

No. WD80005

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IN THE  
MISSOURI COURT OF APPEALS  
WESTERN DISTRICT

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R.M.A, by his next friend Rachelle Appleberry  
Petitioner-Appellant

v.

Blue Springs R-IV School District and Blue Springs School District Board of Education,  
Respondents.

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Appeal from the Circuit Court of Jackson County, Missouri  
Case No. 1516-CV20874

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Brief of American Civil Liberties Union of Missouri Foundation; the ACLU  
Lesbian, Gay, Bisexual & Transgender Project; the National Center for Lesbian Rights;  
and the Transgender Law Center as *Amici Curiae* in Support of Appellant

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ANTHONY E. ROTHERT, #44827  
ACLU of Missouri Foundation  
454 Whittier Street  
St. Louis, Missouri 63108  
(314) 652-3114 telephone  
(314) 652-3112 facsimile

GILLIAN R. WILCOX, #61278  
ACLU of Missouri Foundation  
3601 Main Street  
Kansas City, Missouri 64111  
(816) 470-9933 telephone  
(816) 652-3112 facsimile

Attorneys for Amici Curiae

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## **Jurisdictional Statement**

*Amicus* adopts the jurisdictional statement as set forth in Appellant's brief.

## **Interests of Amici Curiae**

The American Civil Liberties Union (ACLU) is a nonprofit, nonpartisan membership organization founded in 1920 to protect and advance civil liberties throughout the United States. The ACLU has more than 500,000 members nationwide. The ACLU of Missouri Foundation is an affiliate of the national ACLU. The ACLU of Missouri has more than 4,500 members. The ACLU has participated as counsel and amicus in numerous precedent-setting legal cases involving the rights of LGBT persons in Missouri and nationally.

The National Center for Lesbian Rights is a national non-profit legal organization dedicated to protecting and advancing the civil rights of lesbian, gay, bisexual, and transgender people and their families through litigation, public policy advocacy, and public education. Since its founding in 1977, NCLR has played a leading role in securing fair and equal treatment for LGBT people and their families in cases across the country involving constitutional and civil rights. NCLR has a particular interest in promoting equal opportunity for transgender youth through its Transgender Youth Project, which takes on precedent-setting cases to expand legal protections for youth, advocates for inclusive, affirming, and welcoming policies at all levels of government, and furthers equality through public education.

Transgender Law Center is the leading national legal organization dedicated to advancing the rights of transgender and gender nonconforming people through litigation, policy advocacy, and public education. TLC works to change law, policy, and attitudes so

that all people can live safely, authentically, and free from discrimination regardless of their gender identity or expression.

*Amici* strive to strengthen and protect the rights of transgender and gender nonconforming students to be treated equally, to be free from discrimination and bullying, and to have equal opportunities to learn, participate, and contribute in school.

### **Statement of Facts**

Petitioner, R.M.A., is a boy at Blue Springs R-VI School District, where he has attended school since at least fourth grade. LF 11, 14. He is also transgender, having been assigned the female sex at birth. LF 11. He transitioned to living consistently as a boy in all aspects of his life since 2009, including legally changing his name and gender marker on his birth certificate. LF 11-12.

R.M.A. asked his school to allow him to use the boys' restrooms and locker rooms like all the other boys in his school. LF 12-13. However, his school has consistently refused to treat him like his male peers; instead, it has required him to use a separate place from all other students to change for gym and use the restroom. LF 13-14.

## **Argument**

Medical research and clinical standards recognize that transgender persons' gender identity determines their sex and that allowing transgender young people to live consistent with their gender identity is crucial for their health and well-being. School policies or practices that exclude students from gender-appropriate restrooms and locker rooms, such as the District's exclusionary practices regarding R.M.A., cause serious harm to transgender students. As shown in Section II of the brief, the MHRA prohibits this kind of harmful discrimination because discrimination against individuals because they are transgender or have undergone a gender transition is a form of sex discrimination proscribed by the MHRA. Finally, Section III shows that the experience of hundreds of school districts throughout the country indicates that schools can allow transgender students to use the facilities that match their gender without incident and that all students—transgender and non-transgender alike—benefit from their doing so.

### **I. Transgender Young People and Their Experience at School.**

#### **A. Sex, Gender Identity, and Gender Dysphoria**

Gender identity is a person's inner sense of belonging to a particular sex, such as male or female.<sup>1</sup> It is a deeply felt and core component of human identity. Everyone has

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<sup>1</sup> See, e.g., American Psychological Association, *Answers to your questions about transgender people, gender identity, and gender expression* (2011) ("APA Answers"), <http://www.apa.org/topics/sexuality/transgender.pdf>.

a gender identity, and for most people, their gender identity is consistent with the sex they were assigned at birth.<sup>2</sup> Current science recognizes that gender identity is innate or fixed at a young age and strongly indicates that gender identity has a biological basis.<sup>3</sup> Children typically become aware of their gender identity between the ages of two and four years old.<sup>4</sup> Transgender people have a gender identity, or affirmed sex, that is different from the sex they were assigned or assumed to be at birth.<sup>5</sup>

By the beginning of the twentieth century, scientific research had established that external genitalia alone—the usual criterion relied on for assigning sex at birth—is not always an accurate proxy for a person’s sex. Instead, a person’s sex is made up of a number of different characteristics, including internal reproductive organs, external

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<sup>2</sup> A person’s sex is typically assigned at birth based on the appearance of a person’s external genitalia. See e.g., Money, J., & Ehrhardt, A.A. *Man & woman, boy & girl: The differentiation and dimorphism of gender identity from conception to maturity* (1972).

<sup>3</sup> Stieglitz, K. (2010). Development, risk, and resilience of transgender youth. *Journal of the Association of Nurses in AIDS Care*, 21(3), 192–206; Money & Ehrhardt (1972).

<sup>4</sup> See Am. Psych. Ass’n, *Diagnostic and Statistical Manual of Mental Disorders*, 455 (5th ed. 2013) (“DSM-5”).

<sup>5</sup> See, e.g., World Professional Ass’n for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People* 221 (7th ed. 2011) (“Standards of Care”); Am. Psychiatric Ass’n, *APA Topical Resource: Lesbian, Gay, Bisexual, Transgender*.

genitalia, chromosomes, hormones, neurological sex, gender identity, and secondary-sex characteristics, among others.<sup>6</sup> For most people, these characteristics are aligned. For some people, however, these characteristics diverge. For example, an intersex person may have both male and female chromosomes or other characteristics that combine typically male and typically female features. Similarly, a transgender person has a gender identity and, current research strongly suggests, a neurological sex that does not align with other characteristics. When there are inconsistencies among the factors that comprise a person's sex, the person's neurological sex and gender identity are the most important determinants of the person's sex.<sup>7</sup>

The medical diagnosis of gender dysphoria refers to the severe and unremitting emotional pain resulting from this incongruity.<sup>8</sup> People diagnosed with gender dysphoria have an intense and persistent discomfort with the primary and secondary sex characteristics of their assigned gender. Gender dysphoria is a serious medical condition

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<sup>6</sup> See Norman P. Spack, An Endocrine Perspective on the Care of Transgender Adolescents, 13 J. of Gay & Lesbian Mental Health 309, 312- 13 (2009) ("Endocrine Perspective") ("In other words, how can [a transgender girl] be a male to female if you really always were a female in your brain?"); see also P.T. Cohen-Kettenis & L.J.G. Gooren, *Transsexualism: A Review of Etiology, Diagnosis and Treatment*, 46 J. of Psychosomatic Res. 315, 318 (1999); Endocrine Perspective, 312-13 (2009).

<sup>7</sup> *Id.*

<sup>8</sup> DSM-5, 451.

codified in the DSM-5 and the World Health Organization's International Classification of Diseases.<sup>9</sup> Attempts to address gender dysphoria by seeking to change a person's gender identity are unethical, ineffective, and cause extreme psychological harm.

The way in which a transgender child evinces a transgender identity to others differs greatly from children engaging in age-appropriate imaginative play; children expressing a gender identity that is different than their assigned gender exhibit a strong cross-gender identification that is insistent, persistent, and consistent. Although uncommon, a gender identity that is inconsistent with one's gender assigned at birth is a normal variation of human diversity.

Transgender children have the same capacity for happiness, achievement, and contributing to society as other children. Unfortunately, transgender children are more likely to be denied the love, support, and affirmation that all children need to thrive and grow into healthy adults. When parents, caregivers, and adult authority figures discourage or do not accept a transgender child's gender identity, the child experiences psychological distress. Rejection or disapproval leads to serious mental health consequences for the child, including shame, low self-esteem, anxiety, depression, self-harming behaviors, and suicidal ideation. Given the amount of time that students spend in school, the school environment has a tremendous effect on a transgender student's well-being.

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<sup>9</sup> *Id.*

Part of supporting a transgender child is ensuring that the child has access to treatment for their gender dysphoria. The goal of treatment is to enable a transgender person to live authentically, based on their core gender identity, and typically involves bringing the person's body and social presentation into alignment with the person's gender.<sup>10</sup> Treatment does not make a transgender person more of a man or more of a woman; rather, the person's core gender identity already exists. Treatment creates more alignment between the person's identity and the person's appearance, alleviating the symptoms of gender dysphoria and allowing a transgender person to function and to lead a healthy, well-adjusted life.

Health care providers recognize that when a child has a strong and persistent cross-gender identification, which is a hallmark of gender dysphoria, "social transition" may be medically necessary in order to alleviate the child's distress, improve the child's mental health, and reduce the risk that the child will engage in self-harming behaviors.<sup>11</sup> Social transition refers to the process of permitting a child to live consistently with the child's gender identity in all aspects of the child's life. Social transition brings the child's outer appearance and lived experience into alignment with the child's sex. That typically

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<sup>10</sup> Am. Med. Ass'n, *Report of the Board of Trustees 26-A-14: Conforming Birth Certificate Policies to Current Medical Standards for Transgender Patients (Resolution 5-A-13)* 2 (2014) ("AMA Report").

<sup>11</sup> Kristina Olson, *et al.*, *Mental Health of Transgender Children who are Supported in Their Identities*, 137 *Pediatrics* at 1 (2016).

includes wearing clothes, using a name and pronouns, and interacting with peers and the social environment in a manner that matches the child's core gender. A key part of social transition is that the child is treated in a manner consistent with their sex in all settings, including school. Inconsistencies across social settings compromise the effectiveness of a child's social transition and undermine the treatment of the child's gender dysphoria.

## **B. Transgender Students**

Transgender students who are not supported at school face high levels of harassment, violence, and discrimination in schools.<sup>12</sup> Close to 40% of transgender students feel unsafe at school and report distressing rates of verbal harassment (55%), physical harassment (22%), and physical assault (11%).<sup>13</sup> As a result, transgender students are more likely to miss school, have lower levels of academic achievement, and

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<sup>12</sup> See Gay, Lesbian and Straight Educational Network (GLSEN), *2013 National School Climate Survey*, <http://www.glsen.org/article/2013-national-school-climate-survey> ("GLSEN School Climate Survey"); see also Jenifer McGuire et al., *School Climate for Transgender Youth: A Mixed Method Investigation of Student Experiences and School Responses*, 39 J. Youth & Adolescence, 2010, at 1175-88; Russell B. Toomey et al., *Gender-Nonconforming Lesbian, Gay, Bisexual, and Transgender Youth: School Victimization and Young Adult Psychosocial Adjustment*, 1 Psychol. of Sexual Orientation & Gender Diversity, 2013, at 71-80.

<sup>13</sup> See GLSEN School Climate Survey.

are twice as likely to drop out of school as their peers.<sup>14</sup> The hostile environment that many transgender students face at school also has a long-lasting effect on their lives: transgender students that experience victimization in school are twice as likely not to plan to pursue post-secondary education and to experience decreased life satisfaction and diminished mental health outcomes.<sup>15</sup>

Nearly 60% of transgender students attend schools that bar them from using the same restrooms or other facilities as other students.<sup>16</sup> Such discriminatory practices cause serious harms to transgender students. Excluding transgender students from facilities used by their peers singles them out for differential treatment and sends a message to the entire school community that transgender students are different and must be segregated from their peers. Transgender youth often internalize such messages – that their gender is a shameful aspect of their identity – and the mental health consequences of exclusion are grim: transgender adolescents experience depression, anxiety, self-harm,

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<sup>14</sup> *Id.*

<sup>15</sup> See GLSEN School Climate Survey; *see also* Russell B. Toomey et al., *Gender-Nonconforming Lesbian, Gay, Bisexual, and Transgender Youth: School Victimization and Young Adult Psychosocial Adjustment*, 1 Psychol. of Sexual Orientation & Gender Diversity, 2013, at 71-80.

<sup>16</sup> See GLSEN School Climate Survey.

and suicidality at two to three times the rates of non-transgender adolescents.<sup>17</sup> In one recent study, transgender people who experienced gender-based hostility in high school were approximately four times more likely to have attempted suicide than those who did not experience victimization.<sup>18</sup> Research further demonstrates that more than 50% of transgender youth report attempting suicide at least once in their lifetimes.<sup>19</sup>

Most significantly, research reveals that transgender people's poorer mental health outcomes are rooted in their experiences of extensive victimization and discrimination,

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<sup>17</sup> Ethan H. Mereish & V. Paul Poteat, *A Relational Model of Sexual Minority Mental and Physical Health: The Negative Effects of Shame on Relationships, Loneliness, and Health*, 62(3) J. Counseling Psychol., Jul. 2015, at 425-437; *see also* Sari L. Reisner et al., *Mental Health of Transgender Youth in Care at an Adolescent Urban Community Health Center: A Matched Retrospective Cohort Study*, 56(3) J. Adolescent Health, Mar. 31, 2015, at 274-9.

<sup>18</sup> Peter Goldblum et al., *The Relationship Between Gender-Based Victimization and Suicide Attempts in Transgender People*, 43(5) Prof. Psychol.: Res. & Prac., Oct. 2012, at 468-475.

<sup>19</sup> Brian Mustanski & Richard T. Liu, *A Longitudinal Study of Predictors of Suicide Attempts Among Lesbian, Gay, Bisexual and Transgender Youth*, 42(3) Archives of Sexual Behavior. Apr. 2013, at 437-38.

rather than in their status as transgender.<sup>20</sup> Similarly, the educational outcomes of LGBTQ youth mirror those of their non-LGBTQ classmates, when victimization is accounted for.<sup>21</sup> Accordingly, if discrimination and victimization against transgender youth were eliminated, mental health and educational outcomes for transgender youth would resemble those of other youth. The cost of discrimination, both to individual young people and their families and to the larger society, is extremely high.

When schools discriminate against transgender students by preventing them from using the same facilities as their peers, transgender students often have no safe and meaningful access to the restrooms during the school day. When forced to use restrooms that conflict with their identity, transgender students experience anguish, which heightens their gender dysphoria and puts them at risk of serious harms including severe depression and suicide attempts.<sup>22</sup> Being forced to use restrooms that conflict with their visible,

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<sup>20</sup> Peter Goldblum et al., *The Relationship Between Gender-Based Victimization and Suicide Attempts in Transgender People*, 43(5) Prof. Psychol.: Res. & Prac., Oct. 2012, at 468-475.

<sup>21</sup> Shannon D. Snapp et al., *Messy, Butch, and Queer: LGBTQ Youth and the School-to-Prison Pipeline*, 30 J. Adolescent Res., Jan. 2015, at 57-82; *see also* Stephen T. Russell et al., *Are School Policies Focused on Sexual Orientation and Gender Identity Associated with Less Bullying? Teachers' Perspectives*, 54 J. Sch. Psychol., Feb. 2016, at 23-28.

<sup>22</sup> Kristie L. Seelman, *Transgender Adults' Access to College Bathrooms and Housing and the Relationship to Suicidality*, 63 J. Homosexuality, 2016, at 1378-99.

lived identity also puts these students at increased risk for harassment and violence by their peers, similar to what any other student who tried to use facilities not matching their gender would experience.<sup>23</sup> Forcing transgender students to use single-user or “gender-neutral” restrooms creates a similarly high risk of harassment and stigma. Such isolating practices segregate transgender youth from peers in a highly visible way, often subjecting them to invasive questioning from peers and staff about why they are using a different bathroom and effectively “outing” them as transgender. In addition, schools generally have a small number of gender-neutral restrooms, if any, and they are often located far from classrooms (i.e., in the nurse’s office) or are otherwise difficult to access (i.e., locked to prevent student use), causing students using those facilities to be repeatedly late for class. Consequently, to avoid being stigmatized, outed, or tardy, transgender students often refrain from using the facilities at all. This can lead to significant health consequences. A recent study showed that 54% of transgender people reported a medical issue from refraining from bathroom use, including dehydration, urinary tract infections, and kidney infections.<sup>24</sup>

## **II. The Allegations of the Petition State a Claim of Sex Discrimination.**

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<sup>23</sup> Jody L. Herman, *Gendered Restrooms and Minority Stress: The Public Regulation of Gender and its Impact on Transgender People’s Lives*, 19 J. Pub. Mgmt. & Soc. Pol’y, Apr. 1, 2013, at 65, 72.

<sup>24</sup> *Id.*

The MHRA is a remedial statute that should be interpreted liberally to address the whole range of sex discrimination, including discrimination on the basis of a person's gender identity or failure to comport with sex stereotypes. That interpretation also aligns the MHRA with the federal courts' interpretation of federal non-discrimination laws, which Missouri courts have regularly looked to in interpreting the MHRA.

**A. The MHRA should be interpreted liberally to address all forms of sex discrimination.**

Because the MHRA is a remedial statute, Missouri courts have repeatedly given it a liberal construction “in order to accomplish the greatest public good.” *Missouri Comm'n on Human Rights v. Red Dragon Rest., Inc.*, 991 S.W.2d 161, 167 (Mo. App. W.D. 1999) (quoting *Hagan v. Dir. of Revenue*, 968 S.W.2d 704, 706 (Mo. banc 1998)). Accordingly, in *Red Dragon*, the court concluded that the MHRA must be read to include associational discrimination, even if not explicitly addressed in the statute. *Id.* Similarly, in *Doe ex rel. Subia v. Kansas City, Missouri Sch. Dist.*, 372 S.W.3d 43, 47-48 (Mo. App. W.D. 2012), the Court of Appeals concluded that the MHRA's definition of public accommodation must be interpreted broadly to include schools, even though the requirement that such a public accommodation be “open to the public” could be read narrowly “to mean accessible by *all* members of the populace,” rather than access to a “subset of the general population.” *Id.* at 50 (emphasis in the original). In rejecting the argument that “secular, private universities who hold themselves out by offering education to the general public,” are not a public accommodation because they “selectively choose a subset of . . . applicants,” the Court of Appeals reached the same

conclusion – that such a narrow “interpretation of ‘open to the public’” would “circumvent[ ] the legislature’s purpose.” *State ex rel. Wash. Univ. v. Richardson*, 396 S.W.3d 387, 396 (Mo. App. W.D. 2013).

Missouri courts have applied the sex discrimination provision of the MHRA broadly to a range of gender-based discrimination, and in certain instances, provided even greater protection than the MHRA’s federal counterparts. *See, e.g., Doe ex rel. Subia*, 372 S.W.3d at 52 (holding a failure to take prompt and effective remedial action to stop student-on-student sexual harassment may violate the MHRA); *Midstate Oil Co. v. Missouri Comm’n on Human Rights*, 679 S.W.2d 842, 846 (Mo. banc 1984) (holding pregnancy discrimination is sex discrimination); *Gilliland v. Missouri Athletic Club*, 273 S.W.3d 516, 521 n. 8 (Mo. banc 2009) (MHRA prohibits same-sex harassment).

While Missouri courts have not specifically addressed the question of whether discrimination against transgender individuals is sex discrimination under the MHRA, such a conclusion is consistent with the Missouri courts’ emphasis of reading the MHRA liberally to achieve the legislature’s goal of preventing discrimination on the basis of sex.

**B. This Court should look to federal case law interpreting federal discrimination statutes as a guide for how to interpret the MHRA.**

Missouri courts often rely on federal decisions interpreting federal non-discrimination laws as authority for how to decide cases under the MHRA, because the MHRA “is modeled after federal anti-discrimination laws,” and federal decisions may supply “strong persuasive authority” for purposes of deciding certain issues. *Pollock v. Wetterau Food Distrib. Grp.*, 11 S.W.3d 754, 771 (Mo. App. E.D. 1999) (following

federal precedent in interpreting MHRA to provide for an award of pre-judgment interest); *see also Daugherty v. City of Maryland Heights*, 231 S.W.3d 814, 818 (Mo. banc 2007) (“In deciding a case under the MHRA, appellate courts are guided by both Missouri law and federal employment discrimination case[]law that is consistent with Missouri law.”).

Where the language of the MHRA is similar to federal discrimination statutes, Missouri courts have often adopted the interpretations of federal courts interpreting the analogous federal law provisions. *See Daugherty*, 231 S.W.3d at 821-22 (relying on federal disability case law to interpret the MHRA); *id.* at 818 (citing other Missouri cases applying federal precedents to interpret the MHRA); *Swyers v. Thermal Sci., Inc.*, 887 S.W.2d 655, 656 (Mo. App. E.D. 1994) (applying federal case law regarding Title VII in construing the “after-acquired evidence” defense to an MHRA claim).

In contrast, where the wording of the MHRA is different from analogous federal discrimination statutes, Missouri courts will follow the plain meaning of the MHRA. *Hammond v. Mun. Corr. Inst.*, 117 S.W.3d 130, 137 (Mo. App. W.D. 2003), *opinion adopted and reinstated after retransfer* (Nov. 6, 2003) (applying shorter statute of limitation found in MHRA); *Cooper v. Albacore Holdings, Inc.*, 204 S.W.3d 238, 244 (Mo. App. E.D. 2006) (finding in contrast to Title VII that the MHRA imposes individual liability for discriminatory conduct since “the wording of the definition of ‘employer’ within the MHRA is more analogous to the [federal Family Medical Leave Act] definition of ‘employer’ rather than the Title VII definition of ‘employer.’”); *Doe ex rel. Subia*, 372 S.W.3d at 52-54 (concluding that Title IX’s actual knowledge standard was

not applicable to the MHRA, since “[u]nlike Title IX, the MHRA creates an express cause of action for damages for sex discrimination that is not contingent upon the receipt of federal or state funds.”).

The MHRA sex discrimination provisions applicable to schools and employment are analogous to the applicable federal non-discrimination laws. *Cf.* Sections Mo. Rev. Stat. § 213.055.1(1) (“unlawful employment practice ... [f]or an employer ... to discriminate against any individual ... **because of such individual’s ... sex**”) & 213.065 (“withhold from or deny any other person, any of the accommodations, advantages, facilities, services, or privileges made available in any place of public accommodation, ... or to segregate or discriminate against any such person in the use thereof **on the grounds of ... sex**”) (emphasis added) to 42 U.S.C. § 2000e-2(a)(1) (“unlawful employment practice for an employer ... to discriminate against any individual ..., **because of such individual’s ... sex**”) & 20 U.S.C. § 1681 (“No person in the United States shall, **on the basis of sex**, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance”) (emphasis added).

This Court should follow well-reasoned federal authority in finding that discrimination against a transgender student constitutes sex discrimination under the MHRA.

**C. Disparate treatment of transgender persons is sex-based discrimination as federal courts have recognized.**

Discrimination against someone because they are transgender falls within the plain meaning of “sex,” because being transgender is a sex-based characteristic: transgender people are by definition individuals who identify with a sex different from the sex they were assigned at birth. Every federal appellate court that has considered sex discrimination claims brought by transgender people post-*Price Waterhouse* has reaffirmed that laws prohibiting sex discrimination encompass discrimination against transgender people. *G.G. v. Gloucester Cty. Sch. Bd.*, 822 F.3d 709, 723 (4th Cir. 2016), *cert. granted*, 2016 WL 4565643 (Oct. 28, 2016); *Glenn v. Brumby*, 663 F.3d 1312, 1314 (11th Cir. 2011); *Smith v. City of Salem*, 378 F.3d 566, 570 (6th Cir. 2004); *Rosa v. Park W. Bank & Trust Co.*, 214 F.3d 213 (1st Cir. 2000); *Schwenk v. Hartford*, 204 F.3d 1187, 1199-1203 (9th Cir. 2000); *see also Etsitty v. Utah Trans. Auth.*, 502 F.3d 1215, 1224 (10th Cir. 2007) (assuming without deciding that transgender employees may bring sex stereotyping claims under Title VII).

Numerous other courts have allowed sex discrimination claims brought by transgender plaintiffs to proceed after *Price Waterhouse*.<sup>25</sup> As these courts have

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<sup>25</sup> *See, e.g., Hughes v. William Beaumont Hosp.*, No. 13-cv-13806, 2014 WL 5511507 (E.D. Mich. Oct. 31, 2014); *Finkle v. Howard Cnty., Md.*, 12 F. Supp. 3d 780 (D. Md. 2014); *Schroer v. Billington*, 577 F. Supp. 2d 293 (D.C. 2008); *Lopez v. River Oaks Imaging & Diagnostic Grp., Inc.*, 542 F. Supp. 2d 653 (S.D. Tex. 2008); *Tronetti v. TLC HealthNet Lakeshore Hosp.*, No. 03-CV-0375E(SC), 2003 WL 22757935 (W.D.N.Y. Sept. 26, 2003).

recognized, by its very nature discrimination against transgender individuals constitutes discrimination on the basis of gender nonconformity. In *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989), the U.S. Supreme Court recognized that employers discriminate “because of sex” when they make adverse employment decisions based on sex-specific stereotypical beliefs, such as the view that “a woman cannot be aggressive, or that she must not be[.]” *Id.* at 250. *Price Waterhouse* therefore concluded that sex discrimination includes not only disparate treatment of women as compared to men, or vice versa, but also discrimination because a person does not conform to societal expectations based on gender.

Similarly, because “[a] person is defined as transgender precisely because of the perception that his or her behavior transgresses gender stereotypes,” discrimination based on transgender status is a form of impermissible sex stereotyping. *Glenn*, 663 F.3d at 1316-18 (collecting cases);<sup>26</sup> *see also Rumble v. Fairview Health Servs.*, No. 14-CV-2037

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<sup>26</sup> In *Pittman v. Cook Paper Recycling Corp.*, 478 S.W.3d 479 (Mo. App. W.D. 2015), *reh'g and/or transfer denied* (Nov. 24, 2015), *transfer denied* (Jan. 26, 2016), this Court noted that *Price Waterhouse* had “clarified that sex discrimination under Title VII comprises not only disparate treatment of women as compared to men, or vice versa, but also discrimination based upon gender stereotyping.” *Id.* at 484. However, it did not have to decide “whether or not the Missouri Human Rights Act prohibits sex discrimination based upon gender stereotyping,” because of its conclusion that “Pittman did not raise a gender stereotyping claim in his petition.” *Id.*

SRN/FLN, 2015 WL 1197415, at \*2 (D. Minn. Mar. 16, 2015) (“Because the term ‘transgender’ describes people whose gender expression differs from their assigned sex at birth, discrimination based on an individual’s transgender status constitutes discrimination based on gender stereotyping.”); *Finkle*, 12 F. Supp. 3d at 788 (“[A]ny discrimination against transsexuals (as transsexuals) – individuals who, by definition, do not conform to gender stereotypes – is proscribed by Title VII’s proscription of discrimination on the basis of sex as interpreted by *Price Waterhouse*.”).<sup>27</sup>

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<sup>27</sup> In *Pittman*, 478 S.W.3d at 479, this Court rejected the argument that discrimination on the basis of sexual orientation constitutes sex discrimination absent specific allegations of gender stereotyping. However, the weight of federal precedent finding that sexual orientation discrimination constitutes sex discrimination is very different from the precedent applicable to transgender individuals. Many courts of appeals have rejected the argument that sexual orientation discrimination is synonymous with sex discrimination. See *Vickers v. Fairfield Med. Ctr.*, 453 F.3d 757, 762 (6th Cir. 2006); *Medina v. Income Support Div., New Mexico*, 413 F.3d 1131, 1135 (10th Cir. 2005); *Bibby v. Phila. Coca Cola Bottling Co.*, 260 F.3d 257, 261 (3d Cir. 2001); *Simonton v. Runyon*, 232 F.3d 33, 35 (2d Cir. 2000); *Higgins v. New Balance Athletic Shoe, Inc.*, 194 F.3d 252, 259 (1st Cir. 1999); *Hopkins v. Balt. Gas & Elec. Co.*, 77 F.3d 745, 751-52 (4th Cir. 1996); *U.S. Dep’t of Hous. & Urban Dev. v. Fed. Labor Relations Auth.*, 964 F.2d 1, 2 (D.C. Cir. 1992); *Williamson v. A.G. Edwards & Sons, Inc.*, 876 F.2d 69, 70 (8th Cir. 1989); *Blum v. Gulf Oil Corp.*, 597 F.2d 936, 938 (5th Cir. 1979). In contrast, numerous

Here, R.M.A. is denied the use of gender-appropriate restrooms and locker rooms because, as a transgender boy, his assigned sex at birth did not match his identity as male. But for that sex-based characteristic, he would be permitted to use the same restrooms as other male students. As the Supreme Court recognized in *Price Waterhouse* and as other federal courts have also held, “[d]iscrimination ‘because of sex,’ . . . is not only discrimination because of maleness and discrimination because of femaleness, but also discrimination because of the... *properties or characteristics* by which individuals may be classified as male or female.” *Fabian v. Hosp. of Cent. Conn.*, 172 F. Supp. 3d 509, 526 (D. Conn. 2016) (emphasis in the original). As the Supreme Court held in *Price Waterhouse*, Title VII prohibits employers from taking any aspect of a person’s “gender into account.” 490 U.S. at 258.

Denying R.M.A. the use of the boys’ facilities also constitutes sex discrimination because of his gender transition. Discrimination because someone begins to present consistent with a new gender is “*literally* discrimination ‘because of . . . sex.’” *Schroer v. Billington*, 577 F. Supp. 2d 293, 308 (D.C. 2008) (emphasis in the original) (denying a woman a job because of her gender transition is sex discrimination).

In sum, regardless of how discrimination against a transgender person is analyzed, it inescapably constitutes discrimination because of sex.

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appellate and district court decisions have recognized that discrimination against transgender persons is sex discrimination – either literally or because by its very nature discrimination against transgender persons constitutes gender stereotyping.

**D. It is sex discrimination to deny someone use of gender-appropriate facilities because they are transgender or have undergone a gender transition.**

Denying someone the use of gendered facilities because they are transgender is sex discrimination under the MHRA, since R.M.A.’s “gender was a contributing factor in” the District’s decision to deny him the use of male restrooms and locker rooms. *See Doe ex rel. Subia*, 372 S.W.3d at 52; *see also Daugherty v. City of Maryland Heights*, 231 S.W.3d 814, 820 (Mo. banc 2007) (adopting “contributing factor” standard for proving discrimination under the MHRA). The District’s refusal to allow R.M.A. to use the boys’ facility because he is transgender—that is, because his male identity differs from the sex he was assigned at birth—means that his gender is not only a contributing factor to the discrimination he is experiencing, it is the *only* factor. Similarly, the District’s refusal to allow him to use the same facilities used by other male students because he underwent a gender transition underscores that gender is a contributing factor in the District’s decision to deny him the use of these facilities.

Discriminating against someone by denying them the use of a gendered facility because they are transgender is no different than any other form of prohibited sex discrimination. *See G.G.*, 822 F.3d at 726 (vacating denial of preliminary injunction to student asserting sex discrimination in refusing him use of gender-appropriate restrooms); *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 16-cv-00943, Dkt. No 33, at 9 (E.D. Wis. Sept. 22, 2016) (granting preliminary injunction and ordering school system

to provide access to gender-appropriate facilities on basis that transgender plaintiff was likely to succeed on merits of sex discrimination claim); Order Granting Motion for Preliminary Injunction (“Preliminary Injunction Order”), *Bd. of Educ. of the Highland Local Sch. Dist. v. U.S. Dep’t of Educ.*, 2:16-cv-00524, ECF No. 95, at 29 (S.D. Ohio Sept. 26, 2016) (same); *Lusardi v McHugh*, EEOC DOC 0120133395, 2015 WL 1607756, at \*8 (EEOC Apr. 1, 2015) (denying transgender women the use of the restrooms used by other women constitutes sex discrimination); *Kastl v. Maricopa Cty. Coll. Dist.*, No. Civ.02-1531PHX-SRB, 2004 WL 2008954, at \*2-3 (D. Ariz. June 3, 2004) (“[N]either a woman with male genitalia nor a man with stereotypically female anatomy, such as breasts, may be deprived of a benefit or privilege of employment by reason of that nonconforming trait. Application of this rule may not be avoided merely because restroom availability is the benefit at issue.”).<sup>28</sup>

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<sup>28</sup> Numerous federal agencies charged with enforcing our nation’s sex discrimination laws have reached the same conclusion. *See, e.g., Macy v. Holder*, EEOC Doc. 0120120821, 2012 WL 1435995, at \*10 (EEOC Apr. 20, 2012) (“[I]f Complainant can prove that the reason that she did not get the job ... is that the Director was willing to hire her when he thought she was a man, but was not willing to hire her once he found out that she was now a woman – she will have proven that the Director discriminated on the basis of sex.”); Nondiscrimination in Health Programs and Activities Rule, 81 Fed. Reg. 31,376 (May 18, 2016) (to be codified at 45 C.F.R. Part 95) (defining discrimination “on the basis of sex” to include gender identity discrimination).

**E. Neither the legislative history at the time the MHRA was passed, nor subsequent efforts to add gender identity to it, provide a reason to deny R.M.A.’s claim.**

It is inconsequential that the legislative history surrounding the passage of the MHRA fails to reveal a particularized intent to proscribe discrimination against transgender persons, since “a court must enforce the law according to its terms, not by what may have been intended by the enactment.” *Mo. Nat’l Educ. Ass’n v. Mo. State Bd. of Educ.*, 34 S.W.3d 266, 279 (Mo. App. W.D. 2000)) (citing *Pipe Fabricators, Inc. v. Dir. of Revenue*, 654 S.W.2d 74, 76 (Mo. banc 1983); *Missourians for Honest Elections v. Mo. Elections Comm’n*, 536 S.W.2d 766, 775 (Mo. Ct. App. 1976) (en banc)); cf. *Oncale v. Sundowner Offshore Oil Servs., Inc.*, 523 U.S. 75, 79 (1998) (Title VII coverage not limited to specific forms of discrimination contemplated by Congress); see also *Doe v. City of Belleville, Ill.*, 119 F.3d 563, 572 (7th Cir. 1997) (Title VII’s coverage not limited “to the specific problem that motivated its enactment”) (quoting *Newport News Shipbuilding & Dry Dock Co. v. EEOC*, 462 U.S. 669, 679 (1983)).<sup>29</sup>

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<sup>29</sup> While the *Pittman* court relied on one portion of a dictionary definition to support its conclusion that sex discrimination does not include sexual orientation discrimination, 478 S.W.3d at 482, the dissent correctly pointed out that the same dictionary includes a broader range of meanings that show that sex is properly defined more broadly to include discrimination on the basis of both sex and gender. *Id.* at 486 (Gabbert, J., dissenting).

Similarly, the failure of subsequent efforts to amend the MHRA to explicitly prohibit discrimination against transgender individuals is not a valid reason for courts to artificially constrict the scope of the MHRA's existing prohibition on sex discrimination to avoid protecting transgender people from illegal gender discrimination. *Cf. Pension Benefit Guarantee Corp. v. LTV Corp.*, 496 U.S. 633, 650 (1990) (explaining that “subsequent legislative history is a hazardous basis for inferring the intent of an earlier Congress” and that “Congressional inaction lacks persuasive significance because several equally tenable inferences may be drawn from such inaction, including the inference that the existing legislation already incorporated the offered change.”) (internal quotation marks omitted); *Fabian*, 172 F. Supp. 3d at 527 n. 12 (“The fact that the Connecticut legislature added [language explicitly protecting gender identity] does not require the conclusion that gender identity was not already protected by the plain language of the statute [prohibiting sex discrimination], because legislatures may add such language to clarify or to settle a dispute about the statute’s scope rather than solely to expand it.”).

In *Red Dragon*, 991 S.W.2d at 161, this Court addressed a similar question—whether the amendment of the MHRA to explicitly address associational discrimination meant that the MHRA should be interpreted to exclude such claims prior to its amendment. In rejecting this argument, this Court found that “[w]hile it is presumed that in enacting a new statute or amending an existing one, the legislature intended to effect some change in the existing law, ‘it is also true that the purpose of a change in the statute can be clarification.’” *Id.* at 167 (quoting *Mid-America Television Co. v. State Tax Com'n of Missouri*, 652 S.W.2d 674, 679 (Mo. banc 1983)). The same is true here. The

failure of the Missouri legislature to explicitly address gender identity discrimination is not a basis for finding that discrimination against transgender individuals is not already addressed by the MHRA's prohibition on sex discrimination.

**F. Contrary court decisions finding that discrimination against transgender persons is not sex discrimination are outdated, abrogated by *Price Waterhouse*, or wrongly decided.**

*Price Waterhouse*, *Oncale*, and other federal court decisions rejected the reasoning of earlier federal decisions excluding transgender persons from protection under Title VII on the erroneous ground that the statute prohibits only discrimination based on a person's "biological sex." See, e.g., *Ulane v. Eastern Airlines, Inc.*, 742 F.2d 1081 (7th Cir. 1984); *Sommers v. Budget Mktg.*, 667 F.2d 748, 750 (8th Cir. 1982); *Holloway v. Arthur Andersen*, 566 F.2d 659, 661-63 (9th Cir. 1977) Instead of restricting the scope of Title VII to such discrimination, the U.S. Supreme Court has now repeatedly instructed the lower courts that Title VII must be applied to any employer action that takes "gender into account," *Price Waterhouse*, 490 U.S. at 258, and to bar even forms of sex-based discrimination that Congress did not consider when it enacted the statute, *Oncale*, 523 U.S. at 79. As a result, "since the decision in *Price Waterhouse*, federal courts have recognized with near-total uniformity 'that the approach in cases such as *Holloway*, *Sommers*, and *Ulane*...has been eviscerated' by *Price Waterhouse*'s holding." *Glenn*, 663 F.3d at 1318 n.5 (quoting *Smith*, 378 F.3d at 573).

Across the country, courts have held that there is no longer any principled basis to exclude transgender individuals from protection under Title VII and have declined to

follow older cases that predated *Price Waterhouse* and *Oncale*. See, e.g., *Schwenk*, 204 F.3d at 1201 (the “narrow[ ]” construction and “judicial approach” in *Holloway* and *Ulane* “ha[ve] been overruled by the logic and language of *Price Waterhouse*.”); *Fabian*, 172 F. Supp. 3d at 526 (“*Price Waterhouse* abrogates” *Holloway*, *Sommers*, and *Ulane*); *Finkle*, 12 F. Supp. 3d at 788; *Radtke v. Misc. Drivers & Helpers Union*, 867 F. Supp. 2d 1023, 1032 (D. Minn. 2012) (rejecting “reliance on decades-old Title VII cases” including *Sommers* and *Ulane*); *Schroer*, 577 F. Supp. 2d at 307; *Tronetti*, 2003 WL 22757935, at \*4 & n. 15.<sup>30</sup>

### **III. Numerous School Districts Have Allowed Transgender Students to Use Gender-Appropriate Facilities Without Any Problems.**

Recognizing the importance of treating transgender students equally, thousands of schools and districts across the country have policies or practices in place to ensure that transgender students are treated the same as other students in all aspects of the school environment, including use of the restroom that matches the student’s gender identity. Some states have enacted laws or statewide policies that expressly protect transgender

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<sup>30</sup> Before the circuit court, the District centered its argument that this case does not involve sex discrimination on *Johnston v. Univ. of Pittsburgh*, 97 F. Supp. 3d 657 (W.D. Pa. 2015). However, *Johnston* relied on the discredited reasoning in *Ulane* and *Sommers*, *id.* at 675-78, as well as *Etsitty*, 502 F.3d at 1222, all which are inconsistent with both the logic and result in *Price Waterhouse*.

students.<sup>31</sup> This includes jurisdictions with many of the largest school districts in the country, including New York City, Los Angeles, Chicago, and Washington, D.C. In other states, many schools and school districts have recognized their obligation to ensure equal treatment of transgender students under existing law, including in Alaska, Florida,

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<sup>31</sup> Education organizations, including the National Association of Secondary School Principals and National Education Association, also have issued guidance recommending that schools adopt policies that support and affirm transgender students, including in their use of facilities consistent with their gender identity. *See* Nat'l Ass'n of Secondary Sch. Principals, *Transgender Students*, <https://www.nassp.org/who-we-are/board-of-directors/position-statements/transgender-students?SSO=true>. *See also* Nat'l Educ. Ass'n, *Legal Guidance on Transgender Students' Rights*, [https://www.nea.org/assets/docs/20184\\_Transgender%20Guide\\_v4.pdf](https://www.nea.org/assets/docs/20184_Transgender%20Guide_v4.pdf).

<sup>32</sup> Education organizations, including the National Association of Secondary School Principals and National Education Association, also have issued guidance recommending that schools adopt policies that support and affirm transgender students, including in their use of facilities consistent with their gender identity. *See* Nat'l Ass'n of Secondary Sch. Principals, *Transgender Students* (2015), <https://www.nassp.org/who-we-are/board-of-directors/position-statements/transgender-students?SSO=true>. *See also* Nat'l Educ. Ass'n, *Legal Guidance on Transgender Students' Rights* (2016), [https://www.nea.org/assets/docs/20184\\_Transgender%20Guide\\_v4.pdf](https://www.nea.org/assets/docs/20184_Transgender%20Guide_v4.pdf).

Kentucky, Michigan, Missouri, Nevada, New Hampshire, New York, North Carolina, Rhode Island, Texas, and Wisconsin.<sup>33</sup> As a result, millions of students across the country attend schools with non-discriminatory policies and share restrooms and other facilities with transgender students every day without incident.

The collective experience of school administrators in schools and districts with non-discrimination policies, as articulated in several *amici curiae* briefs in support of transgender students using the same facilities as other students, demonstrate that the fears and concerns voiced by some have not materialized and that, in fact, inclusive policies minimize disruption and foster a safe, welcoming, and optimal learning environment for all students.<sup>34</sup> Dr. Thomas Aberli, the principal of J.M. Atherton High School in

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<sup>33</sup> See U.S. Dep't of Educ., Office of Elementary and Secondary Educ., Office of Safe and Healthy Students, *Examples of Policies and Emerging Practices for Supporting Transgender Students* (2016),

<http://www2.ed.gov/about/offices/list/oese/oshs/emergingpractices.pdf>, at 16-17.

<sup>34</sup> See *Amici Curiae Brief of School Administrators from California, Colorado, District of Columbia, Florida, Illinois, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Hampshire, New Jersey, New York, North Carolina, Oregon, Rhode Island, Texas, Vermont, Washington, and Wisconsin in Support of Plaintiffs-Appellants, Carcaño v. McCrory*, No. 16-1989, Dkt. No. 59 (4th Cir. Oct. 25, 2016). See also *Amici Curiae Brief of School Administrators from California, District of Columbia, Florida, Illinois, Kentucky, Massachusetts, Minnesota, New York, Oregon, Washington,*

Louisville, Kentucky, explains that Atherton High School “has multiple transgender individuals in our school... and... there has not been any issue at all with respect to implementation [of an inclusive bathroom policy].”<sup>35</sup> Similarly, Dylan Pauly, General Counsel of the Madison Metropolitan School District, confirms that “[n]one of the irrational fears have been realized at all.”<sup>36</sup> Dr. Judy Chiasson, Program Coordinator for the Office of Human Relations, Diversity and Equity of the Los Angeles Unified School District, the second-largest school district in the country, states that “[she has] yet to be called into a situation [involving the district’s inclusive policy] to respond to an actual incident; [she has] only had to respond to fears, and the fears are unfounded.”<sup>37</sup>

One frequently voiced concern is that some students will pretend to be transgender to gain access to gender-specific spaces that they would not otherwise have access to. Because being transgender is an enduring aspect of one’s identity, Dr. Chiasson explains the fallacy behind the concern: “being transgender is persistent and consistent throughout

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*and Wisconsin in Support of Plaintiff-Appellant, G.G. ex rel. Grimm v. Gloucester Cnty. Sch. Bd.*, No. 15-2056 (4th Cir. Oct. 28, 2015); *Amici Curiae Brief of School Administrators, Bd. of Educ. of the Highland Local Sch. Dist. v. U.S. Dep’t of Educ.*, 2:16-cv-00524 (S.D. Ohio Sept. 26, 2016).

<sup>35</sup> *See Amici Curiae Brief of School Administrators, Carcaño v. McCrory*, No. 16-1989, Dkt. No. 59 (4<sup>th</sup> Cir. Oct. 25, 2016) at 21.

<sup>36</sup> *See id.* at 20-21.

<sup>37</sup> *Id.* at 13-14

the day: all classes; all relationships; in and out of the classroom. ... I've never had that happen, where someone has pretended to be transgender for nefarious reasons.”<sup>38</sup>

Eldridge Greer, Associate Chief, Student Services, Denver Public Schools elaborates:

“[t]here are easier ways to get into the girls’ bathroom – and we have policies and consequences to address that. From a social justice standpoint, it is an incredibly offensive thing to think that our [transgender] students would go through the psychological trauma of transforming their identity just to game the system.”<sup>39</sup>

Another common concern is that sharing gender-specific facilities with transgender students will infringe on the comfort and privacy of other students. Although non-transgender students do not have a reasonable expectation that they will not share a gender-specific facility with a transgender student,<sup>40</sup> school administrators have shown

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<sup>38</sup> *Id.* at 23.

<sup>39</sup> *Id.*

<sup>40</sup> *See Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 16-cv-00943, Dkt. No. 33, at 14 (E.D. Wis. Sept. 22, 2016) (finding that evidence contradicted school district’s assertion that allowing a transgender student to use the boys’ restroom violates other students’ privacy rights); Order Granting Motion for Preliminary Injunction (“Preliminary Injunction Order”), *Bd. of Educ. of the Highland Local Sch. Dist. v. U.S. Dep’t of Educ.*, 2:16-cv-00524, ECF No. 95, at 36 (S.D. Ohio Sept. 26, 2016) (concluding that school district cannot show that allowing a transgender girl to use the girls’ restroom compromises the privacy interest of those students).

that schools can accommodate the privacy concerns of certain students without discriminating against transgender students. One solution has been to offer the use of a private restroom facility to any student expressing discomfort around sharing facilities with transgender students; other solutions include instituting greater privacy measures, such as curtains, or a staggered schedule for facilities use.<sup>41</sup> Roger Bourgeois, Superintendent-Director of the Greater Lowell Technical Regional School District in Massachusetts explains: “we’re not going to tell the transgender student they can’t go where they’re comfortable. I can still remember the remnants of white people being uncomfortable with black people being in the same locker rooms and restrooms, so it’s not about whether everyone is ‘comfortable.’ Just because some people are uncomfortable didn’t mean you treated people as second-class citizens.”<sup>42</sup> Dr. Aberli of Louisville, Kentucky, agrees that making a transgender student use a separate restroom is not the answer: “Tell me what you would say to that child – that there’s something so freakish about you, and so many people are uncomfortable with you, that you have to use a completely separate restroom than the one you feel like you should be using?”<sup>43</sup>

It is the experience of many school administrators that their school’s inclusive policies are in the best interest not only of transgender students but of the entire school

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<sup>41</sup> See *Amici Curiae Brief of School Administrators, Carcaño v. McCrory*, No. 16-1989, Dkt. No. 59 (4<sup>th</sup> Cir. Oct. 25, 2016) at 25-26.

<sup>42</sup> *Id.* at 26.

<sup>43</sup> *Id.* at 28-29.

community. Denise Palazzo, Former Instructional Facilitator and Diversity and LGBTQ Coordinator, Broward County, Florida Public Schools explains that “an affirming policy has a positive effect on other students as well. If everyone is taken care of, students see that and they value that.”<sup>44</sup> Rachel Santa, Director of Special Education, Cumberland, Rhode Island Schools, confirms that “[w]hen kids see that you are respecting all students, then they know that they will be respected. We are showing them how to treat people respectfully and know they will be treated the same.”<sup>45</sup>

Social science research substantiates the experience of these school administrators that an inclusive school climate benefits all students and that, conversely, a negative school climate diminishes the experiences of all students. Schools with LGBTQ-inclusive policies report higher levels of safety not just for LGBTQ students, but for all students.<sup>46</sup> Schools with Gender & Sexuality Alliance (“GSA”) clubs, formerly Gay-Straight Alliance clubs, report better health outcomes for all students, including those that

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<sup>44</sup> *Id.* at 18.

<sup>45</sup> *Id.*

<sup>46</sup> Stacey S. Horn & Laura A. Szalacha (2009). *School Difference in Heterosexual Students’ Attitudes About Homosexuality and Prejudice Based on Sexual Orientation*. 3 European J. of Developmental Science, 2009, at 64-70; *see also* Shannon D. Snapp et al., *Messy, Butch, and Queer: LGBTQ Youth and the School-to-Prison Pipeline*, 30 J. Adolescent Res., Jan. 2015, at 57-82.

do not participate in GSA clubs.<sup>47</sup> Anti-discrimination policies, such as allowing transgender students to use the same facilities as other students, model to the school community that the school respects and supports transgender students and expects other students to mirror that same respect. Such inclusiveness has been shown time and again to improve the overall climate of schools.<sup>48</sup>

Respectfully submitted,

/s/ Anthony E. Rothert  
Anthony E. Rothert, #44827  
ACLU of Missouri Foundation  
454 Whittier Street  
St. Louis, Missouri 63108  
(314) 652-3114

Gillian R. Wilcox, #61278  
ACLU of Missouri Foundation  
3601 Main Street  
Kansas City, Missouri 64111  
(816) 470-9933

*Attorneys for Amicus Curiae*

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<sup>47</sup> V. Paul Poteat et al., *Contextualizing Gay-Straight Alliances: Student, Advisor, and Structural Factors Related to Positive Youth Development Among Members*, 86 Child Development, Jan.-Feb. 2015, at 176-193.

<sup>48</sup> Stephen T. Russell & Jenifer McGuire, *The School Climate for Lesbian, Gay, Bisexual, and Transgender (LGBT) Students*, in *Changing Schools and Community Organizations to Foster Positive Youth Development* (Marybeth Shinn & Hirokazu Yoshikawa eds., 2008).

### **Certificate of Service and Compliance**

The undersigned hereby certifies that on November 26, 2016, the foregoing amicus brief was filed electronically and served automatically on the counsel for all parties.

The undersigned further certifies that pursuant to Rule 84.06(c), this brief: (1) contains the information required by Rule 55.03; (2) complies with the limitations in Rule 84.06 and Local Rule XLI; (3) contains 7,901 words, as determined using the word-count feature of Microsoft Office Word 2013. Finally, the undersigned certifies that electronically filed brief was scanned and found to be virus-free.

/s/ Anthony E. Rothert