

No. 16-273

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In the  
**Supreme Court of the United States**

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GLOUCESTER COUNTY SCHOOL BOARD,  
*Petitioner,*

v.

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

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**On Writ of Certiorari to the United States  
Court of Appeals for the Fourth Circuit**

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**BRIEF OF ANTI-SEXUAL ASSAULT,  
DOMESTIC VIOLENCE, AND GENDER-BASED  
VIOLENCE ORGANIZATIONS AS *AMICI  
CURIAE* IN SUPPORT OF RESPONDENT**

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## TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
STATEMENT OF INTEREST .....	1
SUMMARY OF THE ARGUMENT .....	3
ARGUMENT .....	5
I. Baseless Safety Concerns Do Not Justify Discrimination Against Transgender Students.....	6
II. Experience Has Demonstrated That Transgender-Inclusive Restrooms Do Not Increase the Risk of Sexual Violence .....	10
III. The School Board’s Policy Increases Safety Risks to Transgender Students .....	16
A. Transgender Individuals Are More Likely to Be Victims of Sexual Assault and Other Crimes .....	16
B. Transgender People Experience Violence in Public Facilities with Staggering Frequency .....	19
C. Discriminatory Policies Like the One Adopted by the School Board Increase the Risk That Transgender Individuals Will Be the Victims of Sexual Assault and Other Crimes.....	21
CONCLUSION .....	25

## TABLE OF AUTHORITIES

### Case

<i>Farmer v. Brennan</i> , 511 U.S. 825 (1994) .....	23
---	----

### Statutes

34 C.F.R. § 106.33 .....	8
Minn. Stat. § 363A.11 .....	11

### Other Authorities

ACLU, <i>Know Your Rights: Transgender People and the Law</i> (2017).....	11
Associated Press, <i>Report: Transgender teen attacked in bathroom of Northern California high school</i> , <i>The Oregonian</i> (Mar. 4, 2014).....	20
Avy A. Skolnik, et al., <i>Hate Violence Against Lesbian, Gay, Bisexual, and Transgendered People in the United States: 2008</i> , National Coalition of Anti-Violence Programs (2009) ...	17-18
Brenda V. Smith, et al., <i>Policy Review and Development Guide: Lesbian, Gay, Bisexual and Intersex Persons in Custodial Settings</i> , National Institute of Corrections (Aug. 2013).....	25
C. Kruttschnitt, et al., <i>Estimating the Incidence of Rape and Sexual Assault</i> , National Research Council, National Academies Press (2014).....	19
California Department of Corrections and Rehabilitation, <i>Operations Manual</i> (Jan. 31, 2016) .....	24

Carlos Maza, <i>An Expert Explains Why The Right-Wing “Bathroom Predator” Myth is Wrong and Dangerous</i> , Media Matters for America (Oct. 15, 2015) .....	13
Carlos Maza & Luke Brinker, <i>15 Experts Debunk Right-Wing Transgender Bathroom Myth</i> , Media Matters for America (Mar. 20, 2014).....	12
Carlos Maza & Rachel Percelay, <i>Texas Experts Debunk The Transgender “Bathroom Predator” Myth Ahead of HERO Referendum</i> , Media Matters for America (Oct. 15, 2015).....	12
Edecio Martinez, <i>Suspects in beating of transgender woman Chrissy Lee Polis could face hate crime charges</i> , CBS News (Apr. 26, 2011) .....	19-20
Emily Waters, et al., <i>Lesbian, Gay, Bisexual, Transgender, Queer and HIV-Affected Hate Violence in 2015</i> , National Coalition of Anti-Violence Programs (2016) .....	16-17
Federal Bureau of Investigation, <i>Relationship of Victims to Offenders by Offense Category</i> (2015) .....	14
Federal Interagency Working Group on Improving Measurement of Sexual Orientation and Gender Identity in Federal Surveys, <i>Toward a Research Agenda for Measuring Sexual Orientation and Gender Identity in Federal Surveys: Findings, Recommendations, and Next Steps</i> (Oct. 20, 2016).....	22-23

G. M. Herek, <i>Hate crimes and stigma-related experiences among sexual minority adults in the United States</i> , 24(1) <i>J. of Interpersonal Violence</i> (Jan. 2009) .....	22
Hayley Miller, <i>Violence Against Transgender Community Continues to Increase</i> , <i>Human Rights Campaign</i> (Jun. 9, 2015) .....	16
J.B. Woods, “ <i>Queering Criminology</i> ”: <i>Overview of the State of the Field</i> , <i>Handbook of LGBT Communities, Crime, and Justice</i> , (D. Peterson and V. R. Panfil, eds.) Springer Science & Business (2013) .....	18, 22
J. Grant, et al., <i>Injustice at Every Turn: A Report of the National Transgender Discrimination Survey</i> , National Center for Transgender Equality (2011) .....	18
Jody L. Herman, <i>Gendered Restrooms and Minority Stress</i> , Williams Institute (2013).....	19
Joe Garofoli, <i>Texan needs to be schooled in San Francisco on transgender rights</i> , <i>San Francisco Chron.</i> (May 15, 2016) .....	13
Jon Levine, <i>Connecticut Woman Who Donated Hair to Cancer Patients is Victim of Transphobic Attack</i> , <i>News Mic</i> (May 17, 2016) .....	20-21
Kim Shayo Buchanan, <i>Our Prisons, Ourselves: Race, Gender, and the Rule of Law</i> , 29(1) <i>Yale L. &amp; Pol’y Rev.</i> (2010).....	23
Kristina Olson, et al., <i>Gender Cognition in Transgender Children</i> , 26 <i>Psych. Sci.</i> 467 (2015) .....	9

Lou Chibbaro Jr., <i>Predictions of Trans Bathroom Harassment Unfounded</i> , Wash. Blade (Mar. 31, 2016) .....	11-12
Maureen Cavanaugh, <i>Transgender In Prison: How California's New Guidelines Will Be Implemented</i> , KPBS (Oct. 26, 2015) .....	24
Michael Planty, et al., <i>Female Victims of Sexual Violence, 1994-2010</i> (Mar. 2013).....	13-14
Michael Scherer, <i>Battle of the Bathroom</i> , Time (May 30, 2016) .....	11, 13
Michele C. Black, et al., <i>The National Intimate Partner and Sexual Violence Survey: 2010 Summary Report</i> , National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (2011).....	14
National Task Force to End Sexual and Domestic Violence Against Women, <i>National Consensus Statement of Anti-Sexual Assault and Domestic Violence Organizations in Support of Full and Equal Access for the Transgender Community</i> (Apr. 21, 2016) .....	13
Osman Ahmed & Chai Jindasurat, <i>Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Hate Violence in 2013</i> , National Coalition of Anti-Violence Programs (2014) .....	16
Osman Ahmed & Chai Jindasurat, <i>Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Hate Violence in 2014</i> , National Coalition of Anti-Violence Programs (2015) .....	16, 17, 18

Press Release, Washington State Human Rights Commission, Statement Regarding Seattle Locker Room Incident (Feb. 26, 2016) .....	10
Rachel Percelay, <i>17 School Districts Debunk Right-Wing Lies About Protections for Transgender Students</i> , Media Matters for America (June 3, 2015) .....	12
Rachel Percelay, <i>Florida Experts Debunk the Transgender “Bathroom Predator” Myth</i> , Media Matters for America (Jan. 12, 2016) .....	12
Rachel Percelay, <i>National Expert: Anti-LGBT “Bathroom Predator” Fears Are “Very Misinformed”</i> , Media Matters for America (Apr. 21, 2016) .....	13
Robert J. Cramer, et al., <i>Mental Health and Violent Crime Victims, Does Sexual Orientation Matter?</i> , 36(2) Law & Human Behavior (2012) .....	17, 22
Valerie Jenness, et al., <i>Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault</i> , University of California, Irvine, Center for Evidence-Based Corrections (2007). .....	24
Virginia Dep’t of Criminal Just. Servs., <i>2016 School Safety Inspection Checklist for Virginia Public Schools</i> (2016).....	8-9
Will Doran, <i>Equality NC director: No public safety risks in cities with transgender anti-discrimination rules</i> , PolitiFact N.C. (Apr. 1, 2016) .....	14

Zoe Greenberg, *Sentenced to Abuse: Trans  
People in Prison Suffer Rape, Coercion,  
Denial of Medical Treatment*, Rewire  
(May 12, 2015) .....24

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**STATEMENT OF INTEREST**

*Amici curiae* anti-sexual assault and domestic violence organizations respectfully submit this brief in support of Respondent G.G.<sup>1</sup> *Amici* are 138

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<sup>1</sup> Petitioner consented to the filing of *amicus* briefs by letter to the Court dated November 22, 2016. Pursuant to Supreme Court Rule 37.3(a), *amici* certify that Respondent has consented to the filing of this brief. Pursuant to Rule 37.6, *amici* certify that no counsel for

organizations that advocate for victims of sexual assault, domestic violence, and other gender-based violence. The form of their advocacy varies, but their purpose is uniform: to eliminate sexual assault, domestic violence, and other gender-based violence, and to support and empower all survivors of these crimes.

As organizations that support, empower, and advocate for victims, *amici* reject attempts by the Gloucester County School Board (the “School Board”) to coopt sexual assault survivors to justify discrimination against transgender people and its argument that the protections for transgender students afforded by the Department of Education’s interpretation of Title IX create safety or privacy risks for others.

There is no evidence that Title IX’s nondiscrimination requirements (or any nondiscrimination protections for transgender people) increase risks to non-transgender people in public restrooms. But, without protection, transgender people face real risks to their safety. Transgender individuals, and the LGBT community generally, experience sexual assault, harassment, and abuse at greater rates than the rest of the population. By forcing transgender students to use restrooms that do not correspond with their gender

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any party authored this brief in whole or in part, no party or party’s counsel made a monetary contribution to fund its preparation or submission, and no person other than *amici* or their counsel made such a monetary contribution. A full list of *amici curiae* is included in the Appendix.

identities, policies like those adopted by the School Board increase the risk that both transgender people (and people who are mistakenly perceived as transgender) will fall victim to the same type of violence the School Board claims it is attempting to avoid. The Court should, therefore, affirm the Fourth Circuit's conclusion that G.G. has stated a cognizable claim under Title IX.

### SUMMARY OF THE ARGUMENT

The School Board and its supporters have put sexual assault, domestic violence, and other gender-based violence at the forefront of their arguments against transgender-inclusive facilities by arguing that discrimination is necessary to protect students' safety and privacy. That argument has no basis in fact and contradicts the experience and expertise of *amici* who have spent decades working to eliminate sexual assault, domestic violence, and other gender-based violence.

Policies that deny transgender students access to restrooms that correspond with their gender identities do nothing to reduce the incidence of sexual assault. Quite the opposite: these policies place transgender people—who are victims of sexual assault, domestic violence, and other gender-based violence at higher reported rates than the rest of the population—in harm's way. Proponents justify this increased risk to transgender people as the price of safety and privacy for non-transgender individuals. Yet these policies achieve neither goal.

The School Board adopted its policy, in large part, in response to G.G.'s principal's decision to allow him to use the boys' restrooms while at school. They

reached that decision despite evidence that G.G. had used those facilities without incident for nearly two months. G.G.'s initial experience—that using the restrooms corresponding with his gender identity drew little notice—is consistent with the history of nondiscrimination protections for transgender people. This type of law has existed for decades across many jurisdictions. To date, 18 states and more than 200 municipalities have enacted laws that prohibit discrimination based on gender identity and protect the right of transgender people to use facilities (including restrooms) consistent with their gender identity. Such laws protect individuals who would otherwise risk safety and privacy to attend to the most basic of human needs. None of these jurisdictions has reported a rise in sexual violence or other public safety issues following the enactment of these laws.

The School Board and its supporters offer no evidence that discriminatory policies are necessary to protect students' safety—criminal laws preventing assault, battery, and sexual crimes already protect women and men in restrooms. Yet supporters of policies like the one adopted by the School Board make the specious argument that criminals will use nondiscrimination laws to pretend they are transgender and illegally access facilities in order to assault women and children. Nothing in Title IX protects criminal conduct or allows students to use nondiscrimination policies as a cover for otherwise prohibited behavior. Instead, it is school administrators, who know perfectly well the identity of students on campus, that are in the best position to deal with these would-be criminal students on a case-by-case basis.

In light of this background, *amici* submit this brief to aid the Court in discerning fact from fiction. Transgender nondiscrimination laws do not harm safety or privacy. There is no evidence that offenders rely on nondiscrimination laws to escape liability for their crimes. These fictions hinge on misconceptions about and prejudices against transgender people, and they are refuted by rigorous research and the experience of organizations that work with sexual assault survivors every day.

### ARGUMENT

After G.G. had used the boys' restrooms at his school with the permission of his principal for seven weeks without incident, a small group of community members asked the Gloucester County School Board to intervene to prevent G.G. from continuing to use those facilities. Pet. App. 7a. In response, one member of the School Board proposed a new policy that would prevent transgender students from using the restrooms and locker rooms that correspond with their gender identity. *Id.* at 10a. That policy, which G.G. argues violated Title IX and the Equal Protection Clause, purported to advance the School Board's goal of providing "a safe learning environment" for all students. *Id.* Among other things, supporters argued before the School Board that G.G.'s presence in the boys' bathroom would "lead to sexual assault in restrooms." *Id.*

The School Board and its supporters continue to stoke those fears before this Court. Some, like *amici* William J. Bennett, assert that sexual predators will use Title IX's protections to "more easily access their intended victims." Merits Br. of *Amicus* William J. Bennett at 22. Others echo Judge Niemeyer's

reliance in dissent on claims that “safety concerns” “arise from sexual responses prompted by students’ exposure to the private body parts of [other] students.” Pet. App. 52a. The National Organization for Marriage and the Center for Constitutional Jurisprudence go so far as to suggest that the Department of Education should be divested of its power to interpret Title IX because it did not give “due regard” to threats of sexual assault and other crimes. Merits Br. of *Amici* National Organization for Marriage and Center for Constitutional Jurisprudence at 10.

Those fears are baseless. As the Fourth Circuit recognized, the record in this case is “devoid of any evidence tending to show that G.G.’s use of the boys’ restroom creates a safety issue.” Pet. App. 26a. Nor is there evidence from outside G.G.’s school of a widespread problem that policies like the School Board’s claim to solve. As explained below, academic research, empirical data, and the expertise and experience of *amici* refute the contention that denying transgender people access to facilities consistent with their gender identity makes anyone safer. On the contrary, these policies work against their stated goals by increasing safety risks to transgender people.

#### **I. BASELESS SAFETY CONCERNS DO NOT JUSTIFY DISCRIMINATION AGAINST TRANSGENDER STUDENTS.**

1. While the School Board has been, “perhaps deliberately, vague as to the nature of the safety concerns it has,” Pet. App. 26a, its supporters claim that they or others are threatened by non-transgender men masquerading as women with lewd

intent. See, e.g., Merits Br. of *Amici* Women’s Liberation Front and Family Policy Alliance at 7-8; Merits Br. of *Amicus* William J. Bennett at 26; Pet. App. 10a. Policies like the one the School Board adopted here, they argue, prevent would-be criminals from gaining easier access to their victims.

Notably, these parties never really explain *how* policies designed to prevent sex-based discrimination against transgender people embolden or enable criminal offenders. In Virginia—and every other state—criminal laws prohibiting assault, battery, and other sexual crimes already protect individuals when they use the restrooms at school or any other place. Perhaps these advocates believe that restricting access for transgender people will allow law enforcement officials to identify potential criminals before they enter sex-segregated facilities. Unless law enforcement is stationed at the bathroom door to check birth certificates—a solution neither the School Board nor its supporters can realistically propose—violations by strangers in public places will rarely, if ever, be uncovered. Indeed, as G.G. has experienced, transgender people are typically not perceived by others as members of their sex at birth. See Br. in Opp. at 9 (“No one contends G. should use the girls’ restrooms. Even before G. transitioned, girls objected to his presence in the girls’ restrooms because they perceived him to be male.”). These anti-transgender measures are, in this way, largely symbolic.

In any event, nothing prevents law enforcement from removing anyone engaged in unlawful conduct from a restroom. After all, *the conduct*—not a person’s gender identity or anatomy—is at issue. As

explained in more detail in Part II, transgender-inclusive restrooms have existed for years. Where they do, they have not been associated with any increase in sexual predation or violence.

2. The School Board's safety claims are even more perplexing in the context of Title IX. First, Title IX and the implementing regulation at issue here, 34 C.F.R. § 106.33, apply to students using school facilities. Schools know who their students are, and they know which ones have publicly identified themselves as transgender. *See* Pet. App. 87a-88a (describing the process by which G.G. began to socially transition at school, which included communications with school administrators and teachers); Resp. Br. at 46. If the concern is that students will pretend to be transgender in order to gain access to otherwise off-limits facilities, school officials are well positioned to deal with those students on a case-by-case basis. They need not discriminate against all transgender students in order to address this potential misbehavior. In the context of schools, the Department of Education has provided guidance on how schools can confirm a student's transgender status without resort to stereotypes, including communications with doctors and parents. *See* Resp. Br. at 47. And there is no evidence presented by the School Board that this unlawful activity has ever occurred.

The related concern that schools would be required to extend Title IX's nondiscrimination provisions to non-students is also unfounded. For a variety of safety reasons, schools tightly control access to their facilities. *See, e.g.,* Virginia Dep't of Criminal Just. Servs., *2016 School Safety Inspection Checklist for*

*Virginia Public Schools* (2016) at 5 (“To control admittance, it is recommended that only one entrance to each building be designated for public access.”).<sup>2</sup> Nothing in Title IX protects criminal conduct or allows anyone to enter a restroom that does not correspond with the person’s actual gender identity.

3. Many of the safety arguments advanced in this case rest on the shared—and false—assumption that there is no way to distinguish transgender people from non-transgender male predators posing as transgender women. In other words, the School Board and its supporters credit the myth that transgender identity is fleeting and inauthentic. Not so. Gender identity is a deeply ingrained, innate characteristic that often manifests itself in early childhood. *See, e.g.,* Kristina Olson, et al., *Gender Cognition in Transgender Children*, 26 *Psych. Sci.* 467, 468, 472 (2015) (finding sample of 5-12 year-old transgender children’s Implicit Association Test results were as consistent with their expressed gender identity as their 5-12 year-old non-transgender peers’ results). The argument that non-transgender men will exploit nondiscrimination laws for criminal purposes thus misunderstands gender identity and incorrectly presupposes that nondiscrimination laws prevent law enforcement officers from carrying out their duties.

The examples offered by *amici* supporting the School Board do nothing to contradict this point. Of

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<sup>2</sup> Available at [https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/publications/law-enforcement/school-safety-inspection-checklist\\_0.pdf](https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/publications/law-enforcement/school-safety-inspection-checklist_0.pdf).

the incidents they cite, one was a political protest by a man who did not claim to be transgender, as the trial court recognized.<sup>3</sup> *See* Merits Br. of *Amici* Public Safety Experts at 1a. Of the other examples cited, the perpetrators were arrested for their conduct. *Id.* at 13-14. In one of the States, Idaho, there is no law protecting transgender individuals' rights to use public bathrooms that correspond with their gender identity, while in the other jurisdiction, Boston, there was. *See id.* All these examples show is that sexual predators have no regard for the legality of their actions. Put simply, neither the School Board nor its *amici* have shown that discriminatory policies prevent or reduce sexual assault and other safety threats.

## **II. EXPERIENCE HAS DEMONSTRATED THAT TRANSGENDER-INCLUSIVE RESTROOMS DO NOT INCREASE THE RISK OF SEXUAL VIOLENCE.**

1. The experiences of over two hundred localities, eighteen states, and the District of Columbia show that such nondiscrimination laws do not result in increased criminal activity in restrooms. Each of these jurisdictions has passed a nondiscrimination law permitting transgender individuals to use the facilities that correspond to their gender identity.

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<sup>3</sup> The Washington State Human Rights Commission observed that the man was trying to make “some kind of misguided point” about transgender-inclusive laws. Press Release, Washington State Human Rights Commission, Statement Regarding Seattle Locker Room Incident (Feb. 26, 2016), [http://www.hum.wa.gov/media/dynamic/files/320\\_Press%20Release%20pool%20locker%20room.pdf](http://www.hum.wa.gov/media/dynamic/files/320_Press%20Release%20pool%20locker%20room.pdf).

See ACLU, *Know Your Rights: Transgender People and the Law*;<sup>4</sup> National Center for Transgender Equality, *Public Accommodations*.<sup>5</sup> The first of these laws has been in effect since 1993. See Minn. Stat. § 363A.11. None of these jurisdictions has reported a rise in sexual violence or other public safety issues as a result of transgender individuals using the restrooms, locker rooms, or other sex-segregated facilities that correspond with their gender identity. Cf. Michael Scherer, *Battle of the Bathroom*, Time at 35 (May 30, 2016) (“[T]here is not yet any anecdotal evidence that trans-friendly rules have been abused by predators, or that incidents of violence or sexual assault have increased.”).

2. When asked, public officials, members of law enforcement, and anti-sexual assault organizations from jurisdictions across the country with transgender-inclusive laws all state that they have not experienced any of the safety-related problems envisioned by the School Board.

A law enforcement official from Baltimore stated in response to an email survey about the safety effects of gender identity nondiscrimination laws that “[i]t’s the most ridiculous thing I’ve ever heard \* \* \*. I’m more concerned in going to the bathroom about someone reaching under and trying to snatch my purse.” See Lou Chibbaro Jr., *Predictions of Trans Bathroom Harassment Unfounded*, Wash. Blade

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<sup>4</sup> Available at <https://www.aclu.org/know-your-rights/transgender-people-and-law>.

<sup>5</sup> Available at <http://www.transequality.org/know-your-rights/public-accommodations>.

(Mar. 31, 2016).<sup>6</sup> A school official in St. Paul, Minnesota noted that, in the nearly 25 years since the Minnesota Human Rights Act was amended to protect transgender individuals, there was “no correlation between the Act and incidences of bullying or harassment.” Rachel Percelay, *17 School Districts Debunk Right-Wing Lies About Protections for Transgender Students*, Media Matters for America (June 3, 2015).<sup>7</sup> The CEO of the Dallas Area Rape Crisis Center not only denied any problems, but noted that “those that cite this proposition as an ‘opportunity’ to victimize someone are simply doing so in ignorance; not understanding the mentality of perpetrators.” Carlos Maza & Rachel Percelay, *Texas Experts Debunk The Transgender “Bathroom Predator” Myth Ahead of HERO Referendum*, Media Matters for America (Oct. 15, 2015).<sup>8,9</sup>

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<sup>6</sup> Available at <http://www.washingtonblade.com/2016/03/31/predictions-of-trans-bathroom-harassment-unfounded/>.

<sup>7</sup> Available at <http://mediamatters.org/research/2015/06/03/17-school-districts-debunk-right-wing-lies-abou/203867>.

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

<sup>9</sup> See also Carlos Maza & Luke Brinker, *15 Experts Debunk Right-Wing Transgender Bathroom Myth*, Media Matters for America (Mar. 20, 2014, 10:01 AM), <http://mediamatters.org/research/2014/03/20/15-experts-debunk-right-wing-transgender-bathro/198533>; Rachel Percelay, *Florida Experts Debunk the Transgender “Bathroom Predator” Myth*, Media Matters for America (Jan. 12, 2016), <http://mediamatters.org/research/2016/01/>

3. Nor is there any support, statistical or sociological, for the proposition that public restrooms must be singled out for additional protection against sexual assault at the expense of nondiscrimination protections for transgender people. Data from the National Crime Victimization Survey suggest that between 2005 and 2010, more than two-thirds of sexual assaults of female victims occurred either at or near the victim's home or the home of the victim's friend, relative, or acquaintance. See Michael Planty, et al., *Female Victims of Sexual Violence*,

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12/florida-experts-debunk-the-transgender-bathroom/207916; Joe Garofoli, *Texan needs to be schooled in San Francisco on transgender rights*, San Francisco Chron. (May 15, 2016), <http://www.sfchronicle.com/politics/article/Texan-needs-to-be-schooled-in-San-Francisco-on-7469979.php>; Michael Scherer, *Battle of the Bathroom*, Time, May 30, 2016; National Task Force to End Sexual and Domestic Violence Against Women, National Consensus Statement of Anti-Sexual Assault and Domestic Violence Organizations in Support of Full and Equal Access for the Transgender Community (Apr. 21, 2016), <https://www.scribd.com/doc/309946430/National-Consensus-Statement-of-Anti-Sexual-Assault-and-Domestic-Violence-Organizations-in-Support-of-Full-and-Equal-Access-for-the-Transgender-Commun>; Rachel Percelay, *National Expert: Anti-LGBT "Bathroom Predator" Fears Are "Very Misinformed,"* Media Matters for America (Apr. 21, 2016), <http://mediamatters.org/blog/2016/04/21/national-expert-anti-lgbt-bathroom-predator-fears-are-very-misinformed/210001>; Carlos Maza, *An Expert Explains Why The Right-Wing "Bathroom Predator" Myth is Wrong and Dangerous*, Media Matters for America (Oct. 15, 2015), <http://mediamatters.org/blog/2015/10/15/an-expert-explains-why-the-right-wing-bathroom/206163>.

1994-2010, U.S. Dep't of Just. at 4 (Mar. 2013).<sup>10</sup> Bathrooms are not, as some have suggested, fertile ground for such criminal conduct.

The vast majority of perpetrators are not the strangers the School Board's *amici* imagine lying in wait in restrooms, but rather someone who already knows the victim. *See id.* (concluding from National Crime Victimization Survey data that between 2005-2010, female victims knew 78 percent of rape or sexual assault perpetrators); Federal Bureau of Investigation, *Relationship of Victims to Offenders by Offense Category* (2015) (concluding that, in 2015, more than 80 percent of sex offenders were either a family member or otherwise known to the victim.)<sup>11</sup>; accord Michele C. Black, et al., *The National Intimate Partner and Sexual Violence Survey: 2010 Summary Report*, NISVS, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention at 23 (2011).

4. Nevertheless, *amici* are keenly aware that restrooms and locker rooms—like any location—can be sites for sexual violence. *See* Will Doran, *Equality NC director: No public safety risks in cities with transgender anti-discrimination rules*, PolitiFact N.C. (Apr. 1, 2016) (confirming three convictions since 1999 of men in women's restrooms for sexual

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<sup>10</sup> Available at <http://www.bjs.gov/content/pub/pdf/fvsv9410.pdf>.

<sup>11</sup> Available at <https://ucr.fbi.gov/nibrs/2015/tables/data-tables>.

crimes from reporter's searches).<sup>12</sup> *Amici* are also sensitive to the fact that survivors of sexual assault and domestic violence may, based on their traumatic experiences, fear that sexual predators might hide behind transgender-inclusive nondiscrimination laws. The consequences of sexual assault, including post-traumatic stress disorder and severe anxiety, can profoundly impact how survivors engage with the outside world. Many of the undersigned *amici* work directly with survivors to help them navigate their daily lives after a sexual assault, and they recognize that increased fear and anxiety may persist for many years, and in many different types of spaces.

*Amici* point out, however, that transgender people, particularly survivors of sexual assault, also experience stress upon being forced to use restrooms and other facilities that do not correspond with their gender identity—places where they know they are at increased risk of harassment and violence. *See infra* at 16-19 (describing the disproportionately high rates of violence against transgender people). Transgender survivors are equally deserving of protection from this increased fear and anxiety, sexual assault, and other violent crimes. The School Board's discriminatory policy ignores this fact.

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<sup>12</sup> *Available at* <http://www.politifact.com/north-carolina/statements/2016/apr/01/chris-sgro/equality-nc-director-no-public-safety-risks-cities/>.

### III. THE SCHOOL BOARD'S POLICY INCREASES SAFETY RISKS TO TRANSGENDER STUDENTS.

#### A. Transgender Individuals Are More Likely to Be Victims of Sexual Assault and Other Crimes.

Policies like the one adopted by the School Board do not prevent sexual assault and other crimes, but they do have a safety impact: increasing risks *to transgender students*. Reported crimes against transgender people, including sexual assault and other sex crimes, are on the rise. In 2013, 72 percent of the victims of LGBT hate-violence homicides nationwide were transgender women. Osman Ahmed & Chai Jindasurat, *Lesbian, Gay, Bisexual, Transgender, Queer and HIV-Affected Hate Violence in 2013*, National Coalition of Anti-Violence Programs at 8 (2014).<sup>13</sup> In 2014, while overall violence against LGBT individuals decreased by 32 percent, crimes against transgender people increased by 13 percent. Hayley Miller, *Violence Against Transgender Community Continues to Increase*, Human Rights Campaign (Jun. 9, 2015) (citing NCVAP 2014, *infra* at 17).<sup>14</sup> And in 2015, the National Coalition of Anti-Violence Programs reported that 26 percent of all reported incidents of anti-LGBTQ hate violence involved anti-transgender bias. See Emily Waters, et al., National Coalition of Anti-Violence Programs, *Lesbian, Gay, Bisexual,*

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<sup>13</sup> Available at [http://www.avp.org/storage/documents/2013\\_ncavp\\_hvreport\\_final.pdf](http://www.avp.org/storage/documents/2013_ncavp_hvreport_final.pdf).

<sup>14</sup> Available at <http://www.hrc.org/blog/violence-against-transgender-community-continues-to-increase>.

*Transgender, Queer and HIV-Affected Hate Violence in 2015* (2016).<sup>15</sup>

More generally, sexual and gender minorities in the United States are exposed to staggeringly high levels of violence. Recent analysis of criminal data shows that “lesbian, gay, bisexual, and transgender (LGBT) victims were more likely to be victims of sexual assault” than others. Robert J. Cramer, et al., *Mental Health and Violent Crime Victims, Does Sexual Orientation Matter?*, *Law and Human Behavior*, 36(2) (2012), at 87. These high rates of hate crimes, sexual assault crimes, and crimes of violence are well-documented. *See, e.g., id.* at 90 (finding that “LGBT victims were 2.3 times more likely to be victims of sexual assault than heterosexual victims.”); Osman Ahmed & Chai Jindasurat, *Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Hate Violence in 2014*, National Coalition of Anti-Violence Programs (2015) (“NCVAP 2014”) (finding that “transgender women were almost twice as likely (1.6) to experience sexual violence [than other hate-violence victims surveyed], highlighting a disproportionate impact of sexual violence against transgender women.”).<sup>16</sup> As reported in 2009, “anti-LGBT crimes have increased over the last decade, with particular increases in both sexual assault and murder.” Cramer, et al., at 88 (citing Avy A. Skolnik, et al., *Hate Violence*

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<sup>15</sup> Available at [http://avp.org/storage/documents/ncavp\\_hvreport\\_2015\\_final.pdf](http://avp.org/storage/documents/ncavp_hvreport_2015_final.pdf).

<sup>16</sup> Available at [http://www.avp.org/storage/documents/Reports/2014\\_HV\\_Report-Final.pdf](http://www.avp.org/storage/documents/Reports/2014_HV_Report-Final.pdf).

*Against Lesbian, Gay, Bisexual, and Transgendered People in the United States: 2008*, National Coalition of Anti-Violence Programs (2009)).<sup>17</sup>

These disquieting statistics are likely just the tip of the iceberg. “Existing official crime statistics, victim surveys, and self-report surveys provide a very limited glimpse of LGBTQ people’s victimization and offending because they exclude sexual orientation and gender identity as key variables \* \* \*.” J. B. Woods, “*Queering Criminology*”: *Overview of the State of the Field, Handbook of LGBT Communities, Crime, and Justice*, D. Peterson and V. R. Panfil (eds.), Springer Science & Business Media at 18 (2013). And, even where sexual orientation and gender identity are studied, experts believe the existing statistics *underestimate* the actual rates of crimes against transgender people.<sup>18</sup> In other words,

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<sup>17</sup> Available at [http://www.ncavp.org/common/document\\_files/Reports/2008%20HV%20Report%20smaller%20file.pdf](http://www.ncavp.org/common/document_files/Reports/2008%20HV%20Report%20smaller%20file.pdf).

<sup>18</sup> Transgender people underreport violence because they are more likely to be the victims of police violence than other survivors of sexual assault, domestic violence, and other gender-based violence. In fact, transgender people have been found to be 3.7 times more likely to experience police violence and seven times more likely to experience physical violence in interactions with the police than other survivors of assault and abuse. See NCVAP 2014, *supra* at 17. A national survey of transgender individuals found that almost half of the respondents (46 percent) were “uncomfortable seeking police assistance.” J. Grant, et al., *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, National Center for Transgender Equality at 6 (2011),

it is likely that LGBT individuals, and transgender people in particular, experience these crimes at higher rates than currently available statistics suggest.

**B. Transgender People Experience Violence in Public Facilities with Staggering Frequency.**

Transgender people experience far more violence than the population at large, even when compared with lesbian, gay, and bisexual individuals. Restrooms in particular have become a common site of violence against transgender people. In a recent survey of transgender residents of Washington, D.C., for example, nearly 70 percent of all respondents reported that they had been verbally harassed or physically assaulted in public restrooms. Jody L. Herman, *Gendered Restrooms and Minority Stress*, Williams Institute at 71 (2013).<sup>19</sup> The findings of this study are also borne out in anecdotal reporting. See Edecio Martinez, *Suspects in beating of*

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[http://www.thetaskforce.org/static\\_html/downloads/reports/reports/ntds\\_full.pdf](http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf). All sexual assault crimes are underreported, but this is especially problematic with transgender survivors. See C. Kruttschnitt, et al., *Estimating the Incidence of Rape and Sexual Assault*, National Research Council, National Academies Press (2014) at 37 (noting that 65 percent of all sexual assault crimes in the U.S. go unreported and that 13 percent of those crimes are not reported because of the belief that the police would not help).

<sup>19</sup> Available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Herman-Gendered-Restrooms-and-Minority-Stress-June-2013.pdf>.

*transgender woman Chrissy Lee Polis could face hate crime charges*, CBS News (Apr. 26, 2011) (Chrissy Lee Polis, a 22-year-old Maryland transgender woman, was brutally attacked by two teenage girls when she attempted to use a McDonald's restroom; the girls spit in her face, ripped her hair, threw her to the floor, and kicked her in her face while others stood by laughing);<sup>20</sup> *see also, e.g.*, Associated Press, *Report: Transgender teen attacked in bathroom of Northern California high school*, The Oregonian (Mar. 4, 2014) (student whose sex assigned at birth was female “but identifies as male, told officers he was leaving a boy’s bathroom at Hercules Middle/High School when three teenage boys pushed him inside a large stall and assailed him”).<sup>21</sup>

Prejudice and violence motivated by anti-transgender animus also threaten the safety of people who have been mistakenly identified as transgender in the private confines of restrooms. Non-transgender women have been victims of the anti-transgender animus that discriminatory policies encourage. For example, Aimee Toms, a 22-year-old non-transgender Connecticut woman who had recently donated her hair to cancer patients, was physically attacked when washing her hands in a Walmart restroom because the assailant mistakenly thought she was transgender. *See* Jon Levine, *Connecticut Woman Who Donated Hair to Cancer*

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<sup>20</sup> Available at <http://www.cbsnews.com/news/suspects-in-beating-of-transgender-woman-chrissy-lee-polis-could-face-hate-crime-charges/>.

<sup>21</sup> Available at [http://www.oregonlive.com/today/index.ssf/2014/03/report\\_transgender\\_teen\\_attack.html](http://www.oregonlive.com/today/index.ssf/2014/03/report_transgender_teen_attack.html).

*Patients is Victim of Transphobic Attack*, News Mic (May 17, 2016).<sup>22</sup> In short, transgender people, and those mistakenly targeted by anti-transgender animus, are frequently victimized in restrooms.

**C. Discriminatory Policies Like the One Adopted by the School Board Increase the Risk That Transgender Individuals Will Be the Victims of Sexual Assault and Other Crimes.**

*Amici* spend every day addressing concerns related to sexual assault and other forms of gender-based violence. But singling out transgender identity as a means of addressing this concern only raises the risk that transgender people will be the victims of violence. Barring transgender people from facilities appropriate to their gender identity based on imagined safety concerns does nothing to mitigate such threats. It only gives credence to those who harbor prejudicial stereotypes casting transgender individuals as sexual deviants and predators. In this way, discriminatory policies increase the risk of violence and harassment in restrooms by making them a space where people who harbor ill will toward transgender people feel entitled to enforce discriminatory rules on their own. Policies like the one adopted by the School Board legitimize that animus, and both safety and privacy suffer.

*Amici*, academic commentators, and others who advocate against sexual violence all recognize that such exclusionary policies are a cause of—not a

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<sup>22</sup> Available at <https://mic.com/articles/143607/connecticut-woman-who-donated-hair-to-cancer-patients-is-victim-of-transphobic-attack#.HqZ1bSDJu>.

solution to—transphobia that leads to violence. “[S]exual minority victimization experiences are hypothesized to be a function of society-induced stigma \* \* \* [that is] continually reinforced through subtle and overt means such as anti-LGBT legislation \* \* \*.” Cramer, et al. *supra* at 17, at 87 (emphasis added) (citing G. M. Herek, *Hate crimes and stigma-related experiences among sexual minority adults in the United States*, J. of Interpersonal Violence, 24(1) at 54-74 (Jan. 2009)). In other words, these policies reinforce the prejudices that were on display when the School Board made its decision. See Pet. App. 11a (“One speaker called G.G. a ‘freak’ and compared him to a person who thinks he is a ‘dog’ \* \* \*.”). And they feed the stigma that makes sexual assault and violence in restrooms a legitimate fear for many transgender people.

Assertions of a relationship between transgender identity, restroom selection, and sexual assault have not been subject to any academic scrutiny. Historically, transgender identity has not been the subject of significant study. See, e.g., Woods, “*Queering Criminology*”, *supra* at 18, at 18. (“[e]xisting official crime statistics, victim surveys, and self-report surveys provide a very limited glimpse of LGBTQ people’s victimization and offending because they exclude sexual orientation and gender identity as key variables \* \* \*.”). The federal government acknowledges that “[a]t a time when sexual and gender minority (SGM) populations are becoming more visible in social and political life, there remains a lack of data on the characteristics and well-being of these groups.” Federal Interagency Working Group on Improving Measurement of Sexual Orientation and Gender Identity in Federal

Surveys, *Toward a Research Agenda for Measuring Sexual Orientation and Gender Identity in Federal Surveys: Findings, Recommendations, and Next Steps* (Oct. 20, 2016).<sup>23</sup> There are many reasons for the lack of academic and criminological focus, but the result is limited data on the relationship between transgender identity and victimization rates.

The primary area in which legitimate statistics do exist is the prison population. While not wholly analogous, these statistics are representative of the ways in which transgender individuals experience victimization compared to a general population. These surveys and studies support a clear conclusion: there is an elevated risk of sexual assault to transgender women required to use facilities inconsistent with their gender identities. “Correctional officers, courts, prisoners, advocates, and survey data agree: Gay, bisexual, transgender, and effeminate prisoners face greatly elevated risks of sexual abuse.” Kim Shayo Buchanan, *Our Prisons, Ourselves: Race, Gender, and the Rule of Law*, Yale L. & Pol’y Rev., 29(1) at 15 (2010); *see also generally Farmer v. Brennan*, 511 U.S. 825, 848 (1994) (recounting how the petitioner’s transgender status and feminine appearance alerted prison officials to the risk of sexual abuse).

A study of California state prison inmates found that transgender inmates are 13 times more likely to be sexually assaulted in prison; 59 percent reported

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<sup>23</sup> Available at [https://s3.amazonaws.com/sitesusa/wp-content/uploads/sites/242/2014/04/SOGI\\_Research\\_Agenda\\_Final\\_Report\\_20161020.pdf](https://s3.amazonaws.com/sitesusa/wp-content/uploads/sites/242/2014/04/SOGI_Research_Agenda_Final_Report_20161020.pdf).

sexual assault.<sup>24</sup> Valerie Jenness, et al., *Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault*, University of California, Irvine, Center for Evidence-Based Corrections at 2 (2007).<sup>25</sup> Like many transgender inmates, this was the case for Janetta Johnson, a transgender woman who was forced into a men’s prison in California. She “experienced sustained sexual assault, including resorting to oral sex to avoid penetrative rape. She also endured harassment from guards \* \* \*.” Zoe Greenberg, *Sentenced to Abuse: Trans People in Prison Suffer Rape, Coercion, Denial of Medical Treatment*, Rewire (May 12, 2015).<sup>26</sup> “[T]he American Psychological

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<sup>24</sup> “In California state prisons, transgender inmates are housed with members of their gender at birth, not the gender they identify with, unless they have had sexual reassignment surgery.” Maureen Cavanaugh, *Transgender In Prison: How California’s New Guidelines Will Be Implemented*, KPBS (Oct. 26, 2015), <http://www.kpbs.org/news/2015/oct/26/transgender-prison-how-californias-new-guidelines-/>; *see also* California Department of Corrections and Rehabilitation, *Operations Manual* at 574 (Jan. 31, 2016) (recommending that transgender inmates be placed in prisons consistent with their gender at birth), [http://www.cdcr.ca.gov/Regulations/Adult\\_Operations/docs/DOM/DOM%202016/2016\\_DOM.PDF](http://www.cdcr.ca.gov/Regulations/Adult_Operations/docs/DOM/DOM%202016/2016_DOM.PDF).

<sup>25</sup> *Available at* [http://ucicorrections.seweb.uci.edu/files/2013/06/PREA\\_Presentation\\_PREA\\_Report\\_UCI\\_Jenness\\_et\\_al.pdf](http://ucicorrections.seweb.uci.edu/files/2013/06/PREA_Presentation_PREA_Report_UCI_Jenness_et_al.pdf).

<sup>26</sup> *Available at* <https://rewire.news/article/2015/05/12/sentenced-abuse-trans-people-prison-suffer-rape-coercion-denial-medical-treatment/>.

Association and the National Commission on Correctional Health Care have both issued statements recognizing that transgender inmates are at especially high risk of abuse and calling for their protection.” Brenda V. Smith, et al., *Policy Review and Development Guide: Lesbian, Gay, Bisexual and Intersex Persons in Custodial Settings*, National Institute of Corrections at 7 (Aug. 2013).<sup>27</sup> Forcing transgender women into men’s restrooms, like forcing transgender women into men’s prisons, will only increase the risk that they will be the victims of the assault the School Board purportedly aims to curtail.

Despite these facts, the School Board and its supporters repeatedly cite safety as a key justification for exclusionary action against transgender students and transgender people generally. They ignore the very real risk that more harm, not less, will result from their proposals.

### CONCLUSION

Discriminating against transgender people does not give anyone more control over their body or security. *Amici* welcome policies that will combat sexual assault, but the School Board’s action and others like it will do nothing to advance that goal. Instead, these rules mandate discrimination in response to unsubstantiated safety concerns. Nothing in Title IX protects criminal conduct or otherwise allows students to pretend to be transgender in order to assault or harass other students. And school administrators who actually know the identity of

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<sup>27</sup> Available at [https://www.wcl.american.edu/endsilence/documents/FINAL\\_LGBTIPolicyGuideAugust2013.pdf](https://www.wcl.american.edu/endsilence/documents/FINAL_LGBTIPolicyGuideAugust2013.pdf).

students on campus are in a much better position to police this type of conduct than are the proponents of blanket discriminatory policies like the one at issue here. For these reasons, *amici* urge the Court to rely on the accumulated experience and knowledge of experts around the nation who have concluded that nondiscrimination protections for transgender students pose no safety threat to other children. More importantly, these protections safeguard some of the most vulnerable students in the nation. For the foregoing reasons, we respectfully request that the Court affirm the Fourth Circuit's conclusion that G.G.'s claims under Title IX should not have been dismissed.

Respectfully submitted,

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*Counsel for Amici Curiae*

March 2017

## APPENDIX

*List of Amici Curiae*

**National Organizations**

Asian Pacific Institute on Gender-Based Violence  
Break the Cycle  
FORCE: Upsetting Rape Culture  
FORGE, Inc.  
Futures Without Violence  
Girls for Gender Equity  
Just Beginnings Collaborative  
Legal Momentum, the Women's Legal Defense and  
Education Fund  
National Alliance to End Sexual Violence  
National Coalition Against Domestic Violence  
National Coalition of Anti-Violence Programs  
National Domestic Violence Hotline  
National Latin@ Network of Casa de Esperanza  
National Organization of API Ending Sexual  
Violence  
National Resource Center on Domestic Violence  
Women of Color Network, Inc.  
YWCA USA

**State Organizations**

ADAPT Montana

A2

Alabama Coalition Against Domestic Violence  
Arizona Coalition to End Sexual  
and Domestic Violence  
Arkansas Coalition Against Sexual Assault  
California Coalition Against Sexual Assault  
California Partnership to End Domestic Violence  
Center on Halsted  
Coalition to Stop Violence Against Native Women  
Colorado Coalition Against Domestic Violence  
Colorado Coalition Against Sexual Assault  
Connecticut Alliance to End Sexual Violence  
Connecticut Coalition Against Domestic Violence  
DC Coalition Against Domestic Violence  
Deaf Overcoming Violence through Empowerment  
(DOVE)  
End Domestic Abuse WI  
Family Violence Prevention, Inc.  
Florida Council Against Sexual Violence  
Georgia Coalition Against Domestic Violence  
Idaho Coalition Against Sexual & Domestic Violence  
Illinois Accountability Initiative  
Illinois Coalition Against Sexual Assault  
Indiana Coalition Against Domestic Violence, Inc.  
Jane Doe Inc., the Massachusetts Coalition Against  
Sexual Assault and Domestic Violence

Kansas Coalition Against Sexual and Domestic  
Violence

Kentucky Coalition Against Domestic Violence  
Legal Voice  
Life-Span, Inc.

Maine Coalition Against Sexual Assault  
Maine Coalition to End Domestic Violence

Maryland Coalition Against Sexual Assault  
Michigan Coalition to End Domestic  
& Sexual Violence

Minnesota Coalition Against Sexual Assault  
Minnesota Coalition for Battered Women

Minnesota Indian Women's Sexual Assault Coalition  
Monsoon United Asian Women of Iowa

Montana Coalition Against Domestic and Sexual  
Violence

National Organization for Women, Missouri  
NC Coalition Against Sexual Assault  
Nebraska Coalition to End Sexual  
and Domestic Violence

Nevada Coalition to End Domestic  
and Sexual Violence

New Hampshire Coalition Against Domestic  
and Sexual Violence

New Mexico Coalition of Sexual Assault  
Programs, Inc.

New York State Coalition Against Domestic Violence

New York State Coalition Against Sexual Assault  
North Carolina Coalition Against Domestic Violence  
OAASIS (Oregon Abuse Advocates  
and Survivors in Service)  
Oregon Anti-Violence Project  
Oregon Coalition Against Domestic  
& Sexual Violence  
Outfront Minnesota Anti-Violence Program  
Pennsylvania Coalition Against Rape  
RI Coalition Against Domestic Violence  
Rocky Mountain Children's Law Center  
Samaritan House, Inc.  
SC Coalition Against Domestic Violence  
and Sexual Assault  
Starting Point  
Strong hearted  
Tennessee Coalition to End Domestic  
and Sexual Violence  
Texas Association Against Sexual Assault  
Vermont Network Against Domestic  
and Sexual Violence  
Virginia Anti-Violence Project  
Virginia Sexual and Domestic Violence  
Action Alliance  
Washington Coalition of Sexual Assault Programs  
Washington State Coalition Against  
Domestic Violence

Washington State National Organization for Women  
West Virginia Coalition Against Domestic Violence  
Wisconsin Coalition Against Sexual Assault  
Wyoming Coalition Against Domestic Violence  
and Sexual Assault  
YWCA NH

**Local Organizations**

Alle-Kiski Area HOPE Center, Inc.  
API Chaya  
Artemis House  
Brevard NOW  
Casa Myrna Vazquez  
Chicago Metropolitan Battered Women's Network  
Coalition Ending Gender-Based Violence  
Collins Center  
Community Against Violence  
Crisis Intervention Services  
Diakonos, Inc.  
DISCLOSE  
Donald W. Reynolds Crisis Intervention Center  
Families First, Inc.  
Family Crisis Center, Inc.  
Family Services of Davidson County  
HAVIN (Helping All Victims in Need)

A6

Hope's Door

HopeWorks of Howard County

Los Angeles LGBT Center

Meriden-Wallingford Chrysalis, Inc.

Miami Workers Center

Minnesota Indian Women's Resource Center

Monarch Services - Servicios Monarca

Morongo Basin Unity Home, Inc.

Mujeres Latinas en Accion

National Organization for Women, Columbia Area

New Directions Center, Inc.

New Hope, Inc.

New York City Anti-Violence Project

Phoenix Project

Ponca Tribe Domestic Violence Program

Praxis International

Project Safeguard

Promise Place

Rainbow House Domestic Abuse Services

Raksha, Inc.

Rape Victim Advocates

REACH Beyond Domestic Violence, Inc.

Safehouse Progressive Alliance for Nonviolence

SARA Roanoke

SASMC Forensic Nurse Examiner Program

A7

Shelter House Inc.

SunServe Social Services

The Abuse Network, Inc.

The LGBTQ Center of Long Beach

Turning Points Network

Vera House, Inc.

Victims' Intervention Program

Violence Intervention Program

Walnut Avenue Family & Women's Center

YWCA Clark County

YWCA South Hampton Roads