

No. 16-273

IN THE
Supreme Court of the United States

GLOUCESTER COUNTY SCHOOL BOARD,
Petitioner,

—v.—

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

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT

**BRIEF FOR *AMICI CURIAE* APPLE,
IBM CORPORATION, MICROSOFT AND 50 OTHER
COMPANIES IN SUPPORT OF RESPONDENT**

DEBORAH H. RENNER
Counsel of Record
ONA T. WANG
JOANNA F. WASICK
BAKER & HOSTETLER LLP
45 Rockefeller Plaza
New York, New York 10111
(212) 589-4200
drenner@bakerlaw.com
Attorneys for Amici Curiae

TABLE OF CONTENTS

	PAGE
STATEMENT OF IDENTITY AND INTEREST OF <i>AMICI CURIAE</i>	1
SUMMARY OF THE ARGUMENT	2
ARGUMENT	2
I. Diversity and Inclusion Are Essential Aspects of <i>Amici's</i> Businesses	2
II. The Policy Will Adversely Affect <i>Amici</i> and Its Effect Will Extend Far Past Gloucester County	4
A. The Policy Harms Employees with Transgender Children and Employees Who Themselves are Transgender	5
1. The Policy Harms Employees with Transgender Children	5
2. The Policy Harms <i>Amici's</i> Transgender Employees	8
B. The Policy Harms the Ability of <i>Amici</i> to Recruit Employees	9
C. The Policy Harms <i>Amici</i> by Having an Adverse Effect on Commerce....	11

	PAGE
D. The Policy Harms <i>Amici's</i> Interest in Public Policies that Adequately Prepare Youth to Enter the Workplace	13
III. The Policy Is Discriminatory and Undermines <i>Amici's</i> Core Values.....	14
CONCLUSION.....	15
ADDENDUM	
List of <i>Amici Curiae</i>	Add.1

TABLE OF AUTHORITIES

Cases	PAGE(S)
<i>Board of Ed. of the Highland Local Sch. Dist. v. U. S. Dept. of Educ., No. 2:16-CV-524, --- F. Supp. 3d ---, 2016 WL 5372349 (S.D. Ohio Sept. 26, 2016).....</i>	6
<i>Brown v. Board of Ed., 347 U.S. 483 (1954)</i>	13
<i>Perry v. Schwarzenegger, 704 F. Supp. 2d 921 (N.D. Cal. 2010)...</i>	9
<i>Students and Parents for Privacy v. U. S. Dept. of Educ., No. 16-cv-4945, 2016 WL 6134121 (N.D. Ill. Oct. 18, 2016).....</i>	6
Other Authorities	
Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681.....	1, 15
M.V. Lee Badgett et al., Williams Institute, <i>The Business Impact of LGBT-Supportive Workplace Policies</i> (2013), http://tinyurl.com/kz6774e	4, 10
Catalyst Information Center, <i>Why Diversity Matters</i> (2013), http://tinyurl.com/o2hqrsd	4
Credit Suisse, <i>Credit Suisse ESG Research, LGBT: The Value of Diversity</i> (2016), http://tinyurl.com/h4fdnz3	4

GLSEN, <i>Teaching Respect: LGBT-Inclusive Curriculum and School Climate</i> (Research Brief) (2011), https://www.glsen.org/sites/default/files/Teaching%20Respect.pdf	7, 8
Jaime M. Grant et al., <i>Nat'l Ctr. for Transgender Equal. & National Gay and Lesbian Task Force, Injustice at Every Turn: A Report of the National Transgender Discrimination Survey</i> (2011), www.thetaskforce.org/static_html/downloads/reports/reports/ntds_summary.pdf	7
Emily A. Greytak et al., <i>GLSEN, Harsh Realities: The Experience of Transgender Youth in Our Nation's Schools</i> (2009), http://files.eric.ed.gov/fulltext/ED505687.pdf	8
Mark L. Hatzenbuehler et al., <i>Stigma as a Fundamental Cause of Population Health Inequalities</i> , 103 <i>Am. J. of Pub. Health</i> 813 (2013)	9
Letter from Human Rights Campaign and Equality North Carolina to the Office of the Governor, Pat McCrory, http://tinyurl.com/h6cl35t	11
Human Rights Campaign Foundation, <i>2014 Municipal Equality Index: A Nationwide Evaluation of Municipal Law</i> (2014), http://tinyurl.com/h3fqlyx	10

	PAGE
Human Rights Campaign Foundation, <i>Corporate Equality Index 2016</i> , http://tinyurl.com/p2mfq9m	3
Human Rights Campaign Foundation, <i>Corporate Equality Index 2017</i> , http://hrc-assets.s3-website-us-east-1.amazonaws.com/files/assets/resources/CEI-2017-FinalReport.pdf	3
Jon Kamp & Valerie Bauerlein, <i>Deutsche Bank Freezes North Carolina Expansion, Citing Transgender Law</i> , Wall St. J. (Apr. 12, 2016), http://tinyurl.com/orjftoj	12
Jon Kamp & Valerie Bauerlein, <i>PayPal Cancels Plan for Facility in North Carolina, Citing Transgender Law</i> , Wall St. J. (Apr. 5, 2016), http://tinyurl.com/zzdoy63	12
Joseph G. Kosciw et al., <i>GLSEN, 2007 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth in Our Nation's Schools</i> (2008), https://www.glsen.org/download/file/NDIyMg==	8
Joseph G. Kosciw et al., <i>GLSEN The 2013 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth in Our Nation's Schools</i> (2014), https://www.glsen.org/sites/default/files/2013%20National%20School%20Climate%20Survey%20Full%20Report_0.pdf ...	7

	PAGE
Hadley Malcolm, <i>How Other Stores are Handling Transgender Bathroom Policies</i> , USA TODAY, Apr. 27, 2016, http://www.usatoday.com/story/money/2016/04/27/retailers-transgender-bathroom-policy-lgbt/83560714/	3
Jenifer K. McGuire et al., <i>School Climate for Transgender Youth: A Mixed Method Investigation of Student Experiences and School Responses</i> , 39 J. Youth & Adolesc. 1175 (2010)	7
Matt Motyl et al., <i>How Ideological Migration Geographically Segregates Groups</i> , 51 J. Experimental Soc. Psychol. 1 (2014)	10
Nat'l Ass'n of Sch. Psych. & Gender Spectrum, <i>Gender Inclusive Schools: Policy, Law, and Practice 2</i> (2016)	7
Stephen T. Russell et al., <i>Safe Schools Policy for LGBTQ Students</i> , 24 Social Policy Report (2010)	8
Press Release, Dan Schulman, President & CEO of PayPal, PayPal Withdraws Plan for Charlotte Expansion (Apr. 5, 2016), http://tinyurl.com/zvk3spx	12
Amrit Thapa et al., <i>National School Climate Center, School Climate Research Summary: August 2012</i> (2012), https://www.schoolclimate.org/climate/documents/policy/sc-brief-v3.pdf	13

STATEMENT OF IDENTITY AND INTEREST OF *AMICI CURIAE*

This *amicus* brief is submitted on behalf of some of the largest and most well-known companies in the United States to address the rights of transgender students under Title IX of the Education Amendments of 1972. A complete listing of *amici curiae* is provided in the Addendum to this brief.¹ *Amici* share core values of equality, respect and dignity for all people, regardless of their gender identity. *Amici* support and defend public policies that protect civil rights and foster acceptance and equal treatment for all of their employees, their customers, and the families of both.

Many *amici* employ and/or serve transgender people, and all *amici* are concerned about the stigmatizing and degrading effects of the policy adopted by the Gloucester County School Board (the “Policy”), which restricts access to public school restrooms for transgender youth. The Policy, and the policies and statutes of other government entities that would be permitted if the Policy is sustained, adversely affects *amici*’s businesses, employees, and customers, and undermines *amici*’s ability to build and maintain the diverse and inclusive workplaces that are essential to the success of their companies.

¹ Pursuant to Rule 37.6, *amici curiae* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *amici* and their counsel made a monetary contribution to its preparation or submission. Petitioner’s and Respondent’s consent to the filing of *amicus* briefs have been filed with the Clerk.

Gender identity discrimination is a form of sex discrimination. *Amici* respectfully request that the Court consider the business consequences of such discrimination when rendering a decision in this case.

SUMMARY OF THE ARGUMENT

The judiciary has historically played a critical role in ensuring equality across all lines, including those drawn according to race, gender, and sexual orientation. *Amici* believe that transgender individuals deserve the same treatment and protections as all other members of our society. The Policy undermines *amici's* policies promoting fairness and equality for their employees and customers, and thus directly threatens *amici's* business interests.

ARGUMENT

I. Diversity and Inclusion Are Essential Aspects of *Amici's* Businesses

Diversity and inclusion are essential features of *amici's* businesses, and recruiting and retaining the best employees—including those in or allied with the transgender community—is a critical component of their diversity missions. *Amici's* commitment to diversity and inclusion is widely reflected among many of the largest businesses in the United States. Indeed, hundreds of businesses prohibit discrimination based on gender identity: A full 82% of the Fortune 500, and 98% of the companies that participated in a survey conducted by the Human Rights Campaign in the United States in 2016 (“Participating Companies”), include

gender identity in their U.S. Non-Discrimination Policies. See Human Rights Campaign Foundation, *Corporate Equality Index 2017*, at 7, <http://hrc-assets.s3-website-us-east-1.amazonaws.com//files/assets/resources/CEI-2017-FinalReport.pdf> (“CEI”). Half of the Fortune 500 offer transgender-inclusive health care benefits, including surgical procedures, as do 74% of Participating Companies. *Id.* Major businesses are openly taking a stance on transgender restroom policies and are permitting employees and customers to use the restroom of the gender with which they identify. See, e.g., Hadley Malcolm, *How Other Stores are Handling Transgender Bathroom Policies*, USA TODAY, Apr. 27, 2016, <http://www.usatoday.com/story/money/2016/04/27/retailers-transgender-bathroom-policy-lgbt/83560714/>.

Amici recognize that LGBT equality also makes them stronger in the global economy. More than 90 percent of CEI-rated businesses have embraced gender identity employment protections globally, which is an increase from prior years. CEI, at 2, 7. There is a growing shift towards inclusion and acceptance of transgender workers here in the United States and abroad. *Compare* CEI, at 7, *with* Human Rights Campaign Foundation, *Corporate Equality Index 2016*, at 7, <http://tinyurl.com/p2mfq9m>.

Amici have adopted and implemented policies or practices that foster equality because they are good for their employees, customers, and communities, and also because such policies or practices benefit their bottom lines. *Amici* know firsthand the various advantages inclusive policies confer, and empirical studies confirm that LGBT-

friendly policies are tied to increases in firm value, productivity, and profitability.²

The correlation between having LGBT-friendly policies and financial success is significant. Undermining those policies through discriminatory school policies is bad for business.

II. The Policy Will Adversely Affect Amici and Its Effect Will Extend Far Past Gloucester County

Reversing the Fourth Circuit’s decision in this matter will allow individual school districts, and indeed any other government entity, to do just what the Board has done here—define statutory terms to support policies that discriminate against transgender children. Further, a reversal could embolden other local and state governments to enact legislation that also contravenes federal law and restricts transgender people’s access to

² See Catalyst Information Center, *Why Diversity Matters* 6 (2013), <http://tinyurl.com/o2hqrsd>. One recent study by Credit Suisse, for example, demonstrated that a set of 270 companies that openly support and embrace LGBT employees outperformed a Morgan Stanley-operated market capitalization weighted index known as “MSCI ACWI” by 3.0 % per annum between 2010 and 2016, with returns on equity and cash flow returns that were 10% to 21% higher. See Credit Suisse, *Credit Suisse ESG Research, LGBT: The Value of Diversity* (2016), <http://tinyurl.com/h4fdnz3>. In another study, the Williams Institute at the UCLA School of Law reviewed thirty-six research studies and found that “the more robust a company’s LGBT-friendly policies, the better its stock performed over the course of four years (2002-2006), compared to other companies in the same industry over the same period of time.” M.V. Lee Badgett et al., Williams Institute, *The Business Impact of LGBT-Supportive Workplace Policies* 23 (2013), <http://tinyurl.com/kz6774e>.

restrooms that comport with their gender identity, both in the public sphere and in the workplace. This piecemeal approach will result in a geographic patchwork, the borders of which will be defined by the treatment of the transgender community. Such a result will have very real, adverse effects on *amici*'s businesses.

A. The Policy Harms Employees with Transgender Children and Employees Who Themselves are Transgender³

Amici's employees are their most valuable assets and *amici* have a strong interest in their productivity and morale. Rules like the Policy make life harder for *amici*'s employees with transgender children and for employees who are themselves transgender.

1. The Policy Harms Employees with Transgender Children

Amici recognize that employees cannot work as effectively when they are worried about how their children are being treated at school. Similarly, *amici* are harmed when parents miss work because they have to tend to a sick or hurt child. Unfortunately, employees with transgender children living in areas with discriminatory policies like the Policy would be subject to the same hardships as G.G.'s family.

In the case at bar, the only child reporting harm due to his school's restroom policy was G.G. During the Board meeting when the Policy was first addressed, G.G. was "outed" by his community,

³ *Amici* adopt the facts as set forth in the Respondent's brief.

was called a “freak,” and was compared to someone who thinks he is a dog that urinates on fire hydrants. App. 11a. After the Policy was enforced, G.G. was unable to use a restroom in which he felt comfortable. When he tried to use the girls’ restroom, (1) female students reacted negatively to the presence of an individual who they understood to be a boy, and (2) complications from his gender dysphoria were exacerbated. App. 150-51a. When G.G. tried to use the unisex restroom, he felt even more stigmatized and was sharply reminded that the school viewed him as “different.” App. 151a. *See also Students and Parents for Privacy v. U. S. Dept. of Educ.*, No. 16-cv-4945, 2016 WL 6134121, at *30 (N.D. Ill. Oct. 18, 2016) (recognizing that isolating transgender students against their will could and did negatively impact their experience in school). This incredibly uncomfortable scenario caused G.G. severe and persistent emotional, social, and physical harm. App. 149a-52a.

The impact of the Policy on G.G. is hardly unique or unusual. The same sort of harm was faced by a transgender child in a case involving a similar school restroom policy in Ohio. *See Board of Ed. of the Highland Local Sch. Dist. v. U. S. Dept. of Educ.*, No. 2:16-CV-524, --- F. Supp. 3d ---, 2016 WL 5372349 (S.D. Ohio Sept. 26, 2016).⁴ The

⁴ There, a child identified as transgender since she was four years old. *Id.* at *2. Before starting the first grade, she changed her name to a female one and socially transitioned genders. *Id.* While the school changed records accordingly, it required the girl to use a unisex restroom in the teacher’s lounge. *Id.* This caused her extensive anguish but, despite her repeated requests to change the policy, the school continued to ban her from using the girls’ restroom. *Id.* at *3. She tried to refrain from drinking fluids, refused to use any restroom,

Policy makes going to school that much harder for transgender youth and their families. Furthermore, this population already is particularly susceptible to harm. Even compared to lesbian, gay or bisexual students, transgender students face the most hostile school climates.⁵ Importantly, in schools where students' rights to gender expression are respected, students experience less bullying and have better outcomes. In schools with anti-LGBT bullying policies, for example, students have better relationships with staff and as a result feel safer in school.⁶ When transgender

and became anxious and depressed. Before starting the fourth grade, she attempted suicide. *Id.* at *3-4.

⁵ Joseph G. Kosciw et al., *GLSEN The 2013 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth in Our Nation's Schools* xxiii (2014), https://www.glsen.org/sites/default/files/2013%20National%20School%20Climate%20Survey%20Full%20Report_0.pdf. Those who identify as transgender while in grades K-12 reported disproportionately high rates of harassment (78%), physical assault (35%) and sexual violence (12%). Jaime M. Grant et al., *Nat'l Ctr. for Transgender Equal. & National Gay and Lesbian Task Force, Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* (2011), www.thetaskforce.org/static_html/downloads/reports/reports/ntds_summary.pdf. Transgender students who experienced discrimination at school were more likely to miss school, had lower GPAs, and had higher levels of depression and lower levels of self-esteem than their peers. Kosciw, *supra*, at xviii.

⁶ Nat'l Ass'n of Sch. Psych. & Gender Spectrum, *Gender Inclusive Schools: Policy, Law, and Practice 2* (2016) (citing Jenifer K. McGuire et al., *School Climate for Transgender Youth: A Mixed Method Investigation of Student Experiences and School Responses*, 39 *J. Youth & Adolesc.* 1175 (2010)). In schools that have an academic curriculum that positively represents LGBT individuals, there is less bullying and harassment. GLSEN, *Teaching Respect: LGBT-*

students are supported, they have higher grade point averages, better attendance records, increased self-esteem, and are bullied at lower rates than peers at other schools. Joseph G. Kosciw et al., *GLSEN, 2007 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth in Our Nation's Schools* 121 (2008), <https://www.glsen.org/download/file/NDIyMg==>.

Amici have an interest in school policies that provide their employees with the best, most inclusive educational opportunities for their children. Employees who are confident in their children's physical and emotional security at school will be more productive and satisfied employees.

2. The Policy Harms *Amici's* Transgender Employees

By singling out the transgender population, the Policy signals to *amici's* transgender employees that they are less worthy than other community

Inclusive Curriculum and School Climate 1–2 (Research Brief) (2011), <https://www.glsen.org/sites/default/files/Teaching%20Respect.pdf>. In schools with LGBT inclusive environments, LGBT students have more academic success than those at schools with negative environments. Stephen T. Russell et al., *Safe Schools Policy for LGBTQ Students*, 24 *Social Policy Report*, no. 4, at 6–7 (2010). And when schools support transgender students who come out and socially transition at school, transgender students feel more included in the school community than those who are closeted. See Emily A. Greytak et al., *GLSEN, Harsh Realities: The Experience of Transgender Youth in Our Nation's Schools* 30–31 (2009), <http://files.eric.ed.gov/fulltext/ED505687.pdf>. This sense of belonging correlates with higher academic achievement. *Id.* at 29.

members, and that they should suppress perhaps the most essential part of who they are. This has a very direct effect on *amici*'s transgender employees.

It is well established that stigma can have a harmful effect on those targeted: "Structural stigma provides the context and identifies which members of society are devalued. It also gives a level of permission to denigrate or attack particular groups, or those who are perceived to be member of certain groups in society." *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921, 974 (N.D. Cal. 2010), *see also* Mark L. Hatzenbuehler et al., *Stigma as a Fundamental Cause of Population Health Inequalities*, 103 Am. J. of Pub. Health 813, 815-16 (2013) (stigma can have "a corrosive influence on health" and can harm a person's social relationships and self-esteem).

Amici appreciate the importance of diversity and inclusion in the workplace, and have implemented policies to promote the same. In contrast, the Policy reinforces and perpetuates harmful stereotypes about the transgender community, undermines the policies that *amici* have adopted that are affirmatively non-discriminatory, and results in diminished employee morale.

B. The Policy Harms the Ability of *Amici* to Recruit Employees

One of the greatest business benefits *amici* derive from their policies advancing diversity and inclusion in the workplace, and one of the greatest harms that will result from allowing governmental discrimination against transgender students, relates to recruitment and retention of the best employees. Employers need to be able to recruit and retain the most qualified and talented workforce.

LGBT-friendly policies provide tangible advantages in employee recruitment and retention: many LGBT and non-LGBT workers prefer to work for companies with supportive policies and in communities with supportive laws. Badgett, *supra* note 2, at 2, 38-39; *see also* Matt Motyl et al., *How Ideological Migration Geographically Segregates Groups*, 51 J. Experimental Soc. Psychol. 1 (2014), <http://tinyurl.com/j8pkoul> (individuals are moving from ideologically unfriendly communities to congruent communities). Research conducted by Richard Florida,⁷ a prominent American urban studies theorist, shows that “members of the creative class” in particular (roughly 50 million people including scientists, engineers, and entrepreneurs, researchers and academics, architects and designers, artists, entertainers and professionals in business, media, management, health care and law), use diversity as a proxy for determining whether a city would provide a welcoming home. Human Rights Campaign Foundation, *2014 Municipal Equality Index: A Nationwide Evaluation of Municipal Law* 6 (2014), <http://tinyurl.com/h3fqlyx>.

A community that stigmatizes a class of persons generally will be unattractive to persons and families of that class. Accordingly, *amici* conducting businesses in areas with policies that discriminate will be at a disadvantage in recruiting the best employees. In this way, the Policy undermines *amici*'s recruitment efforts and their businesses.

⁷ Dr. Florida is the current director of the Martin Prosperity Institute at the University of Toronto's Rotman School of Management, and was a senior editor at The Atlantic and Global Research Professor at New York University.

Similarly, many of the *amici* maintain business operations in various regions of the country. If some of those regions recognize the rights of transgender students to be free from discrimination and others do not, transgender employees or employees with transgender children, or even employees who prefer to work in a community that does not discriminate, will be unwilling to transfer to locations where such discrimination is permitted, harming *amici*'s ability to deploy their workforce in a manner that most benefits their business interests.

C. The Policy Harms *Amici* by Having an Adverse Effect on Commerce

Enabling governments to discriminate against transgender students will also interfere with *amici*'s choice of geographies in which to conduct business. *Amici*'s policies and practices support diversity and inclusion and prevent discrimination against transgender people. Their employees and customers will not support the siting of business activities in locations—otherwise desirable to *amici*—where discrimination is tolerated, or even, as in the case of the Policy, mandated by the government.

The reaction of the business community to the passage of a similarly discriminatory law in North Carolina, Session Law 2016-3 (“H.B. 2”), is instructive. After H.B. 2 was passed, over 200 leading CEOs and business leaders signed an open letter calling on North Carolina Governor McCrory and the North Carolina General Assembly to repeal provisions of H.B. 2. Letter from Human Rights Campaign and Equality North Carolina to the Office of the Governor, Pat McCrory, <http://tinyurl.com/h6cl35t>. Businesses

also responded by withdrawing or canceling anticipated investments in North Carolina. PayPal, for example, announced that it would seek an alternative location to Charlotte, North Carolina, for its new global operations center because H.B. 2, like the Policy, “perpetuates discrimination” based on gender identity and “violates the values and principles that are at the core of PayPal’s mission and culture.” Press Release, Dan Schulman, President & CEO of PayPal, PayPal Withdraws Plan for Charlotte Expansion (Apr. 5, 2016), <http://tinyurl.com/zvk3spx>; Jon Kamp & Valerie Bauerlein, *PayPal Cancels Plan for Facility in North Carolina, Citing Transgender Law*, Wall St. J. (Apr. 5, 2016), <http://tinyurl.com/zzdoy63>. Similarly, Deutsche Bank froze a planned North Carolina expansion that would have brought 250 jobs to the Raleigh-Durham area. Jon Kamp & Valerie Bauerlein, *Deutsche Bank Freezes North Carolina Expansion, Citing Transgender Law*, Wall St. J. (Apr. 12, 2016), <http://tinyurl.com/orjftoj>.

If local and state governments are permitted to enact and enforce discriminatory systems such as the Policy (both in an educational arena and beyond, into the public sphere and the workplace), *amici* operating in those areas, or those who wish to conduct business operations there, will be adversely affected. Employees will not want to work there, or work for a company that conducts business there. Customers will not want to buy products or services from such a company. *Amici*’s business interests are harmed by discrimination, which is why all of them have policies or practices that prevent it, and why all of them have joined this brief to the Court.

D. The Policy Harms *Amici's* Interest in Public Policies that Adequately Prepare Youth to Enter the Workplace

This Court has recognized that our national education system maintains a venerable role in the shaping of American culture.

[E]ducation is perhaps the most important function of state and local governments . . . It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment.

Brown v. Board of Ed., 347 U.S. 483, 493 (1954).

Amici agree. Our schools and educators play an integral role in shaping children's values as citizens and in creating norms. And how children learn to treat others in school impacts their views and behavior outside of school and, later, once they are in the work force. An educational system that passes and enforces discriminatory policies such as the Policy, teaches youth that transgender children are second-class citizens and should be treated as such. This dangerous lesson normalizes and enables bullying, prejudice, and harassment, which can translate into workplace and community intolerance in adulthood. In contrast, schools with policies that are inclusive of transgender students create adults who have learned to value and respect each other, no matter their differences. See Amrit Thapa et al., *National School Climate Center, School Climate Research Summary: August 2012* 4 (2012), <https://www.schoolclimate.org/climate/documents/policy/sc-brief-v3.pdf>.

Amici have an interest in ensuring that the education provided to this country’s youth prepares them for inclusive workplaces like those of *amici*—environments in which all members of society can maintain an inherent sense of worth and dignity.

III. The Policy Is Discriminatory and Undermines *Amici*’s Core Values

Beyond the practical benefits that LGBT-friendly policies foster, *amici*’s policies of diversity and inclusion reflect their core values, and *amici* believe that treating transgender people with the dignity and respect they deserve is simply the right thing to do. *Amici* reject policies like the Policy, which needlessly discriminate according to gender identity.

The Policy discriminates against transgender children and violates their privacy. The Policy forces children to use restrooms according to their “biological gender.” This mandate targets transgender individuals in particular because they are the only people for whom “biological gender” fails to correspond with gender identity—indeed, this disparity is a defining aspect of being transgender. The Policy places transgender youth—and only transgender youth—in the humiliating and painful position of having to publicly deny and disclaim their gender identity.

Notably, all *amici* have nondiscrimination policies or practices that permit transgender individuals to use the company facilities consistent with their gender identity—policies that *amici* adopted out of respect for the dignity, autonomy, and privacy of their transgender employees and/or customers and also because *amici* know

that diversity and inclusion are good for business. *None* of these policies has resulted in an increase in sexual assaults or incidents of the kind invoked by the Board and supporters of the Policy. To the contrary, *amici* find that their policies contribute to a work environment that promotes collaboration, creativity and productivity.

CONCLUSION

By discriminating against and harming *amici*'s transgender employees, customers and their families, the Policy, and similar policies and statutes that may arise if the Policy is permitted to stand, threatens *amici*'s diverse and inclusive workplaces and their bottom lines. In light of the lack of any reasoned justification for the Policy, and because of the significant adverse effects on the transgender community and resultant harm to *amici*, *amici* respectfully urge the Court to determine that transgender students are protected by Title IX of the Education Amendments of 1972.

Respectfully submitted,

DEBORAH H. RENNER

Counsel of Record

ONA T. WANG

JOANNA F. WASICK

BAKER & HOSTETLER LLP

45 Rockefeller Plaza

New York, New York 10111

(212) 589-4200

drenner@bakerlaw.com

Attorneys for Amici Curiae

ADDENDUM

Add. 1

LIST OF *AMICI CURIAE*

1. Affirm, Inc.
2. Airbnb, Inc.
3. Amazon.com, Inc.
4. Apple
5. Asana, Inc.
6. Box, Inc.
7. Codecademy
8. Credo Mobile, Inc.
9. Dropbox, Inc.
10. eBay Inc.
11. Etsy
12. Fastly, Inc.
13. Flipboard, Inc.
14. Gap Inc.
15. General Assembly Space, Inc.
16. GitHub, Inc.
17. IBM Corporation
18. Intel Corporation
19. Kickstarter, PBC
20. Knotel, Inc.
21. LinkedIn Corporation, a subsidiary of
Microsoft Corporation
22. Lyft
23. M Booth
24. MAC Cosmetics Inc.
25. Mapbox, Inc.
26. Marin Software Incorporated
27. Massachusetts Mutual Life Insurance
28. Microsoft

Add. 2

29. Mitchell Gold + Bob Williams
30. MongoDB Inc.
31. NetApp, Inc.
32. Next Fifteen Communications Corporation
33. Nextdoor
34. Pandora Media, Inc.
35. PayPal Holdings, Inc.
36. Postmates Inc.
37. Replacements, Ltd.
38. RetailMeNot, Inc.
39. Salesforce
40. Shutterstock, Inc.
41. Slack Technologies, Inc.
42. Spotify
43. The OutCast Agency
44. The WhiteWave Foods Company
45. Tumblr, Inc.
46. Twilio Inc.
47. Twitter Inc.
48. Udacity, Inc.
49. Warby Parker
50. Williams-Sonoma, Inc.
51. Yahoo! Inc.
52. Yelp Inc.
53. Zendesk, Inc.