September 14, 2022

ATTORNEY GENERAL RAOUL CONVENES ROUNDTABLE DISCUSSION ON COMBATTING HATE SPEECH AND VIOLENCE

Chicago — Attorney General Kwame Raoul convened a roundtable meeting on Tuesday with representatives of leading civil rights organizations, places of worship and community-based groups to facilitate a conversation on fighting hate speech and targeted acts of violence in Illinois.

"I have made it a priority since taking office to ensure we are working in a comprehensive way to address the tragic rise in hate speech that often is directed at specific communities and can include violence," Raoul said. "Collaborating with organizations on the ground working to advance justice and equality is vital as we look to continue focusing on confronting hate in all of its forms."

Participating in the roundtable discussion were representatives from the Anti-Defamation League, Asian American Bar Association of Greater Chicago, Asian Americans Advancing Justice | Chicago, Bright Star Community Church, Chinese American Service League, Equality Illinois, Equip for Equality, Illinois Coalition for Immigrant and Refugee Rights, Illinois Department of Human Rights, Jewish United Fund / Jewish Federation of Chicago, and Mexican American Legal Defense and Educational Fund.

During the meeting, representatives from organizations in attendance described the issues facing the communities they serve, including threats based on immigration status, targeted acts of violence against faith-based communities, and coordinated attempts by extremist groups to restrict members of the LGBTQ+ community from using public spaces. The groups pointed out that such acts are often accompanied with hate speech.

"Illinois is a national leader in the fight against hate and bigotry, and a strong collaboration between governmental and community leadership is critical to addressing record levels of hate crimes and incidents," said David Goldenberg, Regional Director of the Anti-Defamation League Midwest. "We are incredibly appreciative of Attorney General Raoul's leadership in convening this group and taking the necessary action to ensure Illinois is no place for hate. Recent events underscore any community can be a target. When these acts occur, all of us must speak out, share facts, and show strength in the face of hate, extremism, and intolerance."

Raoul gave an overview of his office's work and recent accomplishments in addressing violence and hate, including:

- Partnering with the U.S. Secret Service's National Threat Assessment Center (NTAC) since 2019 to hold trainings on behavioral threat assessment designed to help prevent mass casualty attacks.
- Continuing to monitor progress of the Chicago Police Department to enact key consent decree reforms aimed at improving hate crime reporting and accountability and transparency with the public.
- Filing the Attorney General office's first hate crime lawsuit against a mother and son who harassed and terrorized their Black neighbor in downstate Savanna.
- Advocating with fellow attorneys general in support of the rights of LGBTQ+ students

Raoul's Civil Rights Bureau enforces state and federal civil rights laws prohibiting discrimination and hate crimes in Illinois. Attorney General Raoul urges individuals who experience or witness hate crimes to contact local law enforcement. Raoul also encourages people to report discrimination or hate-motivated incidents to his office by visiting his website, emailing CivilRights@ilag.gov or by calling his Civil Rights Hotline at 1-877-581-3692.

August 19, 2022

RAOUL, U.S. SECRET SERVICE HOST TRAINING AIMED AT PREVENTING TARGETED SCHOOL VIOLENCE

Secret Service National Threat Assessment Center Provides Training to Prevent Targeted Acts of Violence in Illinois Schools

Chicago — Attorney General Kwame Raoul today partnered with the U.S. Secret Service National Threat Assessment Center (NTAC) and the Lake County State's Attorney's office in hosting a training designed to prevent targeted acts of violence in schools. The event is part of a series of trainings on behavioral threat assessment that are presented by the NTAC to help prevent mass casualty attacks.

Participants in today's training had the option of joining virtually or attending in person at the College of Lake County in Grayslake, Illinois. Attendees included educators, school and district administrators, school counselors and psychologists, school resource officers, mental health specialists, social workers, law enforcement officers and others who may be involved in risk detection or risk management. The Attorney General's office and the NTAC have collaborated since 2019 to provide threat assessment trainings to public and private entities around Illinois. Using research and case studies from past mass attacks in public spaces, the trainings provide recommendations to help faith leaders, educators, law enforcement officials, prosecutors and others identify, assess and intervene with individuals who exhibit concerning or threatening behaviors.

"Keeping our schools safe cannot fall to law enforcement alone. A collaborative approach is critical and must involve administrators, security officers, counselors and teachers – the individuals who interact with students regularly and may be in a position to intervene if a student shows signs of being in crisis," Attorney General Kwame Raoul said. "My office is proud to partner with the U.S. Secret Service's National Threat Assessment Center to ensure that school officials have access to behavioral threat assessment training that can help avert an unimaginable tragedy – before it occurs."

The training today highlighted past mass tragedies at schools in the United States. NTAC officials also presented relevant findings and recommendations based on the NTAC's latest research on targeted violence and school attacks that have been averted in the U.S. Additionally, participants learned about the role communities can play in using a multidisciplinary approach to identifying, assessing and intervening with students exhibiting concerning or threatening behaviors as early as possible.

"We at the National Threat Assessment Center are privileged and honored to be in steadfast partnership with the local communities and leaders of Illinois in equipping our nation's schools and communities with the best practices and tools to prevent targeted school violence," said National Threat Assessment Center Chief Dr. Lina Alathari. "Our research provides guidance for school leaders, educators, and staff enabling them to identify, assess and provide appropriate intervention for a student in distress or exhibiting concerning behavior, thereby ensuring the safety of the student and school community."

For more than 20 years, the NTAC has conducted research on the thinking and behaviors of those who commit targeted acts of violence in an effort to prevent future acts. The NTAC has found that attacks took place in a variety of locations, including businesses and workplaces, schools, places of worship, military bases, open spaces, housing complexes, and on forms of transportation. In its yearly "Mass Attacks in Public Spaces" report, most recently issued in 2020, the NTAC found that most of the attackers used firearms, nearly half of which were possessed illegally during the attack. The report also found many attackers had experienced unemployment, substance abuse, mental health issues or recent stressful events. Attackers also had a history of prior criminal charges or arrests and domestic violence. Additionally, the report found that most of the attackers had exhibited behavior that raised concerns other individuals, causing many of those people to fear for their own safety or that of others.

The Secret Service recommends a multidisciplinary approach to violence prevention, called behavioral threat assessment. The goal is to proactively identify individuals who display threatening behavior and intervene prior to violence occurring, which requires a

community-based approach. According to the NTAC, faith-based leaders, mental health professionals, workplace managers, law enforcement officers and school personnel play essential roles in threat assessment.

The trainings are part of Attorney General Raoul's work to address violence throughout Illinois. In addition to working with local law enforcement agencies and prosecutors to increase awareness of Illinois' red flag law, Raoul has worked with other law enforcement agencies to address gaps in the state's FOID card system. The Attorney General's office supported a law that was signed in 2021 to expand background checks and require the Illinois State Police (ISP) to confiscate firearms from individuals whose FOID cards have been revoked. Raoul's office also prosecutes individuals who lie on FOID card applications, collaborates with local law enforcement to combat gun trafficking and uses the office's jurisdiction to prosecute multi-county gun trafficking offenses.

The Attorney General's office, in collaboration with Everytown for Gun Safety, created a state-of-the-art crime-gun tracing database, Crime Gun Connect. The database will be housed at the ISP and will serve an investigative tool accessible only by Illinois law enforcement officials and collects data related crime gun tracing performed in the state of Illinois since 2009. The Attorney General's office filled in the gap and has conducted law enforcement trainings to increase awareness and usage of the new database. Nationally, Attorney General Raoul successfully partnered with Everytown for Gun Safety and the city of Kansas City to get the federal firearm license of an unscrupulous arms manufacturer revoked.

In addition to supporting law enforcement, the Attorney General's office supports victims' service providers around Illinois that support trauma informed services for crime victims and their families. Raoul's Crime Victims Services Division administers a host of programs and services to assist survivors of violent crime. For instance, the Illinois Crime Victims Compensation program offers reimbursement for expenses incurred by eligible victims as a result of a violent crime. More information is available on the Attorney General's website.

Return to August 2022 Press Releases

TOP

March 31, 2021

ATTORNEY GENERAL RAOUL CALLS ON CHICAGO POLICE DEPARTMENT TO CONTINUE TO ENACT KEY CONSENT DECREE REFORMS

Independent Monitor Finds That Chicago Police Department Has Not Met Most Court-Ordered Reforms Two Years After Consent Decree Became Effective

Chicago — Attorney General Kwame Raoul today urged the Chicago Police Department (CPD) and the city of Chicago to work with community stakeholders to continue to implement reforms outlined in the consent decree following the release of the independent monitor's third progress report. The progress report released today shows that while CPD and the city of Chicago have made some progress, many urgently needed police reforms, including most of the city's commitments regarding improved accountability and transparency, have yet to be implemented.

The progress report, the third to be released since the consent decree took effect in March 2019, covers an unprecedented time in the history of Chicago, marked by the COVID-19 pandemic and nationwide protests over police misconduct.

"Now, more than ever, the city and CPD must commit to working with the communities most impacted by police misconduct in order to implement lasting, systemic change," Raoul said. "Reform is a constant work in progress, and while the city and CPD have made positive changes in their approach to policing in accordance with the consent decree, there is still work that needs to be done. My commitment to enforcing the consent decree between the city of Chicago and state of Illinois has never wavered and I am committed to working with the city and CPD to continue on the path towards meaningful reform."

Today's report outlines progress CPD and the city have made in specific areas, including improving policies and plans for responding to individuals in mental health crises; significantly expanding the annual in-service training provided to officers; increasing access to mental health support services for officers; implementing better policies regarding use of force; and enhancing review and analysis of use of force incidents. Reforms in other areas remain overdue, including the need for:

- Clear prohibitions against sexual misconduct by CPD members.
- Policies regarding investigations of officer-involved shootings and deaths, as well as interacting with youth and children, members of religious communities, individuals with limited English proficiency, and people with disabilities.
- Implementation of data collection and analysis systems to improve crime-reduction strategies, identify concerns in use-of-force incidents, and measure accountability and supervisory effectiveness.
- Seeking and incorporating community input on its use-of-force, school resource officer, and accountability policies.

The monitor also found that the Civilian Office of Police Accountability and CPD remain out of compliance with most of the accountability and transparency mandates, including meeting less than 20% of their accountability-related consent decree obligations assessed in the report.

Becoming effective in early 2019, the consent decree between the city of Chicago and state of Illinois mandates sweeping reforms that touch on many aspects of CPD's operations, all overseen by an independent monitor and federal judge. The Attorney General's office is responsible for reviewing and approving most of CPD's reform efforts, as well for enforcing the consent decree when it is violated. The consent decree is expected to remain in place for several years.

To find more information, visit the Attorney General's consent decree website.

Return to March 2021 Press Releases

June 1, 2022

ATTORNEY GENERAL RAOUL FILES FIRST-EVER HATE CRIME LAWSUIT AFTER LYNCHED EFFIGY USED FOR ALLEGED INTIMIDATION

Chicago — Attorney General Kwame Raoul announced the office's first-ever hate crime lawsuit, which was filed against two white Carroll County residents who allegedly spent months intimidating their neighbor, who is a Black man. Raoul alleges the harassment culminated with the defendants using a noose to lynch an effigy of their neighbor from a tree in their front yard.

Attorney General Raoul filed the lawsuit in the 15th Judicial Circuit, Carroll County against Chad Hampton, 45, of Victoria, Illinois and his mother, Cheryl Hampton, 67, of Streator, Illinois. Raoul's complaint alleges the two committed a hate crime by intimidation and disorderly conduct, and the lawsuit seeks civil penalties and equitable relief. Separately, the Carroll County State's Attorney's office has charged Chad Hampton with criminal destruction of property and Cheryl Hampton with criminal harassment of a witness.

"Our complaint alleges the defendants intentionally used the shameful history of lynching and racism in America to terrorize and instill fear in their next-door neighbor simply because he is Black. No one should be subjected to this kind of hate," Raoul said. "I am committed to continuing to partner with law enforcement agencies across Illinois to prosecute hate crimes and send a message that hate and bigotry of any kind are not welcome and will not be tolerated."

According to Raoul's lawsuit, Chad and Cheryl Hampton allegedly engaged in months of racist behavior aimed at intimidating their neighbor, Gregory Johnson. For instance, the defendants displayed the racial slur, "n-----," in front of a Confederate flag in a window directly facing the victim's home. Raoul also alleges Chad Hampton had previously displayed swastikas in direct view of Johnson's home. Attorney General Raoul alleges the escalating harassment came to a head with the Hamptons using a noose to hang a bound and chained effigy of a Black man made to resemble Johnson from a tree directly in view of Johnson's home.

"I looked out of my new home at a Black-faced mannequin shackled and lynched on a tree branch, the N-word scrawled upon a window, and swastikas," Gregory Johnson said. "Our American flag was replaced with their Confederate flag. Have we not come any farther than this?

This lawsuit is about tearing off the shackles that still restrain us to this day. It's about never giving up on the mission of our United States Constitution. We, as a nation, are better than this."

Attorney General Raoul filed the lawsuit following a hate crimes investigation by his office's Civil Rights Bureau with assistance by the Carroll County State's Attorney's office, the city of Savanna, and the Savanna Police Department. The case marks the first time Raoul has utilized expanded authority granted to his office under a 2018 amendment to the Illinois Hate Crimes Act that allows for civil lawsuits against perpetrators of hate crimes.

The public is warned that the complaint contains images that may be disturbing and that the defendants are presumed innocent of any criminal charges until proven guilty in a court of law.

The Attorney General's Civil Rights Bureau enforces state and federal civil rights laws prohibiting hate crimes and discrimination in Illinois. Members of the public are encouraged to report discrimination or hate crimes by emailing civilrights@ilag.gov or by calling the Civil Rights Hotline at 1-877-581-3692.

The case is being handled by Public Interest Division Chief Christopher G. Wells, Bureau Chief Amy Meek and Assistant Attorney General Alison Hill for Raoul's Civil Rights Bureau, and Assistant Attorney General Elizabeth Jordan for Raoul's Special Litigation Bureau.

Return to May 2022 Press Releases

August 5, 2022

ATTORNEY GENERAL RAOUL JOINS COALITIONS PROTECTING RIGHTS OF LGBTQ+ STUDENTS

Legal Briefs Seek to Protect Transgender Rights, Oppose Florida's "Don't Say Gay" Law

Chicago — Attorney General Kwame Raoul joined two separate coalitions of attorneys general supporting LGBTQ+ students against discrimination in the classroom, filing legal briefs opposing an Indiana school district's efforts to bar a transgender student from using the restroom consistent with the student's gender identity and against Florida's controversial "Don't Say Gay" law, which limits classroom discussions and has serious implications for LGBTQ+ students.

"Across the country, we are seeing increased attacks on the rights of LGBTQ+ youth," Raoul said. "Discrimination has no place in the classroom – period. I will continue to work with fellow attorneys general from across the country to stand up for the rights of all students and will vehemently oppose unjust policies that jeopardize the education and emotional and physical well-being of LGBTQ+ students."

Raoul joined a coalition of 22 attorneys general in filing an amicus brief in the case A.C. v. Metropolitan School District of Martinsville opposing the Indiana school district's efforts to bar a 13-year-old transgender male student from using the boys' restroom. The brief — filed in the U.S. Court of Appeals for the 7th Circuit — argues for the court to affirm a lower court ruling requiring the Metropolitan School District of Martinsville to allow the student to use the boys' bathroom.

Raoul and the coalition argue that preventing a transgender student from using a school restroom consistent with the student's gender identity violates Title IX of the Education Amendments of 1972 by denying transgender boys and girls access to the same common restrooms that other boys and girls may use. The amicus brief also points out that inclusive policies that maintain sex-segregated spaces while permitting transgender people to use a facility that aligns with their gender identity help to ease the stigma transgender people often experience, with positive effects for their educational and health outcomes. The attorneys' general amicus brief demonstrates that protecting transgender people from discrimination yields broad benefits without compromising privacy or safety, and that nondiscriminatory restroom policies produce important benefits and pose no safety concerns.

Joining Raoul in filing the brief are the attorneys general of California, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont and Washington.

Raoul also joined a separate coalition of 16 attorneys general opposing Florida's recently-enacted "Don't Say Gay" law which prevents classroom discussion of sexual orientation or gender identity, posing a serious threat to LGBTQ+ students and families. Florida's new law outlaws "classroom instruction" on sexual orientation or gender identity in kindergarten through the third grade, while also requiring the state education agency to write new classroom instructions for standards that must be followed by fourth through 12th grade teachers. The new law does not, however, define many of its key terms like "classroom instruction." Out of an abundance of caution, Florida instructors have already begun censoring themselves, as the law allows a parent to bring a civil claim against a school district to enforce its vague prohibitions.

Raoul and the coalition argue in their brief that the Florida law is extreme and causes significant harms to students, parents, teachers and other states. The coalition notes non-inclusive educational environments have severe negative health impacts on LGBTQ+ students, resulting in increased rates of mental health disorders and suicide attempts. These harms extend to youth not just in Florida but throughout the country.

A group of students, parents, teachers, and organizations challenged the new law in federal district court, seeking to prevent its enforcement and alleging that it violates, among other things, the Equal Protection Clause and the First Amendment.

Joining Raoul in filing the brief are the attorneys general of California, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New York and Oregon.

Return to August 2022 Press Releases

TOP

EFILED
5/31/2022 11:41 AM
CIRCUIT CLERK
PATRICIA A. HIHER

IN THE FIFTEENTH JUDICIAL CIRCUIT
CARROLL COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS, *ex rel*. KWAME RAOUL, Attorney General of Illinois, Plaintiff, v. CHERYL HAMPTON and CHAD HAMPTON, Defendants.	Case No. 2022LA4 **JURY TRIAL DEMANDED**

COMPLAINT

Plaintiff, the People of the State of Illinois, by and through their attorney, Kwame Raoul, Attorney General of Illinois, brings this civil action for violations of the Illinois Hate Crime Statute, 720 ILCS 5/12-7.1, against Defendants Cheryl Hampton and Chad Hampton (collectively, the "Hamptons" or "Defendants"). In support of this complaint, Plaintiff states as follows:

NATURE OF PLAINTIFF'S CLAIMS

1. Cheryl Hampton and her adult son Chad Hampton, both of whom are white, committed a hate crime against their Black next-door neighbor, Gregory Johnson ("Johnson"), by lynching an effigy of Johnson in a tree in plain view of Johnson's home in order to intimidate him.

2. The life-size effigy resembled Johnson by design. The head consisted of a mask intentionally painted black and a curly wig altered to resemble Johnson's hair. The stuffed clothing used for the body resembled Johnson's clothing. A noose made of rope hung the effigy by the neck from a tree a few feet from Johnson's property. A large chain bound the effigy's hands and torso. To further terrorize and intimidate Johnson, in one of their windows facing Johnson's home, the

Hamptons displayed the word "NIGGER" (hereafter, "n****r" or the "n-word") in black marker on the glass with a Confederate flag draped behind the slur.

3. The Hamptons took these actions for a specific, illegal purpose: to intimidate Johnson into silence. Prior to the appearance of the lynched effigy in October 2020, Johnson had repeatedly contacted the local police department in Savanna, Illinois, about the Hamptons' aggressive conduct toward him. A few months prior, in July 2020, Johnson notified the police about damage to a fence on his property after Cheryl Hampton told him she would tear the fence down. Johnson again contacted the Savanna police after witnessing Chad Hampton purposefully spray weed killer on large portions of Johnson's lawn, damaging the grass. After being charged with a misdemeanor for damaging Johnson's property, Chad Hampton spray-painted large, black swastikas on a garage facing Johnson's property in September 2020. The Savanna police again visited the Hampton residence to ask Chad Hampton to remove the swastikas. Less than a month later, on October 19, 2020, Chad Hampton was arraigned on his misdemeanor charge. Within a week of the arraignment, the lynched effigy of Johnson appeared hanging from a tree next to Johnson's property.

4. When the Savanna police visited the Hamptons' residence about the effigy, Cheryl Hampton openly admitted that the display targeted Johnson. When a responding police officer asked Cheryl Hampton why she hung the figure, she responded that she was tired of Johnson complaining about everything she and her son did. Even after authorities asked Cheryl Hampton to move the lynched effigy out of view of Johnson's home, or at least to change its appearance, she refused. After consulting with the Carroll County State's Attorney, the police arrested Cheryl Hampton for intimidation of a witness, a felony. The police took custody of the effigy as evidence. A few days later, on November 1, 2020, Chad Hampton called the Savanna Police Department

seeking to file an official complaint for damage to his property because the police had cut down the lynched effigy.

5. The Hamptons created and hung the effigy as a threat of racial violence against Johnson, because he contacted law enforcement about the Hamptons. The Hamptons intentionally invoked the long, vicious legacy of lynched Black men in America to terrorize Johnson because he is a Black man. The Hamptons intended for this threat of racial violence to stop Johnson from reporting their conduct to law enforcement and assisting in the prosecution of Chad Hampton's criminal case. The Hamptons' conduct violates multiple provisions of the Illinois Criminal Code, including intimidation, 720 ILCS 5/12-6(a)(1), and disorderly conduct, 720 ILCS 5/26-1, both of which are predicate offenses under the Illinois Hate Crime Statute, 720 ILCS 5/12-7.1. Because the Hamptons committed these predicate offenses based in part on Johnson's race, they committed hate crimes under Illinois law, 720 ILCS 5/12-7.1.

6. A 2018 amendment to the Illinois Hate Crime Statute authorizes the Attorney General to bring a civil action on behalf of the People of Illinois for specified hate crime offenses independent of any criminal prosecution. 720 ILCS 5/12-7.1(c). In the name of the People of Illinois, the Attorney General brings this civil action against Cheryl Hampton and Chad Hampton for equitable relief, civil penalties, and other appropriate relief as provided in 720 ILCS 5/12-7.1(c).

PARTIES

7. The Attorney General enforces laws protecting civil rights and prohibiting race discrimination. 15 ILCS 210/1. The Attorney General enforces the public policy of the State of Illinois to secure for all its residents the freedom from discrimination against any individual because of their race. 775 ILCS 5/1-102(A). Illinois law authorizes the Attorney General to "bring

a civil action in the name of the People of the State" for an injunction, civil penalties, and other equitable relief for specified violations of the Illinois Hate Crimes Statute, 720 ILCS 5/12-7.1(c). The Attorney General brings this civil action on behalf of the People of Illinois as Plaintiff. The Attorney General brings this action after consultation with the Carroll County State's Attorney. *Id.*

8. At all times relevant to this complaint, Defendant Cheryl Hampton was a resident of Savanna, Illinois, located in Carroll County. At all times relevant to this complaint, Cheryl Hampton was Johnson's next-door neighbor in Savanna. Upon information and belief, Cheryl Hampton is no longer Johnson's next-door neighbor, though she remains a resident of Illinois.

9. At all times relevant to this complaint, Defendant Chad Hampton was a resident of Savanna, Illinois. At all times relevant to this complaint, Chad Hampton was Johnson's next-door neighbor in Savanna. Upon information and belief, Chad Hampton is no longer Johnson's next-door neighbor, though he remains a resident of Illinois.

JURISDICTION AND VENUE

10. The Attorney General of Illinois brings this action under 720 ILCS 5/12-7.1(c).

11. Venue is proper in the Fifteenth Judicial Circuit because the events giving rise to the causes of action occurred in Savanna, Illinois.

FACTUAL ALLEGATIONS

12. At all times relevant to this complaint, Cheryl Hampton and her adult son, Chad Hampton, lived in Savanna, Illinois. The Hamptons rented and resided in a single-family home with a yard in Savanna ("Hampton Rental Property").

13. The Hamptons are white.

14. At all times relevant to this complaint, Gregory Johnson lived next door to the Hamptons in a single-family home ("Johnson Property") in Savanna. Johnson owns the Johnson Property, which consists of his residence and the underlying residential lot on which it rests.

15. Johnson is Black.

16. In approximately July 2020, Johnson noticed damage to his lawn, which he believed was caused by someone using a riding mower to cross over the property line from the Hampton Rental Property. After noticing the damage, Johnson erected an orange retractable fence on his property to prevent a lawn mower from crossing from the Hampton Rental Property onto his property.

17. On or about July 11, 2020, Cheryl Hampton told Johnson to remove the fence. Johnson declined to do so. Johnson told Cheryl Hampton to have the owner of the Hampton Rental Property contact him regarding any concerns about property-line issues. Cheryl Hampton told Johnson that she would tear the fence down.

18. The next day, on July 12, 2020, Johnson noticed his fence was cut in half. Johnson called the Savanna Police Department to file a police report.

19. Savanna Police Lieutenant Daniel Nevills responded to the call and spoke to Cheryl Hampton. On or around this time, Cheryl Hampton told Lt. Nevills in reference to her dispute with Johnson that she did not want "n****rs" living next to her.

20. The intimidating and threatening nature of the epithet used by Cheryl Hampton, and the terrorizing impact it can have given its historical context, are well recognized. *See, e.g.*, *Virginia v. Black*, 538 U.S. 343, 355 (2003) (describing how the Ku Klux Klan burned crosses in front of a proposed housing project while declaring "we are here to keep [n-words] out of your town"); *Robinson v. Perales*, 894 F.3d 818, 828 (7th Cir. 2018) (noting that "in light of its

threatening use throughout American history, this particular epithet can have a highly disturbing impact on the listener").

21. During the conversation between Lt. Nevills and Cheryl Hampton on July 12, 2020, Chad Hampton walked to the front of the Hampton Rental Property and raised a Confederate flag on the flagpole in front of the Hamptons' house.

22. Upon information and belief, Chad Hampton displayed the Confederate flag in view of Johnson's home because of the Confederate flag's historical and present-day association with white supremacist ideology and beliefs.

23. That same day, after Lt. Nevills left, Johnson witnessed Chad Hampton spraying Johnson's lawn with weed killer, damaging the grass. Johnson called the Savanna police a second time. Johnson also took photographs of Chad Hampton spraying the lawn. Johnson subsequently noticed that the weed killer destroyed the grass on an extended strip of his lawn along the fence next to the Hampton Rental Property.

24. In or about July 2020, Johnson hired a company to survey the property where his lawn had been damaged by Chad Hampton spraying weed killer. Johnson commissioned the survey in order to demonstrate that the fence and the damaged portion of the lawn were part of the Johnson Property, not the Hampton Rental Property.

25. On or about August 30, 2020, Johnson contacted the Savanna police to report that his retractable fence had again been pulled up and damaged.

26. On September 22, 2020, the Carroll County Sheriff issued a summons against Chad Hampton for a misdemeanor charge of criminal damage to property, 720 ILCS 5/21-1, for his prior spraying of weed killer on Johnson's lawn. Johnson was listed as the complaining witness.

27. On or about September 23, 2020, Chad Hampton spray-painted large swastikas with black paint on the garage of the Hampton Rental Property. The swastikas were in direct view of Johnson's home. Johnson was upset by the swastikas. Johnson took photographs of the swastikas and notified the Savanna police.

28. Upon information and belief, Chad Hampton displayed the swastikas in view of Johnson's property because of the swastika's historical and present-day association with white supremacist ideology and beliefs.

29. On October 19, 2020, Chad Hampton appeared at a court hearing for his arraignment on the misdemeanor charge of criminal damage to property stemming from his spraying of weed killer on Johnson's lawn.

30. Within a week of Chad Hampton's arraignment, Johnson first observed what he described to the Savanna police as a black "dummy" hanging by a noose from a tree on the Hampton Rental Property. Johnson understood the hanging figure to be an effort by the Hamptons to intimidate him.

31. On the morning of Monday, October 26, 2020, Johnson went to the Savanna Police Department to report the hanging figure on the Hampton Rental Property. Johnson met with Lt. Nevills. Johnson stated to Lt. Nevills that the Hamptons should be arrested and charged with hate crimes.

32. Later that day, October 26, 2020, Lt. Nevills went to observe the Hampton Rental Property from the adjacent road. Lt. Nevills observed the "dummy" in a tree between the Hamptons' house and Johnson's house. The "dummy" was hanging by the neck from a rope fashioned into a noose. Lt. Nevills took photographs of the "dummy". The photographs taken by Lt. Nevills are attached to this complaint as Group Exhibit 1.

33. The hanging figure photographed by Lt. Nevills had a white rubber mask that had been painted black—similar to Johnson's skin color.

34. The hanging figure photographed by Lt. Nevills had a curly wig on its head. Then, as now, Johnson has curly hair. According to Lt. Nevills, the wig had black hair that appeared to have been spray-painted in parts with white spray-paint. Then, as now, Johnson has "salt-and-pepper" hair—a mixture of black, white, and gray.

35. The body of the hanging figure photographed by Lt. Nevills had two arms and two legs made of clothing stuffed with other material. The legs consisted of stuffed jeans. The torso and arms consisted of a stuffed beige zip-up jacket. Then, as now, Johnson is known to wear similar clothing.

36. The body of the hanging figure photographed by Lt. Nevills had a large chain wrapped around the hands, over the shoulders, and behind the neck.

37. After observing the hanging figure, Lt. Nevills went to the Hamptons' door to try to speak with them. No one answered.

38. Seeing the hanging figure caused Johnson great distress. He interpreted the figure as a threat on his life and his personal safety.

39. Over the course of October 26, 2020, Savanna officials, including the Mayor of Savanna, Chris Lain ("Mayor Lain"), received multiple complaints about the hanging figure on the Hampton Rental Property. According to Lt. Nevills, reports of the hanging figure had "blown up" on social media, including, specifically, Facebook.

40. In the afternoon of October 26, 2020, Savanna Police Officer Cory Drowns spoke with Cheryl Hampton at her house about the hanging figure. Cheryl Hampton told Officer Drowns that she had hung it herself in the tree on the Hampton Rental Property. Officer Drowns also asked

Hampton about a Confederate flag that had been displayed on the Hampton Rental Property. Cheryl Hampton told Officer Drowns that the flag was hers and that she had owned it for years. Cheryl Hampton also told Officer Drowns that she would file a harassment suit against Johnson if his complaints continued.

41. On or about the afternoon of October 27, 2020, Lt. Nevills and Mayor Lain went to the Hamptons' residence to speak with them about the hanging figure. As Lt. Nevills approached the house, he observed the hanging figure in the same location where he had photographed it the previous day.

42. At that time, Lt. Nevills also observed that a window in the Hamptons' house that faced Johnson's house displayed a Confederate flag draped across it. On the glass of the same window, Lt. Nevills observed the word "n****r" written in large black letters. Lt. Nevills took photographs of this window display, which are attached to this complaint as Group Exhibit 2.

43. Lt. Nevills and Mayor Lain knocked on the Hamptons' front door. Cheryl Hampton answered the door.

44. Mayor Lain asked Cheryl Hampton why the figure was hanging from the tree. Cheryl Hampton responded that she was tired of Johnson complaining about everything she and her son do.

45. Lt. Nevills told Cheryl Hampton that the hanging figure was in poor taste at the very least and looked to be a racist symbol. Cheryl Hampton claimed the hanging figure was a Halloween decoration.

46. Lt. Nevills asked whether Cheryl Hampton would move the hanging figure to the other side of the property, so that the Black man living next door would not have to see it every day. Cheryl Hampton refused this request.

47. Lt. Nevills offered to get white paint to re-paint the figure's face and a different wig. Cheryl Hampton refused this offer.

48. Cheryl Hampton told Lt. Nevills that she hung the figure in the tree herself. Cheryl Hampton told Lt. Nevills that she was mad that her son, Chad Hampton, had had to take off of work for his court case involving Johnson.

49. Mayor Lain again asked Cheryl Hampton to take down the hanging figure. She refused.

50. Lt. Nevills informed Cheryl Hampton that he intended to consult with the Carroll County State's Attorney's Office about potential charges and that he would likely return. Lt. Nevills and Mayor Lain departed from the Hamptons' residence.

51. Later that day, October 27, 2020, after consulting with the Carroll County State's Attorney's Office, Lt. Nevills returned to the Hamptons' residence with Savanna Police Officer Dustin Lawson. Lt. Nevills and Officer Lawson arrested Cheryl Hampton for harassment of a witness, 720 ILCS 5/32-4(a), a class 2 felony under Illinois law.

52. On or about October 27, 2020, Officer Lawson and Lt. Nevills cut down the hanging figure from the tree on the Hampton Rental Property. Officer Lawson and Lt. Nevills took custody of the figure as evidence of the criminal charge against Cheryl Hampton. The size and weight of the figure required two adults to work together to safely take it down. Based on the size, weight, and location where the figure had been hung, Lt. Nevills believed that Cheryl Hampton could not have hung it by herself. At that time, Cheryl Hampton was approximately 5'2" tall and 65 years old.

53. On November 1, 2020, Chad Hampton contacted the Savanna Police Department. Chad Hampton indicated that he wanted to file a complaint against Lt. Nevills for property damage because Lt. Nevills had cut down the hanging figure from the tree outside his home.

54. As of the date of this complaint, Chad Hampton has not been criminally charged in conjunction with the hanging figure. His misdemeanor charge for criminal damage to property remains pending.

55. As of the date of this complaint, Cheryl Hampton's felony charge for witness intimidation remains pending.

56. By using a noose to hang a human-like figure with a face painted black to resemble Johnson's skin, a curly wig painted to resemble Johnson's hair, clothes resembling Johnson's, and chains binding the figure's wrists, the Hamptons made a threat of racial violence against Johnson. The Hamptons hung this effigy in a location where they knew Johnson would see it. Even after being asked to remove the effigy, change its appearance, or change its location, Cheryl Hampton refused. Later, after police took custody of the effigy as evidence, Chad Hampton objected to its removal.

57. The Hamptons used a noose to hang the effigy for a specific reason: to evoke the historical legacy of racially-motivated lynching of Black men in the United States.

58. The Hamptons chose to bind the hands and neck of the effigy with chains for a specific reason: to evoke the historical enslavement of Black people in the United States.

59. The Hamptons chose to lynch a chained effigy of Johnson because they intended to intimidate him based on his race. In doing so, the Hamptons perpetrated a hate crime against Johnson for which they may be held liable in this civil action.

COUNT I
Cheryl Hampton's Commission of a Hate Crime by Intimidation in Violation of 720 ILCS 5/12-7.1(a) & 720 ILCS 5/12-6(a)(1)

60. The People of the State of Illinois, through the Attorney General restate and re-allege Paragraphs 1 through 59 of this Complaint as though fully set forth herein.

61. Through the actions alleged in this complaint, Cheryl Hampton engaged in intimidation in violation of 720 ILCS 5/12-6(a)(1).

62. Through the actions alleged in this complaint, Cheryl Hampton communicated threats of physical harm to Gregory Johnson with the intent to cause Johnson to perform or to omit performance of an act. Specifically, Cheryl Hampton intended to cause Johnson to stop: communicating with law enforcement regarding her conduct and the conduct of her son, Chad Hampton; and assisting with the prosecution of Chad Hampton for criminal damage to Johnson's property. Cheryl Hampton had no lawful authority at any relevant time to inflict physical harm on Johnson.

63. Under the Illinois Hate Crimes Statute, 720 ILCS 5/12-7.1(a), a person commits a hate crime when, by reason of the actual or perceived race or color of another individual and regardless of the existence of any other motivating factor or factors, he or she commits intimidation as defined in paragraph (a)(1) of Section 12-6 of the Criminal Code. 720 ILCS 5/12-7.1(a); 720 ILCS 5/12-6(a)(1).

64. Through the actions alleged in this complaint, Cheryl Hampton committed intimidation in violation of 720 ILCS 5/12-6(a)(1) against Gregory Johnson by reason of Johnson's race, in further violation of 720 ILCS 5/12-7.1(a).

WHEREFORE, the People of the State of Illinois, through the Attorney General, request that this Court enter judgment in their favor and against Cheryl Hampton on this Count I and enter an order:

Declaratory Relief

A. Declaring that Cheryl Hampton violated the Illinois Hate Crime Statute by engaging in intimidation against Gregory Johnson based in part on Johnson's race in violation of 720 ILCS 5/12-7.1(a) & 720 ILCS 5/12-6(a)(1);

Injunctive Relief

B. Enjoining Cheryl Hampton from engaging in conduct toward Gregory Johnson that constitutes a hate crime, discrimination based on race, or unlawful intimidation or harassment, and from assisting or abetting any other individual engaging in such unlawful conduct;

C. Enjoining Cheryl Hampton from engaging in conduct toward any person that violates 720 ILCS 5/12-7.1(a);

D. Enjoining Cheryl Hampton from having any contact, including nonphysical contact and electronic communication as defined in Section 26.5-0.1 of the Illinois Criminal Code, with Gregory Johnson, whether directly, indirectly, or through third parties, regardless of whether those third parties know of the Court's order;

E. Requiring Cheryl Hampton to stay away from the Johnson Property and any other property owned, possessed, leased, kept, or held by Johnson, and forbidding Cheryl Hampton from damaging or assisting any third party in damaging any such property;

Civil Penalties

F. Requiring Cheryl Hampton to pay a civil penalty of $25,000 for each violation of 720 ILCS 5/12-7.1(a); and

G. Ordering such other relief that the Court deems just and appropriate.

COUNT II
Chad Hampton's Commission of a Hate Crime by Intimidation in Violation of 720 ILCS 5/12-7.1(a) & 720 ILCS 5/12-6(a)(1)

65. The People of the State of Illinois, through the Attorney General, restate and re-allege Paragraphs 1 through 64 of this Complaint as though fully set forth herein.

66. Through the actions alleged in this complaint, Chad Hampton engaged in intimidation in violation of 720 ILCS 5/12-6(a)(1).

67. Through the actions alleged in this complaint, Chad Hampton communicated threats of physical harm to Gregory Johnson with the intent to cause Johnson to perform or to omit performance of an act. Specifically, Chad Hampton intended to cause Johnson to stop: communicating with law enforcement regarding his conduct and the conduct of his mother, Cheryl Hampton; and assisting with his prosecution for criminal damage to Johnson's property. Chad Hampton had no lawful authority at any relevant time to inflict physical harm on Johnson.

68. Under the Illinois Hate Crimes Statute, 720 ILCS 5/12-7.1(a), a person commits a hate crime when, by reason of the actual or perceived race or color of another individual and regardless of the existence of any other motivating factor or factors, he or she commits intimidation as defined in paragraph (a)(1) of Section 12-6 of the Criminal Code. 720 ILCS 5/12-7.1(a).

69. Through the actions alleged in this complaint, Chad Hampton committed intimidation in violation of 720 ILCS 5/12-6(a)(1) against Gregory Johnson by reason of Johnson's race, in further violation of 720 ILCS 5/12-7.1(a).

WHEREFORE, the People of the State of Illinois, through the Attorney General, request that this Court enter judgment in their favor and against Chad Hampton on this Count II and enter an order:

Declaratory Relief

A. Declaring that Chad Hampton violated the Illinois Hate Crime Statute by engaging in intimidation against Gregory Johnson based in part on Johnson's race in violation of 720 ILCS 5/12-7.1(a) & 720 ILCS 5/12-6(a)(1);

Injunctive Relief

B. Enjoining Chad Hampton from engaging in conduct toward Gregory Johnson that constitutes a hate crime, discrimination based on race, or unlawful intimidation or harassment, and from assisting or abetting any other individual engaging in such unlawful conduct;

C. Enjoining Chad Hampton from engaging in conduct toward any person that violates 720 ILCS 5/12-7.1(a);

D. Enjoining Chad Hampton from having any contact, including nonphysical contact and electronic communication as defined in Section 26.5-0.1 of the Illinois Criminal Code, with Gregory Johnson, whether directly, indirectly, or through third parties, regardless of whether those third parties know of the Court's order;

E. Requiring Chad Hampton to stay away from the Johnson Property and any other property owned, possessed, leased, kept, or held by Johnson, and forbidding Chad Hampton from damaging or assisting any third party in damaging any such property;

Civil Penalties

F. Requiring Chad Hampton to pay a civil penalty of $25,000 for each violation of 720 ILCS 5/12-7.1(a); and

G. Ordering such other relief that the Court deems just and appropriate.

COUNT III
Cheryl Hampton's Commission of a Hate Crime by Disorderly Conduct in Violation of 720 ILCS 5/12-7.1(a) & 720 ILCS 5/26-1

70. The People of the State of Illinois, through the Attorney General restate and re-allege Paragraphs 1 through 69 of this Complaint as though fully set forth herein.

71. Through the actions alleged in this complaint, Cheryl Hampton engaged in disorderly conduct in violation of 720 ILCS 5/26-1.

72. Through the actions alleged in this complaint, Cheryl Hampton communicated threats of physical harm and racial slurs to Gregory Johnson in such unreasonable manner as to alarm or disturb Johnson and to provoke a breach of the peace.

73. Under the Illinois Hate Crimes Statute, 720 ILCS 5/12-7.1(a), a person commits a hate crime when, by reason of the actual or perceived race or color of another individual and regardless of the existence of any other motivating factor or factors, he or she commits disorderly conduct as defined in 720 ILCS 5/26-1.

74. Through the actions alleged in this complaint, Cheryl Hampton committed disorderly conduct in violation of 720 ILCS 5/26-1 against Gregory Johnson by reason of Johnson's race, in further violation of 720 ILCS 5/12-7.1(a).

WHEREFORE, the People of the State of Illinois, through the Attorney General, request that this Court enter judgment in their favor and against Cheryl Hampton on this Count III and enter an order:

Declaratory Relief

A. Declaring that Cheryl Hampton violated the Illinois Hate Crime Statute by engaging in disorderly conduct against Gregory Johnson based in part on Johnson's race in violation of 720 ILCS 5/12-7.1(a) & 720 ILCS 5/12-6(a)(1);

Injunctive Relief

B. Enjoining Cheryl Hampton from engaging in conduct toward Gregory Johnson that constitutes a hate crime, discrimination based on race, or unlawful intimidation or harassment, and from assisting or abetting any other individual engaging in such unlawful conduct;

C. Enjoining Cheryl Hampton from engaging in conduct toward any person that violates 720 ILCS 5/12-7.1(a);

D. Enjoining Cheryl Hampton from having any contact, including nonphysical contact and electronic communication as defined in Section 26.5-0.1 of the Illinois Criminal Code, with Gregory Johnson, whether directly, indirectly, or through third parties, regardless of whether those third parties know of the Court's order;

E. Requiring Cheryl Hampton to stay away from the Johnson Property and any other property owned, possessed, leased, kept, or held by Johnson, and forbidding Cheryl Hampton from damaging or assisting any third party in damaging any such property;

Civil Penalties

F. Requiring Cheryl Hampton to pay a civil penalty of $25,000 for each violation of 720 ILCS 5/12-7.1(a); and

G. Ordering such other relief that the Court deems just and appropriate.

COUNT IV
Chad Hampton's Commission of a Hate Crime by Disorderly Conduct in Violation of 720 ILCS 5/12-7.1(a) & 720 ILCS 5/12-6(a)(1)

75. The People of the State of Illinois, through the Attorney General, restate and re-allege Paragraphs 1 through 74 of this Complaint as though fully set forth herein.

76. Through the actions alleged in this complaint, Chad Hampton engaged in disorderly conduct in violation of 720 ILCS 5/26-1.

77. Through the actions alleged in this complaint, Chad Hampton communicated threats of physical harm and racial slurs to Gregory Johnson in such unreasonable manner as to alarm or disturb Johnson and to provoke a breach of the peace.

78. Under the Illinois Hate Crimes Statute, 720 ILCS 5/12-7.1(a), a person commits a hate crime when, by reason of the actual or perceived race or color of another individual and regardless of the existence of any other motivating factor or factors, he or she commits disorderly conduct as defined in 720 ILCS 5/26-1.

79. Through the actions alleged in this complaint, Chad Hampton committed disorderly conduct in violation of 720 ILCS 5/26-1 against Gregory Johnson by reason of Johnson's race, in further violation of 720 ILCS 5/12-7.1(a).

WHEREFORE, the People of the State of Illinois, through the Attorney General, request that this Court enter judgment in their favor and against Chad Hampton on this Count IV and enter an order:

Declaratory Relief

A. Declaring that Chad Hampton violated the Illinois Hate Crime Statute by engaging in disorderly conduct against Gregory Johnson based in part on Johnson's race in violation of 720 ILCS 5/12-7.1(a) & 720 ILCS 5/12-6(a)(1);

Injunctive Relief

B. Enjoining Chad Hampton from engaging in conduct toward Gregory Johnson that constitutes a hate crime, discrimination based on race, or unlawful intimidation or harassment, and from assisting or abetting any other individual engaging in such unlawful conduct;

C. Enjoining Chad Hampton from engaging in conduct toward any person that violates 720 ILCS 5/12-7.1(a);

D. Enjoining Chad Hampton from having any contact, including nonphysical contact and electronic communication as defined in Section 26.5-0.1 of the Illinois Criminal Code, with Gregory Johnson, whether directly, indirectly, or through third parties, regardless of whether those third parties know of the order;

E. Requiring Chad Hampton to stay away from the Johnson Property and any other property owned, possessed, leased, kept, or held by Johnson, and forbidding Chad Hampton from damaging or assisting any third party in damaging any such property;

Civil Penalties

F. Requiring Chad Hampton to pay a civil penalty of $25,000 for each violation of 720 ILCS 5/12-7.1(a); and

G. Ordering such other relief that the Court deems just and appropriate.

THE PEOPLE OF THE STATE OF ILLINOIS, *ex rel*. KWAME RAOUL, Attorney General of Illinois

Dated: March 31, 2022

By: */s/ Alison V. Hill*

Alison V. Hill
Assistant Attorney General
Civil Rights Bureau
Office of the Attorney General of Illinois

Amy Meek (6316325)
Bureau Chief
Civil Rights Bureau

Elizabeth Jordan (6320871)
Assistant Attorney General
Special Litigation Bureau

Christopher G. Wells (6304265)
Division Chief
Public Interest Division

Office of the Attorney General of Illinois
100 West Randolph Street
Chicago, Illinois 60601
(312) 814-3000
ARDC: 6327029

THIS CASE IS SET FOR PROGRESS CALL
BEFORE JUDGE Kane
ON Thursday THE 1st DAY OF
September 20 22
ALL PARTIES OR THEIR COUNSEL ARE TO BE
PRESENT BEFORE THE COURT AT THIS PROGRESS
CALL AT 9:30a M FAILURE TO
APPEAR MAY RESULT IN DISMISSAL OR
DEFAULT.
CLERK OF THE CIRCUIT COURT

GROUP EXHIBIT 1

GROUP EXHIBIT 2

22-1786

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 and FRED KUTRUFF, in his official capacity as Principal of John R. Wooden Middle School,
Defendants-Appellants.

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

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

ROBERT W. FERGUSON
Attorney General
State of Washington
COLLEEN M. MELODY
LANE POLOZOLA
NEAL LUNA
Assistant Attorneys General

P.O. Box 40100
Olympia, Washington 98504
(360) 753-6200

LETITIA JAMES
Attorney General
State of New York
BARBARA D. UNDERWOOD
Solicitor General
JUDITH N. VALE
Deputy Solicitor General
ANDREW W. AMEND
Assistant Deputy Solicitor General
MARK S. GRUBE
Assistant Solicitor General
of Counsel
28 Liberty Street
New York, New York 10005
(212) 416-8028

(Counsel listing continues on signature pages.)

Dated: August 2, 2022

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases **Page(s)**

Cases **Page(s)**

Laws

Federal

California

Laws **Page(s)**

Laws **Page(s)**

Laws **Page(s)**

Minnesota

Nevada

New Hampshire

New Jersey

Laws **Page(s)**

Laws **Page(s)**

Regulations & Rules

Legislative History **Page(s)**

Miscellaneous Authorities

Miscellaneous Authorities **Page(s)**

Miscellaneous Authorities **Page(s)**

Miscellaneous Authorities **Page(s)**

Miscellaneous Authorities **Page(s)**

Miscellaneous Authorities **Page(s)**

Miscellaneous Authorities **Page(s)**

INTERESTS OF THE AMICI STATES

The States of New York, Washington, California, Colorado, Connecticut, Delaware, Hawai'i, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, North Carolina, Oregon, Pennsylvania, Rhode Island, and Vermont, and the District of Columbia, file this brief as amici curiae in support of plaintiff-appellee A.C. *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 on the basis of one's transgender status 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 gender-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—including access to common restrooms—benefits all, without compromising safety or privacy, or imposing significant costs.

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 the Metropolitan School District of Martinsville (District) and its amici characterize the issue. *See* Appellants' Br. (Br.) at 10-18; Amicus Br. of Ind. & 20 Other States (Ind. Br.) at 3-6. Rather, this case challenges the District's policy excluding a transgender male student, A.C., from the boys' bathroom based on his sex assigned at birth, despite A.C. taking medication to suppress menstruation, being known in Indiana state records by a traditionally masculine name, and being referred to as "he" or "him," even by school officials. *See* Br. at 6 n.3. The District's policy violates Title IX of the Education Amendments of 1972 by denying transgender boys and girls access to the same common restrooms that other boys and girls may use. 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 1.6 million people in the United States—including approximately 300,000 youth between the ages of thirteen and seventeen—identify as transgender.[1] Transgender people have been part of cultures worldwide "from antiquity until 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 nearly a quarter century ago. Today, at least twenty-two States and the District of

---

[1] Jody L. Herman et al., *How Many Adults and Youth Identify as Transgender in the United States?* 1 (Williams Inst. 2022) (internet). (For authorities available online, full URLs appear in the table of authorities. All URLs were last visited on August 2, 2022.)

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

Columbia,[3] and at least 225 local governments,[4] offer express protections against discrimination based on gender identity in areas such as education, housing,

---

[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(7) (definition); *id.* § 24-34-402 (employment); *id.* § 24-34-502 (housing); *id.* § 24-34-601 (public accommodations). **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) (housing, employment, access to financial credit, public accommodations); *id.* 5/1-103(O-1) (definition). **Iowa**: Iowa Code § 216.2(10) (definition); *id.* § 216.6 (employment); *id.* § 216.7 (public accommodations); *id.* § 216.8 (housing); *id.* § 216.9 (education). **Kansas**: Kansas Hum. Rts. Comm'n, *Kansas Human Rights Commission Concurs with the U.S. Supreme Court's* Bostock *Decision* (Aug. 21, 2020) (internet) (advising that Kansas laws prohibiting discrimination based on "sex" in "employment, housing, and public accommodation" contexts "are inclusive of LGBTQ and all derivates of 'sex'"). **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). **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). **Minnesota**: Minn. Stat. § 363A.03(44) (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, employment); *id.* § 18A:36-41 (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(Q) (definition); *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,

(*continued on the next page*)

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.

---

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 § 11-24-2 (public accommodations); 28 R.I. Gen. Laws §§ 28-5-6(11), 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(27) (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) (definition); *id.* § 2-1402.11 (employment); *id.* § 2-1402.21 (housing); *id.* § 2-1402.31 (public accommodations); *id.* § 2-1402.41 (education).

[4] Human Rts. Campaign, *Cities and Counties with Non-Discrimination Ordinances That Include Gender Identity* (internet) (current as of January 28, 2021).

[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.*, 140 S. Ct. 1731, 1742-43 (2020).

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

Transgender youth experience levels of discrimination, violence, and harassment that exceed those experienced by their cisgender counterparts.[6] In the 2015 U.S. Transgender Survey (USTS), the largest survey of transgender people to date, 77% of respondents who were known or perceived as transgender in grades K-12 reported negative experiences at school, including being harassed or attacked.[7] More than half of transgender students (54%) reported verbal harassment, almost a quarter (24%) reported suffering a physical attack, and approximately one in eight (13%) reported being sexually assaulted.[8] Another 2015 survey showed that three-fourths of transgender students felt unsafe at school because of their gender expression.[9] More than a quarter of transgender respondents to a survey of LGBTQ teenagers in December 2016 and January

---

[6] Joseph G. Kosciw et al., *The 2019 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Youth in Our Nation's Schools* xxvii, 93 (GLSEN 2020) (internet); *see also* Emily A. Greytak et al., *Harsh Realities: The Experiences of Transgender Youth in Our Nation's Schools* xi (GLSEN 2009) (internet).

[7] Sandy E. James et al., *The Report of the 2015 U.S. Transgender Survey* 131-35 (Nat'l Ctr. for Transgender Equal. 2016) (internet).

[8] *Id.* at 132-33.

[9] Joseph G. Kosciw et al., *The 2015 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Youth in Our Nation's Schools* 84-85 (GLSEN 2016) (internet).

2017 reported being bullied or harassed within the past thirty days.[10] As a consequence of this violence and harassment, transgender students surveyed in 2019 reported feeling less connected to their schools, and had less of a sense of belonging, than other students.[11]

Discrimination against transgender youth—including denial of access to appropriate restroom facilities—can have serious health and academic consequences. 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.[12] Respondents to the 2015 USTS who reported negative experiences in grades K-12 were more likely than other respondents to be under serious psychological distress, to have experienced homelessness, and to have attempted suicide.[13] Transgender people attempt suicide at a rate nearly nine times that of the general population.[14] And a 2016 study found that transgender people who had been denied access to bathroom facilities were approximately 40% more likely to have

---

[10] Human Rts. Campaign Found., *Human Rights Campaign Post-Election Survey of Youth* 8 (2017) (internet).

[11] Kosciw et al., *The 2019 National School Climate Survey*, *supra*, at 95.

[12] *Id.* at 52, 54.

[13] James et al., *2015 U.S. Transgender Survey*, *supra*, at 132.

[14] *Id.* at 114.

attempted suicide than were other transgender people.[15] Similarly, a 2021 study found that 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.[16]

Suicide is not the only health risk faced by transgender youth. For example, the district court found that A.C. "sometimes tries 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.*, No. 21-cv-2965, 2022 WL 1289352, at *2 (S.D. Ind. Apr. 29, 2022). Research shows that A.C.'s experience is not unique. More than four in five (82.1%) of the transgender students surveyed in one study had avoided school restrooms because they felt unsafe or uncomfortable.[17] And 54% of respondents in another study of transgender people reported negative health

---

[15] Kristie L. Seelman, *Transgender Adults' Access to College Bathrooms and Housing and the Relationship to Suicidality*, 63 J. of Homosexuality 1378, 1388 tbl. 2 (2016) (internet).

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

[17] Kosciw et al., *The 2019 National School Climate Survey*, *supra*, at 97 fig. 3.8.

effects from avoiding public restrooms, such as kidney infections and other kidney-related problems.[18]

Discrimination in school settings also negatively affects educational outcomes. A 2019 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.[19] Discriminatory school climates have also been found to exacerbate absenteeism. As the district court found here, the District's policy barring A.C. from using the boys' restroom caused him to be late for class, disrupted his ability to focus in school, worsened his anxiety and depression, made him feel isolated, and made "being at school painful." *See A.C.*, 2022 WL 1289352, at *2, *7 (quotation marks omitted). And a 2019 survey of LGBTQ students found that those who had experienced discrimination in their schools

---

[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) (internet); *see also Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 600, 603, 617 (4th Cir.) (transgender boy suffered painful urinary tract infection after being denied access to boys' restrooms at school), *rehr'g en banc denied*, 976 F.3d 399 (4th Cir. 2020), *cert. denied*, 141 S. Ct. 2878 (2021); *Adams ex rel. Kasper v. School Bd.*, 318 F. Supp. 3d 1293, 1307 & n.28 (M.D. Fla. 2018), *aff'd*, 3 F.4th 1299 (11th Cir.), *and rehr'g en banc granted*, 9 F.4th 1369 (11th Cir. 2021).

[19] Kosciw et al., *The 2019 National School Climate Survey*, *supra*, at 45, 48; *see also* Greytak et al., *Harsh Realities*, *supra*, at 25, 27 fig. 15 (showing that more-frequently harassed transgender students had significantly lower grade point averages than other transgender students).

based on their sexual orientation or gender identity were almost three times as likely to have missed school in the month before the survey because they felt unsafe or uncomfortable (44.1% vs. 16.4%).[20]

Such discrimination inhibits transgender students' ability to learn, to the detriment of the broader community because education advances more than the private interests of students: it prepares young people to contribute to society socially, culturally, and economically. *See, e.g.*, *Brown v. Board of Educ.*, 347 U.S. 483, 493 (1954).

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

As noted above, at least twenty-two States and 225 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. at 10-18) and its amici (*see* Ind. Br. at 3-6), these protections wholly 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—

[20] Kosciw et al., *The 2019 National School Climate Survey*, *supra*, at 49.

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 those policies do so without threatening individual safety or privacy, or imposing significant costs.

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

Supportive educational environments increase success rates for transgender students. Data from one national survey show that more-frequently harassed transgender teenagers had significantly lower grade-point averages than other transgender students.[21]

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, California adopted protections against gender-identity discrimination in schools to address harms suffered

[21] Greytak et al., *Harsh Realities*, *supra*, at 27 fig. 15.

by transgender students, including students not drinking and eating during the school day to avoid restroom use.[22]

In States allowing transgender students to use bathrooms corresponding to their gender identity, public schools have reported no instances of transgender students harassing others in restrooms or locker rooms.[23] 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.[24] The District's speculation (Br. at 2-3, 16) 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.[25]

---

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

[23] Alberto Arenas et al., *7 Reasons for Accommodating Transgender Students at School*, Phi Delta Kappan (Sept. 1, 2016) (internet).

[24] Br. of Amici Curiae Sch. Adm'rs from Thirty-One States & D.C. in Supp. of Resp't ("School Adm'rs Br.") at 14-16, *Gloucester Cnty. Sch. Bd. v. G.G. ex rel. Grimm*, 137 S. Ct. 1239 (2017) (No. 16-273), 2017 WL 930055.

[25] 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) (internet) (largest school districts in 12 States with gender-identity protection laws); *see* Carlos Maza & Luke Brinker, *15 Experts Debunk Right-Wing Transgender Bathroom Myth*, Media Matters for Am. (Mar. 19, 2014) (internet) (law

(*continued on the next page*)

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."[26] In 2013, the Los Angeles Unified School District—the second largest school district in the country, with more than 600,000 K-12 students[27]—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.[28] And the Massachusetts Chiefs of Police Association and Massachusetts Majority City Chiefs expressed that allowing people to use public bathrooms consistent with their gender

---

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) (internet) (six of California's largest school districts, including two that have had antidiscrimination policies for more than a decade); *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 (2019) (internet) (comparing criminal incident reports in localities with and without gender identity inclusive public accommodations nondiscrimination laws in Massachusetts).

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

[27] Los Angeles Unified Sch. Dist., *District Information, About the Los Angeles Unified School District* (internet).

[28] S. Comm. on Educ., Bill Analysis for Assemb. B. 1266, *supra*, at 8 (internet).

identity "improve[s] public safety."[29] Meanwhile, in Texas, officials in Austin, Dallas, 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.[30]

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

Contrary to the claims of the District (*see, e.g.*, Br. at 10-18) and its amici (*see* Ind. Br. at 12-13), 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—and are being addressed—by increasing privacy options for all students, without singling out transgender people for stigmatizing differential treatment.

---

[29] 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) (internet).

[30] Carlos Maza & Rachel Percelay, *Texas Experts Debunk the Transgender "Bathroom Predator" Myth Ahead of HERO Referendum*, Media Matters for Am. (Oct. 15, 2015) (internet); *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* (Jan. 23, 2017) (internet) (no known cases of people in North Carolina committing crimes in bathrooms under the cover of protections provided to transgender people).

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 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)."[31] 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."[32]

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."[33] But rather than segregating transgender students, additional privacy is provided for any student who desires

---

[31] Susanne Beauchaine et al., *Prohibiting Discrimination in Washington Public Schools* 30 (Wash. Off. of Superintendent of Pub. Instruction 2012) (internet); *see also* Washington State Hum. Rts. Comm'n, *Frequently Asked Questions Regarding WAC 162-32-060 Gender-Segregated Facilities* 3 (2016) (internet) (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).

[32] Beauchaine et al., *Prohibiting Discrimination*, *supra*, at 30.

[33] *Id.*; Washington Interscholastic Activities Ass'n, *2021-2022 Handbook* 36 (2021) (internet).

it, regardless of the underlying reason, by providing "a reasonable alternative changing area, such as the use of a private area (e.g., a nearby restroom stall with a door), or a separate changing schedule."[34]

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.[35] None of

---

[34] Beauchaine et al., *Prohibiting Discrimination*, *supra*, at 30-31; *see also* Providence Pub. Sch. Dist., *Nondiscrimination Policy: Transgender and Gender Expansive Students* p. 4 (internet) (student uncomfortable with gender-segregated facility may use "a safe and non-stigmatizing alternative," such as a privacy partition or separate changing schedule).

[35] **California**: California Sch. Bds. Ass'n, *Final Guidance: AB 1266, Transgender and Gender Nonconforming Students, Privacy, Programs, Activities & Facilities* 2 (2014) (internet). **Colorado**: Colorado Ass'n of Sch. Bds. et al., *Guidance for Educators Working with Transgender and Gender Nonconforming Students* 4-5 (internet). **Connecticut**: Connecticut Safe Sch. Coal., *Guidelines for Connecticut Schools to Comply with Gender Identity and Expression Non-Discrimination Laws* 9-10 (2012) (internet). **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) (internet); Illinois State Bd. of Educ., *Non-Regulatory Guidance: Supporting Transgender, Nonbinary and Gender Nonconforming Students* 10-11 (2020) (internet); Affirming & Inclusive Schs. Task Force, *Strengthening Inclusion in Illinois Schools* 19-21 (2020) (internet). **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) (internet). **Massachusetts**: Massachusetts Dep't of Elementary & Secondary Educ., *Guidance for Massachusetts Public Schools: Creating a Safe and Supportive School Environment* (Oct. 28, 2021) (internet). **Minnesota**: Minnesota Dep't of Educ., *A Toolkit for Ensuring Safe and Supportive Schools for Transgender and Gender Nonconforming Students* 10 (2017) (internet). **New Jersey**: New Jersey State Dep't of Educ., *Transgender Student Guidance for School Districts* 7 (2018) (internet). **New York**: New York State Educ. Dep't, *Guidance to School Districts for Creating a Safe and Supportive School*

(*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."[36] The experiences of school administrators in dozens of States across the country confirm that such policies can be implemented fairly, simply, and effectively.[37]

Inclusive policies such as these maintain gender-segregated spaces. For example, the District of Columbia expressly requires that businesses "provide access to and the safe use of facilities that are segregated by gender" where

---

Environment for Transgender and Gender Nonconforming Students 9-10 (2015) (internet). **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) (internet). **Oregon**: Oregon Dep't of Educ., *Guidance to School Districts: Creating a Safe and Supportive School Environment for Transgender Students* 10-11 (2016) (internet). **Rhode Island**: Rhode Island Dep't of Educ., *Guidance for Rhode Island Schools on Transgender and Gender Nonconforming Students* 8-9 (2016) (internet). **Vermont**: Vermont Agency of Educ., *Continuing Best Practices for Schools Regarding Transgender and Gender Nonconforming Students* 6, 8 (2017) (internet). **District of Columbia**: District of Columbia Pub. Schs., *Transgender and Gender-Nonconforming Policy Guidance* 9 (2015) (internet).

[36] Ura, *For Transgender Boy*, *supra* (quotation marks omitted).

[37] *See* School Adm'rs Br. at 17-21, *Gloucester Cnty. Sch. Bd.*, 137 S. Ct. 1239 (No. 16-273), 2017 WL 930055.

nudity in the presence of others is customary, while also making accommodations for transgender individuals to use the facility "that is consistent with that individual's gender identity or expression."[38] And New York's guidance for school districts explains how schools have accommodated transgender youth and "foster[ed] an inclusive and supportive learning environment," while maintaining sex-segregated spaces.[39] Contrary to the arguments advanced by the States supporting the District (Ind. Br. at 3-6), inclusive policies are thus entirely consistent with the provisions of Title IX permitting schools to maintain sex-segregated facilities.[40]

In fact, it is discriminatory restroom policies rather than inclusive ones that raise privacy concerns, notwithstanding the concern expressed by the social worker at A.C.'s school to the contrary. *See* Br. at 5. Such policies are more likely to create a needless risk of violence against transgender people, whose physical appearance may diverge from their sex assigned at birth and who therefore are likely to be perceived as using the "wrong" restroom.[41] In short,

---

[38] D.C. Mun. Regs. tit. 4, § 805.

[39] New York State Educ. Dep't, *Guidance to School Districts for Creating a Safe and Supportive School Environment for Transgender and Gender Nonconforming Students*, *supra*, at 10.

[40] *See* 20 U.S.C. § 1686; 34 C.F.R. § 106.33 (2022).

[41] *See* James et al., *2015 U.S. Transgender Survey*, *supra*, at 225-27; *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) (internet).

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 GENDER-IDENTITY DISCRIMINATION IN THIS CASE

The District and its amici mischaracterize the central issue in this case as whether sex-segregated bathrooms violate the Equal Protection Clause or Title IX. A.C. has never disputed a school's authority to separate bathrooms by sex. Rather, the key question in this case is instead whether "the alleged facts, if true, raise a plausible [inference] that [the District] discriminated against [A.C.] on the basis of sex?" *A.C.*, 2022 WL 1289352, at *3 (quotation marks omitted). Relying on this Court's precedent in *Whitaker ex rel. Whitaker v. Kenosha Unified School District No. 1 Board of Education*, the district court correctly answered that question in the affirmative. *See* 858 F.3d 1034 (7th Cir. 2017). As the court properly determined, "discrimination against a person on the basis of their transgender status constitutes discrimination based on sex," and A.C. was likely to succeed on his claims that he had been discriminated against based on his sex. *A.C.*, 2022 WL 1289352, at *3, *6.

The district court correctly applied *Whitaker* as the controlling precedent. There is no meaningful difference between the facts in *Whitaker* and those presented here. The plaintiffs in both cases are transgender male students who

were designated female at birth. Both plaintiffs were diagnosed with gender dysphoria and were under medical care to suppress developing female secondary sex characteristics. Both plaintiffs consistently presented as boys for four years prior to suing their respective schools for denying them access to the boys' restrooms. And both plaintiffs experienced similar harms from that denial, such as missing class time and experiencing anxiety, depression, and stigmatization. Indeed, for a time, both boys defied school orders and used the boys' restrooms with no complaints from students. *Compare Whitaker*, 858 F.3d at 1040-42, 1052, *with A.C.*, 2022 WL 1289352, at *1-2.

The similarities between *Whitaker* and the current case also extend to the defendant school districts' positions. For example, in neither case did the defendant school district present any evidence that the presence of a transgender boy in the boys' bathroom threatened, much less violated, the privacy rights of other students. *Whitaker*, 858 F.3d at 1052; *A.C.*, 2022 WL 1289352, at *7. Given such similar facts between the two cases, the district court properly applied *Whitaker* in holding that A.C., like the plaintiff in *Whitaker*, had demonstrated a likelihood of success on the merits of his claim that the District discriminated against him on the basis of sex in violation of Title IX and the Equal Protection Clause. *A.C.*, 2022 WL 1289352, at *6; *see Whitaker*, 858 F.3d at 1050, 1054. The District plainly and unlawfully discriminates based on sex because it does not and cannot explain its reasons for excluding A.C. from using

the bathrooms that align with his gender identity without referencing A.C.'s "biological sex" or conformity with it. *See Whitaker*, 858 F.3d at 1049, 1051; Br. at 8.

Consistent with *Whitaker*, other courts, including the Supreme Court in *Bostock v. Clayton County*, have found that gender identity discrimination is necessarily sex discrimination.[42] *See* 140 S. Ct. at 1741-42, 1745-47; *Glenn v. Brumby*, 663 F.3d 1312, 1317 (11th Cir. 2011) (citing cases). As the Supreme Court explained, discriminating against a person for being transgender is sex discrimination because "[i]t is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex." *Bostock*, 140 S. Ct. at 1741. For example, a person who is discriminated against for identifying as female simply because she was identified as male at birth is necessarily being discriminated against based on sex—i.e., she would not be treated differently than other females if not for the fact that her designated sex at birth was male. *Id.* In reaching its conclusion, the Supreme Court acknowledged that "transgender status" is a distinct concept from "sex," but observed that sexual harassment and discrimination based on

[42] When determining whether conduct constitutes discrimination based on sex under Title IX, courts routinely look to and apply case law interpreting Title VII. *See, e.g.*, *Davis ex rel. LaShonda D. v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 636, 651 (1999); *Franklin v. Gwinnett Cnty. Pub. Schs.*, 503 U.S. 60, 75 (1992).

motherhood are also distinct concepts that, unquestionably, still qualify as sex discrimination. *Id.* at 1742, 1746-47.

Applying much the same reasoning as in *Bostock*, courts have correctly recognized that Title IX's bar against sex discrimination prohibits policies that, like the District's policy here, bar transgender students from using the bathroom that aligns with their gender identity. As these courts have correctly explained, the discriminator is necessarily referring to an individual's sex assigned at birth to deny access to a bathroom that aligns with their gender identity. *See Grimm*, 972 F.3d at 616-19; *Dodds v. United States Dep't of Educ.*, 845 F.3d 217, 221-22 (6th Cir. 2016); *see also Parents for Privacy v. Barr*, 949 F.3d 1210, 1228-29 (9th Cir.) (transgender students' use of sex-segregated spaces that align with their gender identity does not violate Title IX rights of cisgender students), *cert. denied*, 141 S. Ct. 894 (2020); *Doe ex rel. Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 534-35 (3d Cir. 2018), *cert. denied*, 139 S. Ct. 2636 (2019).[43] Thus, a policy that denies a transgender boy, for example, access to the boys' bathroom violates Title IX's prohibition against sex discrimination because it treats the transgender boy differently than other students who

[43] *See also N.H. v. Anoka-Hennepin Sch. Dist. No. 11*, 950 N.W.2d 553, 563-64 (Minn. Ct. App. 2020) (considering Title IX precedents to interpret Minnesota anti-discrimination statute).

identify as boys, simply because of the sex they were assigned at birth. The district court did not err in reaching the same conclusion here.

The District's policy needlessly denies A.C. something most people take for granted: the ability to use a public restroom consistent with one's lived experience of one's own gender. The policy singles out transgender students like A.C. and forces them either to forgo restroom use or to choose between two other detrimental options: using common restrooms corresponding to their sex assigned at birth or using special single-user restrooms (i.e., those with no specific gender designation). The first option contravenes a core aspect of transgender people's identities, subjects them to potential harassment and violence, and violates medical treatment protocols. The second option stigmatizes the person—like "outing" individuals as transgender in settings where they could be exposed to danger or prefer to keep that information private—assuming that single-user restrooms are even available and equally convenient.[44] *See A.C.*, 2022 WL 1289352, at *7.

[44] The same concerns are not posed by the privacy-enhancing measures described above (see *supra* at 15-17), which are available to all students who desire additional privacy. Such measures do not single out or stigmatize transgender students, and thus do not force students into the untenable choice presented by the kind of policy at issue here.

Contrary to the arguments of the District (*see, e.g.*, Br. at 10-14) and its amici (*see, e.g.*, Ind. Br. at 3-6), there is no regulatory basis for such stigmatizing discrimination. In permitting "separate toilet, locker room, and shower facilities on the basis of sex," 34 C.F.R. § 106.33, Title IX's implementing regulation does not require segregation of the enumerated facilities exclusively on the basis of "biological sex" (*see, e.g.*, Br. at 21-22, 24). Neither Title IX nor its implementing regulations define "sex" in terms of biological sex. In fact, as courts have uniformly recognized, "sex" incorporates gender identity (see *supra* at 21-22), and Title IX's statutory language broadly prohibits discrimination on the basis of sex—including gender identity, 20 U.S.C. § 1681(a). The District's interpretation of 34 C.F.R. § 106.33 is accordingly unreasonable and must fail. *See United States v. Larionoff*, 431 U.S. 864, 873 (1977) ("[R]egulations, in order to be valid must be consistent with the statute under which they are promulgated."); *Manhattan Gen. Equip. Co. v. Comm'r*, 297 U.S. 129, 134 (1936) (a regulation that "operates to create a rule out of harmony with the statute" is "a mere nullity"). Title IX and its implementing regulations require the District to forgo discrimination against students based on transgender status, regardless of whether they are in a classroom, bathroom, or other location at school. As the amici States' successful experiences demonstrate (see *supra* at 10, 17-18), 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 students still use the girls' restrooms and male students still use the boys' restrooms.

For similar reasons, the District's bathroom policy contravenes the Equal Protection Clause. 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 noted,

> [w]hile A.C. has provided evidence of the harm he will likely suffer, the School District's alleged potential harm is unsupported. No student has complained concerning their privacy. The School District's concerns with the privacy of other students appears entirely conjectural. No evidence was provided to support the School District's concerns, and other courts dealing with similar defenses have also dismissed them as unfounded.

A.C., 2022 WL 1289352, at *7 (citing *Whitaker*, 858 F.3d at 1052; *J.A.W. v. Evansville Vanderburgh Sch. Corp.*, 323 F. Supp. 3d 1030, 1041 (S.D. Ind. 2018)). And while the district court acknowledged "that the public interest favors

furthering individual privacy interests, the Court does not believe that granting A.C. access to the boys' restrooms threatens those interests." *Id.* at *8. See *supra* at 10-19.

In contrast, the full evidentiary record shows that the harm the policy causes to A.C. is real. The District's policy stigmatizes A.C., "worsens the anxiety and depression" that he already feels because of his gender dysphoria, and "makes being at school painful" and isolating. *A.C.*, 2022 WL 1289352, at *7 (quotation marks omitted). A.C.'s mother worries about the emotional harm to A.C. and "the possible medical risks associated with him trying not to use the restroom during school." *Id.* "Like other courts recognizing the potential harm to transgender students," the district court found "no reason to question the credibility of A.C.'s account and that the negative emotional consequences with being refused access to the boys' restrooms constitute irreparable harm that would be difficult—if not impossible—to reverse." *Id.* (quotation marks omitted). Under well-established constitutional analysis, such discrimination cannot withstand any level of equal protection scrutiny.

CONCLUSION

This Court should affirm the decision below.

Dated: New York, New York
August 2, 2022

Respectfully submitted,

ROBERT W. FERGUSON
Attorney General
State of Washington

LETITIA JAMES
Attorney General
State of New York

By: */s/ Mark S. Grube*
MARK S. GRUBE
Assistant Solicitor General

COLLEEN M. MELODY
LANE POLOZOLA
NEAL LUNA
Assistant Attorneys General

BARBARA D. UNDERWOOD
Solicitor General
JUDITH N. VALE
Deputy Solicitor General
ANDREW W. AMEND
Assistant Deputy Solicitor General
of Counsel

P.O. Box 40100
Olympia, WA 98504
(360) 753-6200

28 Liberty Street
New York, NY 10005
(212) 416-8028

(Counsel listing continues on next page.)

ROB BONTA
Attorney General
State of California
1300 I Street
Sacramento, CA 95814

AARON M. FREY
Attorney General
State of Maine
6 State House Station
Augusta, ME 04333

PHILIP J. WEISER
Attorney General
State of Colorado
1300 Broadway
Denver, CO 80203

BRIAN E. FROSH
Attorney General
State of Maryland
200 Saint Paul Place, 20th Floor
Baltimore, MD 21202

WILLIAM TONG
Attorney General
State of Connecticut
165 Capitol Avenue
Hartford, CT 06106

MAURA HEALEY
Attorney General
Commonwealth of Massachusetts
One Ashburton Place
Boston, MA 02108

KATHLEEN JENNINGS
Attorney General
State of Delaware
820 N. French Street
Wilmington, DE 19801

DANA NESSEL
Attorney General
State of Michigan
P.O. Box 30212
Lansing, MI 48909

HOLLY T. SHIKADA
Attorney General
State of Hawai'i
425 Queen Street
Honolulu, HI 96813

KEITH ELLISON
Attorney General
State of Minnesota
102 State Capitol
75 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

KWAME RAOUL
Attorney General
State of Illinois
100 West Randolph Street
Chicago, IL 60601

AARON D. FORD
Attorney General
State of Nevada
100 North Carson Street
Carson City, NV 89701

MATTHEW J. PLATKIN
Acting Attorney General
State of New Jersey
Richard J. Hughes Justice Complex
25 Market Street
Trenton, NJ 08625

JOSH SHAPIRO
Attorney General
Commonwealth of Pennsylvania
Strawberry Square
Harrisburg, PA 17120

HECTOR BALDERAS
Attorney General
State of New Mexico
P.O. Drawer 1508
Santa Fe, NM 87504

PETER F. NERONHA
Attorney General
State of Rhode Island
150 South Main Street
Providence, RI 02903

JOSHUA H. STEIN
Attorney General
State of North Carolina
North Carolina Department of Justice
114 W. Edenton Street
Raleigh, NC 27603

SUSANNE R. YOUNG
Attorney General
State of Vermont
109 State Street
Montpelier, VT 05609-1001

ELLEN F. ROSENBLUM
Attorney General
State of Oregon
1162 Court Street NE
Salem, OR 97301

KARL A. RACINE
Attorney General
District of Columbia
400 6th Street, NW, Suite 8100
Washington, D.C. 20001

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 32(a) of the Federal Rules of Appellate Procedure, Kelly Cheung, 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 6,442 words and complies with the typeface requirements and length limits of Rules 29 and 32(a)(5)-(7) and the corresponding local rules.

/s/ *Kelly Cheung*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was filed electronically with the Court's CM-ECF system on August 2, 2022. Service will be effectuated by the Court's electronic notification system upon all parties and counsel of record.

Dated: New York, New York
August 2, 2022

/s/ Mark S. Grube

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

EQUALITY FLORIDA, et al.,

Plaintiffs,

v.

FLORIDA STATE BOARD OF EDUCATION, et al.,

Defendants.

Case No. 4:22-cv-134-AW-MJF

BRIEF OF THE DISTRICT OF COLUMBIA AND THE STATES OF NEW JERSEY, CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE, HAWAII, ILLINOIS, MAINE, MARYLAND, MASSACHUSETTS, MICHIGAN, MINNESOTA, NEVADA, NEW YORK, AND OREGON AS AMICI CURIAE IN SUPPORT OF PLAINTIFFS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes and Regulations

Other Authorities

INTRODUCTION AND INTEREST OF AMICI

The District of Columbia and the States of New Jersey, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New York, and Oregon (collectively, "Amici States") file this brief as amici curiae in support of Plaintiffs in their opposition to the motions to dismiss.

The responsibility for public education lies with the states, *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968), and encompasses several "important" duties, *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 637 (1943). One is to "prepare[] students for active and effective participation in [our] pluralistic . . . society." *Bd. of Educ. v. Pico*, 457 U.S. 853, 868 (1982) (plurality op.). Another is to "protect" students from harm. *Mahanoy Area Sch. Dist. v. B.L. by & through Levy*, 141 S. Ct. 2038, 2046 (2021). As the Supreme Court has explained, states must perform these educational duties "within the limits of" the Constitution. *Barnette*, 319 U.S. at 637.

In carrying out those duties, Amici States work to create an educational environment that is inclusive of everyone—including those who identify as LGBTQ. Indeed, Amici States strongly support the right of LGBTQ people to feel welcomed and to be treated equally in the school community. And we have sought to make curricular decisions that embrace, rather than stifle, the free expression of students

and teachers. Thus, Amici States have an interest in the protection of LGBTQ students, parents, and teachers, and we can offer expertise in education policy.

Amici States' experiences make clear that Florida's recent actions are far outside the bounds of ordinary educational decision-making. The challenged Act, H.B. 1557, flatly bans "[c]lassroom instruction . . . on sexual orientation or gender identity" in kindergarten through third grade. Act of Mar. 28, 2022, § 1, 2022 Fla. Sess. Law Serv. Ch. 2022-22 (West) (codified at Fla. Stat. § 1001.42(8)(c)(3)). For all other students, the Act prohibits such instruction if not "in accordance with state standards." *Id.* These standards, however, may not exist for another year, and there is no limit to how restrictive they might be. *See id.* § 2. The Act also subjects schools to liability for any violation by granting parents a cause of action for damages and attorney fees. *Id.* § 1.

All of those aspects of the law make it a radical outlier. Indeed, no other state educational law sweeps as broadly as Florida's or targets the LGBTQ community in the same way. That undermines any genuine assertion that the Act furthers educational goals. Said another way, the Act's "unusual character" provides an additional indication that the Act is constitutionally suspect. *Romer v. Evans*, 517 U.S. 620, 633 (1996) (quoting *Louisville Gas & Elec. Co. v. Coleman*, 277 U.S. 32, 37-38 (1928)); *accord United States v. Alvarez*, 567 U.S. 709, 722 (2012) ("[T]he sweeping, quite unprecedented reach of the statute puts it in conflict with the First

Amendment."). Moreover, Amici States' own evidence reveals the "immediate, continuing, and real injuries" the Act will inflict, and those harms "outrun and belie any legitimate justifications." *Romer*, 517 U.S. at 635. In light of the serious constitutional issues raised by Florida's extreme approach, Plaintiffs' allegations that Florida's law is unconstitutional are more than sufficient to survive a motion to dismiss.

SUMMARY OF ARGUMENT

I. Amici States' experiences reveal that the Act lacks a legitimate pedagogical purpose, rendering it constitutionally suspect. Amici States' policies allow educators to address LGBTQ issues, and these policies demonstrate that there is no legitimate reason to ban mentioning them. Amici States also ordinarily leave educational decisions to schools and teachers, rather than allowing schools to be haled into court over even minor instructional choices. Florida has chosen a starkly different path. It stands alone in its censorship of instruction related to LGBTQ issues and in its imposition of legal liability on school districts that do not censor LGBTQ issues. All the while, there are ways to address Florida's alleged concern in ensuring parental input in education without targeting a minority group. The experience of Amici States thus makes clear that Florida's approach is an unreasonable way to advance the state's professed interests. Indeed, the fact that the

Act so departs from other states' approaches provides further indication that it is not motivated by legitimate pedagogical goals.

II. The Act will stigmatize and harm LGBTQ youth in Florida and Amici States. Research shows that a failure to provide LGBTQ-inclusive classroom instruction adversely affects LGBTQ students' mental health and learning outcomes, and that it results in increased anti-LGBTQ bias. Further, the harms stemming from Florida's law will extend beyond Florida's borders. The Act will harm children from Amici States but who will be placed with families in Florida pursuant to the Interstate Compact for the Placement of Children ("ICPC"). And Amici States will need to devote resources to counteract the Act's harmful effects, including by increasing funding for programs that work to ensure the health and well-being of LGBTQ students in Amici States.

ARGUMENT

I. Amici States' Experiences Undermine Florida's Contention That Its Extreme Act Has A Legitimate Pedagogical Purpose.

Florida contends that the Legislature had "legitimate pedagogical concerns" when it enacted H.B. 1557. State Defs.' Mot. to Dismiss & Inc. Mem. of L. ("Fla. Br.") 3 (quoting *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 273 (1988)). But Amici States' experiences undermine Florida's assertions that the Act has a legitimate pedagogical purpose and that it is reasonably related to any such purpose. *See* Fla. Br. 34-38. To pass constitutional muster, Florida must show—at least under

the First Amendment—that the Act is "reasonably related to legitimate pedagogical concerns." *Bannon v. Sch. Dist. of Palm Beach Cnty.*, 387 F.3d 1208, 1213-14 (11th Cir. 2004) (per curiam); *see Searcey v. Harris*, 888 F.2d 1314, 1320 (11th Cir. 1989) (applying same test to a restriction by a school on non-student speech). That inquiry is fact-intensive and thus unsuitable for resolution at the motion-to-dismiss stage. Florida cannot justify its law with bare assertions; rather, factual development is necessary to determine whether the law is constitutional. *See Bishop v. Aronov*, 926 F.2d 1066, 1070-71 (11th Cir. 1991) ("[A] correct legal analysis must predicate proper explication of the constitutionally pivotal facts."); *Searcey*, 888 F.2d at 1322 ("We cannot *infer* the reasonableness of a regulation [restricting speech in school] from a vacant record.").[1]

---

[1] Florida ignores much of this on-point Eleventh Circuit precedent directly addressing restrictions on speech in school, instead relying on out-of-circuit case law and claiming that subsequent Supreme Court decisions have abrogated Eleventh Circuit case law. *See* Fla. Br. 31-38. But this Court is "not at liberty to disregard binding case law that is so closely on point," unless it has been "directly overruled"—which none of the above cases have. *Fla. League of Pro. Lobbyists, Inc. v. Meggs*, 87 F.3d 457, 462 (11th Cir. 1996). Further, Florida points to no decision where a district court has dismissed a challenge to a speech regulation without any factual development. *See Bishop*, 926 F.2d at 1070-71 (stressing the importance of factual support for a defendant's restriction on speech in school); *Searcey*, 888 F.2d at 1321-22 (same); *Arce v. Douglas*, 793 F.3d 968, 976-77 (9th Cir. 2015) (holding that district court erred, in challenge under the Equal Protection Clause to curriculum law, by granting summary judgment on a limited record, thereby preventing plaintiffs from presenting evidence regarding legislative intent).

Moreover, Florida's attempt to justify the Act with bald assertions unsupported by facts is especially unpersuasive because the Act's plain terms are highly unusual and stand in stark contrast to other states' educational policies. As explained below, Amici States' educational policies include and protect LGBTQ people, equip teachers to address LGBTQ topics (while accommodating parental choices), and leave educational decisions to school communities, not courts. Amici States' experiences thus show that states have an interest in including—rather than excluding—LGBTQ people. Further, when it comes to LGBTQ issues in schools, Amici States' policies show that Florida's resort to restricting speech and subjecting schools to litigation is extreme and unreasonable.

A. Unlike Florida's Act, Amici States' education policies serve the legitimate pedagogical purpose of including and protecting LGBTQ people.

Recognizing that LGBTQ Americans "cannot be treated as social outcasts or as inferior," *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1882 (2021) (quoting *Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm'n*, 138 S. Ct. 1719, 1727 (2018)), Amici States' policies foster an educational environment that is inclusive and respectful of LGBTQ people. As a general matter, most states do not single out LGBTQ people or issues for disfavored treatment, and many have inclusive or affirming education policies. Deborah Temkin, et al., *Most State Policies That Address LGBTQ+ Students in Schools Are Affirming, Despite Recent Trends Toward*

Exclusion, Child Trends (Mar. 22, 2022), https://tinyurl.com/3atccep3. Amici States have advanced LGBTQ inclusivity and protections in schools in a few key ways.

Most fundamentally, Amici States protect LGBTQ students by statute, regulation, and agency action. Amici States prohibit discrimination in schools on the basis of sexual orientation or gender identity.[2] We also prohibit bullying on the basis of sexual orientation or gender identity, or require or urge schools to adopt policies to that effect.[3]

Amici States also recognize the indisputable fact that LGBTQ people are part of American life and therefore include LGBTQ experiences and contributions in history and social studies education. By statute, seven Amici States have

---

[2] *See, e.g.*, Cal. Educ. Code §§ 200, 220; Conn. Gen. Stat. § 10-15c(a); D.C. Code § 2-1402.41(1); 775 Ill. Comp. Stat. §§ 5/1-103(O-1), 5/5-101(A)(11), 5/5-102(A); Mass. Gen. Law ch. 76, § 5; Md. Code Regs. §§ 13A.01.06.03(B)(5)(d), (j), 13A.01.06.04; Mich. C.R. Comm'n, *Interpretive Statement 2018-1* (May 21, 2018), https://tinyurl.com/yckmrn3z; Minn. Stat. §§ 363A.03(44), 363A.13(1); Nev. Rev. Stat. §§ 388.132(6)(a), 651.070; N.J. Stat. Ann. §§ 10:5-4, 10:5-5(*l*); N.Y. Exec. Law § 296(4); Or. Rev. Stat. § 659.850; Movement Advancement Project, *Equality Maps: Safe Schools Laws*, https://tinyurl.com/3hn9hh8r ("nondiscrimination" tab) (compiling laws of all states) (last visited Aug. 3, 2022).

[3] *See, e.g.*, Cal. Educ. Code § 234.1(a)-(c); Conn. Gen. Stat. § 10-222d(a)(1), (b); D.C. Code §§ 2-1535.01(2)(A)(i), 2-1535.03; 105 Ill. Comp. Stat. § 5/27-23.7(a); Mass. Gen. Law ch. 71, § 37O(d)(1), (3); Md. Code Ann., Educ. §§ 7-424.1, 7-424(a)(2)(i)(1), (b)(1); Mich. State Bd. of Educ., *Model Anti-Bullying Policy* (Dec. 8, 2020), https://tinyurl.com/mttsrte3; Minn. Stat. § 121A.031(2)(g), (3); Nev. Rev. Stat. §§ 388.122(1)(c), 388.133; N.J. Stat. Ann. §§ 18A:37-14, 18A:37-15; N.Y. Educ. Law § 12(1); 8 N.Y.C.R.R. § 100.2(jj)(2), (3)(i); Or. Rev. Stat. §§ 339.351(3), 339.356; Movement Advancement Project, *supra* ("anti-bullying" tab) (compiling laws for all states).

promulgated history or social studies curricular requirements relating to LGBTQ Americans. Cal. Educ. Code § 51204.5; Colo. Rev. Stat. § 22-1-104(1)(a); Conn. Gen. Stat. § 10-25b(b); 105 Ill. Comp. Stat. § 5/27-21; Nev. Rev. Stat. § 389.061(1)(b); N.J. Stat. Ann. § 18A:35-4.35; Or. Rev. Stat. § 329.045(1)(b)(B)(vi) (effective 2026). Other Amici States have undertaken similar efforts to update curricular standards to include LGBTQ people. *E.g.*, D.C. State Bd. of Educ., Soc. Studies Standards Advisory Comm., *Social Studies Standards Guiding Principles* 8 (Dec. 16, 2020), https://tinyurl.com/3a6s68yh. Still others encourage and allow teachers to provide lessons that comprehensively cover the American experience, including that of LGBTQ people. *See, e.g.*, Me. Dep't of Educ., *LGBTQ+ Studies*, https://tinyurl.com/2p9793vf (last visited Aug. 3, 2022) (listing resources for teachers); Mass. Dep't of Elementary & Secondary Educ., *Defending Democracy at Home: Advancing Constitutional Rights, Obergefell v. Hodges (2015) Same-Sex Marriage* (Oct. 2018), https://tinyurl.com/2zh9p3ej (providing a model lesson plan on the history of *Obergefell v. Hodges*, 576 U.S. 644 (2015), to teach students about constitutional rights and the judiciary). At bottom, these efforts aim to "offer[] public school students a more accurate, complete, and equitable picture of American society," Ill. Inclusive Curriculum Advisory Council, *Inclusive Curriculum Implementation Guidance: Condensed Edition* 1, https://tinyurl.com/4pn8yt94 (last visited Aug. 3, 2022), and prepare them to live in

the contemporary United States, *Hearing on H.B. 6619 Before the Joint Comm. on Educ.*, 2021 Sess. 1 (Conn. 2021) (statement of Rep. Geoff Luxenberg), https://tinyurl.com/2rsxc7fs.

In addition to teaching academic subjects, states have an "interest in preparing children to lead responsible, healthy lives." *Leebaert ex rel. Leebaert v. Harrington*, 193 F. Supp. 2d 491, 497 (D. Conn. 2002), *aff'd*, 332 F.3d 134 (2d Cir. 2003). To that end, an increasing number of schools have established health instruction to ensure that all students, including LGBTQ students, have the information necessary about their health. *See* Heather Steed, et al., *Only 17 States and DC Report LGBTQ-Inclusive Sex Ed Curricula in at Least Half of Schools, Despite Recent Increases*, Child Trends (Oct. 6, 2021), https://tinyurl.com/58zpj9kw ("From 2016 to 2018, 27 states and the District of Columbia reported increases . . . in the percentage of schools offering sex-ed materials that are inclusive of LGBTQ youth.").

Instead of including LGBTQ people in the school community, however, Florida's Act excludes them, thereby running counter to constitutional principles. States have a "legitimate . . . interest in seeking to eradicate bias against same-gender couples," and other LGBTQ people, "and to ensure the safety of all public school students." *Parker v. Hurley*, 514 F.3d 87, 102 (1st Cir. 2008). As Amici States' efforts reflect, LGBTQ people are part of American history and society, and "in the preparation of students for citizenship," it is "entirely rational" for schools to

include their experiences in an age-appropriate manner. *Id.* at 95. It is not a legitimate pedagogical interest, however, to exclude the entire class of LGBTQ people and their experiences from the education provided by public schools by censoring discussion about their identities.

B. Instead of censoring or restricting speech like Florida, Amici States equip educators to address LGBTQ topics.

While Florida's law sweeps broadly in its censorship or restriction of LGBTQ topics, Amici States approach these issues in more tailored and effective ways. The experience of other states reflects that Florida's severe approach to LGBTQ issues is unjustifiable and thus violative of the First Amendment. *See Searcey*, 888 F.2d at 1322 ("It is the total banning of a group . . . that we find to be unreasonable."); *Virgil v. Sch. Bd. of Columbia Cnty.*, 862 F.2d 1517, 1525 (11th Cir. 1989) (considering, when upholding the removal of texts from a required reading list, that they "have not been banned from the school" and "[n]o student or teacher is prohibited from assigning or reading these works or discussing the themes contained therein in class or on school property").[4]

---

[4] Although Florida tries to narrow the Act's reach to cover only, essentially, lessons given by teachers, *see* Fla. Br. 15-21, the Act uses broad terms lacking precise definitions. "[T]he many ambiguities concerning the scope of [the Act's] coverage render it problematic for purposes of the First Amendment." *Reno v. ACLU*, 521 U.S. 844, 870 (1997). Indeed, despite what Florida now claims, the Act's broad, vague prohibitions have already chilled expression. *E.g.*, Lori Rozsa, *Florida Teachers Race to Remake Lessons as DeSantis Laws Take Effect*, Wash.

At the outset, Amici States—and, in fact, all states aside from Florida—do not generally ban entire topics from discussion in schools. Until recently, "there [was] no state that actually [had] a 'don't say gay' law—one that explicitly prohibits teachers from discussing homosexuality at all." Clifford Rosky, *Anti-Gay Curriculum Laws*, 117 Colum. L. Rev. 1461, 1469 (2017). Put simply, Florida's effort to censor LGBTQ topics is "sweeping, [and] quite unprecedented." *Alvarez*, 567 U.S. at 722.

Amici States, by contrast, have codified protections for the free exchange of ideas in schools. The District of Columbia, for instance, protects a student's "right to voice his or her opinions." 5-E DCMR § 2401.2. Likewise, Connecticut's Code of Professional Responsibility for Teachers states that teachers shall "[e]ngage students in the pursuit of truth, knowledge and wisdom and provide access to all points of view" and "[n]urture in students lifelong respect and compassion for themselves and other human beings regardless of . . . sexual orientation." Conn. Agencies Regs. § 10-145d-400a(b)(1)(B), (C).

Moreover, Amici States understand that the way to address LGBTQ-related topics that inevitably arise in schools is to equip teachers and schools to handle them directly and compassionately. For example, it is understandable that "questions arise

---

Post (July 30, 2022); https://tinyurl.com/yu4ue5z5; Brooke Migdon, *Florida's 'Don't Say Gay' Law Takes Effect Today. Its Impact Is Already Being Felt*, Changing Am. (July 1, 2022), https://tinyurl.com/bs92arsc.

for . . . school staff when considering the best supports for transgender and gender nonconforming students." Vt. Agency of Educ., *Continuing Best Practices for Schools Regarding Transgender and Gender Nonconforming Students* 1 (Feb. 23, 2017), https://tinyurl.com/243yhrax. Thus, states have issued guidance to schools to address these questions rather than restrict what teachers can say.[5] Such guidance can helpfully identify example scenarios a teacher or administrator may encounter,

---

[5] *E.g.*, Cal. Dep't of Educ., *Legal Advisory Regarding Application of California's Antidiscrimination Statutes to Transgender Youth in Schools* (Sept. 16, 2021), https://tinyurl.com/mr282sf9; Cal. Dep't of Educ., *Frequently Asked Questions - School Success and Opportunity Act (AB 1266)* (Sept. 16, 2021), https://tinyurl.com/2t4ncmsd; Conn. State Dep't of Educ., *Guidance on Civil Rights Protections and Supports for Transgender Students: Frequently Asked Questions* (Sept. 2017), https://tinyurl.com/24vuawfy; D.C. Pub. Schs., *Transgender and Gender-Nonconforming Policy Guidance* (June 2015), https://tinyurl.com/tatd3ncu; Ill. State Bd. of Educ., *Non-Regulatory Guidance: Supporting Transgender, Nonbinary, and Gender Nonconforming Students* (Mar. 1, 2020), https://tinyurl.com/2p8ehwz6; Md. State Dep't of Educ., *Providing Safe Spaces for Transgender and Gender Non-conforming Youth: Guidelines for Gender Identity Non-discrimination* (Oct. 2015), https://tinyurl.com/48by45jn; Mass. Dep't of Elementary & Secondary Educ., *Guidance for Massachusetts Public Schools Creating a Safe and Supportive School Environment* (Oct. 28, 2018), https://tinyurl.com/2p836nrh; Mich. State Bd. of Educ., *Statement and Guidance on Safe and Supportive Learning Environments for Lesbian, Gay, Bisexual, Transgender, and Questioning (LGBTQ) Students* (Sept. 14, 2016), https://tinyurl.com/yetpukkh; Minn. Dep't of Educ., *A Toolkit for Ensuring Safe and Supportive Schools for Transgender and Gender Nonconforming Students* (Sept. 25, 2017), https://tinyurl.com/zr6r3j89; Nev. Dep't of Educ., *Supporting Sex/Gender Diverse Students*, https://tinyurl.com/3sv5tyrp (last visited Aug. 3, 2022); N.J. Dep't of Educ., *Transgender Student Guidance for School Districts*, https://tinyurl.com/2evmmuj6 (last visited Aug. 3, 2022); Or. Dep't of Educ., *Guidance to School Districts: Creating a Safe and Supportive School Environment for Transgender Students* (May 5, 2016), https://tinyurl.com/36ecxvuf.

such as when a student begins to dress in a gender-nonconforming way, and explain best practices. *See, e.g.,* Haw. Dep't of Educ., *Guidance on Supports for Transgender Students* 6-11 (July 25, 2016), https://tinyurl.com/3bra5kjn; N.Y. State Educ. Dep't, *Guidance to School Districts for Creating a Safe and Supportive School Environment for Transgender and Gender Nonconforming Students* 5-10 (July 2015), https://tinyurl.com/2p8mk97k.

Amici States also invest in training for educators so they can meet the needs of LGBTQ students, parents, and teachers. California's recent budget allocated "$3 million for LGBTQ cultural competency training for public school teachers." Jo Yurcaba, *California Budget Includes $3 Million to Train Teachers on LGBTQ Issues*, NBC News (July 16, 2021), https://tinyurl.com/mrx84bnb. Nevada requires that teachers "receive annual training concerning the requirements and needs of persons with diverse gender identities or expressions." Nev. Admin. Code § 388.880(2)(a). And Michigan developed a workshop for educators on LGBTQ issues. Mich. Dep't of Educ., *Creating Safe Schools for Sexual Minority Youth*, https://tinyurl.com/4yesvp2e (last visited Aug. 3, 2022).

All these efforts comport with the constitutional principle of a "free exchange" of ideas. *Mahanoy*, 141 S. Ct. at 2046. Yet Florida's Act seeks to remove LGBTQ-related topics from schools entirely or otherwise restrict them because—purportedly—these are sensitive issues for some. Fla. Br. 35. As federal courts in

Florida have acknowledged, however, the way to approach such issues is not to censor them but to equip educators to address them. *See Gillman ex rel. Gillman v. Sch. Bd. for Holmes Cnty.*, 567 F. Supp. 2d 1359, 1370 (N.D. Fla. 2008) ("If the schools are to perform their traditional function of inculcating the habits and manners of civility, . . . they must be allowed the space and discretion to deal with the nuances." (internal quotation marks omitted) (quoting *Muller by Muller v. Jefferson Lighthouse Sch.*, 98 F.3d 1530, 1543 (7th Cir. 1996))). Although Florida's justifications may "sound in a desire to avoid the discomfort and unpleasantness of tolerating a minority of students whose sexual identity is distinct from the majority," "[e]nsuring that this minority of students are afforded meaningful expression secures the precept of freedom . . . exalted by the founders." *Gonzalez through Gonzalez v. Sch. Bd. of Okeechobee Cnty.*, 571 F. Supp. 2d 1257, 1269 (S.D. Fla. 2008); *see also Gay-Straight All. of Yulee High Sch. v. Sch. Bd. of Nassau Cnty.*, 602 F. Supp. 2d 1233, 1237 (M.D. Fla. 2009). Indeed, Florida's approach stands outside "a long constitutional tradition under which learning how to tolerate diverse expressive activities has always been 'part of learning how to live in a pluralistic society.'" *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2431 (2022) (quoting *Lee v. Weisman*, 505 U.S. 577, 590 (1992)).

C. Florida stands apart from states by subjecting school communities to costly litigation for their legitimate instructional choices.

States typically set education policy at a general level and leave particular instructional decisions to districts, schools, and teachers, in collaboration with parents. *See, e.g.*, *Milliken v. Bradley*, 418 U.S. 717, 741 (1974) ("No single tradition in public education is more deeply rooted than local control over the operation of schools . . . ."); *Ambach v. Norwick*, 441 U.S. 68, 78 (1979) ("[T]eachers by necessity have wide discretion over the way the course material is communicated to students."); Cal. Educ. Code § 60000(b) (recognizing that "specific choices about instructional materials need to be made at the local level"); Minn. Stat. § 120B.021(2)(b)(2) (providing that statewide academic standards must "not require a specific teaching methodology or curriculum"). Indeed, "local autonomy has long been thought essential both to the maintenance of community concern and support for public schools and to [the] quality of the educational process." *Milliken*, 418 U.S. at 741-42. But Florida bucks this "tradition," *id*. at 741, by making such instructional decisions the subject of lawsuits—all purportedly in the name of parental rights, Fla. Stat. § 1001.42(8)(c)(7)(b)(II) (granting parents a cause of action). As Amici States' experience shows, however, parent perspectives and prerogatives can be reasonably accommodated by teachers and schools without courts being involved at every turn to enforce blanket statewide censorship requirements and speech restrictions.

To begin, Amici States largely place curricular and instructional choices with school boards and other bodies that seek public input, including that of parents. *See, e.g.*, Md. Code Ann., Educ. §§ 4-111 (vesting county school boards with the power to "[e]stablish curriculum guides and courses of study"), 4-112(a) (establishing "citizen advisory committee[s] to advise the [school] board[s]"). For example, Colorado instructs school boards to "convene a community forum on a periodic basis . . . to discuss adopted content standards." Colo. Rev. Stat. § 22-1-104(3)(a). Similarly, Oregon provides that the state board, in revising content standards, shall "[i]nvolve . . . parents." Or. Rev. Stat. § 329.045(1)(b)(C) (effective 2026). California, Connecticut, Illinois, Nevada, and New Jersey likewise leave most of the implementation of their inclusive curriculum requirements to local boards. *See* Cal. Dep't of Educ., *Frequently Asked Questions: Senate Bill 48* (Oct. 8, 2021), https://tinyurl.com/yc8yhnkh; Conn. Gen. Stat. § 10-25b(d); Ill. Inclusive Curriculum Advisory Council, *supra*; Nev. Rev. Stat. § 389.061(1); N.J. Stat. Ann. § 18A:35-4.36.

If parental concerns arise over instructional choices, Amici States have developed targeted, cooperative ways to accommodate them. Some Amici States have provided guidance to teachers on how to handle parental perspectives on LGBTQ topics, including sample letters. *See, e.g.*, D.C. Pub. Schs., *Transgender and Gender-Nonconforming Policy Guidance*, *supra*, at 31-36; Minn. Dep't of

Educ., *Toolkit*, *supra*, at 6-7. Other Amici States allow parents to review curriculum and instructional material. Cal. Educ. Code § 51101(a)(8); Mich. Comp. Laws Ann. § 380.1137(1)(a). Minnesota allows parents who object to certain instruction to "make reasonable arrangements with school personnel for alternative instruction." Minn. Stat. § 120B.20. Finally, when it comes to the most sensitive topics like health or sex education, 36 states and the District provide some type of parental opt-out option. Guttmacher Inst., *Sex and HIV Education* (Jul. 1, 2022), https://tinyurl.com/r259h2d2. Through these mechanisms, teachers and schools can accommodate parental choices.

Instead of these common, conciliatory approaches to parental choices, Florida's Act subjects schools to costly litigation by permitting parental lawsuits regarding curricular decisions. That approach breaks so significantly from reasonable alternatives that it undermines any claim that it is motivated by a legitimate effort to accommodate parents and their concerns about limiting inappropriate sexual content in schools. The Act subjects school districts to litigation, injunctions, damages, and attorney fees for any violation of its vague provisions banning certain speech. *See* Fla. Stat. § 1001.42(8)(c)(7)(b)(II). Such "[j]udicial interposition in the operation of the public school system," absent a compelling constitutional reason, is unprecedented. *Epperson*, 393 U.S. at 104; *see Blau v. Ft. Thomas Pub. Sch. Dist.*, 401 F.3d 381, 395-96 (6th Cir. 2005) (Sutton,

J.) (collecting cases rejecting a parental right to direct classroom instruction); Todd A. DeMitchell & Joseph J. Onosko, *A Parent's Child and the State's Future Citizen: Judicial and Legislative Responses to the Tension Over the Right to Direct an Education*, 22 S. Cal. Interdisc. L.J. 591, 622 (2013) (explaining that states have near universally rejected legislative attempts to shift power over curricular decisions away from educators). It is also unneeded: as explained above, several options are available to involve parents in their child's education. Indeed, Florida already provides many of these procedures to parents. Fla. Stat. § 1014.04. Incentivizing litigation against schools is a punitive approach that chills the free exchange of ideas. The Act's drastic approach is thus unreasonable.

* * *

In short, Florida's extreme approach implies the absence of a legitimate pedagogical purpose, rendering its restrictions on speech and targeting of a minority highly suspect. And Amici States' experiences show that reasonable policies are available that include LGBTQ people, foster free speech, and accommodate parents. Florida's turn, instead, to restricting speech and targeting a minority supplies additional evidence of the Act's unconstitutionality. *See Romer*, 517 U.S. at 633. At a minimum, it plainly demonstrates that Florida cannot succeed on its motion to dismiss.

II. Florida's Act Stigmatizes LGBTQ Youth In Florida, And Its Stigmatic Harms Extend To Amici States.

The harm caused by the challenged Act extends well beyond Florida. By targeting the LGBTQ community, the Act harms children in Amici States, including those who will be placed in Florida pursuant to the ICPC, as well as students who attend school in Florida and then move to Amici States. And Amici States will need to devote resources to mitigate and counteract the harm that the Act is causing to LGBTQ students and others in their States.

A. The Act stigmatizes LGBTQ youth in Florida and Amici States.

The Act stigmatizes LGBTQ youth by prohibiting or limiting the discussion of LGBTQ people in schools. And in so doing, it threatens grave harm to the health and well-being of LGBTQ individuals, their families, and their communities. As study after study has shown, discriminatory social conditions have severe negative health impacts on LGBTQ people, resulting in increased rates of mental health disorders and suicide attempts, especially among LGBTQ youth. *See, e.g.*, What We Know Project, Cornell Univ., *What Does the Scholarly Research Say About the Effects of Discrimination on the Health of LGBT People?* (2019), https://tinyurl.com/2p84akjn (summarizing findings of 300 primary research studies, 82% of which "found robust evidence that discrimination on the basis of sexual orientation or gender identity is associated with harms to the health of LGBT

people"). Those harms extend to youth not just in Florida, but throughout the country.

1. Educational decisions that stigmatize LGBTQ youth directly harm mental health and educational outcomes.

As a vulnerable population, LGBTQ youth already face significant hardships. They are particularly likely to experience feelings of sadness and hopelessness, Laura Kann, et al., Ctrs. for Disease Control & Prevention, *Sexual Identity, Sex of Sexual Contacts, and Health-Related Behaviors among Students in Grades 9–12 — United States and Selected Sites, 2015* 18 (2016), https://tinyurl.com/6cyefk2m, and to be victims of bullying, Madeleine Roberts, *New CDC Data Shows LGBTQ Youth Are More Likely to Be Bullied Than Straight Cisgender Youth*, Hum. Rts. Campaign (Aug. 26, 2020), https://tinyurl.com/2wu4ajuj. Increased victimization of LGBTQ students leads to health and suicide risks. Roberts, *supra*. These hardships are evident at the state level, too. For instance, LGBTQ students in Michigan are 2.9 times more likely to be threatened or injured with a weapon at school, 1.9 times more likely to be bullied at school or online, 2.7 times more likely to skip school because they feel unsafe, 1.5 times more likely to get Ds and Fs, and 3.2 times more likely to engage in self-harm behavior. Mich. Dep't of Educ., *Michigan Department of Education's Lesbian, Gay, Bisexual, Transgender and Questioning (LGBTQ+) Students Project at a Glance* 1, https://tinyurl.com/4jxns374 (last visited Aug. 3, 2022). To take just one of the most troubling examples, 23% of Michigan's LGBTQ

high school students (13,500 students) attempted suicide in a recent 12-month period. *Id.* That rate is 4.6 times higher than their non-LGBTQ peers. *Id.*

An inclusive school climate, which permits teachers and students to discuss sexual orientation and gender identity, can help reduce the likelihood of these damaging outcomes. Inclusive school climates foster positive learning environments for LGBTQ youth, which are "an important factor in decreasing suicidality among LGBTQ adolescents." April J. Ancheta, Jean-Marie Bruzzese, & Tonya L. Hughes, *The Impact of Positive School Climate on Suicidality and Mental Health Among LGBTQ Adolescents: A Systematic Review* 10 (Apr. 2021), https://tinyurl.com/42hmsmdu. LGBTQ students in schools with inclusive climates are nearly 40% less likely to attempt suicide compared with LGBTQ students who attend schools with non-inclusive climates. Cady Stanton, *As 'Don't Say Gay' and Similar Bills Take Hold, LGBTQ Youths Feel They're 'Getting Crushed'*, USA Today (May 9, 2022), https://tinyurl.com/yckncebt. They are more likely to feel comfortable speaking to their teachers about LGBTQ-related issues, report less severe victimization based on sexual orientation and gender expression, and are less likely to feel unsafe at school because of their sexual orientation and gender expression. Joseph G. Kosciw, et al., GLSEN, *The 2019 National School Climate Survey: The Experience of Lesbian, Gay, Bisexual, Transgender, and Queer Youth*

in Our Nation's Schools 73-74 (2020) ("Climate Survey"), https://tinyurl.com/5fmmzv9x.

LGBTQ-inclusive school climates are also associated with better educational outcomes. When LGBTQ students see themselves reflected in curricula, it creates an affirming learning environment that "may result in increased student engagement and may encourage students to strive academically which, in turn, may yield better educational outcomes." *Id.* at 74-75. Indeed, LGBTQ students in schools with inclusive curricula achieve a higher GPA than those in schools without inclusive curricula. *Id.* at 75. And LGBTQ students in schools with an LGBTQ-inclusive curriculum are more likely to say they plan to pursue post-secondary education. *Id.*

In light of the benefits of LGBTQ-inclusive curricula, it is no surprise that research also shows that non-inclusive schools—for example, ones that do not incorporate, or that expressly prohibit, discussion of LGBTQ issues within the classroom, as the Act requires—have damaging consequences for LGBTQ youth. As explained above, the absence of an LGBTQ-inclusive climate is strongly correlated with more suicidal ideation, worse educational outcomes, and decreased feelings of safety. LGBTQ students at schools with non-inclusive curricula are also less likely to feel supported by educators and less likely to have access to supportive school clubs, such as Gay-Straight Alliances. GLSEN, *GLSEN Research Brief: Laws Prohibiting "Promotion of Homosexuality" in Schools: Impacts and*

Implications 6-7 (2018), https://tinyurl.com/47r9yhzc ("GLSEN Research Brief"). And at non-inclusive schools, students are "more likely to face harassment and assault at school based on their sexual orientation and gender expression," *id.* at 3, and are less likely to have the benefit of supportive anti-bullying policies, *id.* at 7.

2. The Act will increase anti-LGBTQ bias.

Laws like the challenged Act that stigmatize LGBTQ people also increase the risk of anti-LGBTQ bias inside and outside the school environment.

For example, LGBTQ students attending schools with non-inclusive curricula are more likely to hear homophobic remarks at school. GLSEN Research Brief 3. By contrast, "attending a school that included positive representations of LGBTQ topics in the curriculum was related to less frequent use of anti-LGBTQ language." Climate Survey 73; *see also id.* (documenting less frequent usage of negative remarks about sexual orientation, gender identity, and gender expression).

Whether a school has LGBTQ-inclusive policies also correlates with the rate of peer acceptance of LGBTQ students. Non-inclusive schools are less likely to have students who are accepting of LGBTQ people than schools with inclusive climates (39.4% vs. 51.1%). GLSEN Research Brief 3. By contrast, "[t]he inclusion of positive portrayals of LGBTQ topics in the classroom may . . . help educate the general student body about LGBTQ issues and promote respect and understanding of LGBTQ people in general." Climate Survey 75. Indeed, LGBTQ students who

attend schools with LGBTQ-inclusive curricula are significantly more likely to report that their classmates are somewhat or very accepting of LGBTQ people (66.9% vs. 37.9%). *Id.*

Further, this increased understanding and respect "may lead students in general to speak up when they witness anti-LGBTQ behaviors." *Id.* Relative to students in schools with anti-LGBTQ curricula, LGBTQ youth in schools with inclusive curricula report that other students are more than twice as likely to intervene most or all of the time when hearing homophobic remarks and negative remarks about gender expression. *Id.*

Notably, the damaging effects of a law prohibiting instruction on LGBTQ issues in schools do not stop at a state's borders. When a law anywhere sends the message that some members of the community are disfavored, as the Act does, it compounds the stigma associated with being part of that community everywhere. Indeed, evidence suggests that, as with prior laws that victimize particular groups, the Act will adversely affect the mental health of LGBTQ youth in other states. For example, recent debates around laws that target the transgender community adversely affected the mental health of LGBTQ youth nationwide. The Trevor Project, *Issues Impacting LGBTQ Youth: Polling Analysis* 6 (Jan. 2022), https://tinyurl.com/2xnr9r5t. Two-thirds of LGBTQ youth reported that the recent debates about state laws restricting the rights of transgender people have negatively

affected their mental health. *Id.* And among transgender and non-binary youth, the effects were even more profound, with 85% reporting harm to their mental health. *Id.* These findings suggest that the Act stigmatizes and poses risk of harm to LGBTQ youth not just in Florida, but also elsewhere, including in Amici States.

B. The Act's harms extend beyond Florida and will require Amici States to expend additional funds.

In addition to the harms it inflicts on LGBTQ youth in Florida and in Amici States, the Act harms Amici States by requiring them to increase expenditures of state funds to combat bias and protect their most vulnerable residents.

For example, the Act directly implicates Amici States' interest in protecting at-risk youth who will be placed in Florida pursuant to the Interstate Compact for the Placement of Children. The ICPC—to which Florida and all Amici States are parties—provides for the movement and safe placement of children between states when children are in the state's custody, being placed for adoption, or being placed by a parent or guardian in a residential treatment facility. Am. Pub. Health Servs. Ass'n, *ICPC FAQ's*, https://tinyurl.com/342eej8h (last visited Aug. 2, 2022). This population includes children in foster care, and recent surveys of children in foster care have revealed a high percentage who identify as LGBTQ. *See, e.g.*, Marlene Matarese, et al., *The Cuyahoga Youth Count: A Report on LGBTQ+ Youth Experience in Foster Care* 6 (2021), https://tinyurl.com/mp9bmunb (survey of an Ohio county identifying 32% of foster children to be LGBTQ); Theo G.M. Sandfort,

Experiences and Well-Being of Sexual and Gender Diverse Youth in Foster Care in New York City: Disproportionality and Disparities 5 (2020), https://tinyurl.com/5e6e59kj (survey of New York City identifying 34% of foster children to be LGBTQ). Amici States regularly place children in Florida pursuant to the ICPC,[6] and those children who identify as LGBTQ will be stigmatized by Florida's new law. LGBTQ youth from Florida may also be placed in Amici States under the ICPC, leaving schools and social services agencies in Amici States to address the negative impacts of Florida's law.

State agencies will also need to expend additional resources to address the Act's negative effects on members of their own LGBTQ communities. For example, because the Act stigmatizes and harms LGBTQ people in Amici States, those individuals may require additional mental health services. In light of the "high prevalence of poverty in LGBT communities," state-run programs like Medicaid may bear a substantial share of the burden of addressing the significant mental health consequences stemming from the Act. Kellan Baker, et al., Ctr. for Am. Progress, *The Medicaid Program and LGBT Communities: Overview and Policy Recommendations* (Aug. 9, 2016), https://tinyurl.com/ytp8apz3.

---

[6] As of April 2022, Amici States have placed over 130 students in Florida through the ICPC this calendar year.

Furthermore, Amici States may need to ensure that the stigma caused by the Act does not spread to their own school environments. As explained, Amici States provide training and assistance to school staff to address bullying, understand LGBTQ issues, and improve the educational climate for LGBTQ youth. The Act's adverse impact on LGBTQ students' mental health will increase the demand for such school-based services. And Amici States' education agencies will need to expand their efforts to address barriers to the well-being and educational success of LGBTQ students.

Finally, Amici States may need to increase funding for nonprofit organizations that provide social services to LGBTQ youth. Amici States recognize the vital role these organizations play in promoting LGBTQ individuals' health and well-being. Massachusetts, for example, funds organizations through its Safe Spaces for LGBTQ Youth program, whose goal is to "promote self-esteem, increase social connectedness and resilience, and decrease risk for suicidal behaviors (and self-harm)." Commonwealth of Mass., *The Safe Spaces for LGBTQIA+ Youth Program Engage Youth Who Are LGBTQIA+*, https://tinyurl.com/v25hcf86 (last visited Aug. 3, 2022). And New Jersey's Department of Children and Families provides funding and resources to organizations that serve LGBTQ youth, such as HiTops, which provides health services and group support to LGBTQ youth throughout New Jersey. HiTops, *About Us*, https://tinyurl.com/3bz9n622 (last

visited Aug. 3, 2022). The stigmatic harms stemming from the Act will increase the demand for these organizations' services—and Amici States' funding for them.

CONCLUSION

The Court should deny the motions to dismiss.

Respectfully submitted,

MATTHEW J. PLATKIN
Acting Attorney General for the State of New Jersey

JEREMY M. FEIGENBAUM
Solicitor General

SUNDEEP IYER
MAYUR P. SAXENA
Assistant Attorneys General

MELISSA MEDOWAY
MELISSA FICH
JOHN T. PASSANTE
Deputy Attorneys General

The Office of the Attorney General of New Jersey
Richard J. Hughes Justice Complex
25 Market Street, P.O. Box 112
Trenton, NJ 08625
(609) 376-2690
jeremy.feigenbaum@njoag.gov

KARL A. RACINE
Attorney General for the District of Columbia

CAROLINE S. VAN ZILE
Solicitor General

ASHWIN P. PHATAK
Principal Deputy Solicitor General

/s/ Adam J. Tuetken
ADAM J. TUETKEN*
Assistant Attorney General

Office of the Solicitor General
Office of the Attorney General
for the District of Columbia
400 6th Street, NW, Suite 8100
Washington, D.C. 20001
(202) 735-7474
adam.tuetken@dc.gov

August 2022
*Admitted in the U.S. District Court for the Northern District of Florida

On behalf of:

ROB BONTA
Attorney General
State of California

PHILIP J. WEISER
Attorney General
State of Colorado

WILLIAM TONG
Attorney General
State of Connecticut

KATHLEEN JENNINGS
Attorney General
State of Delaware

HOLLY T. SHIKADA
Attorney General
State of Hawaii

KWAME RAOUL
Attorney General
State of Illinois

AARON M. FREY
Attorney General
State of Maine

BRIAN E. FROSH
Attorney General
State of Maryland

MAURA HEALEY
Attorney General
Commonwealth of Massachusetts

DANA NESSEL
Attorney General
State of Michigan

KEITH ELLISON
Attorney General
State of Minnesota

AARON D. FORD
Attorney General
State of Nevada

LETITIA JAMES
Attorney General
State of New York

ELLEN F. ROSENBLUM
Attorney General
State of Oregon

LOCAL RULE 7.1(F) CERTIFICATION

As required by Local Rule 7.1(F), the undersigned counsel certifies that this brief contains 6,416 words.

/s/ Adam J. Tuetken
ADAM J. TUETKEN

CERTIFICATE OF SERVICE

I hereby certify that on August 3, 2022, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system.

/s/ Adam J. Tuetken
ADAM J. TUETKEN