

IN THE SUPREME COURT OF VIRGINIA

RECORD NO. 211061

PETER VLAMING,

Appellant,

V.

WEST POINT SCHOOL BOARD;

LAURA ABEL, in her official capacity as Division Superintendent;
JONATHAN HOCHMAN, in his official capacity as Principal of West Point High
School; and SUZANNE AUNSPACH, or her successor in office, in her official
capacity as Assistant Principal of West Point High School,

Appellees.

**BRIEF OF *AMICI CURIAE* EQUALITY VIRGINIA AND OTHERS ON
BEHALF OF APPELLEES**

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I. INTRODUCTION AND INTEREST OF *AMICI CURIAE*

Amicus curiae Equality Virginia (“EV”) is the leading advocacy organization in Virginia seeking equality for lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) people. With over 35,000 supporters and more than 100 community-based organizational partners throughout the Commonwealth, EV provides impactful education and programs that seek to advance knowledge and empowerment among LGBTQ Virginians and allies. EV is committed to advocating for inclusive school environments where transgender and non-binary youth feel safe, celebrated, and supported in their education.

Amici curiae Diversity Richmond, Equality Loudoun Inc., Farmville Pride, FCPS Pride, GLSEN NoVA, GLSEN RVA, GLSEN Southwest Virginia, Hampton Roads Pride, He She Ze and We, Health Brigade, Hill City Pride, PFLAG Blue Ridge, Planned Parenthood Advocates of Virginia, Pride Liberation Project, Rappahannock Region Transgender Support (RRTS), Restoration Fellowship RVA, Richmond Triangle Players, Rockbridge LGBTQIA+ Alliance, Side by Side VA, Inc., Southeastern Transgender Resource Center, Stonewall Sports Richmond, Transgender Assistance Program Virginia, UGRC/Black Pride RVA, Virginia Anti-Violence Project, Virginia Council on LGBTQ+, and Virginia Pride are organizations and groups who support LGBTQ people in Virginia.

Amici curiae the Honorable Barbara J. Kanninen (Arlington County), the Honorable David Priddy (Arlington County), the Honorable Lisa Larson-Torres (Chair, Charlottesville City), the Honorable Karl V. Frisch (Fairfax County), the Honorable Laura Downs (Chair, Falls Church City), the Honorable David Ortiz (Falls Church City), the Honorable Lori Silverman (Falls Church City), and the Honorable Elizabeth Warner (Stafford County) are members of school boards representing school divisions across the Commonwealth, and Mr. Jason Kamras is Division Superintendent of the Richmond City Public Schools.

Through their work with individual students and their families, *amici* have come to understand the profound harm that occurs when transgender students are segregated from their cisgender peers. Segregation is not limited to physical segregation, but rather, as caselaw and history demonstrate, also includes differential or unequal treatment. *See infra* Section II. Experiences of transgender students and their families, described below, show that these students face physical abuse, bullying, extreme emotional harm, and feelings of isolation and shame, among many other negative consequences, which further impact the students' education and well-being. The anti-discrimination and anti-harassment policies issued by the West Point School Board ("West Point") aim to counteract and prevent those harms. The student and family experiences below show that transgender students thrive when they are

supported by an inclusive school environment, and they further demonstrate the need to ensure equal treatment.

II. LEGAL ARGUMENT

Courts have long recognized that treating students differently based on innate characteristics is harmful. *See, e.g., Brown v. Bd. of Educ.*, 347 U.S. 483, 494 (1954) (“To separate [students] from others of similar age and qualifications solely because of their race 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.”). The same type of harm Black children experienced as a result of discrimination now harms transgender children. *See, e.g., Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 597 (4th Cir. 2020) (Wynn, J., concurring) (the “unequal treatment” of transgender students “produces a vicious and ineradicable stigma” whose result “is to deeply and indelibly scar the most vulnerable among us—children who simply wish to be treated as equals”), *cert. denied*, 141 S. Ct. 2878 (2021); *B.P.J. v. W. Va. State Bd. of Educ.*, 550 F. Supp. 3d 347, 356 (S.D. W. Va. 2021) (holding that prohibiting transgender girls from participating in school-sponsored girls’ sports “stigmatizes and isolates” those students); *see also* Marvin Lim & Louise Melling, *Inconvenience or Indignity? Religious Exemptions to Public Accommodations Laws*, 22 J.L. & Poly. 705, 711-16 (2014) (discussing U.S. courts’ recognition of the dignitary harms caused by race and sex discrimination).

The harm of differentiating transgender students from their peers is well-established. “When transgender students face discrimination in schools, the risk to their wellbeing cannot be overstated—indeed, it can be life threatening.” *Doe ex rel. Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 529 (3d Cir. 2018); *Grimm*, 972 F.3d at 621 (Wynn, J., concurring) (“[T]he pain [caused by discrimination] is overwhelming, unceasing, and existential. In an experience all too common for transgender individuals (particularly children), early in his junior year at Gloucester High, Grimm was hospitalized for suicidal thoughts resulting from being in an environment of ‘unbearable’ stress where ‘every single day, five days a week’ he felt ‘unsafe, anxious, and disrespected.’”); *Whitaker by Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1051 (7th Cir. 2017) (“According to a report issued by the National Center for Transgender Equality, 78% of students who identify as transgender or as gender non-conformant, report being harassed while in grades K-12 ... 35% report[ed] physical assault and 12% report[ed] sexual assault.”); *Hecox v. Little*, 479 F. Supp. 3d 930, 977 (D. Idaho 2020) (“In a large national study, 86% of those perceived as transgender in a K-12 school experienced some form of harassment, and for 12%, the harassment was severe enough for them to leave school.”). This effect is magnified when the hostile actor is a teacher: 59% of transgender students who were harassed or bullied by teachers in either K-12 schools or higher educational settings reported having attempted suicide. Br. of *Amici Curiae*

Nat'l Medical & Mental Health Orgs. in Supp. of Defs.-Appellees' Pet. for Reh'g or Reh'g *En Banc* at 9-10, *Meriweather v. Hartop*, No. 20-3289 (6th Cir. May 18, 2021) (hereinafter Medical & Mental Health Am. Br.).¹

Courts have specifically recognized that “failing to affirm the identities of transgender students causes emotional harm to those students.” *Kluge v. Brownsburg Comm’y Sch. Corp.*, 548 F. Supp. 3d 814, 834 (S.D. Ind. 2021); *see also B.E. v. Vigo Cnty. Sch. Corp.*, -- F. Supp. 3d --, 2022 WL 2291763, at *5 (S.D. Ind. June 24, 2022) (crediting expert testimony that “school-related distress associated with misgendering,” including “feelings of shame and discrimination,” “have long-term influences on mental health, physical health, and overall wellbeing, including heightened risk for posttraumatic stress disorder, depression, life dissatisfaction, anxiety, and suicidality”); *Bd. of Educ. of the Highland Local Sch. Dist. v. U.S. Dep’t of Educ.*, 208 F. Supp. 3d 850, 856, 870-71 (S.D. Oh. 2016) (crediting testimony that transgender student was “stigmatized and isolated” when school staff misgendered her, including by “failing to use female pronouns when referring to her”); *In re K.L.*, 258 A.3d 932, 959 (Md. Ct. App. 2021) (recognizing “the very real danger transgender children face” when referred to by names that do not align with their gender identity). This harm is also well-established: in the words of one court, “the

¹ Available at <https://www.nclrights.org/wp-content/uploads/2021/05/2021.05.14.-Dkt-111.-Amicus-Brief-of-Nat-Medical-Mental-Health-Orgs-ISO-Def-Appellees-Pet-for-Rehearing.pdf>

general notion that failing or refusing to affirm a transgender individual’s identity using preferred names and pronouns causes psychological and emotional harm is not a unique insight.” *Kluge*, 548 F. Supp. 3d at 834.

Using pronouns that reflect the transgender student’s identity is one important way to mitigate these harms and allow the student to thrive in school. “[W]hen transgender students are addressed with gender-appropriate pronouns and permitted to use facilities that conform to their gender identity, those students reflect the same, healthy psychological profile as their peers.” *Boyertown*, 897 F.3d at 523 (internal quotation marks omitted); *see also Grimm*, 972 F. 3d at 597 (explaining that “transgender students have better mental health outcomes when their gender identity is affirmed”); *F.V. v. Barron*, 286 F. Supp. 3d 1131, 1137 (D. Idaho 2018) (“A complete transition,” including “changes in ... names [and] pronouns,” allows a transgender person to attain “lasting personal comfort with their gendered self, thus maximizing overall health, well-being, and personal safety” (internal citation and quotation marks omitted)). A 2018 study found that transgender youth who use gender-affirming names and pronouns experienced a 29% decrease in reported thoughts of suicide and a 56% decrease in suicide attempts, confirming the importance of using gender-affirming names and pronouns to transgender students. *Medical & Mental Health Am. Br.* at 9.

Just as it is harmful to treat transgender students differently than their cisgender peers in other school settings—for example, when schools tolerate harassment, fail to update their records to be consistent with the student’s gender identity, limit access to bathrooms or locker rooms, or fail to adopt policies to protect the students’ privacy—transgender students are also harmed when schools treat transgender students differently with respect to using their preferred names and pronouns. *See infra* Section III; *see also* Br. of Amici Curiae PFLAG Metro DC *et al.* at 6-7, *Christian Action Network v. Qarni*, No. CL21000282-00 (Va. Cir. Ct. filed Mar. 29, 2021) (describing how schools can be hostile environments for transgender and gender non-conforming students).² Such discriminatory conduct both enforces and perpetuates the stigma that transgender students already face. *See Grimm*, 972 F.3d at 611-12 (detailing the long history of discrimination against transgender people); *Whitaker*, 858 F.3d at 1051; *Hecox*, 479 F. Supp. 3d at 977.

West Point has a compelling interest in protecting its transgender students from these harms. *See Roberts v. U.S. Jaycees*, 468 U.S. 609, 625-26 (1984) (holding that the state had a compelling interest in protecting its citizens from sex discrimination); *Boyertown*, 897 F.3d at 528 (holding that the school district had a compelling interest in protecting transgender students from discrimination and in protecting the physical and psychological well-being of minors). It must also comply

² Available at https://pflag.org/sites/default/files/PFLAG_VirginiaAmicusBrief.pdf.

with Title IX, which prohibits discrimination against transgender children on the basis of their gender identities, and the Equal Protection Clause of the Fourteenth Amendment. *Grimm*, 972 F.3d at 613-15, 616-17; *Boyertown*, 897 F.3d at 533. To serve these interests and comply with the law, West Point must treat its transgender students equally—including by ensuring that its staff addresses transgender students, like their cisgender peers, with the names and pronouns that reflect their gender identity.

The illusory burden asserted by Mr. Vlaming cannot stand against this compelling interest. The reason is simple: The use of a student’s proper pronoun cannot be construed as an endorsement of any particular view on the nature of gender. Mr. Vlaming’s 60-page opening brief spends only a few conclusory lines describing the supposed burden on his freedom of religious exercise, and with good reason: a policy requiring that a teacher use a student’s chosen pronoun does not and cannot violate his religious beliefs.

A slight hypothetical tweak to the facts of this case illustrates why. Mr. Vlaming knew that this student was transgender only because he had previously taught the student when the student used feminine pronouns. But in many cases, a teacher will meet a student and learn their chosen pronouns on the first day of school, and will have no knowledge of that student’s past—and in particular, whether the student’s self-identification may mark them as transgender or non-binary. Mr.

Vlaming’s argument does not explain how West Point could have violated his religious beliefs under that set of facts. If a new student arrives to Mr. Vlaming’s classroom in August and asks him to use he/him pronouns, Mr. Vlaming’s use of these pronouns could not express a belief that gender is non-biological, or a position on the student’s “true” gender, because Mr. Vlaming would have no way to know—aside from sex stereotyping—whether or not the student is transgender. A ruling that West Point’s anti-discrimination and anti-harassment policies violated Mr. Vlaming’s religious beliefs would introduce chaos into Virginia schools by effectively allowing *teachers* to decide each student’s “true” gender, based upon whatever criteria the individual teacher deems appropriate. West Point’s requirement that a teacher must use a student’s chosen pronouns promotes uniformity and protects both transgender and cisgender students.

III. STUDENT AND FAMILY EXPERIENCES DEMONSTRATE HOW CORRECT PRONOUN USE CAN HELP AVOID HARM TO TRANSGENDER STUDENTS

The experiences of transgender students and their families in Virginia schools demonstrate the challenges transgender students face in school and the harmful impact of a teacher’s refusal to use gender-affirming pronouns. These experiences make clear West Point’s strong interest in ensuring that teachers—who should serve as role models and mentors—treat students with respect and refrain from misgendering them.

A. Brigitte and K

Brigitte and her family live in Floyd, Virginia. She and her husband moved there when their two children were young because they wanted to live in an area that was great for raising a family, and where they could potentially find support and community. They have happily raised their family there for the last 18 years. Their youngest son, K, is transgender.

When K was twelve, he came out to his parents and let them know that he was a boy. Brigitte remembers feeling cautious about how to handle her child coming out as transgender. K is on the autism spectrum and at the time was still playing make-believe games and trying different personas, so Brigitte wanted to ensure that they did not rush into anything, just in case. Over time, it became clear that K's gender identity was insistent, persistent, and consistent. Both Brigitte and her husband wanted to be supportive of K, but struggled with figuring out how to do so. They also grappled with their own worries about their son's safety, and in many ways grieved the loss of who they thought their child was.

K socially transitioned during seventh grade, which had its ups and downs. While K felt strongly about his decision to socially transition, it was a difficult process for the family as they were concerned with how their son would be perceived and whether he would have a strong peer group. K's father worked as a guidance counselor in his school, so K was fortunate to have that support readily available.

However, the school would unfortunately not allow any discussion of LGBTQ issues. This blocked K and his teachers from being able to explain to his peers what was happening, and he had to fend off questions from other students by himself. Brigitte says that some teachers were supportive and used K's name and pronouns, but because of the rule against speaking about LGBTQ issues, they were unable to do much else to normalize K's experience. Overall, Brigitte says that the school did not provide any support to her and her husband as they tried to help K navigate his transition.

Starting high school was just a continuation of these challenges. Brigitte remembers asking K how his days at school were and his response would always be, "Bad." When Brigitte asked what was wrong or tried to get background information from K's sister, she discovered that while K wasn't experiencing any overt bullying, he was isolated and was merely being tolerated by his peers and teachers. Sometimes, teachers at pick-up would use the wrong name and pronouns and would fail to address their mistake, and many students would not include K or talk to him at all during the school day. K didn't feel like he fit in anywhere and it began to take an obvious toll on his mental health. Brigitte says she remembers seeing him come home from school and isolate himself from the family so he could decompress. He was no longer invested in doing well in school and was only doing the minimum required to pass. Brigitte became so concerned about K's wellbeing that she started

looking into private schools. “I was prepared to ruin ourselves financially to get him out of that school,” she says.

Then Brigitte found Springhouse Community School. She remembers looking at their website and talking with the head of school, Jenny Finn, and thinking this was a perfect fit for K. They were very fortunate that a community member reached out to sponsor K so that this opportunity could be possible. The Springhouse Community School focused on making sure K was comfortable, part of the group, celebrated, and safe, which was exactly what K and his family were looking for. The school is also open and transparent about their support of LGBTQ students, and understands the resources and supports that K and his parents need in order for K to thrive. Now when Brigitte asks K how school is, he talks the whole drive home about how much he loves it.

K is doing well now and is excited about learning again. Brigitte is very grateful she has been able to make this change for her family, but she also recognizes that not every family will have the community support they had or the funds to



Figure 1. Pictured (from left to right) K’s sister, Amity, and K.

send their transgender child to an affirming private school. She wants every child to be able to feel celebrated and part of the community the way K does at his new school.

B. Joanna and L

Joanna³ is a federal civil service employee who moved to the Hampton Roads area a few years ago with her husband and two children at the time. They originally settled in York County when her oldest was about to go into kindergarten and her second child was about three years old. They currently reside in Newport News with their three children. Her second child, L, is a transgender girl.

When Joanna and her family moved to York County, they decided to put their children in a private Lutheran school because their oldest child needed some additional support in kindergarten with respect to fine and gross motor skill development. Their second child, L, was in the school's preschool program. At age 4, L was already showing interest in stereotypically girly colors, toys, and clothes. Joanna and her husband were trying to show their open-mindedness by letting both children know that they could like whatever they wanted, and that it didn't have to say anything about their gender. Joanna was also very particular when speaking to teachers to ensure that they did not discourage the way L played. The teachers were

³ "Joanna" is a pseudonym, which is being used because of the potential harm of disclosing that her daughter is transgender.

very open to supporting L's interests, and always made sure to reinforce to the class that anyone can play with any toys that they want to. As time progressed, L kept asking Joanna and her husband, "When do boys become girls? When do you get to switch?" So, Joanna and her spouse decided to keep a record of these statements to determine how consistent L's thoughts were on gender. L also began to ask if dresses would be okay to wear to school. Joanna says that her desire to protect and her desire to affirm her child came into conflict, so she decided to come up with a compromise. Since the school had uniforms, she would have L wear the uniform at school, but L could wear dresses on the weekends. This seemed like a good compromise for a while, but L soon began talking about other body-related concerns. Therefore, Joanna thought it might be a good idea to talk to someone who had experience raising a transgender child.

Joanna reached out to a parent of a transgender child in the Richmond area. She explained that she wanted to ensure that any sort of transition was really L's idea, but she wasn't sure how to have an appropriate conversation with her four-year-old. The other parent said, "Have you considered explaining that some boys have penises and some have vaginas, while some girls have vaginas and others have penises?" Joanna explained that it hadn't occurred to her to frame it that way, and she and her spouse decided to have this conversation with both of their children, family meeting style. This way, nobody would feel singled out and it could just be a

conversation about bodies if L was not interested. As it turns out, this was what L needed to hear, because during the discussion she exclaimed, “That’s what I am! I’m a girl with a penis!” She then asked her parents to tell the principal and teachers to make an announcement so that everyone could stop saying she was a boy at school. L and her family attended a family wedding shortly after this conversation, and L was elated to wear a dress and present as female around others. The family was thrilled to see L so happy, but were also nervous about how others might treat her and how they could best protect her.

Joanna went to L’s school and had a conversation with the administration about L being transgender. They were very honest about not having handled anything like this before, but they expressed how much they adored L and were willing to support her in any way they could. Both teachers and administration used L’s name and pronouns and made notes on school rosters to ensure substitutes would not deadname or misgender her. Joanna was happy that they were so supportive and that L would not have to feel like she could not be herself at school, but she knew that her children would not be in private school forever. She and her husband wanted their children to grow up around people of diverse backgrounds and experiences, so they were planning on placing them in the public school system. Joanna reached out to York County Public Schools to talk to them about L joining the school division for kindergarten and to see what their policies for transgender students were. The

administration informed Joanna that they had the same policies as Gloucester County. Because of the Gavin Grimm case, Joanna was familiar with the policies and did not think the school division would be able to support her daughter. The administration informed her that kindergarten would not be an issue for L, because each class had a single stall restroom in it. Joanna tried to get them to see her perspective:

“What about when she’s at lunch? What about when they go to gym class? What about any of the years after kindergarten? Everything you’re saying gets back to ‘she is not a girl in the view of the policy,’ that there is something different or other about her and that’s not going to work for us.”

L’s parents began considering moving to another locality with more diverse schools and better policies on supporting transgender students. Joanna found this difficult at times, because she soon realized that many school divisions did not have overarching policies and so the family would have to look into individual schools. Joanna and her spouse met with the Newport News Director of Elementary Education about the division’s policies for transgender students. The Director informed them that the division also did not have an overarching policy, but she was willing to direct L’s parents to the two elementary schools that she thought might be the most welcoming to transgender students.

Joanna went to the two elementary schools and met with each principal. The principal at the first school was outwardly nice, but also focused mostly on L's ability to use single stall bathrooms in kindergarten. The principal ultimately ended the conversation by bringing up her concern about what other parents might do or say if they found out L was transgender. Joanna called the Director of Elementary Education on her way to the next school to let the Director know how poorly the interaction had gone. The Director assured her that she was confident that Joanna would have a better time in her meeting at the second school. Joanna met with the principal at this school and was grateful to hear that the school already had transgender-friendly policies in place because they had past experience supporting gender-diverse students. L would be able to use the girls' bathroom, and her teachers would use her correct name and pronouns. Joanna decided that the second school would be the best place for her kids, and so the family officially moved. Joanna took it upon herself to meet with all of L's teachers and her oldest child's teachers to ensure they understood the situation and would be supportive. She was met with open minds and support across the board.

Joanna and her husband are very glad to have found a school that is welcoming and affirming to L. They also recognize that not everyone has the same freedom to move and change school divisions to ensure their child feels safe and supported. They want to do everything she can to protect her children, but the burden to ensure

that L is treated like other children falls entirely on Joanna and her husband in the absence of affirming policies. Joanna says that she often feels like she has to be two steps ahead of any given situation. They will have to anticipate how to address the school when L's classes discuss bodily changes or if L ever wants to participate in sports. Having an overarching policy or set of guidelines to protect transgender students would take the strain off of families like theirs and would help better support kids like L.

C. Davina and T

Davina is an educator and the mother of two children. She and her family live in the Fairfax/Loudoun area. Her oldest child, T, is a transgender girl. T came out to Davina in early October when she was in sixth grade. Davina remembers T approaching her and saying, "Mommy, I'm a girl." Davina was ready to immediately start supporting her daughter; she wanted to learn as much as she could and make a plan on what the next steps would be for T.

The next day at school, T told all of her classmates that she was a girl, but they were not nearly as ready to accept T as her mother was. Overall, the school was not prepared to adequately serve a transgender child. There were a few teachers that antagonized T. At the beginning of her social transition, T would wear wigs to school as a part of her gender expression. One teacher told her to stop playing with the wig or she would be asked to remove it, while another told her she was not allowed to

wear Halloween costumes to class. Other teachers just did not know how to respond in order to support T. In one instance, T was on the playground and her wig came off. She was humiliated and emotional, to the point of writing suicidal notes when she came back to the classroom. The teacher did not react to the situation or to the notes. T was so overwhelmed that she got up and left the school to walk home. Davina received a call from the school informing her that they could not find T. Davina remembers saying, “You have five seconds to find my kid” before making a bee line to her home, assuming that was where T was headed. Fortunately, she was right and caught up with T, who told her everything that had happened. Davina called the principal to tell them that this was not acceptable. She had a meeting with the administration and the teacher to ask them what they would do for any other child in an embarrassing situation: “I’m walking them through, I said, ‘What would you have done and why is it different because she’s transgender?’ And they couldn’t answer me.”

When T started seventh grade and moved to middle school, Davina decided to take a new approach. Every time she spoke with the administration, she made sure to discuss her daughter’s rights as inevitable, using phrases such as “when she goes to the girls’ bathroom” or “when she uses the girls’ locker room.” She wanted to be sure the school knew that her daughter being treated like other girls was the only option. Still, the school kept making T feel different by asking about the transition

process, which made her feel as though she had to keep disclosing her genital status. T didn't understand why the school was asking her these questions. She doesn't examine people or question them about their genitals when she uses the bathroom, so why would that be allowed to happen to her? She kept telling her mom, "I want people to treat me like a girl. I have no problem being transgender, but they can't handle it." Davina just kept reaffirming to T that nobody had the right to ask her that, and she didn't have to disclose anything that made her uncomfortable. School remained difficult for T. Her old name was used in the yearbook, even when Davina attempted well in advance to make sure that this would not happen. Substitute teachers were given rosters that did not include T's real name. The administration claimed that T needed more services than they could provide, so she was placed in an alternative education program. When she would become overwhelmed in class by how poorly she was being treated, she would often retreat to the bathroom to call her mom. At one point, this resulted in T being cornered in the bathroom by three adults, including the School Resource Officer. All of this left T feeling scared and isolated. T eventually attempted suicide. Davina was so concerned about her daughter that she tried everything. T switched middle schools three times and even went to live with her aunt in another state for a period of time.

Any success that T has had has been because of her willingness to demand to be treated fairly, her mother's support, and the friends she has made along the way.

When T was early on in her transition, she and her mother went to a school board meeting to speak out about the transgender bathroom policies. They ended up on the news, and the community at large learned that T was transgender. They received generally positive responses and Davina and T met some of their closest friends and allies through that experience. T's peer group in school has been very supportive of her. When one of the schools she attended was questioning whether she should be able to use the girls' locker room under the assumption that it would make other girls uncomfortable, T created a petition to be allowed to use the locker room. So many other girls signed the petition, that there was no question that T's peers saw her as the girl she is and were fine sharing that space with her.

Davina and T's efforts toward redress reveal the need for policies that proactively affirm students' identities at school. One measure that educators could take to guarantee that students like T are treated fairly is to correctly use their gender pronouns. Teachers' failure to do this, Davina observed, "create[s] a hostile, uncomfortable learning environment and shuts down the students' ability to learn." In T's view, using correct pronouns "[p]revents [students] from being attacked for being trans and not having a 'feminine' or 'masculine' name," and would have improved their early experiences in the classroom.

IV. CORRECT PRONOUN USE CAN HELP PREVENT THE TYPES OF HARM EXPERIENCED BY THESE STUDENTS AND THEIR FAMILIES

The experiences of transgender students and their families in Virginia schools demonstrate the harm that students face when their gender identity is undermined by incorrect pronoun use. Without clear protections, such as the Commonwealth’s Model Policies for the Treatment of Transgender Students in Virginia’s Public Schools and West Point’s anti-discrimination and anti-harassment policies, transgender children risk mental, emotional, physical, and sexual harm when they attend school. Without these protections, transgender students suffer isolation and stigma when they are differentiated from their peers. *See supra* Section III.C, at 19 (describing how T frequently felt humiliated, scared, and isolated, which caused her to attempt suicide, and her teachers bullied her); Section III.A, at 11 (describing how K felt isolated and the effect on his mental health); *Grimm*, 972 F.3d at 617 (describing how segregation leads to stigma and isolation); *Adams*, 968 F.3d at 1296 (describing how segregation leads to “humiliation and insult” of transgender students). Without the requirement that teachers use appropriate pronouns at school, students’ education suffers. *See supra* Section III.A, at 11 (when K was in an unsupportive school, where his teachers would sometimes use the wrong name and pronouns without addressing their mistake, he only did the minimum required to pass); Section III.C, at 20 (T left school after isolation and suicide attempt). Without

supportive teachers and schools, students and their families must move to shop for schools with supportive policies (Joanna and L, and Davina and T) or leave the public school system altogether (K). Further, without anti-discrimination and anti-harassment policies like West Point's, parents bear the burden of anticipating risks to their children and proposing school policies to deal with them on an *ad hoc* basis. *See supra* Sections III.B and III.C (describing the burdens on Joanna and Davina). Uniform policies ensure equity and relieve the strain on parents who may not have the resources to meet this heavy burden.

In contrast to the harms described, the experiences of transgender students and their families also underscore the benefits of being in gender-affirming learning environments, such as those some of the students found after suffering in settings that undermined their identities. L thrived after relocating to a new school, which supported her, used the correct pronouns, and permitted her to use the bathrooms associated with her gender identity. *Supra* Section III.B, 17-18. Brigitte noticed a stark improvement in K's mood after he switched to a more gender-affirming school—he became excited about learning and their car rides home transformed from silent and sullen to talkative. *Supra* Section III.A, 12. By contrast, T's school situation improved only through the support of her peers and community members. *Supra* Section III.C, at 21. These positive experiences should not be isolated or hard fought. Rather, Virginia schools should be permitted to require that school

employees use students' correct gender pronouns to ensure that transgender students across the Commonwealth have access to quality education where they are supported and not unlawfully differentiated from their peers.

V. CONCLUSION

For the reasons set forth above, *amici* respectfully request that this Court affirm the judgment of the Circuit Court.

Dated: July 27, 2022

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing *Brief of Amici Curiae* complies with the type-volume limit of Virginia Supreme Court Rule 5:26(b) because this document contains 5,698 words.

This brief complies with Rule 5:26(b) because the portion subject to that rule does not exceed 50 pages or 8,750 words. This document complies with the typeface and typestyle requirements of Virginia Supreme Court Rule 5:6 because this document has been prepared in Times New Roman using Microsoft Word in 14-point font.

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CERTIFICATE OF SERVICE

I further certify that on July 27, 2022, in accordance with Rules 5:30(b)(ii), 5:1B, and 5:26(g), this document was filed electronically with the Court through VACES. Copies were electronically mailed to:

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