to securing equal rights and justice for lesbian, gay, bisexual, transgender and queer North Carolinians. Equality NC conducts comprehensive campaigns to build public support for equal rights, advocates with policy-making bodies for the enactment of anti-discrimination protections for LGBTQ people, and provides educational programming on LGBTQ issues.

Equality New Mexico (EQNM) is New Mexico's LGBTQ civil rights and advocacy organization. For more than 20 years, EQNM has worked to increase access, equity, and wellness for LGBTQ New Mexicans. As one of the state's leading bullying prevention and education organizations, EQNM advances policies and practices in New Mexico's public schools to better support LGBTQ students, especially those who identify as transgender.

Equality Ohio is a non-profit organization whose mission is to achieve fair treatment and equal opportunity for all Ohioans, regardless of their sexual orientation or gender identity or expression. Equality Ohio was founded in 2005 by a group of dedicated LGBT activists and allies from all corners of Ohio after voters passed a constitutional amendment prohibiting same sex marriage and civil unions. Today, Equality Ohio's work is broad and focuses on multiple aspects of LGBTQ equality in Ohio.

Equality Utah in Utah's largest LGBTQ civil rights organization. Founded in 2001 as Unity Utah, our

mission is to secure equal rights and protections for lesbian, gay, bisexual and transgender Utahns and their families. Equality Utah continues to advocate for policies that provide legal parity for LGBTQ Utahns in all areas governed by civil law, with a vision of a fair and just Utah.

Garden State Equality is New Jersey's statewide advocacy and education organization for the lesbian, gay, bisexual, and transgender community. Garden State Equality has led efforts to ensure nondiscrimination for transgender and gender nonconforming people, to pass the most comprehensive anti-bullying law in the country, to end sexual orientation and gender identity/expression change efforts (sometimes called conversion therapy), and to bring marriage equality to the Garden State. Garden State Equality has a particular focus on transgender youth and has worked with schools throughout the State of New Jersey to design and implement transgender policies and to educate, train and provide guidance to school administrators regarding transgender issues.

The **Hawai`i LGBT Legal Association (HLLA)** is a voluntary professional organization of lesbian, gay, bisexual, transgender, intersex and queer ("LGBT") judges, lawyers, legal workers, legislative advocates, law students and allies supportive of HLLA's purposes. HLLA's mission is to establish and maintain a group to support, assist and encourage LGBT legal professionals and to provide support and resources to the people of Hawai`i on LGBT issues. HLLA's specific purposes include, among others: to educate the public

regarding the legal rights of, and issues faced by, LGBT individuals; to be available to the legal community, including judges, governmental officials and others for comment regarding rights and issues that may affect the LGBT community, with the goal of assuring fair and just treatment of Hawai`i's LGBT community and the LGBT community at large; and to work with LGBT organizations and community groups, as well as other minority bar associations and community groups, to achieve human and civil rights for all people.

The **Hispanic National Bar Association** is a nonprofit, nonpartisan, national professional association that represents the interests of thousands of attorneys, judges, law professors, law students and other legal professionals of Hispanic descent in the United States. The Hispanic National Bar Association has approximately fifty (50) affiliated bars in various states across the country. The continuing mission of the Hispanic National Bar Association is to improve the study, practice, and administration of justice for all Americans by ensuring the meaningful participation of Hispanics in the legal profession. Since its inception 45 years ago, the Hispanic National Bar Association has served as the national voice for Hispanics in the legal profession and has promoted justice, equity, and opportunity for Hispanics. For the past several years, the LGBT Division of the Hispanic National Bar Association has served as the national platform for LGBT Hispanics in the legal profession.

Intersex & Genderqueer Recognition Project (IGRP) is a non-profit legal organization engaged

in litigation, education, and advocacy to address the right of transgender and intersex people in the U.S. who identify as non-binary to obtain a correct gender listing on their ID. IGRP has an interest in this Court's consideration of sex discrimination law in this case which directly affects its members. IGRP's membership and advisory committee consists of intersex and transgender persons who have faced discrimination due to their non-binary gender identity and perceived failure to conform to gender stereotypes, as well as their family members.

Kansas City Lesbian, Gay and Allied Lawyers (KC LEGAL) is a bar association serving the lesbian, gay, bisexual, transgender and allied legal community in the Greater Kansas City Metropolitan Area in both Missouri and Kansas. KC LEGAL aims to unite legal professionals around issues facing LGBTQIA individuals, to promote solidarity and support for LGBTQIA individuals in the law, and to educate the general public, the legal profession, and the courts about legal issues facing LGBTQIA individuals.

Legal Aid at Work (formerly Legal Aid Society – Employment Law Center) is a non-profit public interest law firm whose mission is to protect, preserve, and advance the employment and education rights of individuals from traditionally under-represented communities. LAAW has represented plaintiffs in cases of special import to communities of color, women, recent immigrants, individuals with disabilities, the LGBT community, and the working poor. LAAW has litigated a number of cases under Title IX of the Education

Amendments of 1972 as well as Title VII of the Civil Rights Act of 1964. LAAW has appeared in discrimination cases on numerous occasions both as counsel for plaintiffs, *see, e.g.*, *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101 (2002); *U.S. Airways, Inc. v. Barnett*, 535 U.S. 391 (2002); and *California Federal Savings & Loan Ass'n v. Guerra*, 479 U.S. 272 (1987) (counsel for real party in interest), as well as in an amicus curiae capacity, *see, e.g.*, *United States v. Virginia*, 518 U.S. 515 (1996); *Harris v. Forklift Systems*, 510 U.S. 17 (1993); *International Union, UAW v. Johnson Controls*, 499 U.S. 187 (1991); *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989); *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986). LAAW's interest in preserving the protections afforded to employees and students by this country's antidiscrimination laws is longstanding.

The **Legal Aid Society (the Society)** is a private, not-for-profit legal services organization, the oldest and largest in the nation, dedicated since 1876 to providing quality legal representation to low-income New Yorkers. The Society handles 300,000 individual cases and matters annually and provides a comprehensive range of legal services in three areas: the Civil, Criminal and Juvenile Rights Practices. With respect to the particular questions raised here, through the work of its LGBT Law and Policy Initiative, the Society engages in policy and law reform efforts to further the civil rights of the LGBTGNC communities. As the primary institutional provider of legal representation of children and youth in all New York City Family Courts, the Society's Juvenile Rights Practice (JRP) has served

as attorneys for children for over 50 years. JRP's Education Advocacy Project is a leader in ensuring system-involved youth have access to an appropriate and affirming education.

The **LGBT Bar Association of Greater New York (LeGaL)** was one of the nation's first bar associations of the lesbian, gay, bisexual, and transgender legal community and remains one of the largest and most active organizations of its kind in the country. Serving the New York metropolitan area, LeGaL is dedicated to improving the administration of the law, ensuring full equality for members of the LGBT community, and promoting the expertise and advancement of LGBT legal professionals.

The **LGBT Bar Association of Los Angeles (LGBT Bar LA)** was founded in 1979 and has grown into a relevant, multi-cultural, open and active bar association of lesbian, gay, bisexual, and transgender lawyers, judges, law students and other legal professionals. LGBT Bar LA is dedicated to furthering justice and equality and the advancement of lesbian, gay, bisexual and transgender issues throughout California and around the nation by making judicial endorsements, appearing as amicus curiae in cases such as this one, holding representation on the Conference of Delegates of the State Bar of California, and providing educational and networking opportunities for its members. LGBT Bar LA has fought for equal justice for all persons without regard to their sexual orientation or gender identity for more than 35 years.

The **LGBT Bar Association of Wisconsin** is a non-profit legal bar association comprised of over fifty members which include LGBT and allied legal professionals in Wisconsin. Part of our mission is to advance the elimination of discrimination based upon actual or perceived homosexuality, bisexuality, transgender, transsexuality, gender-related identity, race, color, religion, sex, national origin, ancestry, citizenship, age, marital status, disability, or military status in the community at large through educational initiatives, training programs, and collaboration with organizations committed to the same.

Founded in 1985, the **Massachusetts LGBTQ Bar Association (Mass LGBTQ Bar)** is a voluntary state-wide professional association of lesbian, gay, bisexual, transgender and queer lawyers and our allies, providing a visible LGBTQ presence within the Massachusetts legal community. Our work focuses around Leadership, Education, Support, and the promotion of the administration of Justice throughout Massachusetts for all persons without regard to their sexual orientation or gender identity or expression. The Mass LGBTQ Bar has a substantial interest in ensuring that the rights of transgender people to be free from sex discrimination are recognized and upheld under the plain language of federal civil rights laws.

The **National Employment Law Project (NELP)** is a non-profit legal organization with over 45 years of experience advocating for the employment and labor rights of low-wage and unemployed workers. NELP seeks to ensure that all employees, and especially the

most vulnerable ones, receive the full protection of labor and employment laws, including protections against discrimination, regardless of an individual's status. NELP has litigated and participated as amicus curiae in numerous cases in circuit and state and U.S. Supreme Courts addressing the importance of equal access to labor and employment protections for all workers.

The **National Employment Lawyers Association (NELA)** is the largest professional membership organization in the country comprising lawyers who represent workers in labor, employment and civil rights disputes. Founded in 1985, NELA advances employee rights and serves lawyers who advocate for equality and justice in the American workplace. NELA and its 69 circuit, state, and local affiliates have a membership of over 4,000 attorneys who are committed to working on behalf of those who have been illegally treated in the workplace. NELA's members litigate daily in every circuit, affording NELA a unique perspective on how the principles announced by the courts in employment cases actually play out on the ground. NELA strives to protect the rights of its members' clients, and regularly supports precedent-setting litigation affecting the rights of individuals in the workplace.

The **National Queer Asian Pacific Islander Alliance (NQAPIA)** is a federation of lesbian, gay, bisexual, and transgender (LGBT) Asian American, South Asian, Southeast Asian, and Pacific Islander (APIs) organizations. NQAPIA builds the capacity

of local LGBT API groups, develops leadership, promotes visibility, educates the community, invigorates grassroots organizing, encourages collaborations, and challenges anti-LGBT bias and racism. NQAPIA has many transgender members and we have long advocated for the rights and dignities of people of transgender experience.

The **New Mexico Lesbian and Gay Lawyers Association (NMLGLA)**, formed in 1995, is a nonprofit, voluntary bar organization committed to promoting and protecting the interests of the lesbian, gay, bisexual and transgender lawyers and to achieving their full participation in all rights, privileges and benefits of the legal profession. The NMLGLA also strives to promote the efficient administration of justice and the constant improvement of the law, especially as it relates to lesbians, gay men, bisexual and transgender individuals.

North Carolina Advocates for Justice (NCAJ) is a nonprofit organization of over 2,700 private and public-interest North Carolina lawyers who represent individuals in civil and criminal cases and advocate for their interests in court, at the legislature, and through public and continuing legal education. NCAJ has a strong interest in ensuring that all people in North Carolina receive equal protection under the law.

OutFront Minnesota (OFM) is the largest advocacy organization for lesbian, gay, bisexual, transgender, and queer people in the Northstar State. OFM is dedicated to making Minnesota a place where people

can be who they are, love whom they love, and live without fear of discrimination, harassment, or violence. One of OFM's most recent major legislative accomplishments was leading the effort by a broad-based coalition to secure passage in 2014 of the Minnesota Safe and Supportive Schools Act. OFM continues to be a consultant to school districts, and an advocate for students and their families, around issues concerning the use of historically gendered spaces by trans and gender-nonconforming students.

QLaw is the bar association of lesbian, gay, bisexual, transgender, and queer (LGBTQ) legal professionals and allies for Washington state, and serves as a voice for LGBTQ lawyers and other legal professionals on issues relating to diversity and equality in the legal profession, in the courts, and under the law. The organization has five purposes: to provide opportunities for members of the LGBTQ legal community to meet in a supportive, professional atmosphere to exchange ideas and information; to further the professional development of LGBTQ legal professionals and law students; to educate the public, the legal profession, and the courts about legal issues of particular concern to the LGBTQ community; to empower members of the LGBTQ community by improving access to the legal and judicial system and sponsoring education programs; and to promote and encourage the advancement of LGBTQ attorneys in the legal profession.

Queen's Bench Bar Association of the San Francisco Bay Area was formed in 1921 by a group of women lawyers frustrated by the resistance of male

lawyers to their participation in the local bar association. We gain inspiration from these visionary women and our long and proud tradition of Queen's Bench members standing up for equal rights and equal opportunity, and working together to achieve our goals. Queen's Bench seeks to advance the interests of women in law and society, and plays an integral part in furthering the progress of women in the legal profession. We are a non-profit voluntary membership organization made up of attorneys, judges and law students. Queen's Bench also seeks to advance equality and opportunity for all women.

SacLEGAL, Sacramento's LGBT Bar Association, is comprised of attorneys, professionals and legislative advocates affiliated with the Sacramento County Bar Association. Our mission is to promote equality for members of the LGBT community through strong leadership, legislative advocacy, education, and participation in civic and social activities within the legal community and community at large. We aim to defend and expand the legal rights of LGBT people to ensure equality, and to secure for LGBT individuals basic human and civil rights, such as the right to be free from discrimination.

Services & Advocacy for GLBT Elders (SAGE) is the country's largest and oldest organization dedicated to improving the lives of lesbian, gay, bisexual and transgender (LGBT) older adults. Founded in 1978 and headquartered in New York City, SAGE is a national organization that offers supportive services and consumer resources for LGBT older adults and their

caregivers, advocates for public policy changes that address the needs of LGBT older people, and provides training for aging providers and LGBT organizations, largely through its National Resource Center on LGBT Aging. With offices in New York City, Washington, DC and Chicago, SAGE coordinates a growing network of 30 local SAGE affiliates in 20 states and the District of Columbia. In partnership with its constituents and allies, SAGE works to achieve a high quality of life for LGBT older adults, supports and advocates for their rights, fosters a greater understanding of aging in all communities, and promotes positive images of LGBT life in later years. SAGE has appeared as amicus curiae in recent cases impacting LGBT rights. SAGE believes it is important that the court hear the voice of LGBT elders, a resilient population that deserves to be protected at this most vulnerable point in their lives.

Stonewall Law Association of Greater Houston (SLAGH) is a voluntary professional association of gay, lesbian, bisexual, transgender, and ally attorneys, judges, paralegals, and law students who provide an LGBT presence within the greater Houston legal community. We encourage the recognition of civil and human rights, promote sensitivity to legal issues faced by the LGBT community and those living with HIV, assure the fair and just treatment of members of the LGBT community, provide opportunities for LGBT attorneys, judges, law students, and allies to interact in a professional setting, build alliances with other minority bar associations and legal organizations, and

enhance the practice and professional expertise of lawyers who serve or are members of the LGBT community. SLAGH appears as amicus curiae in cases such as this one, where the organization believes it can provide a valuable perspective that will inform the decisions of the Court on matters directly affecting the LGBT community, as well as other minority communities whose rights are often at stake.

The **Tom Homann LGBT Law Association (THLA)** is a non-profit, voluntary membership bar association of attorneys, law students, judges, and other legal professionals and community members dedicated to the advancement of gay, lesbian, bisexual, and transgender issues throughout California and the nation. We are the place for San Diego's LGBTQ lawyers to network, build friendships, and develop their careers. THLA members are also committed to establishing and maintaining personal connections with the local law student community through mentorship and networking.

The **Virginia Equality Bar Association (VEBA)** is a professional organization of independent, nonpartisan, voluntary lesbian, gay, bisexual, and transgender (LGBT) legal professionals and their allies in the legal community. VEBA seeks to secure equality for lesbian, gay, bisexual and transgender people and opposes discrimination based on sexual orientation or gender identity. VEBA provides a forum for education and advocacy on LGBT related issues.