
25-1094

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

A.C., a minor child by his next friend, mother and legal guardian, M.C.,
Plaintiff-Appellee,

v.

METROPOLITAN SCHOOL DISTRICT OF MARTINSVILLE,
Defendant-Appellant.

On Appeal from the United States District Court for the Southern District
of Indiana, Indianapolis Division District Court No. 1:21-cv-2965,
The Honorable Tanya Walton Pratt, Chief Judge

**BRIEF FOR STATES OF NEW YORK, WASHINGTON, CALIFORNIA,
COLORADO, CONNECTICUT, DELAWARE, HAWAI'I, ILLINOIS,
MAINE, MARYLAND, MASSACHUSETTS, MINNESOTA, NEVADA,
OREGON, RHODE ISLAND, AND VERMONT, AND
THE DISTRICT OF COLUMBIA, AS AMICI CURIAE
IN SUPPORT OF APPELLEE**

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INTERESTS OF THE AMICI STATES

The States of New York, Washington, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Minnesota, Nevada, Oregon, Rhode Island, Vermont, and the District of Columbia file this brief as amici curiae in support of plaintiff-appellee A.C., urging affirmance of the district court's grant of summary judgment and issuance of permanent injunction in A.C.'s favor. *See* Fed. R. App. P. 29(a)(2).

Amici States strongly support the right of transgender people to live with dignity, be free from discrimination, and have equal access to education, government-sponsored opportunities, and other incidents of life, including equal access to school restrooms. Discrimination against individuals solely because they live as one sex and were assigned another sex at birth causes tangible economic, educational, emotional, and health harms. To prevent these injuries, the amici States have adopted policies aimed at combatting discrimination against transgender people. Amici submit this brief to describe their experiences with administering such policies—including policies that maintain sex-segregated restrooms while allowing transgender students to use such restrooms on an equal basis with other students of the same sex. As amici's experiences show, ensuring transgender people have access to public facilities consistent with their gender identity and the sex that they live as—including access to common restrooms—benefits all, without compromising safety or privacy.

The amici States also share a strong interest in seeing that federal law is properly applied to protect transgender people from discrimination. This appeal does not challenge the authority of a school district to assign bathrooms based on sex, although that is how some amici of the Metropolitan School District of Martinsville (District) mischaracterize the issue. *See* Br. of U.S. Senator Jim Banks (Banks Br.) 2-3. Rather, this case challenges the District's policy to categorically exclude a transgender male student, A.C., from the boys' bathroom based solely on his sex assigned at birth, notwithstanding that A.C. looks and sounds like other boys (e.g., has facial hair, wears traditionally masculine clothing, sports a traditionally masculine haircut, and has a deepened voice); is known in official Indiana state records by a male gender marker and a traditionally masculine name; and uses male pronouns in official school records. *See* Br. of Appellee (A.C. Br.) 9, 12. The District's policy violates Title IX of the Education Amendments of 1972 by denying A.C. access to the same common restrooms that other boys may use, on the basis that A.C. was assigned female at birth. Further, because the policy fails to advance any legitimate interest such as protecting public safety or personal privacy, its only function is to stigmatize a particular group, which violates equal protection.

ARGUMENT

I. PROTECTING TRANSGENDER PEOPLE FROM DISCRIMINATION CONFERS WIDE SOCIETAL BENEFITS WITHOUT COMPROMISING THE PRIVACY OR SAFETY OF OTHERS

Over 2.8 million people in the United States—including approximately 724,000 youth between the ages of thirteen and seventeen—identify as transgender.¹ Transgender people have been part of cultures worldwide “from antiquity to the present day.”² They contribute to our communities in myriad ways, including as students, teachers, essential workers, firefighters, police officers, lawyers, nurses, and doctors.

Unfortunately, transgender people often experience discrimination that limits their ability to realize their potential. To combat such discrimination, States began providing civil rights protections for transgender people over a quarter century ago. Today, at least twenty-one States and the District of

¹ Jody L. Herman et al., Williams Inst., *How Many Adults and Youth Identify as Transgender in the United States?* 2 (Aug. 2025). (For authorities available online, full URLs appear in the table of authorities.)

² Am. Psych. Ass’n (APA), *Answers to Your Questions About Transgender People, Gender Identity, and Gender Expression* 1 (3d ed. 2014); *see also* APA, *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People*, 70 Am. Psych. 832, 834 (2015).

Columbia,³ and at least 395 municipalities outside of those States,⁴ offer express protections against discrimination based on gender identity in areas such as

³ **California:** Cal. Civ. Code § 51(b), (e)(5) (public accommodations); Cal. Educ. Code §§ 220 (education), 221.5(f) (education and school athletic participation); Cal. Gov't Code §§ 12926(o), (r)(2), 12940(a), 12949 (employment); *id.* § 12955 (housing); Cal. Penal Code §§ 422.55, 422.56(c) (hate crimes). **Colorado:** Colo. Rev. Stat. § 24-34-301(9), (10) (definitions); *id.* § 24-34-402 (employment); *id.* § 24-34-502 (housing); *id.* § 24-34-601 (public accommodations); *id.* § 22-1-143 (education). **Connecticut:** Conn. Gen. Stat. § 10-15c (schools); *id.* § 46a-51(21) (definition); *id.* § 46a-60 (employment); *id.* § 46a-64 (public accommodations); *id.* § 46a-64c (housing). **Delaware:** Del. Code Ann. tit. 6, § 4501 (public accommodations); *id.* tit. 6, § 4603(b) (housing); *id.* tit. 19, § 711 (employment). **Hawai'i:** Haw. Rev. Stat. § 489-2 (definition); *id.* § 489-3 (public accommodations); *id.* § 515-2 (definition); *id.* § 515-3 (housing). **Illinois:** 775 Ill. Comp. Stat. 5/1-102(A) (employment, real estate transactions, access to financial credit, public accommodations); *id.* 5/1-103(O-1) (definition). **Maine:** Me. Rev. Stat. Ann. tit. 5, § 4553(9-C) (definition); *id.* § 4571 (employment); *id.* § 4581 (housing); *id.* § 4591 (public accommodations); *id.* § 4601 (education). **Maryland:** Md. Code Ann., State Gov't § 20-304 (public accommodations); *id.* § 20-606 (employment); *id.* § 20-705 (housing); Md. Code Ann., Educ. § 26-704 (schools and educational programs). **Massachusetts:** Mass. Gen. Laws ch. 4, § 7, fifty-ninth (definition); *id.* ch. 76, § 5 (education); *id.* ch. 151B, § 4 (employment, housing, credit); *id.* ch. 272, §§ 92A, 98 (public accommodations) (as amended by Ch. 134, 2016 Mass. Acts). **Michigan:** Mich. Comp. Laws § 37.2102(1) (employment, housing, public accommodations, public service, education). **Minnesota:** Minn. Stat. § 363A.03(50) (definition); *id.* § 363A.08 (employment); *id.* § 363A.09 (housing); *id.* § 363A.11 (public accommodations); *id.* § 363A.13 (education). **Nevada:** Nev. Rev. Stat. §§ 118.075, 118.100 (housing); *id.* §§ 613.310(4), 613.330 (employment); *id.* §§ 651.050(2), 651.070 (public accommodations). **New Hampshire:** N.H. Rev. Stat. Ann. § 354-A:2(XIV-e) (definition); *id.* § 354-A:6 (employment); *id.* § 354-A:8 (housing); *id.* § 354-A:16 (public accommodations); *id.* § 354-A:27 (education). **New Jersey:** N.J. Stat. Ann. § 10:5-5(rr) (definition); *id.* § 10:5-12 (public accommodations, housing and real estate transactions, employment); *id.* § 18A:36-41(8) (directing issuance of guidance to school districts permitting transgender students “to participate in gender-segregated school activities in accordance with the student’s gender identity”). **New Mexico:** N.M. Stat. Ann. § 28-1-2(T)-(U) (definitions); *id.* § 28-1-7(A) (employment); *id.* § 28-1-7(F) (public accommodations); *id.* § 28-1-7(G) (housing). **New York:** N.Y. Exec. Law §§ 291, 296 (education, employment, public accommodations, housing). **Oregon:** Or. Rev. Stat. § 174.100(4) (definition); *id.* § 659.850 (education); *id.* § 659A.006 (employment, housing, public accommodations). **Rhode Island:** 11 R.I. Gen. Laws

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education, housing, public accommodations, and employment.⁵ The experiences of amici States and other jurisdictions show that policies and practices that ensure equal access to public facilities for transgender people—including access to common restrooms consistent with their gender identity—promote safe and inclusive school environments that benefit all.

§ 11-24-2 (public accommodations); 28 R.I. Gen. Laws §§ 28-5-6(12), 28-5-7 (employment); 34 R.I. Gen. Laws §§ 34-37-3(9), 34-37-4 (housing). **Utah:** Utah Code Ann. § 34A-5-106 (employment); *id.* § 57-21-5 (housing). **Vermont:** Vt. Stat. Ann. tit. 1, § 144 (definition); *id.* tit. 9, § 4502 (public accommodations); *id.* tit. 9, § 4503 (housing); *id.* tit. 21, § 495 (employment). **Washington:** Wash. Rev. Code Ann. § 28A.642.010 (education); *id.* § 49.60.030(1)(a)-(e) (employment, public accommodations, real estate transactions, credit transactions, and insurance transactions); *id.* § 49.60.040(28)-(29) (definition); *id.* § 49.60.180 (employment); *id.* § 49.60.215 (public accommodations); *id.* § 49.60.222 (housing). **District of Columbia:** D.C. Code § 2-1401.02(12A-i) (definition); *id.* § 2-1402.11 (employment); *id.* § 2-1402.21 (housing and other real property transactions); *id.* § 2-1402.31 (public accommodations); *id.* § 2-1402.41 (education).

⁴ Movement Advancement Project, Local Nondiscrimination Ordinances (current as of April 1, 2025).

⁵ The U.S. Supreme Court has confirmed that longstanding federal law similarly prohibits employment discrimination based on gender identity. *See Bostock v. Clayton Cnty.*, 590 U.S. 644, 662 (2020).

A. Transgender Youth Face Pervasive and Harmful Discrimination That Causes Them Serious Health and Academic Harms.

Transgender youth experience high levels of discrimination, violence, and harassment in school.⁶ In the 2022 U.S. Transgender Survey, more than three quarters (80%) of adult respondents who were known or perceived as transgender in grades K-12 reported negative experiences at school, including being harassed or attacked.⁷

In another 2022 survey of LGBTQ+ teenagers, nearly two in three (62.6%) transgender and gender-expansive youth respondents reported being “teased, bullied, or treated badly” at school in the prior year, and more than half (55.6%) of such youth reported being victimized specifically due to their sexual identity, gender identity, and/or gender expression.⁸ In the same survey, nearly six in ten (56.9%) of LGBTQ+ youth respondents reported being verbally or physically harassed at least once in the prior thirty days.⁹ Students subject

⁶ Joseph G. Kosciw et al., GLSEN, *The 2021 National School Climate Survey: The Experiences of LGBTQ+ Youth in Our Nation’s Schools* xxvii, 84 (2022); see GLSEN, *Improving School Climate for Transgender and Nonbinary Youth: Research Brief* 1 (2021); Michelle M. Johns et al., *Transgender Identity and Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High School Students — 19 States and Large Urban School Districts, 2017*, 68 Morbidity & Mortality Wkly. Rep. 67, 67-70 (2019).

⁷ Sandy E. James et al., Nat’l Ctr. for Transgender Equal., *Early Insights: A Report of the 2022 U.S. Transgender Survey* 22 (2024) (“2022 U.S. Transgender Survey”).

⁸ Hum. Rts. Campaign Found., *2023 LGBTQ+ Youth Report* (2023).

⁹ *Id.*

to such discrimination, violence, and harassment have reported feeling less connected to their schools, and feeling less of a sense of belonging, than other students.¹⁰ Transgender youth of color, in particular, face unique difficulties as a result of their intersecting marginalized identities.¹¹

Discrimination against transgender youth—including denial of access to appropriate restroom facilities—can have serious health and academic consequences. Research has demonstrated that discrimination against LGBTQ people “increases the risks of poor mental and physical health.”¹² For example, LGBTQ students who experienced discriminatory policies or practices in school were found to have lower self-esteem and higher levels of depression than students who had not encountered such discrimination.¹³ Half of transgender and nonbinary youth in a 2022 mental health survey reported having seriously considered attempting suicide in the prior twelve months.¹⁴ And in another

¹⁰ Kosciw et al., *The 2021 National School Climate Survey*, *supra*, at 88.

¹¹ Nhan L. Truong et al., GLSEN, *Erasure and Resilience: The Experiences of LGBTQ Students of Color* 3 (2020).

¹² What We Know Project, Cornell Univ., *What Does the Scholarly Research Say About the Effects of Discrimination on the Health of LGBT People?* (2019).

¹³ Kosciw et al., *The 2021 National School Climate Survey*, *supra*, at 43; see also April J. Ancheta et al., *The Impact of Positive School Climate on Suicidality and Mental Health Among LGBTQ Adolescents: A Systematic Review* 2 (2021) (published at 37 J. Sch. Nursing 75).

¹⁴ Trevor Project, *2023 U.S. National Survey on the Mental Health of LGBTQ Young People* 5 (2023).

study, denial of access to bathroom facilities significantly increased the odds of transgender and/or nonbinary youth reporting depressive mood and attempting suicide—one in three youths who faced bathroom discrimination reported a suicide attempt in the past year.¹⁵ Positive school climates, on the other hand, have been linked to lower suicidality in LGBTQ youth.¹⁶

Discriminatory bathroom policies in particular bring severe physical health risks for transgender youth. For example, before the district court granted a preliminary injunction here, A.C. “sometimes trie[d] to go the entire day without using the restroom at all,” despite the physical discomfort it causes and serious health consequences that could result. *See A.C. ex rel. M.C. v. Metropolitan Sch. Dist. of Martinsville*, 601 F. Supp. 3d 345, 350 (S.D. Ind. 2022). Research shows that A.C.’s experience is not unique. Almost three in four (72.9%) of the transgender students surveyed in one study had avoided school restrooms because they felt unsafe or uncomfortable.¹⁷ More than half (54%) of respondents in another study of transgender people reported negative

¹⁵ Myeshia Price-Feeney et al., *Impact of Bathroom Discrimination on Mental Health Among Transgender and Nonbinary Youth*, 68 J. Adolescent Health 1142 (2021).

¹⁶ Ancheta et al., *supra*, at 7; see also Cady Stanton, *As ‘Don’t Say Gay’ and Similar Bills Take Hold, LGBTQ Youths Feel They’re ‘Getting Crushed’*, USA Today (updated May 11, 2022) (noting that LGBTQ youths in affirming schools were nearly 40% less likely to attempt suicide than LGBTQ youths in nonaffirming schools).

¹⁷ Kosciw et al., *The 2021 National School Climate Survey*, *supra*, at 89 fig. 3.13.

health effects from avoiding public restrooms, such as kidney infections and other kidney-related problems.¹⁸ *See also Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 600, 603, 617 (4th Cir. 2020).

Urinary and other medical issues from restroom avoidance are not the only physical harms associated with discriminatory bathroom policies. A 2019 study showed that youth with restricted access to restrooms and locker rooms based on their sex assigned at birth were more likely to experience sexual assault, compared to their peers that did not face similar restrictions.¹⁹

Discrimination in school settings also negatively affects educational outcomes. A 2021 survey showed that LGBTQ students who had experienced discriminatory policies and practices had lower levels of educational achievement, lower grade point averages, and lower levels of educational aspiration than other students.²⁰ Discriminatory school climates have also been found to exacerbate absenteeism. A 2021 survey found that LGBTQ students who had experienced discrimination in their schools were almost three times as likely

¹⁸ 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 65, 75 (2013).

¹⁹ Gabriel R. Murchison et al., *School Restroom and Locker Room Restrictions and Sexual Assault Risk Among Transgender Youth*, 143 Pediatrics e20182903, at 7-8 (June 1, 2019).

²⁰ Kosciw et al., *The 2021 National School Climate Survey*, *supra*, at 35-36; see Emily A. Greytak et al., GLSEN, *Harsh Realities: The Experiences of Transgender Youth in Our Nation's Schools* 25, 27 fig. 15 (2009).

(43.3% versus 16.4%) to have missed school because they felt unsafe or uncomfortable.²¹

B. The Amici States' Experiences Confirm That Protecting Transgender People from Discrimination Yields Broad Benefits Without Compromising Privacy or Safety, or Imposing Significant Costs.

Policies that allow transgender students to access facilities and activities consistent with their gender identity create school climates that enhance students' well-being and facilitate their ability to learn.²² For example, transgender students permitted to live consistently with their gender identity have mental health outcomes comparable to their cisgender peers.²³ And recently, the 2022 U.S. Transgender Survey found that 94% of adult transgender individuals reported being either “a lot more satisfied” (79%) or “a little more satisfied” (15%) after choosing to live at least some of the time consistent with their gender identity.²⁴ These benefits redound to society as a whole because education advances not only the private interests of students, but also prepares them to

²¹ Kosciw et al., *The 2021 National School Climate Survey*, *supra*, at 36.

²² See, e.g., Br. of Amici Curiae Sch. Adm'rs from Thirty-One States & D.C. in Supp. of Resp't (“Br. of Amici Curiae Sch. Adm'rs”) 3-4, *Gloucester Cnty. Sch. Bd. v. G.G.*, 580 U.S. 1168 (2017) (No. 16-273), 2017 WL 930055.

²³ See Kristina R. Olson et al., *Mental Health of Transgender Children Who Are Supported in Their Identities*, 137 *Pediatrics* 1, 5-7 (2016); Br. of Amici Curiae Sch. Adm'rs at 4, *Gloucester Cnty. Sch. Bd.*, 580 U.S. 1168.

²⁴ James et al., *2022 U.S. Transgender Survey*, *supra*, at 17.

contribute to society—socially, culturally, and economically. *See, e.g., Brown v. Board of Educ.*, 347 U.S. 483, 493 (1954).

As noted above, at least twenty-one States and 395 localities expressly provide civil rights protections to transgender people, and those protections often include requirements that transgender people be allowed to use restrooms consistent with their gender identity. Contrary to the claims of the District (*see Br. for Appellant (Br.)* 33-35) and its amici (*see Br. for Indiana, 24 Other States, & the Ariz. Legis. as Amicus Curiae (Ind. Br.)* 9-14), these protections comply with laws, such as Title IX, that allow segregating restrooms by sex, *see* 20 U.S.C. § 1686. These policies maintain sex-segregated spaces while allowing transgender people to use a facility that aligns with their gender identity—thus helping to ease the stigma transgender people often experience, with positive effects for their educational and health outcomes. Such policies promote compelling interests in “removing the barriers to economic advancement and political and social integration that have historically plagued certain disadvantaged groups.” *Roberts v. United States Jaycees*, 468 U.S. 609, 626 (1984). And these policies do so without threatening individual safety or privacy.

1. Nondiscriminatory restroom policies produce important benefits and pose no safety concerns.

Supportive educational environments increase success rates for transgender students. Such environments aim to limit harassment and bullying of transgender students, and data from one national survey show that more-frequently harassed transgender teenagers had significantly lower grade-point averages than other transgender students.²⁵

Policies supporting transgender students, including by allowing them to use common restrooms consistent with their gender identity, also can reduce the health risks facing those students. For example, a transgender boy in Virginia reported a painful urinary tract infection after being denied access to the boys' restroom at school. *Grimm*, 972 F.3d at 600, 603, 617. And California adopted protections against gender-identity discrimination in schools to address such harms often suffered by transgender students, including students not drinking and eating during the school day to avoid restroom use.²⁶

In States allowing transgender students to use bathrooms corresponding to their gender identity, public schools have reported no instances of transgender

²⁵ Ancheta et al., *supra*, at 10-11; Kosciw et al., *The 2021 National School Climate Survey*, *supra*, at 35-36; see Greytak et al., *supra*, at 27 fig. 15.

²⁶ See Assemb. B. 1266, 2013-2014 Sess. (Cal. 2013); Assemb. Comm. on Educ., Bill Analysis for Assemb. B. 1266 at 5-6, 7, 2013-2014 Sess. (Cal. 2013); see also Alexa Ura, *For Transgender Boy, Bathroom Fight Just Silly*, Texas Trib. (June 14, 2016).

students harassing others in restrooms or locker rooms.²⁷ Indeed, the experiences of school administrators in thirty-one States and the District of Columbia show that public safety concerns are unfounded, as are concerns that students will pose as transgender simply to gain improper restroom access.²⁸ The District's amici's speculation (Ind. Br. 16; Banks Br. 25-26) that student safety will suffer if transgender people are treated fairly is thus contrary to the actual experiences of States and localities where nondiscrimination has long been the law.²⁹

²⁷ Alberto Arenas et al., *7 Reasons for Accommodating Transgender Students at School*, Phi Delta Kappan (Sept. 1, 2016); see Beatriz Pagliarini Bagagli et al., *Trans Women and Public Restrooms: The Legal Discourse and Its Violence*, 6 Frontiers Socio. 1, 8 (Mar. 31, 2021); see also Amira Hasenbush et al., *Gender Identity Nondiscrimination Laws in Public Accommodations: A Review of Evidence Regarding Safety and Privacy in Public Restrooms, Locker Rooms, and Changing Rooms*, 16 Sexuality Rsch. & Soc. Pol'y 70, 80-83 (2019) (comparing criminal incident reports in localities with and without gender identity inclusive public accommodations nondiscrimination laws in Massachusetts).

²⁸ Br. of Amici Curiae Sch. Adm'rs at 14-16, *Gloucester Cnty. Sch. Bd.*, 580 U.S. 1168. Such concerns are especially unfounded in this case, where A.C. has changed his gender markers with the State, uses he/him pronouns at school, and has altered his physical appearance to conform with his gender identity. See A.C. Br. 9, 12.

²⁹ Indeed, a survey of the largest school districts in twelve States with gender identity protections found that, years after implementing protections, "none of the schools have experienced any problems." Rachel Percelay, *17 School Districts Debunk Right-Wing Lies About Protections for Transgender Students*, Media Matters for Am. (June 3, 2015) (largest school districts in twelve States with gender-identity protection laws); see also Carlos Maza & Luke Brinker, *15 Experts Debunk Right-Wing Transgender Bathroom Myth*, Media Matters for Am. (Mar. 19, 2014) (law enforcement officials, government employees, and advocates for sexual assault victims); Luke Brinker, *California School Officials Debunk Right-Wing Lies About Transgender Student Law*, Media Matters for Am. (Feb. 11, 2014) (six of California's largest school

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For instance, a former county sheriff noted that Washington State has protected transgender people from discrimination for a decade “with no increase in public safety incidents as a result”; he emphasized “that indecent exposure, voyeurism, and sexual assault[] are already illegal, and police use those laws to keep people safe.”³⁰ In 2013, the Los Angeles Unified School District—the second largest school district in the country, with more than 400,000 enrolled students³¹—reported to the California Legislature that the district had “no issues, problems or lawsuits as a result of [a 2004] policy” allowing students to use restrooms corresponding to their gender identity.³² And the Massachusetts Chiefs of Police Association and Massachusetts Majority City Chiefs expressed that allowing people to use public bathrooms consistent with their gender identity “improve[s] public safety.”³³ Meanwhile, in Texas, officials in Austin, Dallas,

districts, including two that have had antidiscrimination policies for more than a decade); Amira Hasenbush et al., *supra*, at 70-83; Jody L. Herman et al., Williams Inst., *Safety and Privacy in Public Restrooms and Other Gendered Facilities* 1-6 (Feb. 2025) (using data from National Crime Victimization Survey to estimate impact of gender identity nondiscrimination laws for public accommodations on prevalence of violent victimization perpetrated by strangers).

³⁰ David Crary, *Debate Over Transgender Bathroom Access Spreads Nationwide*, Salt Lake Trib. (May 10, 2016) (quotation marks omitted).

³¹ Nat’l Ctr. for Educ. Stat., *Table 215.30: Enrollment, Poverty, and Federal Funds for the 120 Largest School Districts, by Enrollment Size in 2021* (May 2023).

³² S. Comm. on Educ., *Bill Analysis for Assemb. B. 1266*, at 8 (Cal. 2013).

³³ Letter from William G. Brooks III, Mass. Chiefs of Police Ass’n, & Bryan A. Kyes, Mass. Majority City Chiefs, to Sen. William N. Brownsberger & Rep. John V. Fernandes, *Joint Comm. on the Judiciary* (Oct. 1, 2015).

and El Paso found no increase in restroom safety incidents as a result of those cities' policies allowing transgender people to use restrooms consistent with their gender identity.³⁴

To the contrary, discriminatory bathroom policies and the harmful rhetoric advanced in support of such policies have produced incidents that do threaten public safety—frequently against cisgender individuals.³⁵ In one incident, for example, a restaurant employee accused an eighteen-year-old cisgender high school girl of being a man and harassed her to leave the women's restroom; the harassment ceased only after the student showed the employee her breasts.³⁶ In a similar incident, two police officers accused a nineteen-year-old cisgender woman of being a man while she was urinating; for her, too, the

³⁴ Carlos Maza & Rachel Percelay, *Texas Experts Debunk the Transgender "Bathroom Predator" Myth Ahead of HERO Referendum*, Media Matters for Am. (Oct. 15, 2015); see also, e.g., Fox News, *Manafort on Trump's Fight to Rally GOP, Defeat Democrats; Gov. McCrory on Showdown Over NC's Transgender Bathroom Law* (updated Jan. 23, 2017) (no known cases of people in North Carolina committing crimes in bathrooms under the cover of protections provided to transgender people).

³⁵ See, e.g., Brandon Truitt, *Woman Says Security Guard at Liberty Hotel in Boston Confronted Her in Bathroom, Asked to Prove Gender*, CBS News (May 7, 2025); Christopher Wiggins, *Cis Woman Mistaken as Transgender Records Being Berated in Bathroom*, Advocate (May 26, 2023); Matt DeRienzo, *Woman Mistaken for Transgender Harassed in Walmart Bathroom*, News-Times (May 16, 2016).

³⁶ Gerika Mudra, *I Filed a Discrimination Charge for What Happened to Me in a Buffalo Wild Wings Bathroom*, MSNBC (Aug. 15, 2025).

worst harassment ceased only after she showed the police officers her breasts.³⁷

2. Nondiscriminatory restroom policies neither compromise personal privacy nor require significant expenditures.

Contrary to the claims of the District (*see, e.g.*, Br. 45-47) and its amici (*see* Ind. Br. 15-17), the amici States' experiences show that nondiscriminatory policies have neither generated privacy issues nor imposed substantial costs on schools. The risk that students will see others' intimate body parts, or have their intimate body parts seen by others, is not presented by ordinary restroom use. And in any event, concerns about the presence of others (whether or not transgender) can be addressed by individual students choosing to utilize a restroom stall or by increasing privacy options for all students, without singling out transgender people for stigmatizing differential treatment. See *infra* at 17-18.

School districts in the amici States have identified a variety of cost-effective options to maximize privacy for all users of restrooms and changing facilities while avoiding discrimination. In Washington State, where school districts are required to "allow students to use the restroom that is consistent with their

³⁷ Christopher Wiggins, *Cis Woman Confronted by Police Officers in Arizona Walmart Restroom for Looking Too Masculine Speaks Out (Exclusive)*, Advocate (Feb. 28, 2025).

gender identity consistently asserted at school,” schools must provide “[a]ny student—transgender or not—who has a need or desire for increased privacy, regardless of the underlying reason,” with “access to an alternative restroom (e.g., staff restroom, health office restroom).”³⁸ This gives all students with privacy concerns “the option to make use of a separate restroom and have their concerns addressed without stigmatizing any individual student.”³⁹

Similar provisions apply to locker rooms. Students in Washington are allowed to participate in physical education and athletic activities “in a manner that is consistent with their gender identity.”⁴⁰ But rather than segregating transgender students, additional privacy is provided for any student who desires it, regardless of the underlying reason, by providing “a reasonable alternative

³⁸ Susanne Beauchaine et al., Wash. Off. of Superintendent of Pub. Instruction, *Prohibiting Discrimination in Washington Public Schools* 30 (2012); see also Wash. State Hum. Rts. Comm’n, *Frequently Asked Questions Regarding WAC 162-32-060 Gender-Segregated Facilities* 3 (2016) (businesses need not “make any [structural] changes” or “add additional facilities,” but “are encouraged to provide private areas for changing or showering whenever feasible” and “may wish to explore installing partitions or curtains for persons desiring privacy”); Wash. Rev. Code Ann. § 28A.642.080 (requiring implementation by January 31, 2020).

³⁹ Beauchaine et al., *supra*, at 30.

⁴⁰ *Id.*; Wash. Interscholastic Activities Ass’n, *2023-2024 Handbook* 37 (Oct. 10, 2023).

changing area, such as the use of a private area (e.g., a nearby restroom stall with a door), or a separate changing schedule.”⁴¹

At least twelve other States and the District of Columbia offer similar guidance to help schools maximize privacy while complying with laws prohibiting gender-identity discrimination—for instance, by offering privacy curtains and separate restroom and changing spaces to all who desire them.⁴² None of

⁴¹ Beauchaine et al., *supra*, at 30-31; *see also* Providence Pub. Sch. Dist., *Nondiscrimination Policy: Transgender and Gender Expansive Students* 4 (n.d.) (student uncomfortable with gender-segregated facility may use “a safe and non-stigmatizing alternative,” such as a privacy partition or separate changing schedule).

⁴² **California:** California Sch. Bds. Ass’n, *Final Guidance: AB 1266, Transgender and Gender Nonconforming Students, Privacy, Programs, Activities & Facilities* 2 (2014). **Colorado:** Colorado Ass’n of Sch. Bds. et al., *Guidance for Educators Working with Transgender and Gender Nonconforming Students* 4-5 (n.d.). **Connecticut:** Connecticut Safe Sch. Coal., *Guidelines for Connecticut Schools to Comply with Gender Identity and Expression Non-Discrimination Laws* 9-10 (2012). **Illinois:** Illinois Dep’t of Hum. Rts., *Non-Regulatory Guidance: Relating to Protection of Transgender, Nonbinary, and Gender Nonconforming Students Under the Illinois Human Rights Act* 6-7 (2021); Illinois State Bd. of Educ., *Non-Regulatory Guidance: Supporting Transgender, Nonbinary and Gender Nonconforming Students* 10-11 (2020); Affirming & Inclusive Schs. Task Force, Ill. Off. of the Governor, *Strengthening Inclusion in Illinois Schools* 19-21 (2020). **Maryland:** Maryland State Dep’t of Educ., *Providing Safe Spaces for Transgender and Gender Non-Conforming Youth: Guidelines for Gender Identity Non-Discrimination* 13-14 (2015). **Massachusetts:** Massachusetts Dep’t of Elementary & Secondary Educ., *Guidance for Massachusetts Public Schools: Creating a Safe and Supportive School Environment* (Oct. 28, 2021). **Michigan:** Michigan Dep’t of Educ., *State Board of Education Statement and Guidance on Safe and Supportive Learning Environments for Lesbian, Gay, Bisexual, Transgender, and Questioning (LGBTQ) Students* 5-6 (2016). **Minnesota:** Minnesota Dep’t of Educ., *A Toolkit for Ensuring Safe and Supportive Schools for Transgender and Gender Nonconforming Students* 10 (2017). **New Jersey:** New Jersey State Dep’t of Educ., *Transgender Student Guidance for School Districts* 7 (2018). **New York:** New York State Educ. Dep’t, *Creating a Safe, Supportive, and Affirming School Environment for Transgender and Gender Expansive Students: 2023 Legal Update*

(continued on the next page)

these solutions requires remodeling or restructuring restrooms, or otherwise investing in costly facility upgrades. As a spokeswoman for Texas's Clear Creek Independent School District confirmed, that district, like many others, "ha[s] been successful in balancing the rights of all students without issue and offer[s] restrooms, showers and changing areas for students seeking privacy, regardless of their gender or gender identity."⁴³ The experiences of school administrators in dozens of States across the country confirm that such policies can be implemented fairly, simply, and effectively.⁴⁴

Inclusive policies such as these maintain gender-segregated spaces. For example, New York's guidance for school districts explains how schools have accommodated transgender youth and fostered a "safe and supportive school environment," while maintaining sex-segregated spaces.⁴⁵ Contrary to the arguments advanced by the States supporting the District (Ind. Br. 9-14),

and Best Practices 22-24 (2023). **Oregon:** Oregon Dep't of Educ., *Supporting Gender Expansive Students: Guidance for Schools* 24-26 (2023). **Rhode Island:** Rhode Island Dep't of Elementary & Secondary Educ., *Guidance for Rhode Island Schools on Transgender and Gender Nonconforming Students* 8-9 (2016). **Vermont:** Vermont Agency of Educ., *Continuing Best Practices for Schools Regarding Transgender and Gender Nonconforming Students* 6, 8 (2017). **District of Columbia:** Off. of Youth Engagement, District of Columbia Pub. Schs., *Transgender and Gender-Nonconforming Policy Guidance* 9 (2015).

⁴³ Ura, *supra* (quotation marks omitted).

⁴⁴ See Br. of Amici Curiae Sch. Adm'rs at 17-21, *Gloucester Cnty. Sch. Bd.*, 580 U.S. 1168.

⁴⁵ New York State Educ. Dep't, *supra*, at 7, 22-24.

inclusive policies are thus entirely consistent with the provisions of Title IX permitting schools to maintain sex-segregated facilities.⁴⁶

In fact, it is discriminatory restroom policies rather than inclusive ones that raise privacy concerns. Such policies are more likely to create a needless risk of violence against cisgender and transgender people alike, since both may be perceived as using the “wrong” restroom.⁴⁷ In short, policies like the one at issue here, which bar transgender individuals from using a restroom that aligns with their gender identity, are more likely to pose safety and privacy concerns than inclusive policies.

II. TITLE IX AND THE EQUAL PROTECTION CLAUSE PROHIBIT THE SEX DISCRIMINATION IN THIS CASE

In its prior decision in this case affirming the district court’s preliminary injunction, this Court determined that the District’s policy likely violates Title IX and the Equal Protection Clause because it discriminates against A.C. on the basis of sex. *See A.C. v. Metropolitan Sch. Dist. of Martinsville*, 75 F.4th 760, 771-73 (7th Cir. 2023), *cert. denied*, 144 S. Ct. 683 (2024). As the Court explained, the District’s policy—which “[i]n no event” permits a student to

⁴⁶ See 20 U.S.C. § 1686; 34 C.F.R. § 106.33.

⁴⁷ See Sandy E. James et al., Nat’l Ctr. for Transgender Equal., *The Report of the 2015 U.S. Transgender Survey* 225-27 (2016); see also Matt Pearce, *What It’s Like to Live Under North Carolina’s Bathroom Law If You’re Transgender*, L.A. Times (June 12, 2016).

access or use a bathroom facility “where the sex designation for that bathroom facility differs from the student’s biological sex at birth” (Appendix (A.) 32)—prohibited A.C. from accessing the multiple-use section of the boy’s bathroom solely because of the sex assigned to A.C. at birth.⁴⁸ *A.C.*, 75 F.4th at 771-73. In reaching that decision, the Court relied heavily on its precedent in *Whitaker ex rel. Whitaker v. Kenosha Unified School District No. 1 Board of Education*, which held that prohibiting transgender students from using a bathroom inconsistent with their sex assigned at birth constitutes discrimination “on the basis of sex” under Title IX, and constitutes an inherently sex-based classification under the Equal Protection Clause. 858 F.3d 1034, 1049, 1051 (7th Cir. 2017).

The District and its amici now urge this Court to overrule *Whitaker* and to depart from its prior decision in this case in *A.C.* based on the Supreme Court’s recent decision in *United States v. Skrmetti*, 145 S. Ct. 1816 (2025).⁴⁹ But *Skrmetti* does not warrant overruling *Whitaker* or departing from *A.C.*

⁴⁸ One of the District’s amici (*see* Banks Br. 2) continues to mischaracterize the central issue in this case as whether sex-segregated bathrooms violate the Equal Protection Clause or Title IX. As the District and the other amici correctly note, however, *A.C.* “does not challenge” the school’s maintenance of sex-segregated bathrooms and has never disputed a school’s authority to separate bathrooms by sex. Br. 1; *see id.* at 15; Ind. Br. 3.

⁴⁹ Another panel of this Court had ordered supplemental briefing on the issue of whether to overrule *Whitaker* in light of *Skrmetti*. *See D.P. ex rel. A.B. v. Mukwonago Area Sch. Dist.*, No. 23-2568, 2025 WL 1794428, at *1 (7th Cir. June 30, 2025). However, that panel subsequently dismissed the appeal for lack of jurisdiction. *See Order, id.* (Aug. 26, 2025), ECF No. 87.

As a threshold matter, *Skrmetti* leaves intact this Court’s statute-based rulings in *Whitaker* and *A.C.* that sex stereotyping is not a valid basis for discrimination under Title IX, and that policies like the District’s policy here unlawfully discriminate against transgender individuals on the basis of such sex stereotypes. *See A.C.*, 75 F.4th at 769; *Whitaker*, 858 F.3d at 1049; *see also Bostock v. Clayton Cnty.*, 590 U.S. 644, 664-65 (2020) (applying sex-stereotyping theory to employment discrimination claims brought by gay or transgender plaintiffs under Title VII of the Civil Rights Act of 1964). In *Skrmetti*, the Court considered only claims brought pursuant to the Equal Protection Clause of the Fourteenth Amendment and did not consider any statutory claims—let alone claims under Title IX. *See Skrmetti*, 145 S. Ct. at 1824. Indeed, *Skrmetti* expressly left open whether the reasoning of *Bostock* might be expanded into other contexts. *See id.* at 1834 (“We have not yet considered whether *Bostock*’s reasoning reaches beyond the Title VII context, and we need not do so here.”). Leaving open a question does not constitute the sort of “compelling reason” required to overturn this Court’s precedent in *Whitaker* and *A.C.* *See, e.g., United States v. Rivers*, 108 F.4th 973, 980 (7th Cir. 2024) (Supreme Court’s statement that it “need not” decide issue was not “compelling reason” to overturn circuit precedent), *cert. denied*, 145 S. Ct. 1151 (2025); *see generally A.C.*, 75 F.4th at 769 (Supreme Court’s express statement that it is not reaching a certain issue “is an important tool with which [courts]

respect the principles of party presentation . . . and incremental development of the law.” (citation omitted)).

And turning to the constitutional question, *Skrmetti* does not displace this Court’s straightforward conclusion in *A.C.* and *Whitaker* that a policy like the District’s policy here, which prohibits restroom access on the basis of sex assigned at birth, classifies on the basis of sex for purposes of discrimination claims brought under the Equal Protection Clause. *Skrmetti* did not address this issue because the Court concluded that the Tennessee law under review there did not classify on the basis of sex or transgender status, and instead classified based on two non-suspect classifications: “age” and “medical use,” i.e., the use of a drug to treat a specific diagnosis. *See Skrmetti*, 145 S. Ct. at 1829, 1833, 1835. Here, by contrast, the District’s policy does not arise in the medical context, and the District *concedes* that it facially classifies based on sex. *See* Br. 16 (“Here, the School’s rule creates two classifications on its face: sex and gender identity.”). That concession should dispose of the District’s *Skrmetti*-based arguments, particularly because *Skrmetti* itself twice emphasized the longstanding principle that policies containing “overt” sex-based classifications or that “regulate[] a class of *persons* identified on the basis of a specified characteristic” remain subject to heightened review. *Skrmetti*, 145 S. Ct. at 1831-32, 1834 n.3.

The District's amici err in arguing that *Skrmetti* announces the proposition that laws that apply equally to all children are not sex-based classifications “merely because they reference sex-related concepts.” Ind. Br. 1. *Skrmetti* restricted that observation to “the medical context” because certain medical treatments “are *uniquely* bound up in sex.” *Skrmetti*, 145 S. Ct. at 1829-30 (emphasis added). In any event, the District's policy does not merely “reference sex-related concepts.” Instead, sex is dispositive, and restroom access is categorically denied if the restroom's sex designation is inconsistent with the student's sex assigned at birth. *See Whitaker*, 858 F.3d at 1049.

Skrmetti also does not support the incorrect argument, made by the District's amici, that a policy triggers heightened scrutiny under the Equal Protection Clause only where it places a benefit within the reach of one sex and out of the reach of the other, or burdens one sex in a way that it has not burdened the other. *See* Ind. Br. 4, 6. The Supreme Court squarely rejected that characterization of the Equal Protection Clause over fifty years ago in *Loving v. Virginia*, 388 U.S. 1 (1967). There, the State of Virginia had defended its prohibition on interracial marriage by arguing that because its miscegenation statutes “punish equally” both the white and black “participants in an interracial marriage, these statutes, despite their reliance on racial classifications do not constitute an invidious discrimination based upon race.” *Loving*, 388 U.S. at 8. The *Loving* Court definitively rejected that argument, explaining

that “the fact of equal application does not immunize [a] statute from the very heavy burden of justification” under the Fourteenth Amendment. *Id.* at 9. Indeed, the Court in *Skrmetti* expressly relied on *Loving* in explaining that a law does “not . . . shed” its classifications—i.e., the race-based classification in *Loving*—even where it is written to apply to “any person”—i.e., members of all races. *Skrmetti*, 145 S. Ct. at 1831 (quotation marks omitted). The same principle obtains here: the District’s policy does not shed its sex-based classification simply because it is written to apply to both boys and girls.

There is thus no reason under *Skrmetti* or otherwise for this Court to depart from its precedent in *Whitaker* and *A.C.*, and the Court should conclude that the District’s policy violates both Title IX and the Equal Protection Clause. Under Title IX, the District’s policy needlessly denies A.C. something almost all students take for granted on the basis of sex: the ability to use a school restroom consistent with one’s lived experience of one’s own gender. The District’s policy singles out transgender students like A.C. on the basis of sex assigned at birth, and forces them either to forgo restroom use at school or to choose between two other detrimental options, i.e., (i) using common restrooms corresponding to their sex assigned at birth (e.g., for A.C., the girls’ restroom) or (ii) using special single-occupancy restrooms (e.g., those that are reserved for faculty). The first option would not only contravene a core aspect of transgender people’s identities but also subject them to potential harassment and violence. Such risks are

especially pronounced for a student like A.C., who wears masculine clothing; has a deepened voice and facial hair; and uses a masculine name and male gender marker on official documents. *A.C. ex rel. M.C. v. Metropolitan Sch. Dist. of Martinsville*, 761 F. Supp. 3d 1159, 1165-66 (S.D. Ind. 2025). The second option would have at least two problems for transgender students. First, a student's use of the faculty-only restrooms near classrooms, where school policy limits student use of those single-occupancy restrooms to transgender students only, would necessarily "out" that student as transgender, potentially exposing them to danger or preventing them from keeping that information private.⁵⁰ See *A.C.*, 601 F. Supp. 3d at 355; *A.C. Br.* 15-16, 39. Second, a student's use of other special single-occupancy restrooms, such as the gender-neutral restroom in the nurse's clinic or the "family"-designated restrooms in the gymnasium and auditorium, would involve burdensome travel across campus, causing a student to risk "discipline . . . for being late to classes." See *A.C.*, 761 F. Supp. 3d at 1166; see *A.C. Br.* 15. Further, as the amici States' successful experiences demonstrate (see *supra* at 16-20), schools may continue to have sex-segregated restrooms while allowing transgender students to use the bathroom that matches their gender identity. And under those circumstances, female

⁵⁰ The same concerns are not posed by the privacy-enhancing measures described above (see *supra* at 17-20), which are available to all students who desire additional privacy. Such measures do not single out or stigmatize transgender students.

students still use the girls' restrooms and male students still use the boys' restrooms.

Finally and for similar reasons, the District's bathroom policy contravenes the Equal Protection Clause under any level of scrutiny. The Supreme Court has long made clear that equal protection prohibits government policies that serve only to express "negative attitudes" "or fear" toward people viewed as "different." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 448 (1985); *see also* *Nguyen v. Immigration & Naturalization Serv.*, 533 U.S. 53, 68 (2001) (the Equal Protection Clause bars a decision built on stereotypes and a "frame of mind resulting from irrational or uncritical analysis"). The policy at issue here falls squarely into this category. As the district court correctly noted at summary judgment, "[t]he privacy concerns addressed by the School District are hypothetical and do not reflect a genuine governmental objective because no student has complained about A.C.'s use of the boys' restroom," including during the two years since the preliminary injunction has been in place. *See A.C.*, 761 F. Supp. 3d at 1173, 1175. And irrespective of the layout of the boys' multiple-use restroom, privacy concerns are not implicated by A.C.'s use of a stall in that restroom because "the communal restroom is a place where individuals act in a discreet manner to protect their privacy and those who have true privacy concerns are [also] able to utilize a stall." *Id.* at 1173-74 (quoting *Whitaker*, 858 F.3d at 1052). The District's insistence on singling out A.C. for different,

stigmatizing treatment despite this factual record violates the Equal Protection Clause.

CONCLUSION

This Court should affirm the decision below.

Dated: New York, New York
September 10, 2025

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 32(a) of the Federal Rules of Appellate Procedure, Quinn Moss, an employee in the Office of the Attorney General of the State of New York, hereby certifies that according to the word count feature of the word processing program used to prepare this brief, the brief contains 6,998 words and complies with the typeface requirements and length limits of Rules 29 and 32(a)(5)-(7) and the corresponding local rules.

/s/ Quinn Moss

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was filed electronically with the Court's CM-ECF system on September 10, 2025. Service will be effectuated by the Court's electronic notification system upon all parties and counsel of record.

Dated: New York, New York
September 10, 2025

/s/ Mark S. Grube