

No. 16-273

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IN THE  
**Supreme Court of the United States**

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GLOUCESTER COUNTY SCHOOL BOARD,  
*Petitioner,*

v.

G.G., BY HIS NEXT FRIEND AND MOTHER,  
DEIRDRE GRIMM,  
*Respondent.*

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**On Writ of Certiorari  
to the United States Court of Appeals  
for the Fourth Circuit**

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**BRIEF OF  
MONTGOMERY COUNTY PUBLIC SCHOOLS  
AS *AMICUS CURIAE* SUPPORTING RESPONDENT**

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## INTEREST OF *AMICUS CURIAE*<sup>1</sup>

Montgomery County Public Schools (“MCPS”), operated by the Montgomery County Board of Education, is the largest school system in Maryland and the 17th largest in the United States. It is responsible for maintaining a safe learning environment for more than 160,000 students across 204 schools, from pre-kindergarten to 12th grade. As a recipient of federal funds, it is subject to Title IX and its implementing regulations.

MCPS has long experience in engaging a highly diverse population of students, with LGBTQ students attending many of its schools, a majority non-white student population, rich religious diversity, and thousands of international students. It educates students from more than 157 countries speaking 138 languages, including Spanish, Chinese, French, Korean, Vietnamese, and Amharic. Students from some of the wealthiest families in the country learn alongside more than 50,000 students whose household income qualifies them for free or reduced-price meals. This diversity is one of its strengths. MCPS has a strong record of success, and not only because of the academic achievements reflected in its standardized test scores, AP courses, and college acceptances. The diverse perspectives of its students contribute to that success.

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<sup>1</sup> Pursuant to Rule 37.6, counsel for *amicus* certifies that no counsel for a party authored this brief in whole or in part and that no person other than *amicus* and its counsel made a monetary contribution intended to fund the preparation or submission of this brief. Pursuant to Rule 37.3(a), counsel for *amicus* certifies that all parties have consented to the filing of this brief. Counsel for petitioner filed a letter granting blanket consent to the filing of *amicus* briefs; written consent from counsel for respondent to the filing of this brief is being submitted contemporaneously.

MCPS students graduate with a respect for diversity that can enrich their lives and enable their future success.

*Amicus* has a strong interest in ensuring that all of its students are educated commensurate with their needs and abilities and can fully participate in school life, without regard to their perceived personal characteristics or membership in any favored or disfavored group. No large, diverse school system like *amicus*'s can fulfill its educational mission without making equality and respect for diversity a top priority. *Amicus*'s work with transgender students is only the latest example of its commitment to fostering a safe, welcoming school environment where all students, regardless of their background or personal characteristics, are engaged in learning and are active participants in the school community because they feel accepted and valued.

### **SUMMARY OF ARGUMENT**

Transgender children experience unique challenges in defining and expressing their identity, and suffer harassment and even physical violence from their peers. In *amicus*'s experience working with these children, recognizing their gender identity is critical to promoting the dignity and social-emotional well-being that is essential to every student's ability to achieve their academic potential. *Amicus* thus believes that a policy that precludes students from using the bathroom of the gender with which they identify is anathema to the success of school districts' educational mission. Such a policy sends a message to transgender students that they are unwelcome, or even viewed as a threat to other students, which is likely to cause stigma and psychological distress and

prompt transgender students to retreat from full participation in school life. Amicus shares the firm belief that civil rights protection in schools should not depend on the vagaries of school district boundaries, changes in school district personnel, or movement of families in our increasingly mobile society.

This form of discrimination against transgender students cannot be justified by any threat posed by transgender students to their peers. In *amicus*'s experience, allowing transgender students access to bathrooms consistent with their gender identity has not been associated with risks to other students. Nor has *amicus* encountered a student falsely claiming transgender status in order to access particular bathrooms. Unsubstantiated speculation about future misbehavior by students who are not transgender certainly cannot justify a policy of officially sanctioned exclusion of transgender students from full participation in the life of the nation's public schools.

## ARGUMENT

### I. PERMITTING TRANSGENDER STUDENTS TO USE BATHROOM FACILITIES CORRESPONDING TO THEIR GENDER IDENTITY HELPS ENSURE THAT ALL STUDENTS RECEIVE EQUAL EDUCATIONAL OPPORTUNITIES

As this Court recognized more than a half century ago, "education is perhaps the most important function of state and local governments." *Brown v. Board of Educ.*, 347 U.S. 483, 493 (1954). It is as true today as it was at the time of *Brown* that no "child may reasonably be expected to succeed in life if . . . denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms."



*Id.* For that reason, *amicus* firmly believes that civil rights protection in schools should not depend on the vagaries of school district boundaries, changes in school district personnel, or movement of families in our increasingly diverse and mobile society.

Children, no less than adults, strive “to define and express their identity,” and obtain societal recognition of that identity. *Obergefell v. Hodges*, 135 S. Ct. 2584, 2593 (2015); *see id.* (“The Constitution promises liberty to all within its reach, a liberty that includes certain specific rights that allow persons, within a lawful realm, to define and express their identity.”). Transgender students, just like other students, therefore have “a deep personal[] [and] social[] . . . interest in having the official designation of his or her gender match what, in fact, it always was or possibly has become.” *In re Heilig*, 816 A.2d 68, 79 (Md. 2003) (noting that that right has been recognized under the European Convention for the Protection of Human Rights and Fundamental Freedoms); *see also In re Petition for Change of Birth Certificate*, 22 N.E.3d 707, 709 (Ind. Ct. App. 2014) (noting that the “vast majority of states” permit a person to change their gender classification).

In *amicus*’s experience, the process of defining and expressing gender identity tends to be challenging for transgender children, not least because they may endure skepticism, harassment, and even physical violence from the peers whose approval they seek. *See, e.g.,* Maryland Dep’t of Educ., *Providing Safe Spaces for Transgender and Gender Non-Conforming Youth: Guidelines for Gender Identity Non-Discrimination 6* (Oct. 2015) (citing a 2011 study of transgender children in K-12 schools in Maryland, in which 81 percent

of respondents reported verbal harassment, 38 percent reported physical assault, and 16 percent reported sexual violence);<sup>2</sup> *accord* Sandy E. James *et al.*, National Ctr. for Transgender Equality, *The Report of the 2015 U.S. Transgender Survey* 132-35 (Dec. 2016);<sup>3</sup> Joseph G. Kosciw *et al.*, GLSEN, *The 2015 National School Climate Survey* 22-25 (2016) (“*2015 National School Climate Survey*”).<sup>4</sup>

Fostering an educational environment that recognizes the gender identity of transgender students is essential to promoting their dignity and social-emotional well-being, which is critical to their ability to achieve their academic potential. In particular, signaling official support for the equal rights of transgender students is critical to that objective. *See, e.g.*, U.S. Dep’t of Justice, Office for Victims of Crime, *Responding to Transgender Victims of Sexual Assault* (June 2014) (noting that many transgender individuals have a “not unfounded” concern that “the professionals who are supposed to serve them will be ignorant about transgender people at best or outright prejudiced or hostile at worst”);<sup>5</sup> *2015 National School Climate Survey* at 60 (“We found that, for transgender students, having a supportive policy was related to a lower likelihood of gender-related discrimination –

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<sup>2</sup> Available at <http://marylandpublicschools.org/about/Documents/DSFSS/SSSP/ProvidingSafeSpacesTransgendergenderNonConformingYouth012016.pdf>.

<sup>3</sup> Available at <http://www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf>.

<sup>4</sup> Available at <https://www.glsen.org/sites/default/files/2015%20National%20GLSEN%202015%20National%20School%20Climate%20Survey%20%28NSCS%29%20-%20Full%20Report.pdf>.

<sup>5</sup> Available at [https://www.ovc.gov/pubs/forge/tips\\_pro.html](https://www.ovc.gov/pubs/forge/tips_pro.html) (last visited Feb. 28, 2017).

specifically, being prevented from using bathrooms/locker rooms of their gender identity, wearing clothes not deemed appropriate for their legal sex, and using their preferred name and pronoun.”). Officially recognizing the rights of transgender students also has a positive effect on all students, by instilling a respect for diversity that is critical to future success.

By contrast, a policy that precludes transgender students from using the bathroom of the gender with which they identify – and relegates them either to a bathroom contrary to their gender identity or to separate bathroom facilities – is anathema to the success of school districts’ educational mission. Such a policy sends a message to transgender students that they are unwelcome, or even viewed as a threat to other students, simply because their gender identity does not correspond to their physical anatomy at birth. It thus “put[s] the imprimatur of the [school] itself on an exclusion that . . . demeans or stigmatizes” an already vulnerable group of students. *Obergefell*, 135 S. Ct. at 2602. And such officially sanctioned discrimination cannot help but further “generate[] a feeling of inferiority” among transgender students, as well as students from other potentially vulnerable groups, “as to their status in the community.” *Brown*, 347 U.S. at 494.

*Amicus*’s experience supports G.G.’s account of the stigma and psychological distress experienced by transgender students when educational authorities do not support their equitable treatment. *See* Pet. App. 11a-12a. Like G.G., many transgender students take pains to avoid using bathrooms that do not fit their gender identity. “Often, many transgender students will not go to the bathroom the entire day when they are at school, because it is such a scary place.” Corey

W. Johnson *et al.*, “It’s Complicated”: *Collective Memories of Transgender, Queer, and Questioning Youth in High School*, 61 *J. Homosexuality* 419, 427 (2014).<sup>6</sup>

Being forced to use a bathroom contrary to one’s gender identification is likely to prompt transgender students to retreat from full participation in school life – social, extracurricular, and academic. See Jenifer K. McGuire *et al.*, *School Climate for Transgender Youth: A Mixed Method Investigation of Student Experiences and School Responses*, 39 *J. Youth Adolescence* 1175, 1177 (Oct. 2010) (observing that “[t]ransgender youth are also at risk for academic difficulties, school absence due to harassment . . . and dropping out,” and that “[t]ransgender youth who experienced higher levels of harassment reported missing more school due to safety concerns, lower grade point averages, and fewer plans to attend collect than transgender youth who experienced less harassment”);<sup>7</sup> *accord 2015 National School Climate Survey* at 13, figs. 1.2, 1.3, 1.4.

As a public school district, *amicus*’s core mission is to ensure that *all* of its students receive an equal opportunity to develop their academic potential and start on the path to meaningful work for the rest of their lives. *Amicus* believes that a bathroom policy that recognizes transgender students’ gender identity is central to its educational mission and critical to assuring transgender students of their right to equal educational opportunity.

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<sup>6</sup> Available for purchase at <http://dx.doi.org/10.1080/00918369.2013.842436>.

<sup>7</sup> Available for purchase at <http://link.springer.com/article/10.1007%2Fs10964-010-9540-7>.

## II. THE DANGER OF STUDENTS FALSELY CLAIMING TRANSGENDER STATUS TO ACCESS OPPOSITE-GENDER RESTROOMS IS SPURIOUS

In *amicus*'s experience, allowing transgender students access to bathrooms consistent with their gender identity has not been associated with risks to other students. To the contrary, other students tend to be comfortable treating transgender students in accordance with their gender identity. *Amicus* has experienced students becoming the champions of their peers' transition, in small ways (correcting adults' use of the wrong name or pronoun) and large (becoming advocates for the rights of transgender classmates in the school setting). Transgender male students are boys or young men, they present themselves as such, and their peers tend to accept them as such. The same is true of transgender girls and young women. *Amicus* has not experienced any instances of transgender students causing any disturbance in bathrooms.

Yet *amicus* is aware of the claims made by some commentators that a bathroom policy that respects student gender identity would cause harm, not via the transgender students themselves, but because of "those who would falsely claim or pretend to be transgendered." Public Safety Experts *Amicus* Br. 5 (arguing that allowing transgender girls to use the girls' bathroom would create a "risk[] of nonviolent sex crimes from voyeuristic and exhibitionist individuals" who would take advantage of the policy to gain access to school bathrooms and locker rooms). That argument – which, notably, is unsupported by even a single incident involving a non-transgender student at a public school – flies in the face of *amicus*'s experience with K-12 student bathrooms. *Amicus* has no reason

to believe that allowing transgender students to use a bathroom creates any increased safety risk from anyone else.

*Amicus* finds implausible the suggestion that a student would adopt an entirely new gender expression for the purpose of behaving inappropriately in bathrooms. The process for students to fully understand and accept their gender identity is often a long journey, involving choice of pronouns, physical appearance including clothing and hairstyle, and adopting other behaviors associated with a particular gender. Students in transition face potential harassment and social stigma, a high price to pay for their right to authentic self-expression. *Amicus* finds no factual support for the premise that a student would – in full view of his or her peers – attempt to “falsely claim or pretend” transgender status for the sole purpose of bathroom access.

Further, students do not ask for permission to use different restrooms “simply by announcing their gender identity,” as petitioner suggests. Pet. Br. 37. At MCPS, for example, when transgender students come forward and request accommodation, MCPS assigns them a key staff contact and engages in proactive discussion to develop a plan to ensure their full access to all aspects of school life. A school administrator documents the student’s preferred name, pronouns, plans for bathroom and locker use, plans for sports and extracurricular activities, and a communication plan to limit any inappropriate disclosure of personal information about the student’s status. See Office of Shared Accountability, Montgomery Cnty. Pub. Schools, *Intake Form: Supporting Student, Gender*

*Identity*, MCPS Form 560-80 (Dec. 2015);<sup>8</sup> Montgomery Cnty. Pub. Schools, *Guidelines Regarding Student Gender Identity Matters*.<sup>9</sup>

In short, the suggestion that disingenuous students would deceive school staff and develop an action plan for a fictitious transgender life at school, all so that they can make mischief in the bathroom of the opposite sex, is unsupported by *amicus*'s real-world experience. In *amicus*'s judgment, unsubstantiated speculation regarding supposed safety concerns certainly cannot justify a policy of officially sanctioned exclusion of transgender students from full participation in the life of the nation's public schools.

## CONCLUSION

The judgment of the court of appeals should be affirmed.

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<sup>8</sup> Available at <http://www.montgomeryschoolsmd.org/departments/forms/pdf/560-80.pdf>.

<sup>9</sup> Available at <http://www.montgomeryschoolsmd.org/uploaded/Files/departments/student-services/gender-identity-matters.pdf> (last visited Feb. 28, 2017).

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