No. 20-1163

IN THE
Supreme Court of the United States

GLOUCESTER COUNTY SCHOOL BOARD, *Petitioner*,
v.
GAVIN GRIMM, *Respondent*.

On Petition for a Writ of Certiorari
to the U.S. Court of Appeals for the Fourth Circuit

Brief *Amicus Curiae* of Public Advocate of the United States, Eagle Forum, Eagle Forum Foundation, Recover America Now, California Constitutional Rights Foundation, One Nation Under God Foundation, Conservative Legal Defense and Education Fund, I Belong Amen Ministries, Center for Morality, and Restoring Liberty Action Committee in Support of Petitioner

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INTEREST OF THE *AMICI CURIAE*[1]

Public Advocate of the United States and Eagle Forum are nonprofit social welfare organizations, exempt from federal income tax under Internal Revenue Code ("IRC") § 501(c)(4). Eagle Forum Foundation, Recover America Now, California Constitutional Rights Foundation, One Nation Under God Foundation, and Conservative Legal Defense and Education Fund are nonprofit educational and legal organizations, exempt from federal income tax under IRC § 501(c)(3). I Belong Amen Ministries is a ministry headed by David Arthur, a former homosexual and former transgender person. Center for Morality and Restoring Liberty Action Committee are educational organizations. *Amici* organizations were established, *inter alia*, for the purpose of participating in the public policy process, including conducting research, and informing and educating the public on the proper construction of state and federal constitutions, as well as statutes related to the rights of citizens, and questions related to human and civil rights secured by law. Some of these *amici* also filed *amicus* briefs earlier in this case:

- G.G. v. Gloucester County School Board, No. 15-2056, Fourth Circuit, Brief *Amicus Curiae* in

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[1] It is hereby certified that counsel for the parties have consented to the filing of this brief; that counsel of record for all parties received notice of the intention to file this brief at least 10 days prior to its filing; that no counsel for a party authored this brief in whole or in part; and that no person other than these *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

Support of Petition for Rehearing *En Banc* (May 10, 2016);

- Gloucester County School Board v. G.G., No. 16-273, U.S. Supreme Court, Brief *Amicus Curiae* in Support of Petitioner (January 10, 2017); and
- G.G. v. Gloucester County School Board, No. 15-2056, Fourth Circuit, Brief *Amicus Curiae* in Support of Affirmance (May 15, 2017).

In addition, some of these *amici* have filed *amicus* briefs in other similar cases, including:

- EEOC v. Harris Funeral Homes, No. 16-2424, Sixth Circuit, Brief *Amicus Curiae* in Support of Affirmance (May 24, 2017);
- Zarda v. Altitude Express, No. 15-3775, Second Circuit, Brief *Amicus Curiae* in Support of Affirmance (July 26, 2017);
- Altitude Express v. Zarda, No. 17-1623, U.S. Supreme Court (Petition Stage), Brief *Amicus Curiae* in Support of Petitioners (July 2, 2018);
- Harris Funeral Homes v. EEOC, No. 18-107, U.S. Supreme Court (Petition Stage), Brief *Amicus Curiae* in Support of Petitioner (August 23, 2018);
- Harris Funeral Homes v. EEOC, No. 18-107, U.S. Supreme Court (Merits Stage), Brief *Amicus Curiae* in Support of Petitioner (August 23, 2019); and
- Bostock v. Clayton County & Altitude Express v. Zarda, Nos. 17-1618 & 17-1623, U.S. Supreme Court (Merits Stage), Brief *Amicus Curiae* in Support of the Employers (August 23, 2019).

SUMMARY OF ARGUMENT

The Fourth Circuit's opinion is inconsistent with both Title IX and the Equal Protection Clause. Judge Niemeyer's dissent exposed the key flaws in the majority opinion. First, the word "sex" in Title IX clearly referred to physiological distinctions between males and females. Second, the exception in Title IX allowing "separate living facilities for the different sexes" clearly was based on biological indicators. Third, Grimm made no challenge to constitutionality of the Title IX exception allowing separate bathrooms by biological sex. Fourth, Grimm never established that biological females (who were identified as male) were similarly situated to (cisgender) biological males, so as to trigger the Equal Protection Clause. The Fourth Circuit's crushing of the eternal, scientific, and fundamental difference between males and females violated the principles set out in at least two prior decisions of this Court.

The court below revealed its bias and favoritism for plaintiff-respondent Grimm and hostility to the School Board and all those who defended its decisions to accommodate Grimm in other ways than were demanded. The Court below immediately adopted the terminology of referring to biological female Grimm with male pronouns, indicating its pre-supposition that a person can change sexes. It referred to biological sex as "assigned sex" as if it existed only arbitrarily in the mind of a physician. For the statutory term "sex" it employed the word "gender," which unlike "sex," has no fixed meaning. It also exhibited religious *animus*, describing a former lesbian

who left that lifestyle when she became a Christian by including that among "ugly" comments opposing special rights to Grimm. As Judge Niemeyer explained, the panel opinion revealed that it was written "to effect policy rather than simply apply law."

As the Petition stressed, in previously granting certiorari, this Court already determined that the Title IX issue presented in this case warrants review. In addition, the consequences of allowing the Fourth Circuit decision to stand will have far ranging consequences. Prior decisions in this area are not just resolutions of "cases" but rather more akin to a court writing a law — here a law which will require school boards to allow boys into the girls' showers based on subjective, unchallengeable "feelings." Also, each such decision in the past has been the stepping stone to more claims for special sex-based rights. It would be difficult to find an area of the law where the "slippery slope" argument has more application. Additionally, the Fourth Circuit detailed all of the counseling and sex-change therapies given to Grimm, but not once stopped to consider that those could be injurious to children. There now exists a substantial body of medical evidence that cross-sex therapies are dangerous, irreversible, and should never be used for minors. The enthusiasm exuded by the court below for Grimm's journey from girl to boy blinded the court to the dangers of taking that impossible journey.

ARGUMENT

I. THE FOURTH CIRCUIT'S ANALYSES OF TITLE IX AND THE EQUAL PROTECTION CLAUSE ARE FLAWED.

A. The Fourth Circuit Misapplied Title IX and the Equal Protection Clause.

In dissent, Judge Niemeyer unraveled the legal basis for the majority opinion below. First, he addressed Grimm's claim that denying her access to the boys' room violated the Title IX provision that no person "on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination" under covered programs. He made clear that the meaning of the word "sex" in 1972, when Title IX was enacted, was in reference to "the *physiological* distinctions between males and females." Grimm v. Gloucester County School Board, 972 F.3d 586, 632 (4th Cir. 2020) (Niemeyer, J., dissenting). Judge Niemeyer's view was not countermanded by this Court's decision in Bostock v. Clayton County, 140 S. Ct. 1731 (2020). There, this Court made clear that it was not deciding the meaning of "sex." *Id*. at 1739.

Judge Niemeyer addressed the exception built into Title IX's prohibition against sex discrimination by which Congress authorized "'maintaining separate living facilities for the different sexes,'" which regulations make clear included "'separate toilet, locker room, and shower facilities.'" 20 U.S.C. § 1686; 34 C.F.R. § 106.33. He explained that the purpose of

the exception was grounded in Congress's understandings that there were "biological indicators" that distinguished the sexes, and therefore Congress was addressing the difference between biological males and biological females. Grimm at 632 (Niemeyer, J., dissenting).

It is undisputed that Grimm is a biological female. Grimm never challenged Title IX's authorization of "separation of restrooms — indeed, he seeks to use the male restrooms so separated from female restrooms" even though granting access to the boys' room "would allow him to use restrooms **contrary to the basis for separation**." *Id.* at 634 (emphasis added).

With respect to the Equal Protection claim, Judge Niemeyer explained that Grimm never demonstrated that biological males were similarly situated to biological females. *See* Subsection C, *infra*. And, Grimm never argued "that Title IX violates the Equal Protection Clause in allowing educational institutions to separate restrooms on the basis of sex." *Id.* at 635. Judge Niemeyer concluded that "[i]n light of this rationale, Grimm cannot claim that he was discriminated against when he was denied access to the male restrooms because he was not, in fact, similarly situated to the biologically male students who used those restrooms." Grimm at 636.

B. The Fourth Circuit's Decision Violates Established Precedents.

Judge Niemeyer's dissent also noted various inconsistencies between the majority opinion and this Court's and Fourth Circuit precedents:

> both the Supreme Court and [the Fourth Circuit] have previously indicated that it is this type of physiological privacy concern [separate restrooms, locker rooms, and showers] that has led to the establishment of such sex-separated facilities. *See United States v. Virginia* at 550 n.19 (recognizing that "[p]hysical differences between men and women" are "enduring" and render "the two sexes ... not fungible" and acknowledging, when ordering an all-male Virginia college to admit female students, that such a remedy "would undoubtedly require alterations necessary to afford members of each sex privacy from the other sex;" *Faulkner v. Jones*, 10 F.3d 226, 232 (4th Cir. 1993) (noting "society's undisputed approval of separate public rest rooms for men and women based on privacy concerns"). [Grimm at 634 (Niemeyer, J., dissenting) (cleaned up).]

The school board's petition points out that this Court has appropriately recognized that the distinctions between male and female do not prohibit providing different, but equivalent, facilities for the two sexes: "one distinction between the sexes that the Equal Protection Clause allows is the designation of

spaces 'necessary to afford members of each sex privacy from the other sex in living arrangements.'" Pet. Cert. at 29-30. Although United States v. Virginia, 518 U.S. 515 (1996), cited by Petitioner, did not involve a challenge to sex-segregated facilities, it did acknowledge their permissibility. Similarly, this Court in that decision's footnote 19 also noted that the Military, Naval, and Air Force Academies permit "minimum essential adjustments" to the physical standards required for female cadets "because of physiological differences between male and female individuals." United States v. Virginia at 550 n.19 (quoting 10 U.S.C. § 4342).

Further, in Tuan Anh Nguyen v. INS, 533 U.S. 53 (2001), this Court acknowledged differential treatment of federal immigration laws with respect to U.S. citizenship to a child born outside of the United States to unwed parents. If the mother is a U.S. citizen, the child automatically acquires U.S. citizenship. But if only the father is a U.S. citizen, the Immigration and Nationality Act requires additional criteria to be met for the child to inherit that citizenship. Justice Kennedy reasonably concluded:

> To fail to acknowledge even our most basic biological differences ... risks making the guarantee of equal protection superficial, and so disserving it. Mechanistic classification of all our differences as stereotypes would operate to **obscure those misconceptions and prejudices that are real**. The distinction embodied in the statutory scheme here at issue is not marked by misconception

> and prejudice, nor does it show disrespect for either class. [Nguyen at 73 (emphasis added).]

The Fourth Circuit's decision, if allowed to stand, could lead to distortion of federal laws, such as the INA provisions at issue in Nguyen, whereby a transgender man who is a citizen could give birth abroad, and the child would not receive the streamlined citizenship provisions for a citizen mother.

C. Who Is Similarly Situated When It Comes to Sex-Segregated Facilities?

The Fourth Circuit ruled that a biological female who self-identifies as a male is similarly situated in all material respects to a cisgender biological male. If the Fourth Circuit's decision is allowed to stand, why would the same logic not allow a white person to self-identify as a (trans-racial) black person to claim Equal Protection coverage, leaving Equal Protection jurisprudence in a terrible mess? Then, Equal Protection could be triggered by anyone who chooses to self-identify into a protected class or a quasi-protected class, merely based on subjective "feelings."

Viewed another way, if transgender individuals are considered to be differently situated from both males and females, they should be provided their own restroom comparable to what males and females are separately provided. Then the claim of discrimination disappears because that is the essence of what the school board did when it created additional unisex, single-person restrooms, providing additional privacy for those who need or desire it.

The petition should be granted to reverse the lower court's decision because a school prohibiting a student from using the restroom designated for the opposite biological sex does **not** violate the Equal Protection Clause or Title IX. Moreover, Title IX's exception for separate "living facilities" was never challenged.

II. SPECIAL RIGHTS FOR TRANSGENDER PERSONS CAN BEST BE ASSERTED, AND CANNOT EFFECTIVELY BE OPPOSED, USING THE FOURTH CIRCUIT'S' "NEWSPEAK."

The Fourth Circuit decision exuded favoritism for Gavin Grimm on every page. It discussed every aspect of her journey from girl to boy, with the court describing its own decision to compel the School Board to cater to her feelings as a "resounding" victory for her. Grimm at 593. It adopted all of the terminology of the Grimm briefs. Her female nature was only her "assigned sex" or "birth assigned sex." *Id.* at 593-94. She suffered from "stigma." *Id.* at 593. "[B]eing transgender is natural and is not a choice." *Id.* at 594. She faced "unique challenges." *Id.* at 597. The Court accepted as reasonable that she felt "'anxiety and shame'" using the bathroom at the nurse's office. *Id.* at 598.

The parents who objected to her use of the boys' room "vehemently opposed" allowing it. *Id.* at 599. Among the "ugly" comments was that Grimm's gender was a "choice" as was the statement by a "former" lesbian (with the court below putting the word former in quotation marks as if to say that there is no such

person), that her lesbianism was an addiction from which Jesus Christ set her free.[2] *Id.* at 599. While anything that Grimm "felt" was treated with care, the personal religious testimony of the witness was treated with animus. The court asserted transgenderism was "not a psychiatric condition," but at the same time, reported that transgender persons are nine times more likely to attempt suicide than the general population. *Id.* at 594.

As Judge Niemeyer stated, the fact that the majority opinion devoted over 20 pages to her transgender status physically and psychology, revealed "its effort to effect policy rather than simply apply law." *Id*. at 636-37 (Niemeyer, J., dissenting). When court decisions are dominated by policy arguments, it justifies an explanation of the other side of that argument. And when a court decision is expressed in a language that favors one side of the case, some analysis is required.

In his novel 1984, George Orwell explained in a fictionalized setting how changing the language changes thinking. Orwell called this official language of Oceania "Newspeak." In his essay "Politics and the English Language," Orwell elaborated on this technique, explaining "[I]f thought corrupts language, language can also corrupt thought... This invasion of one's mind by ready-made phrases ... can only be

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[2] *Amici* herein, David Arthur, lived for two decades as a homosexual and trans person and testifies that he was delivered by his faith in Jesus Christ. *See* D. Arthur, "A Former Transgender Opposes Transgender Rights," (Mar. 26, 2021).

prevented if one is constantly on guard against them, and every such phrase anaesthetizes a portion of one's brain."

The Circuit's opinion below refers to plaintiff-appellee Gavin Grimm, who everyone concedes is a biological female, by using the male pronouns "he" and "him." Thus, even before the first word of analysis, and without any explanation, the court below accepts the premise of the lawyers for Gavin Grimm that a female should be referred to as a male. At that point, the plaintiff is halfway home. (This *amicus* brief resists Newspeak by using female pronouns to refer to the once, now, and forever female respondent — Gavin Grimm.)

Until very recently, it would be possible to address the public policy problem presented in this case in honest, direct, and realistic terms using words according to their ordinary public meaning. Today, language is being changed, as illustrated by the court below, and such "plain speak" is no longer accepted. Indeed, even to discuss the problem of transgender persons in the way it would have been discussed just a few years ago sounds jarring to the collective ears of a woke culture. This is no accident. To illustrate the point, consider the following two approaches: first, how such a person would be viewed historically — and in a way that millions of "politically incorrect" Americans still view the issue; then, how changes in language altered the lower court's thinking and decision-making.

A. Addressing Transgenderism in Plain Speak.

Local school boards are responsible for the education and safety of each student and they should not be ordered by elitist judges (who often send their children to private schools) to create dangerous and sexualized environments in which students are to be educated.

Every person is born a male or a female.[3] Genesis 5:2; Matthew 19:4. A girl who identifies as a boy is not a boy who was born into a girl's body by mistake. Sexual orientation may be a choice, but no one can choose their sex — that was chosen for every person at the moment of conception, not assigned by a doctor at the moment of birth. It is binary. It is not arbitrary. These are scientific facts that have been known throughout millennia, worldwide. They are not opinions.

A girl who doesn't like to play with dolls is no less a girl. Not everyone is the same, but we are all created

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[3] The tiny number of persons born with atypical sex characteristics does not change the fact people are born male or female. Sex is not just about anatomy. Every cell reflects the difference between a male and a female. *See* T.M. Wizemann, edt., "Every cell has a sex," Exploring the Biological Contributions to Human Health: Does Sex Matter? (National Academies Press: 2001). The percentage of intersex persons is estimated to be 0.018 percent, although advocates of transgender rights often use the fraudulent estimate of 1.7 percent. *See* L. Sax, "How common is intersex? A response to Anne Fausto-Sterling," The Journal of Sex Research (Aug. 2002).

in the "image" and "likeness" of God. Genesis 1:26. Even if the opposite sex behavior is extreme, such a person is probably just going through what has been forever described as "a phase." Many people had confusion about sex while growing up. Studies of transgender children have shown that anywhere from 65 to 94 percent eventually ceased to identify as transgender.[4] If the "orientation" persists, it may require counseling to affirm that acting on what a person "feels" at any time, particularly during childhood, puberty, and adolescence, gives a person no objective standard by which to lead their lives. There are studies showing that the brain is not fully developed until a person reaches the age of 25.

> The **rational part of a teen's brain isn't fully developed** and won't be until age 25 or so.
>
> In fact, recent research has found that adult and teen brains work differently. Adults think with the **prefrontal cortex**, the brain's rational part. This is the part of the brain that responds to situations with good judgment and an awareness of long-term consequences. Teens process information with the **amygdala**. This is the emotional part.
>
> [Teens] **weren't thinking as much as they were feeling**. [J. Campellone, M.D. & R.K. Turley, RN (medical reviewers) "Understanding the Teen Brain," Univ. of

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[4] J. Brooks, "The Controversial Research on 'Desistance' in Transgender Youth, KQED (May 23, 2018).

Rochester Medical Center Health Encyclopedia (emphasis added).]

The role of parents, teachers, counselors is to urge the child or teen to take a deep breath and stop obsessing about themselves. Volunteer at a soup kitchen. Focus on studies and hobbies. Society certainly must not be so solicitous of such "feelings" as to affirm and encourage them. Encouraging students to believe the lie that they can change sex only worsens the problem the student is experiencing.

The use of dangerous hormone therapy or surgery for minors is nothing short of child abuse and should not be permitted. Certainly the state has no authority to tell parents that their children must accept therapies to change their sex.[5] Find a way to adjust to your being a girl, because you cannot change it — just like you cannot be taller just because you want to be.

Moreover, there is a spiritual component to this understanding, and it is revealed in Holy Writ. God chose your sex, and God does not make mistakes.[6] God created you as an individual. Sex is a powerful force in life, and that is no surprise to God, as he created that drive as well. But we live in a fallen world. Even if you were a victim of sexual abuse, that abuse is part of your history, but it does not define you. Even if you

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[5] "Father faces arrest and jail time for trying to stop doctors from transitioning his middle school daughter to a boy," The Gateway Pundit (Mar. 13, 2021).

[6] *See* Psalm 139:13-14, 16 (NIV).

have strong "feelings," you cannot yield to act on all of them. Self-control is essential to live a successful life.

Lastly, each young person has a sense of modesty, which mothers particularly understand.[7] The responsibility of parents and school officials is to respect and protect that modesty. In recent years, it seems that our elitist influencers, and many in public education efforts, seek to make children immodest, sexualizing children rather than protecting them, making them more likely to be exploited by adults — even by teachers.[8] "Childhood used to be a time of **innocence**. But as our culture has become more and more sexualized, children have become the casualties of **adult exploitation**." [F. Kao and A. Jones, "We Must Fight the Sexualization of Children by Adults," Heritage Foundation (Oct. 5, 2019) (emphasis added).]

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[7] "When Do Children Feel Modesty?" You Are Mom (Mar. 15, 2019) ("Children feel modesty by age four. They start to experience shame, and this mixes with their desire for autonomy. In addition, they don't want strangers to look at them. Also, they don't like physical exams or questions about their bodies.").

[8] *See* B. Palmer, "How many kids are sexually abused by their Teachers: Probably millions," Slate (Feb. 8, 2012).

B. Addressing Transgenderism Using Newspeak.

Now, how would the above "plain speak" arguments be made using Newspeak?[9] Well, they can't be made. The Fourth Circuit opinion appears to arise from the following presuppositions that defy rebuttal.

1. A biological female who identifies as a male is a male born into a female's body. (The adjective "biological" must always be used before male and female when referring to this outmoded, artificial construct of society.)

2. You can choose your ~~sex~~ gender, and change ~~sexes~~ genders. (Note: remember never to argue using the word sex, because it is so clearly false that you can

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[9] Leading the way in developing transgender Newspeak are the evolving views of the American Psychiatric Association relied on by the Fourth Circuit. It recently issued a statement explaining how the terminology in that organization's own Diagnostic and Statistical Manual of Mental Disorders has evolved over the past four decades.

> [T]he first two editions of *DSM* contained **no mention** of gender identity. It was not until 1980 with the publication of *DSM*–III that the diagnosis "**transsexualism**" first appeared.... With the release of *DSM*–IV in 1994, "transsexualism" was replaced with "**gender identity disorder** in adults and adolescence" in an effort to reduce stigma.... With the publication of *DSM*–5 in 2013, "gender identity disorder" was eliminated and replaced with "**gender dysphoria**." [American Psychiatric Association, "Gender Dysphoria Diagnosis." (emphasis added).]

change your sex, so we will substitute "gender" for "sex." It doesn't matter that gender just yesterday was thought of as being short for "grammatical gender," which is a linguistic term by which nouns in several languages were classified as masculine, feminine, or neuter.[10])

3. Persons are not limited to the "binary" options of being males and females. Gender is just arbitrarily assigned at birth. And, there are an infinite number of choices: Agender, Gender Nonconforming, Cisgender, Transgender, Genderqueer, Gender fluid, Non-Binary, Intersex.[11] (No doubt this Court eventually will be asked to decide if each "gender" deserves its own bathroom.)

4. Each person — even though a child or adolescent — must have the right to act on their feelings, no matter what they are, and no matter how the world must bend to accommodate how they feel. Opposing views, Biblical counseling, and other counseling designed to have the person live at peace with his/her/etc. gender are "ugly."

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[10] The new, expansive use of "gender" is reminiscent of Lewis Carroll's telling of a conversation between Humpty Dumpty and Alice: "When I use a word," ... "it means just what I choose it to mean—neither more nor less." ... "When I make a word do a lot of work like that," said Humpty Dumpty, "I always pay it extra." If that rule were followed, the word "gender" would be very well paid indeed.

[11] *See* S. Saint Thomas and T. Andrews, "12 Gender-Related Terms You Should Know and Understand: Consider this your cheat sheet," *Cosmopolitan* (Oct. 29, 2020).

C. Judicial Law Making.

Once the Fourth Circuit decided the issue presented, it did not just resolve a "case" or "controversy" between the parties, but it, in effect, enacted a law which will govern all government schools, and possibly private and sectarian schools as well, at least in Virginia, West Virginia, Maryland, North Carolina, and South Carolina. And, other courts no doubt will not limit its application to the facts of this case. It will require a school to allow a girl to use a boy's locker room and showers as well as restrooms. And, it will require that a boy be allowed to use a girl's bathroom, locker room, and showers. Additionally, it will not require any particular proof of cross-sex change, such as seeking counseling, undergoing hormone therapy, or undergoing surgical procedures. It likely will not require the change of sex on a birth certificate or a driver's license, or any period over which the person's "feelings" are manifested, or preventing a student from exhibiting "gender fluidity" in switching back and forth, depending on which shower the student wants to use that day.

George Orwell's essay quoted *supra* contended that, "political speech and writing are largely the defense of the indefensible.... Thus political language has to consist largely of euphemism, question-begging and sheer cloudy vagueness." A judicial decision that equates "sex" with "gender" that applies legal principles based on subjective feelings, that affirms for America the notion that one can change one's sex, and that directs that the interests of all other persons be

subordinated to one person's dysphoria, cannot be allowed to stand.

III. THE FOURTH CIRCUIT'S DECISION OPENED THE DOOR TO SOCIETAL CHAOS AND HARM TO YOUNG PEOPLE.

A. Sex-Rights Litigation Has Proceeded Down a Slippery Slope.

As petitioners point out, this Court has already recognized once that the Title IX issue presented in this case warrants review. Pet. Cert. at 15-16. These *amici* agree that this petition poses an important question of federal law that has not been, but should be, settled by this Court. *See* Supreme Court Rule 10. But in addition, the importance of reviewing the Fourth Circuit's decision is enhanced by an understanding of how sex-based rights jurisprudence has developed in recent years.

Sex rights activists have a long history of pursuing revolutionary change through a series of gradual, incremental "reforms," all the while hiding their ultimate, more radical objectives. In the 1980s, the only request made by these activists was to decriminalize homosexual conduct — to take the state out of the bedroom. Such laws against sodomy were rarely enforced, but stood as a moral statement of the society against what Blackstone called "crimes against nature," Blackstone, IV Commentaries on the Laws of England, chapter 15. Indeed, this Court upheld the constitutionality of a Georgia state law criminalizing homosexual sodomy based on Justice White's

reasonable conclusion that there was no "fundamental right to engage in homosexual sodomy." Bowers v. Hardwick, 478 U.S. 186, 191 (1986). However, the Bowers precedent was swept away not many years later in Lawrence v. Texas, 539 U.S. 558 (2003) in a decision which relied heavily on social science studies who embraced the homosexual rights cause.

Although Courts never go back to see if they had been fooled by litigants, there is good reason to believe that Lawrence v. Texas was a contrived case, staged so it could reach this Court to impose its will on the nation. *See* J. Law, Sex Appealed: Was the U.S. Supreme Court Fooled? (Eakin Press: 2005). Also, Norma McCorvey admitted that a fraud upon the Court had been committed in Roe v. Wade, 410 U.S. 113 (1973). *See* N. McCorvey, I Am Roe (HarperCollins: 1994).

During debates over same-sex "civil unions," LGBTQ activists insisted that such unions would not necessarily lead to legalized homosexual "marriage," but they did when the Biblical definition of marriage (*see*, *e.g.*, *Genesis* 2:24) was overturned by this Court in Obergefell v. Hodges, 576 U.S. 644 (2015).

During debates over same-sex "marriage," gay advocates and their allies rejected the "slippery slope" arguments of conservatives who said that the same argument used in favor of same-sex "marriages" and unions would be used to legalize "multiple-partner unions." Just a few short years later, the city of Somerville, Massachusetts acted to recognize "polyamorous" relationships, "broaden[ing] the

definition of domestic partnership to include relationships between three or more adults." E. Barry, "A Massachusetts City Decides to Recognize Polyamorous Relationships," *New York Times* (July 1, 2020). With the successful "gay" revolution as their model, activists touting "sexual freedom" and "family diversity" are pushing for "social acceptance for polyamorous relationships." E. Sheff, Ph.D., "Polyamory Advocacy: Activists and Organizations Dedicated to Advocating for Polyamory," *Psychology Today* (Mar. 21, 2016). Just last month, Hollywood, as a trusted ally of the cultural left, joined the push. *See* B. Lang, "Queer Polyamorous Love Story 'Ma Belle, My Beauty' Sells to Good Deed (Exclusive)," *Variety* (Feb. 18, 2021). The notorious North American Man/Boy Love Association ("NAMBLA") continues to operate: "NAMBLA's goal is to end the extreme oppression of men and boys in mutually consensual relationships .... NAMBLA is strongly opposed to age-of-consent laws and all other restrictions which deny men and boys the full enjoyment of their bodies and control over their own lives." *See* "Who We Are," NAMBLA (2011).

Even if "slippery slope" arguments in court are viewed as fanciful, the Fourth Circuit's decision, if allowed to stand, will strike another blow at conventional, Biblical morality in the culture. It will sanction the very unscientific notion that people can change their sex, and that this is the road to happiness. It will cause many parents, school officials, and counselors to encourage sex changes using dangerous and untested drugs and irreversible surgeries. It will take young people and render them

sterile in pursuit of an impossibility. In the historic battle between Neopagan and Christian Culture, it will be a victory for the former and a defeat for the latter. *See generally* M. Stanton Evans, The Theme Is Freedom (Regnery Publishing: 1994) at 113-130. And the Courts, increasingly, will be viewed by many Americans as a corrosive influence on society, constitutionalizing public policy issues to transform this into a thoroughly secular nation, putting us at risk. *See* Thomas Jefferson's warning inscribed on the wall of the Jefferson Memorial: "Indeed I tremble for my country when I reflect that God is just: that his justice cannot sleep for ever."

B. Sex Change Therapies Are Highly Dangerous.

Ignored by the court below were the "health risks" of transsexual surgeries and hormone therapies for children, including mastectomies to remove a young woman's healthy breasts to achieve the flat-chested look of a man. And yet, such radical procedures are not only being conducted in leading hospitals on minor children, but they are also defended fervently by pro-LGBTQ advocates, who insist that the "rights" and desires of "trans" minors are preeminent in this cultural and public policy debate.[12] If the fiction of sex

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[12] Fortunately, in December, the U.K. High Court ruled: "It is highly unlikely that a child aged 13 or under would be competent to give consent to the administration of puberty blockers. It is doubtful that a child aged 14 or 15 could understand and weigh the long-term risks and consequences of the administration of puberty blockers." Bell v. Tavistock, Point 151 (Jan. 12, 2020).

change is given encouragement by this Court, it will share responsibility for the damage inflicted on our nation's children, much of which was recently detailed by Abigail Shrier in Irreversible Damage: The Transgender Craze Seducing Our Daughters (Regnery Publishing: 2020).

The following is a sampling of the massive and often permanent health risks for adolescent and pre-adolescent children pursuing medically induced "(trans)gender transitions":

- "Testosterone thickens the blood.... There is some indication that biological women on these doses of testosterone may have nearly five times the risk of heart attack than women have, and two-and-a-half times that of men." Irreversible Damage at 169.

- "Shortly after cross-sex hormones are introduced, permanent changes result. If a biological girl regrets her decision and stops taking testosterone, her extra body and facial hair will likely remain, as will her clitoral engorgement, deepened voice, and possibly even the masculinization of her facial features. While massive doses of testosterone must be maintained to continue the full effects of transition, eliminating testosterone doesn't whisk an adolescent back to where she started." Irreversible Damage at 170.
- "The long-term effects [of "transgender" testosterone "therapy"] include heightened rates of diabetes, stroke, blood clots, cancer,

and, as we've seen, heart disease. In general, mortality risk rises." Irreversible Damage at 170.

- "[W]orld-renowned child and adolescent psychiatrist Christopher Gillberg says he thinks unproven treatment of trans-identifying children is 'possibly one of the greatest scandals in medical history.' Professor Gillberg's neuropsychiatry group at Sweden's Gothenburg University ... has called for an immediate moratorium on the use of puberty blocker drugs because of their unknown long-term effects." J. Van Maren, "World-renowned child psychiatrist calls trans treatments 'possibly one of the greatest scandals in medical history,'" *The Bridgehead* (Sept. 25, 2019).

- "Currently, there is no conclusive medical evidence that children who experience gender incongruence receive long-term benefit from medical and surgical interventions associated with 'gender transition.'... Also, there are potentially severe long-term safety risks from pubertal suppression and cross-sex hormone therapy in children, including infertility, abnormal bone development, premature cardiovascular disease and thromboembolic disease, to name just a few." Catholic Medical Association, Letter co-signed by American College of Pediatricians and Christian Medical & Dental Association (Mar. 17, 2021).

- The pro-LGBTQ London, U.K.-based Gender Identity Development Service ("GIDS") states in an informational flier: "We do not fully know how hormone blockers will affect bone strength, the development of your sexual organs, body shape or your final adult height. There could be other long-term effects of hormone blockers in early puberty that we don't yet know about." (cited in Point 63, Bell vs. Tavistock High Court decision, Jan. 12, 2020).

- Plastic surgeon Dr. Patrick Lappert: "I can reverse masculinizing your nose, I can reverse masculinizing your jaw; I can reverse masculinizing your hairline … But I cannot reverse a mastectomy. All I can do is make you a new breast mound, but it's not a breast. It's a lump on your chest which looks like a breast." Writes Shrier: "The difference between a healthy organ with biological capacities—in this case, erotic sensation and milk production—and a lump of flesh that resembles it turns out to be pretty significant to doctors bound by the Hippocratic oath. The two forms may seem fungible to a layperson. But according to Dr. Lappert, eliminating biological capacities merely for the sake of aesthetics is wrong and—in virtually all other areas of medicine—strictly verboten." Irreversible Damage at 172-73.

CONCLUSION

For the reasons stated above, the Petition for a Writ of Certiorari should be granted.

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