

Case No. 18-35708

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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PARENTS FOR PRIVACY; KRIS GOLLY AND JON GOLLY, individually and  
as guardians ad litem for A.G.; NICOLE LILLY; MELISSA GREGORY,  
individually and as guardian ad litem for T.F.; and PARENTS RIGHTS IN  
EDUCATION, an Oregon nonprofit corporation,  
*Plaintiffs-Appellants,*

v.

DALLAS SCHOOL DISTRICT NO. 2; OREGON DEPARTMENT OF  
EDUCATION; GOVERNOR KATE BROWN, in her official capacity as  
SUPERINTENDENT OF PUBLIC INSTRUCTION; UNITED STATES  
DEPARTMENT OF EDUCATION; BETSY DEVOS, in her official capacity as  
United States Secretary Of Education as successor to JOHN B. KING, JR.;  
UNITED STATES DEPARTMENT OF JUSTICE; JEFF SESSIONS, in his  
official capacity as United States Attorney General, as successor to LORETTA F.  
LYNCH,

*Defendants-Appellees,*

BASIC RIGHTS OREGON,

*Intervenor-Defendant-Appellee.*

On Appeal From the United States District Court for the District of Oregon,  
Portland Division, No. 3:17-cv-01813-HZ  
The Honorable Marco A. Hernandez

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**AMICUS CURIAE BRIEF OF THE NATIONAL WOMEN'S LAW CENTER  
SUPPORTING APPELLEES AND URGING AFFIRMANCE**

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The National Women's Law Center (NWLC) is a nonprofit legal organization dedicated to the advancement and protection of women's legal rights and the right of all persons to be free from sex discrimination. Since 1972, the Center has worked to secure equal opportunity in education for women and girls through enforcement of Title IX, the Constitution, and other laws prohibiting sex discrimination. The Center has participated in numerous cases, including before this Court and other Courts of Appeals, including to emphasize that protections against sex discrimination includes protections against discrimination based on sexual orientation and gender identities.

Descriptions of the other 50 *amici*, organizations committed to women's rights and equality, are included in the Appendix.<sup>1</sup> Given *amici's* collective

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<sup>1</sup> The organizations include: A Better Balance, AFSCME, American Association of University Women, American Federation of Teachers, AFL-CIO, Atlanta Women for Equality, Bet Tzedek Legal Services, Beth Chayim Chadashim (BCC), California Women Lawyers, California Women's Law Center, Center for Constitutional Rights, Center for Reproductive Rights, Civil Rights Education and Enforcement Center, Disability Rights Education & Defense Fund (DREDF), Education Law Center, Equal Rights Advocates, FORGE, Inc., Gender Justice, Girls for Gender Equity (GGE), Girls Inc., Harvard Law School Gender Violence Program, Idaho Coalition Against Sexual & Domestic Violence, In Our Own Voice: National Black Women's Reproductive Justice Agenda, LatinoJustice PRLDEF, Legal Aid At Work, Legal Voice, National Asian Pacific American Women's Forum, National Association of Social Workers (NASW), National Association of Women Lawyers, National Center for Law and Economic Justice, National Crittenton, National LGBTQ Task Force, National Organization for Women Foundation, North Carolina Coalition Against Domestic Violence (NCCADV), Oasis Legal Services, Planned Parenthood Columbia Willamette, Planned Parenthood of Southwestern Oregon, SisterReach, SurvJustice, Virginia

expertise in addressing sex-based discrimination, including through the courts, our perspectives may assist the Court in resolution of this case. *Amici* may file this brief pursuant to Fed. R. App. P. 29(a)(2) because all parties have consented to this submission.

Additionally, *amici* reject a framework that pits the rights of cisgender (non-transgender) and transgender individuals against each other, and assert instead that persons of all genders and sexual orientations should find common cause in addressing the actual harms created by sex discrimination.

**STATEMENT OF CONSENT TO FILE, AUTHORSHIP, AND FINANCIAL SUPPORT**

All parties have consented to the filing of this amicus curiae brief. No party's counsel authored this brief in whole or in part nor contributed money that was intended to fund the preparation or submission of this brief. No person, other than the amicus curiae or its counsel, contributed money that was intended to fund the preparation or submission of this brief.

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Sexual and Domestic Violence Action Alliance, WAPB Inc., Washington State Coalition Against Domestic Violence (WSCADV) , Women Lawyers Association of Los Angeles, Women Lawyers On Guard Inc., Women of Reform Judaism, Women's Bar Association of the District of Columbia, Women's Bar Association of the State of New York, The Women's Law Center of Maryland, Women's Law Project, Women's All Points Bulletin, Women's Sports Foundation, WV FREE.

## **INTRODUCTION AND SUMMARY OF ARGUMENT**

*Amici* submit this brief in support of transgender students and the Student Safety Plan (the “Plan”) implemented by the Oregon public schools in Dallas, Oregon, which permits transgender students to use restrooms and other facilities consistent with their gender identities. The district court properly rejected Appellants’ conclusory assertions that the District’s Plan violates Title IX and the Constitution and dismissed this case. This Court should affirm.

Appellants seek a reversal of the Plan and instead want a policy that requires students to only use facilities that match their sex as assigned at birth. Order at 4. However, Appellants’ unsubstantiated concerns do not justify policies that would subject transgender students to a hostile educational environment, including sex-based harassment. As the district court concluded, the purported discomfort of some students did not justify the exclusion of transgender students from facilities that correspond with their gender identities. *See* July 24, 2018 Opinion & Order at 38-43 (“Order”). The relief Appellants seek, to bar transgender students from facilities consistent with their gender identities, would constitute sex-based discrimination in violation of Title IX and the U.S. Constitution, and would harm transgender students.

*Amici* thus write separately to urge this Court to affirm the dismissal of Appellants’ case for the following reasons: (1) The mere presence of transgender

students in a restroom does not create a hostile environment under Title IX or implicate a privacy concern under the U.S. Constitution; (2) Sex-based protections in federal civil rights laws and the U.S. Constitution include protections for transgender students, and banning them from using restrooms that comport with their gender identities constitutes impermissible sex-based discrimination; (3) Transgender students face documented harms when they are not permitted to use facilities that align with their gender identities; and (4) Appellants' arguments against the Plan rest on the same brand of sex stereotyping historically used to justify sex discrimination, including in the context of racial segregation, and such arguments are rejected by courts today. Accordingly, we urge this Court to reject Appellant's conclusory arguments, and affirm the district court's decision to dismiss this case.

### **ARGUMENT**

#### **I. The Presence of Transgender Students in Restrooms Does Not Create a Hostile Environment under Title IX for Other Students or a Privacy Claim Under the U.S. Constitution.**

Appellants argue, without relevant factual allegations in their Complaint, that the Plan at issue in this case creates difficulties for cisgender students at the Dallas High School in Oregon. As the district court concluded and as detailed below, requiring transgender students to use facilities that don't correspond with

their gender identities would not advance the actual safety or privacy interests of cisgender students under Title IX or the U.S. Constitution.

**A. Appellants Do Not Allege Conduct That Supports a Title IX Claim.**

Appellants allege that the District's current Plan creates a hostile environment for cisgender students and "subjects students to harassment based on sex." Appellants' Br. at 31. However, as the district court concluded, Appellants do not allege facts that establish a Title IX hostile environment claim. The mere presence of transgender students using the facilities corresponding to their gender identities is not harassment, and certainly not severe, pervasive, or objectively offensive to other students. Additionally, the facts alleged do not indicate that the cisgender students were deprived of equal access to the educational opportunities or benefits provided by the District as required for a Title IX claim. *Al-Rifai v. Willows Unified Sch. Dist.*, 469 Fed. App'x 647, 649 (9th Cir. 2012) (quoting *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 651 (1999)). There is nothing objectively offensive about transgender students sharing restroom facilities with cisgender students, and the mere presence of transgender students in facilities that align with their gender identities does not constitute a hostile environment. Compare *Cruzan v. Special Sch. Dist., No. 1*, 294 F.3d 981, 984 (8th Cir. 2002) (school's policy permitting transgender faculty member to use woman's faculty restroom did not create hostile environment under Title VII) with *Petril v. Cheyney*

*Univ. of Pa.*, 789 F. Supp. 2d 574, 579-80 (E.D. Pa. 2011) (Title VII sexual harassment claim may arise when inappropriate conduct including touching and sexual requests occurs while in a locker room).

Further, research confirms that any alleged safety concerns related to the use of public restrooms by transgender individuals are wholly unsubstantiated: “[T]here is no evidence that allowing transgender students to choose bathroom or locker room facilities that correspond to their gender identities puts other students at risk.” *Shut Out: Restrictions on Bathroom and Locker Room Access for Transgender Youth in US Schools*, HUMAN RIGHTS WATCH (Sept. 14, 2016), <https://www.hrw.org/report/2016/09/14/shut-out/restrictions-bathroom-and-locker-room-access-transgender-youth-us-schools>; *see also* Rachel E. Moffitt, *Keeping the John Open to Jane: How California’s Bathroom Bill Brings Transgender Rights Out of the Water Closet*, 16 GEO. J. GENDER & L. 475, 488-91 (2015).

In fact, this sort of gender policing in restrooms also harms cisgender women who do not comport with traditional gender norms: There is ample evidence of gender-nonconforming women who are ejected from women’s restrooms, which is humiliating and harmful. *See, e.g.*, Matthew Van Atta, *Lesbian Sues NYC Restaurant Over Bathroom Incident*, THE ADVOCATE, (Oct. 10, 2007), <https://www.advocate.com/news/2007/10/10/lesbian-sues-nyc-restaurant-over-bathroom-incident>; Melanie Springer Mock, *I’m a Woman Who Got Kicked*

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Federal courts have consistently rejected claims that transgender-inclusive policies violate other students' rights. *Doe v. Boyertown Area School District*, 897 F.3d 518, 533-36 (3rd Cir. 2018) (rejecting arguments that school policy protecting transgender students violated other students' rights), *reh'g en banc denied*, 897 F.3d 515 (3d Cir. 2018); *Cruzan*, 294 F.3d at 983 (rejecting arguments that school policy protecting transgender employees with respect to restroom use violated another employee's rights under Title VII); *See, e.g., Adams ex rel. Kasper v. Sch. Bd. of St. Johns Cnty., Fla.*, 318 F. Supp. 3d 1293, 1325 (M.D. Fla. 2018) ("Adams has proven a Title IX violation because the School Board, a federally funded institution, prohibits Adams, a transgender boy, from using the boys' restroom 'on the basis of sex,' which discrimination caused him harm."); *Students v. U.S. Dep't of Educ.*, No. 16-cv-4945, 2016 WL 6134121 (N.D. Ill. Oct. 18, 2016), *report and recommendation adopted sub. nom., Students & Parents for Privacy v. U.S. Dep't of Educ.*, No. 16-CV-4945, 2017 WL 6629520 (N.D. Ill. Dec. 29, 2017) (same).

Here, as indicated by the district court, the Plan has been in place since 2015—over three years—and it is telling that no incidents of harassment or harm have been alleged by Appellants. *See Order* at 7-9. There is also no evidence, here



or more generally, that cisgender individuals claim transgender status as a pretext to obtain access to certain restrooms.

Finally, Appellants assume all that matters, in classifying by gender, is one's sex as assigned at birth, a presumption based on the appearance of genitalia. Necessarily, this argument denies that there *is* such a thing as being transgender. Yet transgender identities has been extensively documented, including through the diagnosable medical condition of gender dysphoria, and can be addressed medically, for example, through hormone therapy or surgery. Appellants' conclusion thus disregards medical science, the lived reality of countless transgender people throughout history, and the growing number of court decisions according protection to transgender individuals under Title IX, Title VII, and the U.S. Constitution's equal protection provisions.

**B. Appellants Do Not Allege Facts that Support a Privacy Claim.**

Appellants allege that the District's Plan violates cisgender students' substantive due process right to privacy, but these claims are speculative at best, and in any event, outweighed by the District's compelling interest in protecting all of its students. Appellants' Br. at 7, 25-26; *Norman-Bloodsaw v. Lawrence Berkeley Lab.*, 135 F.3d 1260, 1269 (9th Cir. 1998).

As the district court found, Appellants did not allege facts supporting their claim that cisgender students' privacy was violated or that they faced any incidents

of harassment or other forms of sex discrimination from transgender students. Indeed, Appellants’ key argument—that the mere presence of transgender students violated other students’ privacy—was properly rejected by the district court. While the right to bodily privacy protects against compelled exposure of one’s unclothed body, no such exposure is at issue here, and privacy within facilities is not compromised when shared by individuals of the same gender identities, whether they are cisgender or transgender.

Even if there were a privacy interest at stake here, it is outweighed by the compelling government interest in protecting civil rights and combating sex-based discrimination against transgender students. *See Roberts v. U.S. Jaycees*, 468 U.S. 609, 628-29 (1984). As the Third Circuit recognized in a nearly identical context, “[t]he constitutional right to privacy is not absolute” and is outweighed by the narrowly tailored government interest of “not discriminating against transgender students.” *See Boyertown*, 897 F. 3d at 528.

Transgender students’ rights to equal opportunity and freedom from sex discrimination in school must not be violated based on unfounded concerns about risks to cisgender students’ privacy. *See Adams ex rel. Kasper*, 318 F. Supp. at 1320 (“[W]hile the School Board must take into account the concerns of cisgender students and their parents, it may not do so at the expense of Adams’ right to equal protection under the law.”). In *Adams*, the court found that “allowing transgender

students to use the restrooms that match their gender identities does not affect the privacy protections already in place” by the school’s routine safety procedures. *Id.* at 1314. Likewise, in *Boyertown*, the court rejected the argument—similar to Appellants’—that students’ “privacy interest requires protection from the risk of encountering students in a bathroom or locker room whom appellants identify as being members of the opposite sex.” *Boyertown*, 897 F.3d at 531.

Appellants’ asserted privacy right thus “must be weighed against the facts of the case and not just examined in the abstract.” *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1052 (7th Cir. 2017). Here, the Plan supports the Title IX rights of transgender students to equal access to an education and a school environment free of sex-based hostility. Forcing transgender students to use facilities according to their sex assigned at birth would subordinate these rights to an unsubstantiated threat to privacy. The District’s Plan is a narrowly tailored means to protect transgender students’ civil rights and does not infringe on other students’ rights.

**II. Federal Civil Rights Laws and the U.S. Constitution’s Equal Protection Clause Prohibit Sex Discrimination Against Transgender Individuals, and Not Allowing Them to Use Facilities Consistent with Their Gender Identities Constitutes Sex-Based Discrimination.**

**A. Federal Civil Rights Law Prohibits Sex Discrimination Against Transgender Persons.**

Federal courts routinely conclude that federal law protects transgender individuals from sex-based discrimination, both because discrimination against transgender individuals is *per se* sex discrimination, and because it is based on impermissible sex stereotyping.

This Court has made clear that under federal law, sex discrimination includes discrimination based on transgender status. As this Court held in *Schwenk v. Hartford*, 204 F.3d 1187, 1201 (9th Cir. 2000), discrimination against “[an] anatomical male[] whose outward behavior and inward identity did not meet social definitions of masculinity” is sex discrimination. In *Schwenk*, this Court ruled that discrimination because a person is transgender is discrimination because of sex, *Schwenk*, 204 F.3d at 1202, and found that a transgender plaintiff stated a claim under the Gender Motivated Violence Act, which “parallel[s] Title VII.”<sup>2</sup> *Id.*; accord *Kastl v. Maricopa Cnty. Cmty. College Dist.*, 325 Fed. App’x

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<sup>2</sup> Whether under the Constitution’s Equal Protection Clause, Title IX, or Title VII, federal courts’ analysis proceeds in similar fashion as to how the prohibition of sex discrimination under these laws includes protections against discrimination for transgender individuals. *See, e.g., Whitaker*, 858 F.3d at 1046-54. Thus, the

492, 493 (9th Cir. 2009) (“[I]t is unlawful to discriminate against a transgender (or any other) person because he or she does not behave in accordance with an employer’s expectations for men or women.”).

Moreover, the court in *Schroer v. Billington*, 577 F. Supp. 2d 293 (D.D.C. 2008) explained: “Discrimination ‘because of religion’ easily encompasses discrimination because of a change of religion.” *Id.* at 306. Necessarily, then, discrimination “because of . . . sex” encompasses discrimination because of a change of sex. *Id.* Thus, it is unsurprising that federal courts have repeatedly concluded that treating transgender persons adversely is sex discrimination. *See Equal Emp’t Opportunity Comm’n v. R.G. & G.R. Harris Funeral Homes, Inc.*, 884 F.3d 560, 578 (6th Cir. 2018) (“discrimination on the basis of transgender status necessarily entails discrimination on the basis of sex—no matter what sex the employee was born or wishes to be”); *see also Whitaker*, 858 F.3d at 1048-50; *Smith v. City of Salem*, 378 F.3d 566, 575 (6th Cir. 2004); *Evancho v. Pine-Richland Sch. Dist.*, 237 F. Supp. 3d 267, 295-97 (W.D. Pa. 2017); *Bd. of Educ. of Highland Local Sch. Dist. v. U.S. Dep’t of Educ.*, 208 F. Supp. 3d 850, 865-71 (S.D. Ohio 2016); *R.M.A. ex rel. Appleberry v. Blue Springs R-IV Sch. Dist.*, No. SC 96683, 2019 WL 925511, at \*4-5 (Mo. Feb. 26, 2019) (refusing transgender boy access to boys’ restrooms and locker rooms is discrimination based on sex).

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arguments provided here are provided to inform the Court’s analysis of both the Title IX and the equal protection claims at issue.

The Supreme Court has recognized that discrimination based on the failure to conform to sex stereotypes constitutes sex discrimination. As the Court explained in *Price Waterhouse v. Hopkins*, 490 U.S. 228, 251 (1989)<sup>3</sup>:

[W]e are beyond the day when an employer could evaluate employees by assuming or insisting that they matched the stereotype associated with their group, for [i]n forbidding employers to discriminate against individuals because of their sex, Congress intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes.

*Id.* (internal quotation marks and citation omitted); *see also id.* at 272-73 (O'Connor, J., concurring in the judgment); *Zarda v. Altitude Express, Inc.*, 883 F.3d 100, 131 (2d Cir. 2018) (“Sexual orientation discrimination is also based on assumptions or stereotypes about how members of a particular gender should be, including to whom they should be attracted.”); *Hively v. Ivy Tech Cmty. College of Ind.*, 853 F.3d 339 (7th Cir. 2017) (*en banc*) (discrimination based on sexual orientation is sex-based discrimination under Title VII); *Lamplery v. Mo. Comm'n on Human Rights*, No. SC 96828, 2019 WL 925557, at \*5, \*7 (Mo. Feb. 26, 2019) (finding claim of sex discrimination based on sex stereotyping under state law, following *Price Waterhouse*); *United States v. Se. Okla. State Univ.*, No. CIV-15-324-C, 2015 WL 4606079, at \*2 (W.D. Okla. Jul. 10, 2015) (holding that

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<sup>3</sup> As referenced previously, courts interpreting Title IX routinely draw from the settled interpretation of Title VII in analyzing the scope of sex discrimination prohibited by federal law. *See e.g., Franklin v. Gwinnett Cnty. Pub. Schs.*, 503 U.S. 60, 75 (1992) (interpreting discrimination under Title IX in accordance with earlier Title VII decision).

employer's treatment of transgender woman as male instead of female is sex stereotype discrimination under Title VII).

Accordingly, circuit courts have similarly concluded that the prohibition on sex stereotyping discrimination extends to protect transgender individuals under a variety of federal anti-discrimination laws. *See Glenn v. Brumby*, 663 F.3d 1312, 1317 (11th Cir. 2011) (“[D]iscrimination against a transgender individual because of her gender-nonconformity is sex discrimination” under the Equal Protection Clause); *Etsitty v. Utah Transit Auth.*, 502 F.3d 1215, 1222 (10th Cir. 2007) (assuming transgender employee may claim sex discrimination under Title VII for discrimination based on sex stereotypes); *Rosa v. Park W. Bank & Tr. Co.*, 214 F.3d 213, 215 (1st Cir. 2000) (finding valid claim of sex discrimination under Equal Credit Opportunity Act after plaintiff was denied loan application because “Rosa’s attire did not accord with his male gender”).

Notably, Title IX’s legislative history specifically mentions a prohibition on sex stereotyping related discrimination. When Congress enacted Title IX, its principal sponsor, Senator Birch Evans Bayh, Jr., recognized that sex discrimination in education is often based on “stereotypical notions,” such as “women as pretty things who go to college to find a husband . . .” 118 Cong. Rec. 5804 (1972) (statement of Sen. Bayh). Senator Bayh intended Title IX to “change [these] operating assumptions,” and combat the “vicious and reinforcing

pattern of discrimination.” *Id.* Consistent with both this mandate and analogous workplace and other civil rights precedents, multiple courts have held that schools are prohibited from treating transgender students differently from cisgender students because doing so constitutes improper sex stereotyping discrimination.

As another example of prohibited sex stereotyping, the Supreme Court has long recognized that anti-discrimination statutes like Title VII and Title IX are designed to ensure that a person’s reproductive anatomy at birth does not determine one’s role in society. In *Int’l Union, United Auto., Aerospace & Agric. Implement Workers v. Johnson Controls, Inc.*, 499 U.S. 187 (1991), the Court held that employees’ pregnancies or capacity to become pregnant in the future were not bases for excluding them from factory work that might pose a risk to a fetus. *Id.* at 206; *see also Phillips v. Martin Marietta Corp.*, 400 U.S. 542, 544 (1971) (employers may not presume that employees who have recently given birth will be too consumed by parenting duties to make good workers); *Kocak v. Cmty. Health Partners of Ohio, Inc.*, 400 F.3d 466, 470 (6th Cir. 2005) (applicant “cannot be refused employment on the basis of her potential pregnancy”); *Maldonado v. U.S. Bank*, 186 F.3d 759, 768 (7th Cir. 1999) (employer may not conclude, without a doctor’s judgment rooted in evidence, that pregnant employee will be unable to manage physical demands of pregnancy or delivery while fulfilling all job



responsibilities); *Deneen v. Nw. Airlines, Inc.*, 132 F.3d 431, 435-36 (8th Cir. 1998) (same).

These decisions share an incontrovertible principle: Assumptions based on one's sex assigned at birth do not support conclusory judgments about one's nature, including one's gender identities. Just as a cisgender female employee's reproductive capacity could not support discriminatory treatment in *Johnson Controls*, a transgender boy's sex assigned at birth may not be used to exclude him from facilities that correspond with his gender identities. *Cf. Roberts v. Clark Cnty. Sch. Dist.*, 215 F. Supp. 3d 1001, 1015 (D. Nev. 2016) (employer's claim that discrimination is premised on transgender person's "genitalia, not his status as a transgender person . . . is a distinction without a difference").

Appellants seek a policy that forbids transgender students from using restrooms that comport with their gender identities. *See* Order at 4. However, revoking the Plan would violate the Title IX rights of transgender students by penalizing them for failing to conform to the stereotypes associated with their sex assigned at birth. Indeed, courts have evaluated policies like the one Appellants seek and concluded that such policies likely constitute sex discrimination. For example, in *Whitaker*, discussed above, Kenosha Unified School District informed Ash, a transgender male, that he "was allowed to use only the girls' restroom or the single-user, gender-neutral restroom in the school office." *Whitaker v. Kenosha*

*Unified Sch. Dist. No. 1 Bd. of Educ.*, No. 16-CV-943-PP, 2016 WL 5239829, at \*1 (E.D. Wis. Sept. 22, 2016). The district court and the Seventh Circuit both concluded that a preliminary injunction halting the policy was appropriate because Whitaker would likely be able to show the policy violated Title IX and the Equal Protection Clause. *Whitaker*, 858 F.2d at 1049, 1054.

Other courts have agreed that Title IX prohibits such discrimination based on sex assigned at birth. The Third Circuit recently rejected a facilities policy that would have “essentially replicate[d] the policy used by the school district in *Whitaker*.” *Boyertown*, 897 F.3d at 536. Similarly, in *Bd. of Educ. of Highland Local Sch. Dist. v. U. S. Dep’t of Educ.*, the school district defended its policy excluding a transgender girl from using the girls’ restroom by raising the privacy rights and safety of other students. 208 F. Supp. 3d at 874. The court concluded that the record before it lacked any evidence to validate the district’s arguments. *Id.* at 874-76; *see also Evancho*, 237 F. Supp. 3d at 279 (granting preliminary injunction to halt “a student bathroom policy that turns exclusively on the then-existing presence of a determinate external sex organ...irrespective of gender identities”); *A.H. ex rel. Handling v. Minersville Area Sch. Dist.*, 290 F. Supp. 3d 321 (M.D. Pa. 2017) (denying school district’s motion to dismiss transgender girl’s claim that school policy prohibiting her from using girls’ bathroom violated her rights under Title IX); *cf. Students & Parents for Privacy*, No. 16-cv-4945, 2017

WL 6629520, at \*1 (holding *Whitaker* prohibited preliminary injunction that would require school district to segregate facilities based on students' assigned sex at birth).

Thus, there is no place in federally funded schools for sex discrimination based on assumptions that follow solely from students' sex assigned at birth. “[F]ederal protections against sex discrimination are substantially broader than based only on genitalia or chromosome.” *Id.* at \*3. Here, Appellants base their allegations on assumptions about gender that undermine the very purpose of Title IX to forbid sex discrimination, including discrimination based on sex stereotyping. Appellants' alleged concerns do not justify the sex discrimination they seek to enact.

**B. Banning Transgender Students From Using Restrooms That Comport with Their Gender Identities Would Violate the U.S. Constitution's Equal Protection Clause.**

If this Court accepted Appellants' arguments, the District would face justified constitutional challenges for encroaching on transgender students' rights to equal protection under the law. The Fourteenth Amendment's Equal Protection Clause guarantees that “all persons similarly situated should be treated alike.” *Gallinger v. Becerra*, 898 F.3d 1012, 1016 (9th Cir. 2018) (quoting *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985)); *see also Sessions v. Morales-Santana*, 137 S. Ct. 1678, 1690 (2017) (quoting *Obergefell v. Hodges*,

135 S. Ct. 2584, 2603 (2015)) (observing that when interpreting equal protection, the Supreme Court has “recognized that new insights and societal understandings can reveal unjustified inequality . . . that once passed unnoticed and unchallenged”).

Appellants’ proposed policy would exclude transgender students from restrooms used by other students of the same gender identities, and this would constitute sex discrimination. *See Whitaker*, 858 F.3d at 1051. Courts nationwide have concluded that similar school district policies impose impermissible sex-based classifications. *See, e.g., id.*; *Adams*, 318 F. Supp. 3d at 1312; *Grimm v. Gloucester Cnty. Sch. Bd.*, 302 F. Supp. 3d 730, 750 (E.D. Va. 2018); *M.A.B.*, 286 F. Supp. 3d at 722; *Evancho*, 237 F. Supp. 3d at 288-89.

Sex-based classifications demand heightened scrutiny under the Constitution. *Morales-Santana*, 137 S. Ct. at 1689; *see also United States v. Virginia*, 518 U.S. 515, 532-33 (1996). Laws based on gender differences are frequently “grounded in . . . prejudice and antipathy,” and the affected individuals typically “have ‘been subjected to a history of purposeful unequal treatment.’” *Hibbs v. Dep’t of Human Resources*, 273 F.3d 844, 856 (9th Cir. 2001) (quoting *Kimel v. Fla. Bd. of Regents*, 528 U.S. 62, 83 (2000)). Additionally, this heightened scrutiny based on sex is warranted given that, as this Court observed, “significant evidence suggests that transgender persons are often

especially visible, and vulnerable, to harassment and persecution.” *Avendano-Hernandez v. Lynch*, 800 F.3d 1072, 1081 (9th Cir. 2015).

At least two other circuits, as well as multiple district courts, including in this Circuit, agree that sex-based classifications include transgender status and merit heightened scrutiny. *See, e.g., Whitaker*, 858 F.3d at 1051; *Glenn*, 663 F.3d at 1320; *McQueen v. Brown*, No. 15-cv-2544, 2018 WL 1875631, at \*3 (E.D. Cal. Apr. 19, 2018); *F.V. v. Barron*, 286 F. Supp. 3d 1131, 1145 (D. Idaho 2018); *Olive v. Harrington*, No. 15-cv-01276-BAM, 2016 WL 4899177, at \*5 (E.D. Cal. Sept. 4, 2016).

As noted above, this Court has also recognized that discrimination on the basis of transgender status is a form of sex discrimination. *Schwenk*, 204 F.3d at 1202. As such, district courts in this Circuit apply *Schwenk*'s reasoning to sex discrimination claims under the Equal Protection Clause. *See Norsworthy v. Beard*, 87 F. Supp. 3d 1104, 1118-19 (N.D. Cal. 2015) (relying on *Schwenk* to conclude that gender-based discrimination encompasses unequal treatment based on one's failure to “conform to socially-constructed gender expectations”); *accord Barron*, 289 F. Supp. 3d at 1143-44; *Duronslet v. Cnty. of Los Angeles*, 266 F. Supp. 3d 1213, 1222-23 (C.D. Cal. 2017). The logic of *Schwenk* and its progeny illustrate that at least heightened scrutiny is required to judge sex-based classifications that discriminate against transgender students.

Here, if heightened scrutiny is applied, Appellants' requested change to the Plan lacks an "exceedingly persuasive justification" (even if the policy were deemed "substantially related" to "important governmental objectives"). *See Hibbs*, 273 F.3d at 865 (quoting *Virginia*, 518 U.S. at 533). Arguments excluding transgender students from facilities consistent with their gender identities are "resoundingly unpersuasive." *See Grimm*, 302 F. Supp. 3d at 752. Appellants justify their proposal by arguing that cisgender students may experience stress from sharing facilities with transgender students of the same gender. Order at 35.

Whatever discomfort cisgender students might experience here, however, is outweighed by the severe and well-documented psychological, social, and emotional harm that transgender students endure under such policies. *See infra* p.22-24; *see also Boyertown*, 897 F.3d at 523-24 (finding that "the level of stress that cisgender students may experience" and "the plight of transgender students who are not allowed to use facilities consistent with their gender identities" are "simply not analogous"); *see also Whitaker*, 858 F.3d at 1053 (holding that "the School District's privacy arguments are insufficient to establish an exceedingly persuasive justification for the classification"); *Adams*, 318 F. Supp. 3d at 1315-16. Appellants' requested relief therefore runs afoul of Title IX and the Equal Protection Clause and must be rejected.

Indeed, as outlined below, transgender students are the ones most often susceptible to sex harassment and related harm. Thus, the School District's Plan is the only one that protects all students from sex-based discrimination, as required by the U.S. Constitution.

### **III. Transgender Students Excluded From Restrooms That Match Their Gender Identities Face Physical and Emotional Harm.**

The District's Plan aims to provide all students with equal opportunity to an education free from harassment, in accordance with Title IX. There is compelling evidence that Title IX's bar on sex-based discrimination is needed to protect the privacy, health, and safety of transgender students. Some transgender students simply avoid urinating while they are at school, leading to serious health risks including kidney damage and urinary tract infections. *The Report of the 2015 U.S. Transgender Survey*, NAT'L CTR. FOR TRANSGENDER EQUALITY, 130-37 (Dec. 2016), <https://perma.cc/M7MQ-ZQ52> ("NCTE Survey"). Exclusion from the proper restroom may also lead to severe mental distress, including risk of suicide. *See Bd. of Educ. of Highland Local Sch. Dist.*, 208 F. Supp. 3d at 870-71; *cf. Brown v. Bd. of Educ.*, 347 U.S. 483, 494 (1954) (illicit segregation of students causes early isolation and "generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone").

Furthermore, “[w]hen schools require transgender girls to use the men’s room or force transgender boys to use the women’s room, they put them at risk of physical, verbal, or sexual assault from other students or adults.” *See Shut Out: Restrictions on Bathroom and Locker Room Access, supra* p. 5. This increased danger compounds the already high risk of violence that transgender students face at school—violence that renders them in particular need of Title IX’s protections against sex-based harassment. Transgender students face harassment and violence at far higher rates than their cisgender peers. Confirming earlier studies, recent data from the CDC shows that 27% of U.S. transgender high school students feel unsafe at school or traveling to or from campus; that 35% are bullied at school; and that 35% attempt suicide. *Transgender identities and Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High School Students—19 States and Large Urban School Districts, 2017*, CENTERS FOR DISEASE CONTROL AND PREVENTION MORBIDITY AND MORTALITY WEEKLY REPORT (Jan. 25, 2019), [https://www.cdc.gov/mmwr/volumes/68/wr/mm6803a3.htm?s\\_cid=mm6803a3\\_w](https://www.cdc.gov/mmwr/volumes/68/wr/mm6803a3.htm?s_cid=mm6803a3_w).

Similarly, a survey conducted by the National Center for Transgender Equality found that “[t]he majority of respondents who were out or perceived as transgender while in school (K–12) experienced some form of mistreatment, including being verbally harassed (54%), physically attacked (24%), and sexually



assaulted (13%) because they were transgender.” NCTE Survey, at 2. Startlingly, 17% of respondents “experienced such severe mistreatment that they left a school as a result.” *Id.* Respondents who did not complete high school were more than twice as likely to have attempted suicide as the overall sample. *Id.* at 113.

In addition, according to a survey conducted by the American Association of Universities, nearly one in four transgender students experience sexual violence in college—a higher rate of victimization than that experienced by cisgender college women. David Cantor *et al.*, *Report on the AAU Campus Climate Survey on Sexual Assault and Sexual Misconduct*, WESTAT (Sept. 21, 2015), <https://perma.cc/ZY4T-F5LE>. Congress designed Title IX to address sex discrimination of just this sort, no matter the gender identities or sexual orientation of the student.

#### **IV. Courts Have Recognized that Defenses of Exclusionary Policies Based on Asserted Concerns for the Safety or Privacy of Cisgender Women and Girls Are Often Pretextual.**

Appellants’ argument, that transgender students must be excluded from appropriate bathrooms to protect the privacy and safety of others, including cisgender women and girls, is based on unfounded fears and stereotypes. These sorts of “protective rationales” are based on the very stereotypes that civil rights laws are designed to overcome and have long been used to justify discriminatory rules. Specifically, restrooms and other sex segregated environments have been a

focus of these pretextual policies, and Appellants' challenge to the Plan at issue here falls within this long and pernicious tradition. In its modern decisions, the Supreme Court has repeatedly, and correctly, rejected these pretextual justifications. This Court should do the same.

**A. Discriminatory Rules Ostensibly Designed to Protect Women Have Long Reflected Both Stereotype and Pretext.**

In the nineteenth and much of the twentieth centuries, laws that barred women from certain professions or limited their ability to undertake certain types of work were frequently justified by a stated intent to protect women's health and welfare. *See Muller v. Oregon*, 208 U.S. 412 (1908) (holding that State had a valid and over-riding interest in women-protective laws). Laws based on this sort of protective rationale, which served to exclude women from employment opportunities, continued to be enforced for more than half a century thereafter. *See, e.g., Goesaert v. Cleary*, 335 U.S. 464, 466 (1948) (finding law's justification—"that the oversight assured through ownership of a bar by a barmaid's husband or father minimizes hazards that may confront a barmaid without such protecting oversight"—was "entertainable"), *disapproved of by Craig v. Boren*, 429 U.S. 190 (1976).

In the development of rules ostensibly designed to protect women in the workplace, restrooms and similar sex segregated environments played a central role in the arguments to limit women's economic opportunities. *See, e.g., Deborah*

L. Rhode, *The “No-Problem” Problem: Feminist Challenges and Cultural Change*, 100 YALE L.J. 1731, 1782-83 (1991); Terry S. Kogan, *Sex-Separation in Public Restrooms: Law, Architecture, and Gender*, 14 MICH. J. GENDER & L. 1, 15-16 (2007). Scholars have noted that such rules were rooted in the idea that women were “especially vulnerable” in the “public realm.” *Id.* at 54; *see also* Louise M. Antony, *Back to Androgeny: What Bathrooms Can Teach Us About Equality*, 9 J. CONTEMP. LEGAL ISSUES 1, 4-7 (1998); Richard A. Wasserstrom, *Racism, Sexism, and Preferential Treatment: An Approach to the Topics*, 24 UCLA L. REV. 581, 593-94 (1977).

This stated goal of protecting women—specifically, white women—similarly served as justification for segregationist policies, many of which were rooted in anti-miscegenation sentiment. *See generally* Reginald Oh, *Interracial Marriage in the Shadows of Jim Crow: Racial Segregation as a System of Racial and Gender Subordination*, 39 U.C. DAVIS L. REV. 1321, 1349 (2006) (“[R]acial segregation... sought to ‘protect’ white women . . .”). For example, schools forced to integrate racially after *Brown* started to consider sex-segregated schooling to avoid interracial interactions between the sexes. *See* Serena Mayeri, *The Strange Career of Jane Crow: Sex Segregation and the Transformation of Anti-Discrimination Discourse*, 18 YALE J.L. & HUMAN. 187, 270 (2006) (“If anything

the psychological stigma of sex segregation particularly affected black boys, whose alleged propensity to prey upon white girls animated the policy.”).

Thus, restrooms and similar spaces were at the center of the effort to entrench racial segregation. As NAACP Legal Defense and Educational Fund, Inc. and Asian American Legal Defense and Education Fund have noted as *amici* in analogous matters, the arguments here against transgender students using shared facilities echo those made in efforts to sustain racially segregated bathrooms in various kinds of institutions, and are rooted in unfounded fears and stereotypes that are impermissible rationales for government action. *See* Brief of NAACP Legal Defense & Educational Fund, Inc. and Asian American Legal Defense & Education Fund as *Amici Curiae* in Support of Respondent, *Gloucester Cnty. Sch. Bd. v. G.G.*, No. 16-273, at 4 (March 6, 2017); *See also* Brief of NAACP Legal Defense & Educational Fund, Inc. as *Amicus Curiae* Supporting Plaintiff-Appellee, *Adams v. Sch. Bd. of St. Johns Cnty., Fla.*, No. 18-13592, at 5 (11th Cir. Feb. 28, 2019). As these *amici* have also noted, these kinds of arguments are “factually baseless and legally immaterial” and take away the “simple and inherent dignity” of using the appropriate restroom. *Amicus Brief* in Support of Respondent, *Gloucester County Sch. Bd. v. G.G.*, at 5. Additionally, “the patina of legitimacy [sought through] invocations of safety and privacy disappears upon close

examination and reveals instead discomfort, fear and hostility towards transgender students.” *Id.* at 7.

Even after *Brown*, States continued to assert protective purposes in support of the continued racial segregation of public restrooms, pointing, for example, to supposedly heightened rates of venereal disease among black communities. Desegregated restrooms were framed as a public health threat, particularly for girls in school. *See, e.g.,* Phoebe Godfrey, *Bayonets, Brainwashing, and Bathrooms: The Discourse of Race, Gender, and Sexuality in the Desegregation of Little Rock’s Central High*, 62 ARK. HIST. Q. 42, 64 (2003) (“White daughters ... needed to be protected from the sexualized presence of the black girls.”). The impact of such restrictions is dramatized in *Hidden Figures*, a film which depicts the need for a Black female physicist working at NASA to leave her building every time she needed a bathroom break. *See* Christina Cauterucci, *Hidden Figures Is a Powerful Statement Against Bathroom Discrimination*, SLATE (Jan. 18, 2017), <https://slate.com/human-interest/2017/01/hidden-figures-is-a-powerful-statement-against-bathroom-discrimination.html>.

This attitude extended to other public facilities as well. For example, the City of Jackson, Mississippi, preferred to close its public swimming pools rather than desegregate them. *See Palmer v. Thompson*, 403 U.S. 217, 227 (1971) (finding no discriminatory effect in this action).

**B. The Supreme Court Has Recognized That “Protecting Women” Does Not Justify Sex Discrimination.**

In this day and age however, the Supreme Court has come to recognize that the stated rationale of “protecting women” does not justify implementation of discriminatory laws, grounded on stereotypes, that actually deny women opportunities. In *Frontiero v. Richardson*, 411 U.S. 677 (1973) (plurality opinion), the Court addressed these protective pretexts: “Traditionally, such discrimination was rationalized by an attitude of ‘romantic paternalism’ which, in practical effect, put women, not on a pedestal, but in a cage.” *Id.* at 684. The Court held that such “gross, stereotyped distinctions between the sexes” are insupportable as a basis for public policy. *Id.* at 685.

The Court has since made clear that exclusionary policies designed to “protect women” often do not serve that purpose—and instead disadvantage them. In *Johnson Controls*, the Court addressed an employer’s self-described “fetal-protection policy” that excluded “fertile female employee[s] from certain jobs” based on an expressed “concern for the health of the fetus.” 499 U.S. at 190. Noting that the effect of this was the blanket exclusion of women, the Court found the employer’s policy both discriminatory against women (*see id.* at 197-200) and unrelated to “job-related skills and aptitudes.” *Id.* at 201; *see also id.* at 205. Given the purpose of Title VII to achieve equal opportunities for women, the employer’s “professed moral and ethical concerns about the welfare of the next

generation” did not justify disparate treatment, as Title VII was intended to ensure that such decisions were left to women themselves. *Id.* at 206.

Notably, in reaching this conclusion, the Court harkened back to its decision in *Muller*, observing that “[c]oncern for a woman’s existing or potential offspring historically has been the excuse for denying women equal employment opportunities.” 499 U.S. at 211. But pointing to Title VII and the Pregnancy Discrimination Act, 42 U.S.C. § 2000e(k), the Court held that “[i]t is no more appropriate for the courts than it is for individual employers to decide whether a woman’s reproductive role is more important to herself and her family than her economic role.” 499 U.S. at 211; *see also Dothard v. Rawlinson*, 433 U.S. 321, 335 (1977) (“[T]he argument that a particular job is too dangerous for women may appropriately be met by the rejoinder that it is the purpose of Title VII to allow the individual woman to make that choice for herself.”); *United States v. Virginia*, 518 U.S. at 550 (“[G]eneralizations about ‘the way women are,’ including ones based on any alleged protective rationales, ‘no longer justify denying opportunity to women’; rules creating such bans violate the Constitution’s equal protection guarantee). In *United States v. Virginia*, the U.S. Supreme Court thus rejected any notion that excluding women from VMI made sense because, “females tend to thrive in a cooperative atmosphere.” 518 U.S. at 541 (internal quotation omitted). Additionally, the Court noted the troubling history of sex discrimination including,

for example, arguments that “the physiological effects of hard study and academic competition with boys would interfere with the development of girls' reproductive organs.” *Id.* at n 9.

Courts have also recently rejected laws that use a pretextual interest in women’s health and well-being to limit their reproductive decisions. *See, e.g., Whole Woman’s Health v. Hellerstedt*, 136 S. Ct. 2292, 2316 (2016) (holding that abortion laws justified as protections for women’s health and safety violated women’s liberty). Similarly, this Court should reject Appellants’ alleged safety and privacy arguments put forth against the Plan implemented by the Dallas High School in Oregon that allows for the safety and privacy of all its students.

### **CONCLUSION**

For the foregoing reasons, *amici* respectfully request that this Court affirm the decision of the district court.

Respectfully submitted this 8th day of March, 2019.

*s/ Jeffrey DeGroot*

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*s/ Jeffrey DeGroot*

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Jeffrey DeGroot

# **APPENDIX**

A Better Balance, AFSCME, American Association of University Women, American Federation of Teachers, AFL-CIO, Atlanta Women for Equality, Bet Tzedek Legal Services, Beth Chayim Chadashim (BCC), California Women Lawyers, California Women's Law Center, Center for Constitutional Rights, Center for Reproductive Rights, Civil Rights Education and Enforcement Center, Disability Rights Education & Defense Fund (DREDF), Education Law Center, Equal Rights Advocates, FORGE, Inc., Gender Justice, Girls for Gender Equity (GGE), Girls Inc., Harvard Law School Gender Violence Program, Idaho Coalition Against Sexual & Domestic Violence, In Our Own Voice: National Black Women's Reproductive Justice Agenda, LatinoJustice PRLDEF, Legal Aid At Work, Legal Voice, National Asian Pacific American Women's Forum, National Association of Social Workers (NASW), National Association of Women Lawyers, National Center for Law and Economic Justice, National Crittenton, National LGBTQ Task Force, National Organization for Women Foundation, North Carolina Coalition Against Domestic Violence (NCCADV), Oasis Legal Services, Planned Parenthood Columbia Willamette, Planned Parenthood of Southwestern Oregon, SisterReach, SurvJustice, Virginia Sexual and Domestic Violence Action Alliance, Washington State Coalition Against Domestic Violence (WSCADV) , Women Lawyers Association of Los Angeles, Women Lawyers On Guard Inc., Women of Reform Judaism, Women's Bar Association of the District of Columbia, Women's Bar Association of the State of New York, The Women's Law Center of Maryland, Women's Law Project, Women's All Points Bulletin, Women's Sports Foundation, WV FREE.

### **A Better Balance**

A Better Balance is a national legal advocacy organization dedicated to promoting fairness in the workplace and helping employees meet the conflicting demands of work and family. Through its legal clinic, A Better Balance provides direct services to low-income workers on a range of issues, including employment discrimination based on pregnancy and/or caregiver status. A Better Balance is also working to combat LGBTQ discrimination—including bathroom access rights for transgender people— through its national LGBTQ Work-Family project. A Better Balance is committed to ensuring the health, safety, and security of all LGBTQ individuals and families.

### **AFSCME**

The American Federation of State, County and Municipal Employees, AFL-CIO (AFSCME) is a labor organization whose over one million members provide vital public services across the United States in the public and private sectors. AFSCME is a union comprised of a diverse membership who believe all workers are entitled

to equal dignity and respect. On behalf of its diverse membership, AFSCME has been a leader among unions in calling for equality and protection from discrimination for its LGBTQ members. As the first union to negotiate job protections and nondiscrimination for lesbian and gay employees, and among the first to negotiate protection from discrimination for transgender employees, AFSCME's advocacy for LGBTQ rights is longstanding, and such protections can now be found in over 1,700 AFSCME contracts.

### **American Association of University Women**

American Association of University Women In 1881, the American Association of University Women (AAUW) was founded by like-minded women who had defied society's conventions by earning college degrees. Since then it has worked to increase women's access to higher education and equal employment opportunities. Today, AAUW has more than 170,000 members and supporters, 1,000 branches, and 800 college and university partners nationwide. AAUW plays a major role in mobilizing advocates nationwide on AAUW's priority issues to advance gender equity. In adherence with its member-adopted Public Policy Priorities, AAUW supports equitable educational climates free of harassment, bullying, and sexual assault, and vigorous enforcement of Title IX and all other civil rights laws pertaining to education. AAUW also supports civil rights for LGBTQ Americans.

### **American Federation of Teachers, AFL-CIO**

The AFT, an affiliate of the AFL-CIO, was founded in 1916 and today represents 1.7 million members in more than 3,000 local affiliates nationwide. Five divisions within the AFT represent the broad spectrum of the AFT's membership: pre-K through 12th-grade teachers; paraprofessionals and other school-related personnel; higher education faculty and professional staff; federal, state and local government employees; and nurses and other healthcare professionals. AFT is a union of professionals that champions fairness; democracy; economic opportunity; and high-quality public education, healthcare and public services for students, their families and communities. The AFT is committed to advancing these principles through community engagement, organizing, collective bargaining and political activism, and especially through the work AFT members do every day. AFT has a long standing commitment to engaging in civil rights litigation and it views this case as an important vehicle for advancing those issues.

### **Atlanta Women for Equality**

Atlanta Women for Equality (AWE) is a 501(c)(3) nonprofit legal aid organization dedicated to shaping our schools according to true standards of equality and to empowering women and girls to assert their rights to equal treatment. We

accomplish this mission by providing free legal advocacy for individuals facing gender discrimination at school and by protecting and expanding educational opportunities through policy advocacy. AWE strongly opposes the tragically widespread discrimination in schools against transgender individuals. Such discrimination causes severe and often indelible harm to the lives of transgender individuals and to surrounding communities, and profoundly undermines our nation's commitment to providing equal educational opportunities for all.

### **Bet Tzedek Legal Services**

Bet Tzedek—Hebrew for “House of Justice”— was established in 1974 and provides free legal services and counsel in a comprehensive range of practice areas. In 2016, Bet Tzedek launched its Transgender Medical-Legal Partnership (Trans MLP) with the Los Angeles LGBT Center’s Transgender Health Program. Bet Tzedek’s Trans MLP assists hundreds of transgender and gender nonconforming individuals in Southern California to petition for legal name and gender marker changes, to fight harassment and discrimination in housing, employment, and public accommodations, and to appeal insurance coverage denials for medically necessary care.

### **Beth Chayim Chadashim (BCC)**

Beth Chayim Chadashim (BCC) is a Reform Jewish synagogue in Los Angeles. BCC was the world’s first LGBTQ+ synagogue, established in 1972; it has been and seeks to expand its commitment to full inclusion for transgender and gender non-conforming people and their families, including several of our members. BCC embraces the gender identity of each individual in our communities.

### **California Women Lawyers**

California Women Lawyers (CWL) is a non-profit organization chartered in 1974. CWL is the only statewide bar association for women in California and maintains a primary focus on advancing women in the legal profession. Since its founding, CWL has worked to improve the administration of justice, to better the position of women in society, to eliminate all inequities based on sex, and to provide an organization for collective action and expression germane to the aforesaid purposes. CWL has also participated as amicus curiae in a wide range of cases to secure the equal treatment of women and other classes of persons under the law.

### **California Women's Law Center**

The California Women’s Law Center (CWLC) is a statewide, non-profit law and policy center dedicated to breaking down barriers and advancing the potential of women and girls through impact litigation, advocacy and education. CWLC’s issue

priorities include gender discrimination, economic justice, violence against women, and women's health. CWLC places particular emphasis on eliminating all forms of gender discrimination on school campuses, including discrimination based on sexual orientation and sexual identity. CWLC remains committed to supporting equal rights for transgender folks and to eradicating invidious discrimination in all forms.

### **Center for Constitutional Rights**

The Center for Constitutional Rights ("CCR") is a national, not-for-profit legal, educational and advocacy organization dedicated to protecting and advancing rights guaranteed by the United States Constitution and international law. Founded in 1966 to represent civil rights activists in the South, CCR has litigated numerous landmark civil and human rights cases on behalf of individuals impacted by arbitrary and discriminatory state policies, including policies that disproportionately impact LGBTQI communities of color.

### **Center for Reproductive Rights**

The Center for Reproductive Rights is a global advocacy organization that uses the law to advance reproductive freedom as a fundamental right that all governments are legally obligated to respect, protect, and fulfill. In the U.S., the Center's work focuses on ensuring that all people have access to a full range of high-quality reproductive health care. Since its founding in 1992, the Center has been actively involved in nearly all major litigation in the U.S. concerning reproductive rights, in both state and federal courts, including serving as lead counsel for the plaintiffs in *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016), in which the U.S. Supreme Court reaffirmed the constitutional right to access legal abortion. As a rights-based organization, the Center has a vital interest in protecting individuals endeavoring to exercise their fundamental rights free from restrictions based on gender stereotypes. Using its expertise in U.S. constitutional law, the Center seeks to highlight that discrimination against transgender people is rooted in the same gender stereotypes and false pretenses that have historically been used to justify discrimination against women.

### **Civil Rights Education and Enforcement Center**

The Civil Rights Education and Enforcement Center ("CREEC") is a national nonprofit membership organization whose mission is to defend human and civil rights secured by law, and to ensure that everyone can fully and independently participate in our nation's civic life without discrimination based on race, gender, disability, religion, national origin, age, sexual orientation, or gender identity. CREEC's efforts to defend human and civil rights extend to all walks of life,



including ensuring that individuals of any gender identity have access to all programs, services, and benefits of public entities, especially programs as fundamental as public schools. CREEC strongly supports the arguments set forth in this amicus brief as essential to protecting the best interests and the civil rights of all children.

### **Education Law Center**

The Education Law Center-PA is a non-profit legal advocacy organization dedicated to ensuring access to a quality public education for all children in Pennsylvania. For over 40 years, ELC has advocated on behalf of the most at-risk students — children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, English language learners, LGBTQ students, and children experiencing homelessness. Our priority areas include ensuring all students have equal access to safe and supportive schools and the full range of services and programs they need to succeed. We work to eliminate systemic inequalities that lead to disparate educational outcomes based on race, gender, sexual orientation, gender expression, disability status, and other categories. We participate as amicus to explain the importance of ensuring transgender and gender-nonconforming students have access to affirming facilities.

### **Equal Rights Advocates**

Equal Rights Advocates (ERA) is a national civil rights advocacy organization dedicated to protecting and expanding economic and educational access and opportunities for women and girls. Since its founding in 1974, ERA has led efforts to combat sex discrimination and advance gender equality by litigating high-impact cases, engaging in policy reform and legislative advocacy campaigns, conducting community education and outreach, and providing free legal assistance to individuals experiencing unfair treatment at work and in school through our national Advice & Counseling program. ERA has filed hundreds of suits and appeared as amicus curiae in numerous cases to defend and enforce individuals' civil rights in state and federal courts, including before the United States Supreme Court. Promoting equal rights for the LGBT community through legal advocacy has been of great importance to the organization since its early years. ERA countered discrimination specifically directed at lesbians by creating the Lesbian Rights Project, which later became the National Center for Lesbian Rights. ERA views discrimination against transgender people – particularly exclusionary policies - as harmful to the transgender community, to women, and to our society at large.

### **Disability Rights Education & Defense Fund (DREDF)**

The Disability Rights Education and Defense Fund, Inc., (DREDF), based in Berkeley, California, is the nation's premier law and policy center dedicated to protecting and advancing the civil rights of people with disabilities. Founded in 1979, DREDF pursues its mission through education, advocacy and law reform efforts, and is nationally recognized for its expertise in the interpretation of federal disability civil rights laws. We broadly support interpretations of civil rights laws that ensure equal educational opportunity for all students, regardless of race, ethnicity, disability, immigration status, or sexual orientation and gender identity.

### **FORGE, Inc.**

FORGE is a national transgender anti-violence organization that works to counter violence and support trans community members who have been impacted by violence.

### **Gender Justice**

Gender Justice is a nonprofit legal and policy advocacy organization based in the Midwest that is committed to the eradication of gender barriers through impact litigation, policy advocacy, and education. As part of its litigation program, Gender Justice represents individuals and provides legal advocacy as amicus curiae in cases involving issues of gender discrimination. Gender Justice has an interest in ensuring that transgender individuals have access to the restrooms and other gendered facilities that match their gender identity.

### **Girls for Gender Equity (GGE)**

Girls for Gender Equity (GGE) is a youth development and policy advocacy organization committed to the well-being of transgender and cis- gender girls and gender non-conforming youth of color. Through education, organizing, and policy advocacy, GGE encourages communities to remove barriers and create opportunities for girls and women to live self-determined lives. GGE supports this amicus brief and the urgent need for schools to make every effort to create safe, affirming, and inclusive academic environments.

### **Girls Inc.**

Girls Inc. is the national organization dedicated to inspiring all girls to be strong, smart, and bold, through direct service and advocacy. Our 81 local affiliates in the U.S. and Canada serve girls ages 5-18, primarily through afterschool and summer programs. We reach over 156,000 girls annually and provide them with strong mentoring relationships, a safe, pro-girl environment, and research-based programming. We also advocate, with our girls, for policies and practices that

break down barriers so that all girls and young women can have the chance to grow up healthy, educated, and independent. Central to the mission of Girls Inc. is our belief that girls have the right to be themselves and resist gender stereotypes.

### **Harvard Law School Gender Violence Program**

The Gender Violence Program consists of law and graduate students at Harvard Law School engaged in the development of legal policy to address and prevent gender-based violence. We are signing on as amici because of the importance of the issues raised in the case.

### **Idaho Coalition Against Sexual & Domestic Violence**

The Idaho Coalition works to end gender violence inextricably connected to and fueled by multiple systemic oppression. We believe in beloved communities with social equity and collective liberation; where we see our own and each other's full humanity and everyone has the ability to thrive and reach their full potential. A world rooted in interdependence, resilience, and regeneration. Our mission is to engage voices to create change in the prevention, intervention, and response to domestic violence, dating abuse, stalking, and sexual assault. The matter at hand aligns directly with our organizational shared vision and mission in that it seeks to support the rights and full humanity of those in our community.

### **In Our Own Voice: National Black Women's Reproductive Justice Agenda**

In Our Own Voice: National Black Women's Reproductive Justice Agenda is a national-state partnership with eight Black women's Reproductive Justice organizations: The Afiya Center, Black Women for Wellness, Black Women's Health Imperative, New Voices for Reproductive Justice, SisterLove, Inc., SisterReach, SPARK Reproductive Justice NOW, and Women with a Vision. In Our Own Voice is a national Reproductive Justice organization focused on lifting up the voices of Black women leaders on national, regional, and state policies that impact the lives of Black women and girls.

Reproductive Justice is a framework rooted in the human right to control our bodies, our sexuality, our gender, and our reproduction. Reproductive Justice will be achieved when all people, of all immigration statuses, have the economic, social, and political power and resources to define and make decisions about our bodies, health, sexuality, families, and communities in all areas of our lives with dignity and self-determination. In Our Own Voice is committed to engaging in advocacy to ensure that all students are safely able to access school facilities in line with their gender identity.

### **LatinoJustice PRLDEF**

LatinoJustice PRLDEF, formerly known as the Puerto Rican Legal Defense & Education Fund, is a national non-profit civil rights legal defense fund who since 1972 has advocated for and defended the constitutional rights of all Latinos as part of our continuing mission to protect and advance the civil rights of the greater pan-Latinx community in the United States and Puerto Rico. LatinoJustice has engaged in and supported law reform litigation across the country combatting discriminatory policies and practices in various areas including criminal justice, education, employment, fair housing, immigrants' rights, language rights, lgbtq rights, redistricting, and voting rights.

### **Legal Aid At Work**

Legal Aid at Work (LAAW) is a non-profit public interest law firm whose mission is to protect, preserve, and advance the employment and education rights of individuals from traditionally under-represented communities. LAAW has represented plaintiffs in cases of special import to communities of color, women, recent immigrants, individuals with disabilities, the LGBT community, and the working poor. LAAW has litigated a number of cases under Title IX of the Education Amendments of 1972 as well as Title VII of the Civil Rights Act of 1964. LAAW's interest in preserving the protections afforded to employees and students by this country's antidiscrimination laws is longstanding.

### **Legal Voice**

Legal Voice is a regional nonprofit public interest organization based in Seattle that works to advance the legal rights of women in the Northwest through litigation, legislative advocacy, and education about legal rights. Since its founding, Legal Voice has worked to eliminate all forms of sex discrimination. Recognizing that discrimination based on gender identity and sexual orientation are forms of sex discrimination, Legal Voice has a long history of advocacy on behalf of lesbians, gay men, bisexuals, and transgender people, dating back to the 1980s. Legal Voice has participated as counsel and as amicus curiae in cases throughout the Northwest and the country. Legal Voice has a strong interest in this case because it concerns the rights of transgender students to have access to facilities that are consistent with their gender identity.

### **National Asian Pacific American Women's Forum**

The National Asian Pacific American Women's Forum (NAPAWF) is the only national, multi-issue Asian American and Pacific Islander (AAPI) women's organization in the country. NAPAWF's mission is to build the collective power of all AAPI women and girls to gain full agency over our lives, our families, and our

communities. NAPAWF's work is centered in a reproductive justice framework that acknowledges the diversity within our community and ensures that different aspects of our identity – such as ethnicity, immigration status, education, sexual orientation, gender identity, and access to health – are considered in tandem when addressing our social, economic, and health needs.

### **National Association of Social Workers (NASW)**

The National Association of Social Workers (NASW), founded in 1955, is the largest association of professional social workers in the United States with over 120,000 members in 55 chapters. The Oregon Chapter of NASW has 1400 members. NASW recognizes the considerable diversity in gender expression and identity among our population groups. The NASW National Committee on LGBT Issues develops, reviews, and monitors programs of the Association that significantly affect LGBT individuals. The NASW Code of Ethics for professional social workers requires that all people -- including those who are transgender -- should be afforded the same respect and rights regardless of gender identification. NASW supports safe and secure educational environments at all levels of education, in which children, youth, and adults may obtain an education free from discrimination, harassment, violence, and abuse. NASW asserts that discrimination and prejudice directed against any individual on the basis of gender identity or gender expression, can be damaging to the social, emotional, psychological, physical, and economic well-being of the affected individual, as well as to society as a whole. [1]

[FN1: NASW Policy Statements: Transgender and Gender – Antidiscrimination and Public Awareness and Advocacy - in *Social Work Speaks* 305, 306 (10th ed. 2015).]

### **National Association of Women Lawyers**

The mission of the National Association of Women Lawyers (NAWL) is to provide leadership, a collective voice, and essential resources to advance women in the legal profession and advocate for the equality of women under the law. Since 1899, NAWL has been empowering women in the legal profession, cultivating a diverse membership dedicated to equality, mutual support, and collective success. As part of its mission, NAWL works to protect both adults and children from discrimination based on sexual orientation or gender identity.

### **National Center for Law and Economic Justice**

The National Center for Law and Economic Justice (NCLEJ), exists to protect the legal rights of low-income people, especially those who are members of

marginalized communities. This includes trans people, who face higher than average poverty rates as a result of widespread discrimination. NCLEJ focuses on impact litigation that will establish important principles for the protection of such individuals, and is committed to ensuring that all people have fair access to government resources. It has been involved, as counsel or amicus curiae, in many significant cases involving the rights of low-income individuals over the more than 50 years since it was founded in 1965.

### **National Crittenton**

National Crittenton is the umbrella for the 26 members of the Crittenton family of agencies, providing direct services for girls and young women impacted by violence and trauma in 31 states and the District of Columbia. Our focus on root causes and cross-system approaches, supports the attainment of our vision in which, girls, young women, and gender nonconforming youth can define themselves on their own terms and be respected and supported without fear of violence or injustice.

### **National LGBTQ Task Force**

Since 1973, the National LGBTQ Task Force has worked to build power, take action, and create change to achieve freedom and justice for lesbian, gay, bisexual, transgender, and queer ("LGBTQ") people and our families. As a progressive social justice organization, the Task Force works toward a society that values and respects the diversity of human expression and identity and achieves equity for all.

### **National Organization for Women Foundation**

The National Organization for Women (NOW) Foundation is a 501 (c)(3) entity affiliated with the National Organization for Women, the largest grassroots feminist activist organization in the United States with chapters in every state and the District of Columbia. NOW Foundation is committed to advancing equal education opportunity, among other objectives, and works to assure that women and LGBTQIA persons are treated fairly and equally under the law.

### **North Carolina Coalition Against Domestic Violence (NCCADV)**

The North Carolina Coalition Against Domestic Violence (NCCADV) leads the state's movement to end domestic violence. Working through a diverse network of partnerships and collaborations, the Coalition provides technical assistance, innovative training, groundbreaking prevention work, and legislative and policy support for members and the public. NCCADV works to empower all survivors of domestic violence and is committed to helping people from all backgrounds and



identities, including members of the transgender and gender nonconforming communities, attain peace and safety in their lives.

### **Oasis Legal Services**

Oasis Legal Services proudly provides quality legal immigration services to under-represented low-income groups with a focus on LGBTQIA+ communities. By acknowledging, respecting, and honoring their struggles, we empower immigrants so that dignity grows and integrity blooms. Trans refugees are arguably the most vulnerable refugee group. Since inception, Oasis has worked on asylum and other immigration benefits case for 130 trans clients. Oasis advocates generally for trans individuals to be treated with dignity and respect world-wide.

### **Planned Parenthood Columbia Willamette**

Planned Parenthood Columbia Willamette (PPCW) is the largest nonprofit family planning and reproductive rights organization in Oregon and Southwest Washington. Our mission is to provide, promote, and protect access to sexual and reproductive health care. PPCW is committed to helping all LGBTQI people access basic reproductive and sexual health care. We serve transgender people at various places on the spectrum of gender identity and expression. We are committed to improving the way transgender people receive health care. We proudly partner with our transgender community in eliminating barriers to care.

### **Planned Parenthood of Southwestern Oregon**

Planned Parenthood of Southwestern Oregon (PPSO) provides confidential, expert sexual and reproductive health services and education in an environment that is honest, non-judgmental, and supportive through its six health centers throughout southwestern Oregon. PPSO is dedicated to building a strong, healthy community by providing essential health services, education, and advocacy, and believes that no matter who you are, how you identify, where you're from, or who you love, you are welcome here.

### **SisterReach**

SisterReach, founded October 2011, is a Memphis, TN based grassroots 501c3 non-profit supporting the reproductive autonomy of women and teens of color, poor and rural women, LGBTQIA+ and gender non-conforming people and their families through the framework of Reproductive Justice. Our mission is to empower our base to lead healthy lives, raise healthy families and live in healthy communities.

### **SurvJustice**

SurvJustice is a national non-profit organization offering legal assistance in campus hearings to sexual violence survivors regardless of their sex, gender, gender identity, or sexual orientation. Since 2014, SurvJustice has provided students with safe and equitable access to education, protecting their rights under Title IX.

### **Virginia Sexual and Domestic Violence Action Alliance**

The Action Alliance advocates for government, institutions and systems that are rooted in equity and justice, especially in regard to gender and race. Communities can only be strong and healthy when the full humanity and dignity of all people is recognized and embraced.

### **Washington State Coalition Against Domestic Violence (WSCADV)**

The Washington State Coalition Against Domestic Violence (WSCADV) is the federally-recognized membership organization of non-profit domestic violence programs in Washington State. Founded by domestic violence survivors and their allies in 1990, WSCADV's mission is to mobilize and support member programs and allies to end domestic violence through advocacy and action for social change. WSCADV has long advocated for laws, policies, and practices that promote safety and justice for all domestic violence survivors.

### **Women Lawyers Association of Los Angeles**

WLALA is a nonprofit organization comprised primarily of lawyers and judges in Los Angeles County. Founded in 1919, WLALA is dedicated to promoting the full participation of women lawyers and judges in the legal profession, maintaining the integrity of our legal system by advocating principles of fairness and equality, and improving the status of women in our society. WLALA has participated as an amicus in cases involving discrimination before many federal District Courts, Courts of Appeals, and the U.S. Supreme Court. WLALA believes that bar associations have a special obligation to protect the core guarantees of our Constitution to secure equal opportunity for women and girls through the full enforcement of law prohibiting discrimination.

### **Women Lawyers On Guard Inc.**

Women Lawyers On Guard Inc. ("WLG") is a national non-partisan non-profit organization harnessing the power of lawyers and the law in coordination with other organizations to preserve, protect, and defend the democratic values of equality, justice, and opportunity for all.



### **Women of Reform Judaism**

Women of Reform Judaism represents more than 65,000 women in nearly 500 women's groups in North America and around the world. We are committed to ensuring equality for all of God's children. We oppose discrimination against all individuals for the stamp of the Divine is present in each and every human being.

### **Women's Bar Association of the District of Columbia**

Founded in 1917, the Women's Bar Association of the District of Columbia (WBA) is one of the oldest and largest voluntary bar associations in metropolitan Washington, DC. Today, as in 1917, we continue to pursue our mission of maintaining the honor and integrity of the profession; promoting the administration of justice; advancing and protecting the interests of women lawyers; promoting their mutual improvement; and encouraging a spirit of friendship among our members.

### **Women's Bar Association of the State of New York**

The Women's Bar Association of the State of New York ("WBASNY") is the second largest statewide bar association in New York and one of the largest women's bar associations in the United States. Its earliest chapter was founded in 1918, a year before women's right to vote was ratified in the United States. WBASNY's more 4,200 members in its now-twenty chapters across New York State<sup>1</sup> include esteemed jurists, academics, and attorneys who practice in every area of the law, including appellate, litigation, education, commercial, labor and employment, ERISA, matrimonial, access to justice, ethics, health, reproductive rights, constitutional, criminal, and civil rights. WBASNY is dedicated to the fair and equal administration of justice. WBASNY has participated as an amicus curiae in state and federal cases at every level, including those involving civil rights, sex and gender discrimination, sexual assault and harassment, rights under federal and state constitutions, and the right to fair and equal treatment under the law. It stands as a vanguard for the equal rights of women, minorities, LGBT individuals, and all persons.

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<sup>1</sup> WBASNY is incorporated in New York. Its affiliated organizations consist of twenty regional chapters, some of which are separately incorporated, plus nine IRC 501(c)(3) charitable corporations that are foundations and/or legal clinics. Neither WBASNY nor any of its affiliates issue stock to the public. WBASNY's current affiliates are: Chapters – Adirondack Women's Bar Association; The Bronx Women's Bar Association, Inc.; Brooklyn Women's Bar Association, Inc.; Capital District Women's Bar Association; Central New York Women's Bar Association;

Del-Chen-O Women's Bar Association, Finger Lakes Women's Bar Association; Greater Rochester Association for Women Attorneys; Mid-Hudson Women's Bar Association; Mid- York Women's Bar Association; Nassau County Women's Bar Association; New York Women's Bar Association; Queens County Women's Bar Association; Rockland County Women's Bar Association; Staten Island Women's Bar Association; The Suffolk County Women's Bar Association; Thousand Islands Women's Bar Association; Westchester Women's Bar Association; Western New York Women's Bar Association; and Women's Bar Association of Orange and Sullivan Counties. Charitable Foundations & Legal Clinic – Women's Bar Association of the State of New York Foundation, Inc.; Brooklyn Women's Bar Foundation, Inc.; Capital District Women's Bar Association Legal Project Inc.; Nassau County Women's Bar Association Foundation, Inc.; New York Women's Bar Association Foundation, Inc.; Queens County Women's Bar Foundation; Westchester Women's Bar Association Foundation, Inc.; and The Women's Bar Association of Orange and Sullivan Counties Foundation, Inc. (Note: No members of WBASNY or its affiliates who are judges or court personnel participated in WBASNY's amicus curia vote in this matter.)

### **The Women's Law Center of Maryland**

The Women's Law Center of Maryland, Inc. (WLC) is a non-profit, membership organization established in 1971 with a mission of improving and protecting the legal rights of women, particularly regarding gender discrimination, employment law, family law and reproductive rights. Through its direct services and advocacy, the Women's Law Center seeks to protect women's legal rights and ensure equal access to resources and remedies under the law.

### **Women's Law Project**

The Women's Law Project (WLP) is a non-profit legal advocacy organization with offices in Philadelphia and Pittsburgh, Pennsylvania. Its mission is to create a more just and equitable society by advancing the rights and status of all women throughout their lives. Since 1974, WLP has engaged in high-impact litigation, public policy advocacy, and education challenging discrimination rooted in gender stereotypes. WLP represented amici curiae in *Doe v. Boyertown Area School District*, 897 F.3d 515 (3d Cir. 2018) to ensure that Title IX was not misused to deny transgender students use of school bathrooms and locker rooms aligning with their gender identity. WLP also represented amici curiae in *Prowel v. Wise Business Forms*, 579 F.3d 285 (3d Cir. 2009), to ensure full enforcement of Title VII's protection against sex discrimination in the workplace for a litigant who suffered harassment based on gender stereotyping, and represented Rainbow Alliance, an LGBTQA-student group, in litigation filed under Pittsburgh's Fair

Practices Ordinance challenging the University of Pittsburgh's gendered facilities policies from 2012 to 2016. WLP was also instrumental in passage of the Allegheny County Human Relations Ordinance, which prohibits discrimination in employment, public accommodations, and housing based on sex, gender identity, and gender expression.

### **Women's Sports Foundation**

The Women's Sports Foundation (WSF) is a nonprofit educational organization dedicated to expanding opportunities for girls and women to participate in sports and fitness and to creating an educated public that supports gender equity in sports. The WSF distributes grants and scholarships to female athletes and girls' sports programs, answers hundreds of inquiries per year concerning Title IX and other women's sports related questions, and administers award programs to increase public awareness about the achievements of girls and women in sports.

### **WV FREE**

WV FREE believes in the rights of all people to live safely, with dignity and autonomy. Transgender students face harassment and physical threat and must be provided protection from societal institutions. They must be able to rely on reasonable adults in their lives who will ensure their environments are safe.

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