

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 OF *AMICI CURIAE*
LAW ENFORCEMENT OFFICERS
IN SUPPORT OF RESPONDENT**

BRADLEY S. PHILLIPS
KATHERINE M. FORSTER
Counsel of Record
AMELIA L.B. SARGENT
SARA N. TAYLOR
MUNGER, TOLLES & OLSON LLP
350 South Grand Avenue
Fiftieth Floor
Los Angeles, CA 90071
(213) 683-9100
Katherine.Forster@mto.com

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INTEREST OF *AMICI CURIAE*¹

Amici are more than 60 current and former Chiefs of Police, Sheriffs, and other law enforcement officers from around the United States, and include executive leadership of the Major Cities Chiefs Association and the National Association of Women Law Enforcement Executives. Each individual law enforcement officer is dedicated to preserving public safety, protecting the public, and ensuring equal treatment of all people, including transgender individuals. *Amici* join this brief in their individual capacities, and their titles and affiliations are provided for identification purposes only.

INTRODUCTION

In this case, G.G. challenges a school rule prohibiting him from using the restroom that matches his gender identity. Regulations and rules like the one imposed by G.G.'s school seek to prohibit transgender people from using restroom facilities that match their gender identity but do not match the gender they were assigned at birth. These laws are often defended as purportedly necessary to ensure safety in public facilities. But public-safety concerns do not justify these laws, because there is no safety threat created by permitting transgender people to use public facilities that match their gender identity.

¹ No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the *amici curiae*, or their counsel, made such a monetary contribution. All parties have consented to *amici*'s submission of this brief either in writing or by blanket consent letter. A full list of *amici curiae* appears in the Appendix to this brief.

Amici have concluded that these laws address no legitimate public-safety concern based on their collective decades of experience, including with rules that permit transgender people to use restrooms and other public facilities that match their gender identity. Nondiscrimination laws that permit transgender people, such as G.G., to use public restroom facilities that match their gender identity have been in effect in jurisdictions, schools, and businesses across the country for decades and have caused no observable increase in crime. Transgender people do not enter public restrooms to engage in criminal conduct any more than anyone else who uses public restrooms. Rather, like nearly everyone else who uses public restrooms, transgender individuals enter these facilities simply to perform one of life's most basic functions. The small number of people who do enter public restroom facilities for the purpose of committing crime generally do not exploit nondiscrimination laws to do so. Fears that nondiscrimination laws will enable non-transgender offenders to take advantage of these laws to access sex-segregated facilities are unfounded, as demonstrated by law enforcement's decades of experience operating with such laws. As *amici* law enforcement officials have observed and explained, there has been no increase in criminal conduct in public facilities that correlates with the existence of nondiscrimination laws or policies allowing transgender people to use facilities that match their gender identity.

Law enforcement's experience with nondiscrimination laws and policies in jurisdictions across the country shows that these laws and policies in fact *improve* public safety, by protecting transgender individuals, who are particularly vulnerable to assault in public facilities, and by encouraging collaboration between transgender people and law enforcement.

Moreover, existing laws already target precisely the criminal conduct that restrictive restroom laws are meant to prevent: Every jurisdiction and the District of Columbia has laws prohibiting assault and other criminal behavior in public restrooms. Nondiscrimination laws do not impede or limit enforcement of these laws and may in some circumstances facilitate their enforcement.

ARGUMENT

I. RULES PERMITTING TRANSGENDER PEOPLE TO USE RESTROOMS THAT MATCH THEIR GENDER IDENTITY DO NOT CREATE A RISK TO PUBLIC SAFETY

As explained further below, hundreds of jurisdictions across the country have experience with nondiscrimination laws, ordinances, and policies protecting transgender individuals against discrimination in schools, public buildings, public accommodations, and businesses. These include rules permitting transgender people to use the restroom facilities that match their gender identity. As law enforcement officers have explained in legislative testimony supporting such nondiscrimination rules across the country, these rules help rather than hinder their jobs. *See* Expert Decl. of Assistant Chief of Univ. Police Aran C. Mull in Supp. of Pls.’ Mot. for Prelim. Inj., Ex. C, *Carcaño v. McCrory*, No. 1:16-cv-00236 (M.D.N.C. May 16, 2016), ECF No. 22-10 (collecting formal legislative testimony from law enforcement and prosecutors across the country). Speculative fears that gender-identity nondiscrimination rules would harm the public safety have not proven warranted; to the contrary, rules promoting respectful treatment of vulnerable minority

groups, including members of the transgender community, facilitate the job of law enforcement by reducing crimes targeting such groups and increasing their cooperation with law enforcement. *Id.* at 10-12. As a Massachusetts prosecutor testified with regard to that state's gender-identity nondiscrimination law:

[O]ver the years, every time we came to a new step we needed to take to make our Commonwealth more just, more tolerant and more fair, we have been met with dire predictions. Each time, we overcame those arguments with reason and by appealing to people's inherent sense of decency and fairness. And every time we did so, as a Commonwealth, as a society, and as citizens, we emerged better.

Id. Ex. C, at 9.

That is the view of law enforcement as well.

Nineteen states, the District of Columbia, and more than 200 municipalities currently have laws prohibiting discrimination on the basis of gender identity and protecting transgender individuals' right to use public facilities (including restrooms) consistent with their gender identity.² These jurisdictions include a diverse cross-section of communities in the United States, from Massachusetts and California to Minnesota and Iowa. It includes some of the largest cities in the country, such as Philadelphia, Austin, Columbus, Seattle, San Francisco, and New York. Carolyn Simon, *Municipality Equality Index 2016: A Nationwide Evaluation*

² <https://www.aclu.org/map/non-discrimination-laws-state-state-information-map>.

of *Municipal Law* (2016).³ It also includes municipalities in many states that do not have statewide nondiscrimination laws. Major cities in Arizona, Florida, Georgia, Indiana, Louisiana, Kentucky, Michigan, Missouri, Ohio, Pennsylvania, Texas, and Virginia have passed local gender-identity nondiscrimination ordinances, though their states do not have such laws.⁴

Many of these laws have been in effect for years. Minnesota was the first to enact such a law, in 1993, and Massachusetts passed a similar law in 1997; several states, including Hawaii, Iowa, Maine, New Mexico, Oregon, Rhode Island, and Vermont, have had such laws for a decade or more, and many cities have had similar laws for just as long, while other jurisdictions have added such laws more recently. Carlos Maza & Luke Brinker, *15 Experts Debunk Right-Wing Transgender Bathroom Myth*, Media Matters for America (March 20, 2014).⁵

³ <http://www.hrc.org/blog/municipal-equality-index-2016-all-star-cities>.

⁴ Cities that have passed these ordinances include: Phoenix, Tucson, and Tempe, Arizona; Gainesville, Miami Shores, Oakland Park, Orlando, St. Petersburg, Tallahassee, Tampa, and Wilton Manors, Florida; Atlanta, Georgia; Bloomington and Indianapolis, Indiana; New Orleans, Louisiana; Louisville, Kentucky; Ann Arbor, Detroit, East Lansing, and Ferndale, Michigan; Columbia, Kansas City, and St. Louis, Missouri; Missoula, Montana; Cincinnati, Columbus, Dayton, and Toledo, Ohio; Allentown, Philadelphia, and Pittsburgh, Pennsylvania; Austin, Dallas, Fort Worth, and San Antonio, Texas; and Alexandria and Arlington, Virginia. Simon, *supra*.

⁵ <http://mediamatters.org/research/2014/03/20/15-experts-debunk-right-wing-transgender-bathro/198533>.

There is no evidence that the nondiscrimination laws in these jurisdictions have led to an increase in crime in public facilities or other related public-safety problems. As *Time Magazine* recently reported, in the many years these laws have been in effect, there is not yet any anecdotal evidence “that incidents of violence or sexual assault have increased.” Michael Scherer, *Battle of the Bathroom*, *Time Magazine*, May 30, 2016, at 35.⁶ Based on the experience in significant numbers of jurisdictions, law enforcement officers across the country, including *amici*, have concluded that these laws do not cause any increase in crime in public facilities.

Many law enforcement officers have publicly explained that, since nondiscrimination laws have been in effect in their jurisdictions, there have not been increased rates of assault or harassment either by transgender individuals in public facilities or by cisgender (i.e., non-transgender) individuals seeking to exploit nondiscrimination laws to enter sex-segregated facilities. See Lou Chibbaro Jr., *Predictions of Trans Bathroom Harassment Unfounded*, *Washington Blade* (Mar. 31, 2016);⁷ Carlos Maza & Rachel Percelay, *Texas Experts Debunk the Transgender “Bathroom Predator” Myth Ahead of HERO Referendum*, *Media Matters for America* (Oct. 15, 2015).⁸

The District of Columbia, for example, has had a nondiscrimination law permitting transgender individuals to use the restroom that matches their gender identity since 2005. Cathy Lanier, who served as D.C.

⁶ http://time.com/4341419/battle-of-the-bathroom/?iid=toc_051916.

⁷ <http://www.washingtonblade.com/2016/03/31/predictions-of-trans-bathroom-harassment-unfounded/>.

⁸ <http://mediamatters.org/research/2015/10/15/texas-experts-debunk-the-transgender-bathroom-p/206178>.

Chief of Police from 2007 through mid-2016, has said she is not aware of a single case in which D.C. police have been called to a public restroom because of a threat by a transgender person or in which a transgender person had been charged with assaulting or harassing women in public restrooms since the law took effect. Chibbaro, *supra*. Austin, Texas, has had a nondiscrimination law in effect since 2004, and law enforcement officers there have also observed no related increase in crime in public facilities. A detective with the Austin Police Department said in 2015 that he was not aware of any problem caused by their nondiscrimination ordinance with “cases in which a suspect entered a public restroom while being dressed as a woman (or claiming to be transgender), and sexually assaulted a female victim,” nor “of a male [] assaulting another male victim in this manner.” Maza & Percelay, *supra*. Similarly, an official in the Albuquerque, New Mexico Police Department said that she was unaware of any increase in “assault in [the] city as a result of the transgender[] accommodations,” which have been in place in place in 2003. A spokesperson for the Minneapolis Police Department said that sexual assaults resulting from Minnesota’s nondiscrimination law, which has been in effect since 1993, had been “not even remotely” a problem and an inquiry by the city had found no evidence of cisgender men posing as transgender women to enter women’s restrooms. Maza & Brinker, *supra*.

Many other law enforcement officials have related similar experiences, and none has reported observing an increase in crime in public facilities since nondiscrimination laws were enacted. *See* Chibbaro, *supra*; Maza & Percelay, *supra*. *Amici*’s experience is consistent with the experiences reported by these many law enforcement officials: They have not received any

reports or other evidence that nondiscrimination laws or policies have led to an increase in crime in public facilities, either by transgender individuals or by non-transgender individuals seeking to exploit gender-identity nondiscrimination laws and policies to access sex-segregated facilities.

School officials in districts across the country that have regulations permitting students to use bathrooms that are consistent with their gender identity have similarly observed no increase in assault, harassment, or other problems in school restroom facilities as a result of these regulations. *See Rachel Percelay, 17 School Districts Debunk Right-Wing Lies About Protections for Transgender Students, Media Matters for America (June 3, 2015).*⁹ The Los Angeles Unified School District, for example, which educates over 640,000 students and is the second largest school district in the United States, has permitted students to use restrooms that match their gender identity since 2005. In that time, it has not experienced any issues with misconduct by transgender students in campus restrooms or other problems relating to transgender students' use of restroom facilities. Scherer, *supra*, at 35. This experience is consistent with other school districts that have enacted similar rules: Just as states and municipalities have experienced no increase in crime resulting from gender-identity nondiscrimination laws, school districts have seen no increase in safety problems as a result of permitting students to use the restroom that matches their gender identity. Percelay, *supra*.

⁹ <https://mediamatters.org/research/2015/06/03/17-school-districts-debunk-right-wing-lies-abou/203867>.

The collective experience of these states, municipalities, and school districts from diverse areas across the country, and *amici*'s own experience, shows that nondiscrimination laws and policies permitting transgender people to use public facilities that match their gender identity pose no public-safety risk. The fear that these laws would threaten public safety is—as is demonstrated by vast experience throughout the country—unfounded. *Amici*'s experience leads them to conclude that the fear that motivates rules like the one prohibiting G.G. from using the school restroom that matches his gender identity is similarly unfounded. There is simply no public-safety interest that is served by rules restricting transgender individuals' access to restrooms that match their gender identity.

Furthermore, existing law already prohibits assault and other crimes in public restroom facilities, as in any other location. If any person commits physical or sexual assault in a public restroom, for example, law enforcement officers apply existing criminal laws to investigate the crime, as they always have in the past. It makes no difference whether the jurisdiction permits transgender people to use restroom facilities that match their gender identity—regardless of gender identity, a person who has engaged in criminal activity will meet the full force of the law. Katy Steinmetz, *Why LGBT Advocates Say Bathroom 'Predators' Argument Is a Red Herring*, Time Magazine (May 2016) (“If you are a man who dresses as a woman and goes into a bathroom and commits a crime,” says the Human Rights Campaign attorney Cathryn Oakley, “whether you have a non-discrimination protection on the basis

of gender identity or not, that behavior is illegal and criminal and you could be arrested and go to jail.”).¹⁰

II. NONDISCRIMINATION LAWS PROMOTE PUBLIC SAFETY FOR ALL MEMBERS OF THE COMMUNITY

Amici's experience as law enforcement officials has taught them that nondiscrimination laws and policies, like those prohibiting discrimination against transgender individuals and permitting them to use public restrooms that match their gender identity, promote rather than compromise public safety. These laws offer much-needed protections to transgender people, who are particularly vulnerable to harassment and assault, especially in public facilities. At the same time, such laws improve the ability of law enforcement personnel to protect the community as a whole.

Though much attention has been directed to the purported threat caused by permitting transgender individuals to use public facilities that match their gender identity—a threat that is not supported by the evidence—transgender people are in fact far more

¹⁰ <http://time.com/4314896/transgender-bathroom-bill-male-predators-argument/>. Two *amici* supporting the petitioner school district point to news stories involving lewd conduct and assault, but most of the cited incidents are not about people who are, or pretend to be, transgender. See *Gloucester Cnty. Sch. Bd. v. G.G. ex rel. Grimm*, No. 16-273, 2017 WL 104592, at *1a (U.S. Jan. 10, 2017). Indeed, law enforcement make decisions every day about whether people are being dishonest and can do that just as well in this context. Those *amici* also posit significant underreporting of lewd conduct crimes in jurisdictions with non-discrimination protections. *Id.* at *9-11. But the majority of sex-related offenses involve parties who know each other and occur in private places, not public restrooms. Regardless, gender-identity nondiscrimination protections do not impact the prevalence of such crimes.

likely than other groups to be victims of violence in public restroom facilities. As a general matter, surveys indicate that more than 60 percent of transgender people experience physical or sexual assault in their lifetimes. Jaime M. Grant, et. al., Nat'l Center for Transgender Equal., Nat'l Gay & Lesbian Task Force, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* (2011) (finding that 61 percent of transgender people were victims of physical assault and 64 percent were victims of sexual assault).¹¹ Sex-segregated restrooms are particularly dangerous places for transgender individuals. A recent survey conducted in Washington, D.C. found that more than 70 percent of transgender people reported being verbally or physically harassed in sex-segregated restrooms. Jody L. Herman, The Williams Inst., UCLA Sch. of Law, *Gendered Restrooms and Minority Stress* 71 (2013).¹² That number is particularly striking given that fully 59 percent of transgender people also reported that they avoid bathrooms at work, school, or other public places due to fear of harassment. Nat'l Center for Transgender Equality, *Harassment of Transgender People in Bathrooms and Effects of Avoiding Bathrooms: Preliminary Findings from the 2015 U.S. Transgender Survey* (2016).¹³ Non-discrimination laws improve public safety by protecting this extremely vulnerable group of people.

¹¹ http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf.

¹² <http://williamsinstitute.law.ucla.edu/research/transgender-issues/herman-jpmss-june-2013/>.

¹³ <http://static1.squarespace.com/static/54f76238e4b03766696d8f4c/t/5782a8d9197aeaa57b589608/1468180715744/USTS-Preliminary-Findings-July-2016-2.pdf>.

Nondiscrimination laws also promote safety for the community at large by promoting positive collaboration between law enforcement officials and all community members, including transgender individuals. As law enforcement officers, *amici* are keenly aware of the importance of building trust and facilitating communication between police officers and those they are sworn to protect. To be effective, *amici* as law enforcement officers need all members of the community to work together to report crimes, cooperate with the police, and help develop solutions for local safety problems. Their experience has taught them that discriminating against certain groups alienates those groups and makes it less likely that they will report being victims of or witnesses to crimes.

Amici have seen this dynamic play out with other minority groups, and its effect is evident within the LGBT community as well. Laws discriminating against transgender people undermine the relationship between the LGBT and law enforcement communities, making it more difficult for law enforcement officers to do their jobs. Nondiscrimination laws, on the other hand, improve minority groups' relationships with law enforcement, make community members more likely to report crime, and help improve public safety. In short, these laws help *amici*, as law enforcement officers, improve public safety, while extending protections to a vulnerable group of people and creating no risk to others.

CONCLUSION

For the reasons described above, *amici* urge this Court to recognize that laws and policies that permit transgender individuals to use restrooms that match their gender identity pose no threat to community or school safety and in fact promote public safety.

Transgender people, like everyone else, simply want the right to use public restroom facilities in which they are comfortable and safe. No legitimate public safety purpose is served by laws limiting transgender individuals' right to access restroom facilities of their choice, and so these laws cannot and should not be justified on public safety grounds.

Respectfully submitted,

BRADLEY S. PHILLIPS
KATHERINE M. FORSTER
Counsel of Record
AMELIA L.B. SARGENT
SARA N. TAYLOR
MUNGER, TOLLES & OLSON LLP
350 South Grand Avenue
Fiftieth Floor
Los Angeles, CA 90071
(213) 683-9100
Katherine.Forster@mto.com

March 2, 2017

APPENDIX

APPENDIX

LIST OF AMICI CURIAE

Darrel W. Stephens, Executive Director, Major Cities Chiefs Association

Dawn Layman, President, National Association of Women Law Enforcement Executives

David Weisz, Executive Director, National Association of Women Law Enforcement Executives

Art Acevedo, Chief of Police, Houston Police Department, Texas

Roberta Abner, Division Chief of Homeland Security Division (Ret.), Los Angeles County Sheriff's Department, California

Chris Burbank, Chief of Police (Ret.), Salt Lake City Police Department, Utah

Matthew Carmichael, Chief of Police, University of Oregon Police Department, Oregon

Jerry L. Clayton, Sheriff, Washtenaw County Sheriff's Office, Michigan

Steve Conrad, Chief of Police, Louisville Metro Police Department, Kentucky

Margo Frasier, Sheriff (Former), Travis County Sheriff's Office, Texas

Beatrice M. Girmala, Assistant Chief of Police, Los Angeles Police Department, California

Janee Harteau, Chief of Police, Minneapolis Police Department, Minnesota

Carla Johnson, Assistant Chief of Police, Tucson Police Department, Arizona

Chris Magnus, Chief of Police, Tucson Police Department, Arizona

Michael Masterson, Chief of Police (Ret.), Boise Police Department, Idaho

Dave O'Malley, Sheriff, Albany County Sheriff's Office, Wyoming

John W. Mina, Chief of Police, Orlando Police Department, Florida

Aran C. Mull, Assistant Chief of Police, New York State University Police, University at Albany, New York

Kathleen O'Toole, Chief of Police, Seattle Police Department, Washington

David Rausch, Chief of Police, Knoxville Police Department, Tennessee

Lupe Valdez, Sheriff, Dallas County Sheriff's Department, Texas

Robert C. White, Chief of Police, Denver Police Department, Colorado

Greg Miraglia, Dean Emeritus, Napa Valley Criminal Justice Training Center, California

Robert Saltzman, Commissioner (Ret.), Board of Police Commissioners, Los Angeles Police Department, California

Michele Bates-Ferreira, School Resource Officer, Folsom Police Department, California

Jennifer Born, Sergeant (Ret.), New Iberia Police Department, Louisiana

Robert Breeden, Assistant Special Agent in Charge (Ret.), Florida Department of Law Enforcement, Florida

Cholyonda Brown, Sergeant, Flint Police Department, Michigan

Donna Brown, Sergeant (Ret.), Tallahassee Police Department, Florida

Julie Callahan, Police Officer (Ret.), San Jose Police Department, California

Lynda Warren Castro, Equity Commander (Ret.), Los Angeles County Sheriff's Department, California

Dana M. Cole, Detective Sergeant and LGBTQ+ Liaison, Bloomington Police Department, Indiana

Victoria Crosier, Corporal, Falls Township Police Department, Pennsylvania

Michael Crumrine, Sergeant, Austin Police Department, Texas

Patricia England, Sergeant (Ret.), Florida Highway Patrol, Florida

Christine Garcia, Transgender Police Liaison Officer, San Diego Police Department, California

Janine Gedmin, Inspector Sergeant (Ret.), Monroe County Sheriff's Office, Florida

James Gonzales, Police Officer, San Jose Police Department, California

Pat Gross, Police Sergeant, Dallas Independent School District Police Department, Texas

Michael Guston, Sergeant and LGBTQ Liaison, George Mason University Police Department, Virginia

Calvin Howard, Senior Corporal (Ret.), Dallas Police Department, Texas

Clara Just, Detective/School Resource Officer, Evanston Police Department, Illinois

Christopher Landavazo, Deputy Sheriff, Los Angeles County Sheriff's Department, California

Pamela Lee, Police Officer, Indianapolis Metropolitan Police Department, Indiana

Jeremy Liebbe, Detective Sergeant (Ret.), Dallas Independent School District Police Department, Texas

Stephanie Lourenco, Lieutenant, Portland Police Bureau, Oregon

Lea Militello, Commander (Ret.), San Francisco Police Department, California

Donald Mueller, Lieutenant, Los Angeles County Sheriff's Department, California

Tony Murphy, Police Officer, Dayton Police Department, Ohio

Jonathan Oliveras, Police Officer, New York Police Department, New York

Javier A. Pagán, Police Officer and GLBTQ Liaison, Boston Police Department, Massachusetts

Veronica L. Pickell, Federal Air Marshal (Ret.), Department of Homeland Security, Florida

Sallyann Polizzi, Police Officer, New York Police Department, New York

Diana J. Powe, Police Officer (Ret.), Richardson Police Department, Texas

Conrad Prosniewski, Captain/LGBT Liaison, Salem Police Department, Massachusetts

5a

Jim Ritter, Police Officer and LGBT Liaison, Seattle Police Department, Washington

Jason Samuel, Police Officer, New York Police Department, New York

Stacy Simmons, Lieutenant, Douglas County Sheriff's Office, Kansas

Linda Simpson, Detective (Ret.), Rock Springs Police Department, Wyoming

Sunshine Straiges, Sergeant (Ret.), New York Police Department, New York

Marion Tucker, Sergeant, Los Angeles County Sheriff's Department, California

James Young, Lieutenant and LGBT Liason, Orlando Police Department, Florida

John Zeuzheim, Corporal, Honolulu Police Department, Hawaii