

No. 15-2056
**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

G.G., by his next friend and mother, **DEIRDRE GRIMM**,
Plaintiff-Appellant,

v.

GLOUCESTER COUNTY SCHOOL BOARD,
Defendant-Appellee.

**On Appeal from the United States District Court
for the Eastern District of Virginia
Newport News Division**

**BRIEF OF AMICI CURIAE LIBERTY CENTER FOR CHILD
PROTECTION AND JUDITH REISMAN, PH.D., IN SUPPORT OF
DEFENDANT-APPELLEE, SEEKING AFFIRMANCE**

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**STATEMENT REGARDING CONSENT TO FILE, AUTHORSHIP, AND
MONETARY CONTRIBUTIONS**

Appellant's counsel has consented to the filing of this brief. Appellee's counsel has stated that it does not consent, but does not oppose Amici Curiae's motion for leave to file an amicus brief.

Pursuant to Rule 29(c) of the Federal Rules of Appellate Procedure, Amici Curiae state that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than Amici Curiae or their counsel made a monetary contribution to its preparation or submission.

**UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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INTERESTS**

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No. 15-2056

Caption: G.G. v. Gloucester County School Board

Pursuant to FRAP 26.1 and Local Rule 26.1, Liberty Center for Child Protection and Judith Reisman, Ph.D. (name of party/amicus) who is Amici Curiae (appellant/appellee/petitioner/respondent/amicus/intervenor) make the following disclosure:

1. Is party/amicus a publicly held corporation or other publicly held entity?
NO

2. Does party/amicus have any parent corporations?
NO

If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity?
NO

If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))?

NO

If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding?

NO

If yes, identify any trustee and the members of any creditors' committee:

Signature: /s/ Mary E. McAlister Date: November 30, 2015

Counsel for: Amici Curiae

CERTIFICATE OF SERVICE

I certify that on November 30, 2015 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

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TABLE OF CONTENTS

STATEMENT REGARDING CONSENT TO FILE, AUTHORSHIP, AND MONETARY CONTRIBUTIONS..... i

CORPORATE DISCLOSURE STATEMENT..... ii

TABLE OF CONTENTS iv

TABLE OF AUTHORITIESv

INTEREST OF AMICI.....1

ARGUMENT.....1

I. THE SCHOOL BOARD’S POLICY RESTRICTING ACCESS TO SEX-SEPARATE BATHROOMS BASED UPON BIOLOGICAL SEX COMPLIES WITH THE LETTER AND SPIRIT OF TITLE IX.1

II. THE SCHOOL BOARD IS ACTING IN THE BEST INTEREST OF ALL DISTRICT STUDENTS BY MAINTAINING SEX-SEPARATE FACILITIES BASED UPON BIOLOGICAL SEX.6

A. Adopting “Gender Identity” Instead Of Biological Sex For School Facilities Means Abandoning Scientific Reality In Favor Of An Artificial Social Construct Built Upon Child Sexual Abuse And Fraud.....7

B. School Environments Will Be Demonstrably More Hostile If Biological Sex Is Replaced With “Gender Identity.”.....22

C. Replacing Biological Sex With “Gender Identity” Will Threaten Children’s Physical And Mental Health.25

CONCLUSION.....30

CERTIFICATE OF COMPLIANCE WITH.....32

FEDERAL RULE OF APPELLATE PROCEDURE 32(a)(7)(C)32

CERTIFICATE OF SERVICE33

TABLE OF AUTHORITIES

Cases

<i>Bethel Sch. Dist. No. 403 v. Fraser</i> , 478 U.S. 675 (1986).....	6
<i>G.G. v. Gloucester County School Bd</i> , 2015 WL 5560190 (E.D. Va. 2015) ...	2, 3, 5
<i>Hare v. State, Dep’t of Human Servs.</i> , 666 N.W.2d 427 (Minn. Ct. App. 2003)...	10
<i>Johnston v. University of Pittsburgh</i> , 97 F.Supp.3d 657 (W.D. Penn. 2015)	2, 3

Other Authorities

Alfred Kinsey, <i>et. al.</i> , SEXUAL BEHAVIOR IN THE HUMAN FEMALE (1953)	8
Alfred Kinsey, <i>et. al.</i> , SEXUAL BEHAVIOR IN THE HUMAN MALE (1948).....	8, 9
Alice Sterling Honig, <i>Psychosexual Development in Infants and Young Children: Implications for Caregivers</i> , 55 YOUNG CHILDREN 70 (2000).....	25-26
Ashley Collman, <i>From coaches sleeping with athletes to substitutes sexting with 15-year-olds: Alabama tops list of states with highest rate of teachers busted for sex with students ...an average of two a MONTH</i> , UK DAILY MAIL, January 15, 2015	23
Cecilia Dhejne, <i>et. al. Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden</i> , 6 PLoS ONE	20
Dr. Veritas, “P” for Pedophile, June 15, 2015,	7
Harry Benjamin, M.D., <i>7 Kinds of Sex</i> . 27 SEXOLOGY: SEX SCIENCE ILLUSTRATED 436 (Feb. 1961).....	11, 12
Heather J. Risser, <i>et. al., PTSD as a Mediator of Sexual Revictimization: The Role of Reexperiencing, Avoidance, and Arousal Symptoms</i> , 19 JOURNAL OF TRAUMATIC STRESS, 687 (2006).....	7

Henk Asscheman, <i>et. al.</i> , <i>A long-term follow-up study of mortality in transsexuals receiving treatment with cross-sex hormones</i> , 164 EUROPEAN JOURNAL OF ENDOCRINOLOGY, 635 (2011)	20
Jay N Giedd, <i>et. al.</i> , <i>The Teen Brain: Insights from Neuroimaging</i> , 42 JOURNAL OF ADOLESCENT HEALTH 335–43 (2008)	25
Jay N. Giedd <i>et al.</i> , <i>Brain Development during Childhood and Adolescence: A Longitudinal MRI Study</i> , 2 NATURE NEUROSCIENCE, 861–63 (October 1999)	27
Jeffrey Satinover, M.D., <i>HOMOSEXUALITY AND THE POLITICS OF TRUTH</i> , 113-17 (1996).....	16
Jennifer Levitz, <i>Rape Trial Casts Spotlight on New Hampshire Prep School, Case looks at alleged student ‘tradition’ at St. Paul’s School</i> , WALL STREET JOURNAL, August 25, 2015.....	24
John Colapinto, <i>AS NATURE MADE HIM</i> , 25 (2000).	13
John Money, ed. <i>SEX RESEARCH RECENT DEVELOPMENTS</i> (1965).....	13
John Money, <i>Gender Role, Gender Identity, Core Gender Identity: Usage and Definition of Terms</i> , JOURNAL OF THE AMERICAN ACADEMY OF PSYCHOANALYSIS 397 (1973)	12, 13
Judith A. Reisman, <i>et. al.</i> <i>KINSEY, SEX & FRAUD</i> (1990).....	8
Judith A. Reisman, Ph.D., <i>SEXUAL SABOTAGE</i> , (2010)	10
Judith Reisman, Ph.D., <i>STOLEN HONOR, STOLEN INNOCENCE</i> (2013).....	10
Kaitlin A. Chivers-Wilson, <i>Sexual assault and posttraumatic stress disorder: A review of the biological, psychological and sociological factors and treatments</i> , 9 MCGILL JOURNAL OF MEDICINE, 111 (2006).....	6, 7
Keith Ablow, M.D., <i>All wrong in California, girls can use urinals in the boys’ restroom</i> , Fox News, January 14, 2014.....	27, 28
Kenneth J. Zucker and Susan J. Bradley, <i>GENDER IDENTITY DISORDER AND PSYCHOSEXUAL PROBLEMS IN CHILDREN AND ADOLESCENTS</i> (1995)	18, 19

Kenneth J. Zucker <i>et al.</i> , <i>Psychopathology in the Parents of Boys with Gender Identity Disorder</i> , 42.1 JOURNAL OF THE AMERICAN ACADEMY OF CHILD AND ADOLESCENT PSYCHIATRY 2–4. (January 2003).....	19
Larry Cahill, <i>Why Sex Matters for Neuroscience</i> , 7 NATURE REVIEWS NEUROSCIENCE, 477-84 (2006).....	17
Leah Cahan Schaefer & Connie Christine Wheeler, <i>Harry Benjamin’s First Ten Cases (1938-1953): A Clinical Historical Note</i> , 24 ARCHIVES OF SEXUAL BEHAVIOR 73 (1995).....	10-12
LGBT History Month, October: 31 days, 31 icons: Alfred Kinsey, sex researcher..	8
Marcia Carteret M.Ed., <i>The Role of Religion in Providing Culturally Responsive Care</i> , Dimensions of Culture Newsletter, Fall 2011	29
Mary Beckman, <i>Crime, Culpability and the Adolescent Brain</i> , 305 SCIENCE 596 (July 30, 2004),.....	25, 27
Milton Diamond, Ph.D. & H. Keith Sigmundson, M.D., <i>Sex Reassignment at Birth: A Long Term Review and Clinical Implications</i> , 151 ARCHIVES OF PEDIATRICS AND ADOLESCENT MEDICINE 298 (1997).....	14
Miriam Grossman, M.D., YOU’RE TEACHING MY CHILD WHAT? (2009).	17, 18
NATIONAL CENTER FOR EDUCATION STATISTICS U.S. DEPARTMENT OF EDUCATION, AND BUREAU OF JUSTICE STATISTICS, OFFICE OF JUSTICE PROGRAMS, U.S. DEPARTMENT OF JUSTICE INDICATORS OF SCHOOL CRIME AND SAFETY: 2013 (2014).....	24
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Paul R. McHugh, <i>Transgender Surgery Isn’t the Solution</i> , WALL STREET JOURNAL, June 12, 2014	14, 20, 22
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Richard P. Fitzgibbons, M.D. <i>et. al.</i> , <i>The Psychopathology of “Sex Reassignment” Surgery Assessing Its Medical, Psychological, and Ethical Appropriateness</i> , THE NATIONAL CATHOLIC BIOETHICS QUARTERLY, 97 (Spring 2009)	16-19

Ritch C. Savin-Williams & Kara Joyner, <i>The Dubious Assessment of Gay, Lesbian, and Bisexual Adolescents of Add Health</i> , 43 ARCH SEX BEHAV. 413 (2014).....	21
Samantha Levy, <i>Trans-Forming Notions of Equal Protection: The Gender Identity Class</i> , 12 TEMP. POL. & CIV. RTS. L. REV. 141 (2002).....	28
Susan Bradley, AFFECT REGULATION AND THE DEVELOPMENT OF PSYCHOPATHOLOGY (2003)	18
Transcript, NOVA, <i>Sex Unknown</i> , PBS October 30, 2001	14
U.S. Department of Education, Office for Civil Rights, <i>Sexual Harassment: It's Not Academic</i> (2008),	1, 4, 5
U.S. Department of Education, Office of Civil Rights, <i>Title IX Resource Guide</i> , (April 15, 2015)	3, 4
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W. Byne and B. Parsons, <i>Human Sexual Orientation: The Biologic Theories Reappraised</i> , 50 ARCHIVES OF GENERAL PSYCHIATRY, 228-39 (1993).....	16
Walt Heyer, <i>Public School LGBT Programs Don't Just Trample Parental Rights. They Also Put Kids at Risk</i> , PUBLIC DISCOURSE, June 13, 2015	22
World Net Daily, <i>When Sex Changes Are Involuntary</i> , November 17, 2001 ..	12, 13

Treatises

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INTEREST OF AMICI

As described in more detail in Amici's Motion for Leave to File Amicus Curiae Brief, Amici are the Liberty Center for Child Protection and its Director, Judith Reisman, Ph.D. Amici have developed a body of research regarding the history and consequences of replacing biological sex with gender identity, and in particular, the harm posed to all students.

Amici's research summarized in this Brief offers the Court context for the arguments being presented by the parties and demonstrates that Appellee has acted in the best interests of the children of Gloucester County by maintaining sex-separate private facilities based upon biological sex. Amici respectfully submit this Brief for the Court's consideration.

ARGUMENT

I. THE SCHOOL BOARD'S POLICY RESTRICTING ACCESS TO SEX-SEPARATE BATHROOMS BASED UPON BIOLOGICAL SEX COMPLIES WITH THE LETTER AND SPIRIT OF TITLE IX.

In keeping with its obligations under Title IX, the School Board is providing "a safe and nondiscriminatory environment for all students"¹ by limiting the use of sex-segregated restrooms and locker rooms to the corresponding biological sexes. Despite directing that school boards provide safe environments for all students, the Department of Education ("DOE") is now insisting that districts such as Gloucester

¹ U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS, SEXUAL HARASSMENT: IT'S NOT ACADEMIC 10 (2008), <http://www2.ed.gov/about/offices/list/ocr/docs/ocrshpam.pdf>.

County disregard the safety of, and discriminate against, virtually all students in order to accommodate one or perhaps a few students who “identify” as something other than their biological sex.² In other words, under the guise of enforcing Title IX, DOE is pressuring school districts to violate the statute or lose federal funding.³ As did the district court here, a district court in Pennsylvania rejected the DOE’s claim that Title IX extends to transgenderism:

Title IX does not prohibit discrimination on the basis of transgender itself because transgender is not a protected characteristic under the statute. The Court has found no federal court case that has squarely decided this issue in the Title IX context. However, nearly every federal court that has considered the question in the Title VII context has found that transgendered individuals are not a protected class under Title VII.

Johnston v. University of Pittsburgh, 97 F.Supp.3d 657, 674-75 (W.D. Penn. 2015).

Title IX’s language does not provide a basis for a transgender status claim. On a plain reading of the statute, the term “on the basis of sex” in Title IX means nothing more than male and female, under the traditional binary conception of sex consistent with one’s birth or biological sex.

Id. at 676.

This Court’s narrow view of the meaning of the statutory term “sex” is also supported by the legislative history and application of Title IX in this Circuit’s case law. Congress’s purpose in enacting Title IX was

² See Statement of Interest of United States, *G.G. v. Gloucester County School Board*, 2015 WL 5560190 (E.D. Va. 2015) (District Court Dkt. #28).

³ *Id.*

to establish equal educational opportunities for women and men in education.

Id. at 677. “Thus, while Title IX was intended to provide equal educational opportunities for both sexes, the statute does not necessarily prohibit sex-segregated spaces in educational settings.” *Id.* In fact, as the district court here concluded, the DOE’s own regulations “expressly allow schools to provide separate bathroom facilities based upon sex, so long as the bathrooms are comparable.” *G.G. v. Gloucester County School Board*, 2015 WL 5560190 at *9 (E.D. Va. 2015). Nevertheless, DOE baldly states, without any attribution or authority, that “Title IX protects students, employees, applicants for admission and employment, and other persons from all forms of sex discrimination, including discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity.”⁴ The Department of Justice (“DOJ”) likewise asserts in conclusory fashion that Title IX supposedly “protects all persons, including transgender students, from sex discrimination.”⁵ DOJ also argues that “[t]he term “sex” as it is used in Title IX is broad and encompasses gender identity, including transgender status.”⁶ But DOJ also does not cite to any

⁴ U.S. DEPARTMENT OF EDUCATION, OFFICE OF CIVIL RIGHTS, TITLE IX RESOURCE GUIDE, 2 (April 15, 2015), <http://www2.ed.gov/about/offices/list/ocr/docs/dcl-title-ix-coordinators-guide-201504.pdf>.

⁵ *Id.* at 5.

⁶ *Id.* at 6.

precedent expressly including “gender identity” as a protected class, extrapolating instead its expansion of the law from cases finding that sex discrimination included discrimination based upon sex stereotyping.⁷

DOE and DOJ’s insistence that Title IX includes “gender identity” as a protected class is not only wholly unsubstantiated by precedent, but also actually facilitates creation of the very kind of hostile learning environment the agencies are supposed to be protecting against. DOE explains that sex-based discrimination under Title IX includes sexual harassment, which is defined as conduct that 1) is sexual in nature; 2) is unwelcome; and 3) denies or limits a student's ability to participate in or benefit from a school's education program.⁸ As well as including overt sexual advances, images or words, sexual harassment also includes creation of a “hostile environment that is sufficiently serious to deny or limit a student's ability to participate in or benefit from the school’s program.”⁹ Examples of a “hostile environment” include the presence of pictures, objects or gestures, or past or present actions that make it difficult or impossible for a student to concentrate on his studies or create fear so that a student cannot attend class.¹⁰ Again, DOE

⁷ *Id.* at 6-7.

⁸ U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS, SEXUAL HARASSMENT: IT’S NOT ACADEMIC, 3 (2008), <http://www2.ed.gov/about/offices/list/ocr/docs/ocrshpam.pdf>.

⁹ *Id.* at 6.

¹⁰ *Id.* at 7-8.

also cautions schools that they must provide a safe and nondiscriminatory environment for **all** students.¹¹

Requiring that schools include “gender identity” in non-discrimination policies and open private facilities for use based on “identity” not biological sex imposes a Hobson’s choice upon schools who are charged with providing a safe and nondiscriminatory environment for all students. In order to satisfy transgender students’ requests to use facilities designated for their “gender identity” instead of their biological sex will in some cases mean that individuals who have male features, including genitalia, but who “identify” as female will have to be permitted to use the girls’ restroom or locker room, or, as in this case, vice versa. While that will purportedly make the school environment less hostile to the “transgender” student, it will make it more hostile to girls who are distressed and feel unsafe undressing and using the restroom for private, excretory activities in the presence of students with male bodies and vice versa. Students who object will face charges of discrimination or even aggression from those whose presence they find objectionable.

The district court properly rejected Appellee’s arguments and the DOJ’s “statement of interest” when it dismissed the Title IX claim. *G.G. v. Gloucester County School Board*, 2015 WL 5560190 at *9 (E.D. Va. 2015). The School Board

¹¹ *Id.* at 10.

is complying with the letter and the spirit of Title IX by limiting access to private facilities to those of corresponding biological sex.

II. THE SCHOOL BOARD IS ACTING IN THE BEST INTEREST OF ALL DISTRICT STUDENTS BY MAINTAINING SEX-SEPARATE FACILITIES BASED UPON BIOLOGICAL SEX.

Appellee is acting in the best interest of all district students by limiting access to sex-separate facilities on the basis of biological sex. The Supreme Court has recognized that school authorities have a responsibility, “acting in loco parentis, to protect children” from sexually explicit materials and other harms to health and safety. *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 684 (1986). In this case, Appellee is protecting the privacy, safety and psychological well-being of all students, including Appellant, by rejecting calls to adopt an artificial social construct that not only contradicts science but actually disregards biology, psychology and social development in favor of pseudoscience built upon child sexual abuse and fraud (see below). Importantly, Appellee is also protecting the safety and well-being of students who have already experienced sexual victimization who will be further traumatized by even the thought of having to encounter or worse, confront, a person who is physically the opposite sex in private spaces.¹² Facing such trauma will by definition create a hostile and dangerous

¹² Research shows that 50 percent to as many as 94 percent of sexual assault victims suffer from post-traumatic stress disorder or PTSD. Kaitlin A. Chivers-Wilson, *Sexual assault and posttraumatic stress disorder: A review of the*

environment for those students, and Appellee is fulfilling its obligations to all children of Gloucester County by retaining the policy of sex-separate facilities based upon biological sex instead of “gender identity.”

A. Adopting “Gender Identity” Instead Of Biological Sex For School Facilities Means Abandoning Scientific Reality In Favor Of An Artificial Social Construct Built Upon Child Sexual Abuse And Fraud.

The American College of Pediatricians (“ACP”) recently summarized the pseudo-scientific history and underlying worldview which has hijacked society and fostered the transgender movement that asks children to suspend reality and ignore biology in favor of an amorphous concept of “gender identity:”

...When I look at the origins of the transgender movement I find John Money and Harry Benjamin, both bisexuals, who failed to condemn pedophiles, and freely associated with them....When I look at sex education in schools, I see Alfred C. Kinsey, and his colleagues, and I see pansexuality and an embracing of pedophilia, along with bestiality.¹³

The sexually deviant origins of the effort to abandon the concept of biological sex and adopt a fluid concept of “gender identity” establish why this Court must

biological, psychological and sociological factors and treatments, 9 MCGILL JOURNAL OF MEDICINE, 111, 112 (2006). PTSD, in turn, includes hyper-arousal, avoidance and re-experiencing, which makes these victims particularly vulnerable to re-victimization under circumstances that might not affect people who are not sexual assault victims. Heather J. Risser, *et. al.*, *PTSD as a Mediator of Sexual Revictimization: The Role of Reexperiencing, Avoidance, and Arousal Symptoms*, 19 JOURNAL OF TRAUMATIC STRESS, 687, 694-95 (2006).

¹³ Dr. Veritas, “P” for Pedophile, AMERICAN COLLEGE OF PEDIATRICIANS, June 15, 2015, <http://www.acpeds.org/p-for-pedophile>.

uphold the district court and reject Appellant's and DOE/DOJ's argument that defining private spaces by biological sex is somehow discriminatory. As the ACP noted above, the genesis of the movement to redefine biological sex as "gender identity" is Alfred Kinsey's books on male and female sexuality,¹⁴ which purported to show that sexuality is fluid and that children are sexual from birth.¹⁵ Still today, "Alfred Kinsey is known as the father of sexology. His groundbreaking and controversial research on human sexuality profoundly influenced social and cultural values."¹⁶ Kinsey's "groundbreaking" research, and in particular his claim that children are sexual from birth, was founded upon systematic sexual abuse of children, as young as two months, which was chronicled in five tables printed in the *Male* volume.¹⁷ One of the tables, Table 34, is reprinted below:

¹⁴ Alfred Kinsey, *et. al.*, SEXUAL BEHAVIOR IN THE HUMAN MALE (1948) ("Kinsey Male"); Alfred Kinsey, *et. al.*, SEXUAL BEHAVIOR IN THE HUMAN FEMALE (1953) ("Kinsey Female").

¹⁵ Judith A. Reisman, *et. al.* KINSEY, SEX & FRAUD, 19 (1990); Kinsey Male, at 175-80; 638-39.

¹⁶ See LGBT History Month, October: 31 days, 31 icons: Alfred Kinsey, sex researcher, <http://lgbthistorymonth.com/alfred-kinsey>.

¹⁷ Kinsey Male, at 175-80.

AGE	NO. OF ORGASMS	TIME INVOLVED	AGE	NO. OF ORGASMS	TIME INVOLVED
5 mon.	3	?	11 yr.	11	1 hr.
11 mon.	10	1 hr.	11 yr.	19	1 hr.
11 mon.	14	38 min.	12 yr.	7	3 hr.
2 yr.	{ 7	9 min.	12 yr.	{ 3	3 min.
	{ 11	65 min.		{ 9	2 hr.
2½ yr.	4	2 min.	12 yr.	12	2 hr.
4 yr.	6	5 min.	12 yr.	15	1 hr.
4 yr.	17	10 hr.	13 yr.	7	24 min.
4 yr.	26	24 hr.	13 yr.	8	2½ hr.
7 yr.	7	3 hr.	13 yr.	9	8 hr.
8 yr.	8	2 hr.		{ 3	70 sec.
9 yr.	7	68 min.	13 yr.	{ 11	8 hr.
10 yr.	9	52 min.		{ 26	24 hr.
10 yr.	14	24 hr.	14 yr.	11	4 hr.

Table 34. Examples of multiple orgasm in pre-adolescent males

Some instances of higher frequencies.

Kinsey also developed what has become known as the Kinsey Scale to depict his impressions that sexuality, and in particular what is today known as sexual orientation, is fluid and changeable through life.¹⁸ Armed with this scale and “data,” Kinsey’s supporters inaugurated the fields of “sexology” and “sex

¹⁸ *Id.* at 638-39.

education” and his ideas became firmly ensconced in academia, media, law, social science, medicine, behavioral health and other cultural institutions.¹⁹

Among those who utilized Kinsey’s research to transform society were the architects of “gender” theory: Drs. Harry Benjamin and John Money. Dr. Harry Benjamin is known as the “Father of Transsexualism.”²⁰ Benjamin developed what became known as the Harry Benjamin International Association Standards of Care for Gender Identity Disorders, which are still used today.²¹ Benjamin’s tenure as the “Father of Transsexualism” began when Kinsey referred a patient to him in 1948.²² Benjamin’s 1948 introduction to Rene Guyon’s book, *Ethics of Sexual Acts* illustrates the worldview underlying the movement to replace biological sex with “gender identity” in schools: “Guyon’s message of sexual freedom is a clarion call to all victims of anti-sexualism and puritanical terror.”²³ Benjamin called for wholesale revision of legal and moral codes based upon Kinsey’s work:

¹⁹ See, Judith Reisman, Ph.D., *STOLEN HONOR, STOLEN INNOCENCE*, 187-261 (2013); Judith A. Reisman, Ph.D., *SEXUAL SABOTAGE*, 76-300 (2010).

²⁰ Leah Cahan Schaefer & Connie Christine Wheeler, *Harry Benjamin’s First Ten Cases (1938-1953): A Clinical Historical Note*, 24 *ARCHIVES OF SEXUAL BEHAVIOR* 73, 74 (1995).

²¹ See *Hare v. State, Dep’t of Human Servs.*, 666 N.W.2d 427, 432 (Minn. Ct. App. 2003), in which the Minnesota Department of Human Services cited to the Benjamin standards as authority for defining the term “gender reassignment.”

²² Schaefer & Wheeler, at 74.

²³ Rene Guyon, *THE ETHICS OF SEXUAL ACTS* (Second Printing, Alfred A. Knopf, 1948), Harry Benjamin, M.D., *Introduction to the Second Printing, id.* at a, b.

Unless we want to close our eyes to the truth or imprison ninety-five per cent of our male population, we must completely revise our legal and moral codes. Faced by Guyon's disconcerting candor (and also by Kinsey's unimpeachable figures) even the liberal-minded scientist, believing himself quite free of prejudices, may suddenly discover that he too has retained childhood inhibitions and that his reasoning is impaired by some deeply embedded, ecclesiastical taboos and subconscious repressions. It comes probably a jolt to many, even open-minded people, when they realize that chastity cannot be a virtue because it is not a natural state.²⁴

It is that worldview that Benjamin carried forward as he spent 30 years treating patients suffering from "gender dysphoria."²⁵ Benjamin developed strategies creating an atmosphere of acceptance designed to normalize the idea that gender is fluid. "Instead of the conventional two sexes, symbolized by Adam and Eve with their anatomical differences, there may be seven or even more – that is to say, at least seven separate concepts and manifestations of sex, each of more or less vital importance to the individual."²⁶ In other words, sexual differences should be defined as "gender identity," not biological sex. At the same time, Benjamin could not deny the realities of biology:

[T]he surgeon's knife can remove the male organs and also the internal organs of the female,not a 'change of sex,' but a change of secondary sex characteristics...²⁷

Man is male and woman is female because of his or her genetic inheritance...The Y spells male for the offspring, the X female....²⁸

²⁴ *Id.* at i.

²⁵ Schaefer & Wheeler, at 74.

²⁶ Harry Benjamin, M.D., *7 Kinds of Sex*. 27 SEXOLOGY: SEX SCIENCE ILLUSTRATED 436, 437 (Feb. 1961).

²⁷ *Id.* at 438.

Sometimes, but not always, the history of transvestites and transsexualists reveals that as young children they were raised, wholly or partly, as if they belonged to the opposite sex. Their sex of rearing was wrong. The boy was brought up as a girl and the girl as a boy (tomboy).²⁹

Still, Benjamin claimed that “[i]nstead of treating the patient, might it not be wiser and more sensible to treat society educationally so that logic, understanding and compassion might prevail?”³⁰ As did Kinsey, Benjamin blamed societal attitudes, and particularly Judeo-Christian principles, instead of early sexual trauma and mental illness for the distress suffered by “transsexuals.”

Kinsey’s and Benjamin’s animus for Judeo-Christian sexual mores was shared by Dr. John Money of Johns Hopkins University. In fact, Money is described as hating Judeo-Christian, “repressive religious structures...the anti-masturbatory, anti-sexual fervor.”³¹ Money coined the term “gender role” to overcome the confusion between “the sex of the genitalia and their activities [and] the nonerotic and nongenital sex roles and activities that are prescribed culturally and historically.”³² By 1967 there were two terms—“gender role” and “gender

²⁸ *Id.* at 440.

²⁹ *Id.* at 441.

³⁰ Schaefer & Wheeler, at 91.

³¹ *When Sex Changes Are Involuntary*, WORLD NET DAILY, November 17, 2001, <http://www.wnd.com/2001/11/11692>.

³² John Money, *Gender Role, Gender Identity, Core Gender Identity: Usage and Definition of Terms*, JOURNAL OF THE AMERICAN ACADEMY OF PSYCHOANALYSIS 397, 398 (1973).

identity,” with “gender role” used to refer to empirically observable behavior and “gender identity” to psychological beliefs.³³ Money defined “gender identity” as:

The sameness, unity and persistence of one’s individuality as male, female (or ambivalent), to a greater or lesser degree, especially as experienced in self-awareness and behavior. Gender identity is the private experience of gender role and gender role is the public expression of gender identity.³⁴

Money pioneered a theory that, with surgery, behavioral modification and hormones sex could be redefined,³⁵ and he established the Johns Hopkins clinic for transsexual surgeries.³⁶ Money extrapolated information he obtained from studying intersex³⁷ infants to conclude that all newborns were psychosexual blank slates.³⁸

He wrote:

[T]he conclusion that emerges is that sexual behavior and orientation as male or female does not have an innate, instinctive basis. In place of a theory of instinctive masculinity or femininity which is innate, the evidence of hermaphroditism lends support to a conception that, psychologically, sexuality is undifferentiated at birth and that it becomes differentiated as masculine or feminine in the course of the various experiences of growing up.³⁹

³³ *Id.*

³⁴ *Id.* at 398-99, citing John Money, ed. *SEX RESEARCH RECENT DEVELOPMENTS* (1965).

³⁵ *When Sex Changes Are Involuntary.*

³⁶ John Colapinto, *AS NATURE MADE HIM* 25 (2000).

³⁷ “Intersex” or “hermaphrodite” individuals are those who are born with both ovarian and testicular tissues and so have ambiguous genitalia. Ida Dox, Biagio Melloni & Gilbert Eisner, *MELLONI’S ILLUSTRATED MEDICAL DICTIONARY*, 199 (1979).

³⁸ Colapinto at 31-32.

³⁹ *Id.* at 33-34.

Based upon the concept that children are psychosexually neutral at birth, Money developed medical protocols in which infants born with ambiguous genitalia were surgically altered and raised to correspond to their altered genitalia.⁴⁰

Kinsey's, Benjamin's and Money's theories have been discredited,⁴¹ as studies have established that "sex change" is biologically impossible, and efforts to medically and surgically "re-assign sex" exacerbate and promote instead of prevent and treat a mental disorder.⁴² A 1979 investigation of Money's clinic at Johns Hopkins revealed that "sex reassignment surgery" did not lessen the psycho-social problems of adults who identified as "transgender," and the clinic, along with other university based clinics, stopped performing the surgeries.⁴³ Dr. Paul McHugh, the chief psychiatrist at Johns Hopkins Hospital who requested the study in 1979, said the research found that adult recipients of "sex reassignment surgery"... "had much the same problems with relationships, work, and emotions as before. The

⁴⁰ NOVA, *Sex Unknown*, (PBS October 30, 2001), <http://www.pbs.org/wgbh/nova/transcripts/2813gender.html>.

⁴¹ See e.g., Milton Diamond, Ph.D. & H. Keith Sigmundson, M.D., *Sex Reassignment at Birth: A Long Term Review and Clinical Implications*, 151 ARCHIVES OF PEDIATRICS AND ADOLESCENT MEDICINE 298 (1997)(raising questions about Money's work); Paul R. McHugh, *Transgender Surgery Isn't the Solution*, WALL STREET JOURNAL, June 12, 2014, <http://www.wsj.com/articles/paul-mchugh-transgender-surgery-isnt-the-solution-1402615120> (describing why he closed the clinic started by Money).

⁴² McHugh, *Transgender Surgery Isn't the Solution*.

⁴³ *Id.*

hope that they would emerge now from their emotional difficulties to flourish psychologically had not been fulfilled.”⁴⁴

We saw the results as demonstrating that just as these men enjoyed cross-dressing as women before the operation so they enjoyed cross-living after it. But they were no better in their psychological integration or any easier to live with. With these facts in hand I concluded that Hopkins was fundamentally cooperating with a mental illness. We psychiatrists, I thought, would do better to concentrate on trying to fix their minds and not their genitalia.⁴⁵

Similarly, Johns Hopkins stopped performing sex reassignment surgeries on infants after a long-term study of male infants who had genital abnormalities and whose parents were persuaded to surgically “remake” them and raise them as girls.⁴⁶ The study showed:

that such re-engineered males were almost never comfortable as females once they became aware of themselves and the world. From the start of their active play life, they behaved spontaneously like boys and were obviously different from their sisters and other girls, enjoying rough-and-tumble games but not dolls and “playing house.” Later on, most of those individuals who learned that they were actually genetic males wished to reconstitute their lives as males (some even asked for surgical reconstruction and male hormone replacement)—and all this despite the earnest efforts by their parents to treat them as girls.⁴⁷

⁴⁴ Paul R. McHugh, *Surgical Sex: Why We Stopped Doing Sex Change Operations*, FIRST THINGS (November 2004), <http://www.firstthings.com/article/2004/11/surgicalsex>.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

As a result of the study, Dr. McHugh and his colleagues concluded that “human sexual identity is mostly built into our constitution by the genes we inherit and the embryogenesis we undergo.”⁴⁸

The sense of disquiet in one’s sexual role—known as “sexual dysphoria”—can occur in males raised as females in an effort to correct an infantile genital abnormality or can be “socially induced in apparently constitutionally normal males, in association with (and presumably prompted by) serious behavioral aberrations, amongst which are conflicted homosexual orientations and the remarkable male deviation now called autogynephilia.”⁴⁹

Subsequent studies have confirmed that just as there is no evidence of a “gay gene,”⁵⁰ there is also no evidence that “gender identity disorder” is an innate condition justifying drastic medical intervention such as hormonal treatments and genital mutilation.⁵¹ Scientists have determined that “[a] baby is conceived genetically male or female. Prenatal brain development is influenced by the same

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Jeffrey Satinover, M.D., *HOMOSEXUALITY AND THE POLITICS OF TRUTH*, 113-17 (1996), citing W. Byne & B. Parsons, *Human Sexual Orientation: The Biologic Theories Reappraised*, 50 *ARCHIVES OF GENERAL PSYCHIATRY* 228-39 (1993).

⁵¹ Richard P. Fitzgibbons, M.D. *et. al.*, *The Psychopathology of “Sex Reassignment” Surgery Assessing Its Medical, Psychological, and Ethical Appropriateness*, *THE NATIONAL CATHOLIC BIOETHICS QUARTERLY* 97, 103 (Spring 2009): There is no scientific evidence to support the conclusion that gender identity disorder is biological in origin.

hormones that trigger the development of the reproductive organs.”⁵² “The sex of each individual is encoded in the genes—XX if female, XY if male.”⁵³

Indeed, since Drs. Benjamin and Money developed their theories, the biotechnology revolution has given researchers the ability to scrutinize and map DNA.⁵⁴ This mapping has proven that there are distinct “male” and “female” blueprints created from the moment of conception.⁵⁵ “The striking quantity and diversity of sex-related influences on brain function indicate that the still widespread assumption that sex influences are negligible cannot be justified and probably retards progress in our field.”⁵⁶ In fact, scientists now know that the DNA blueprint for a male versus a female brain is established eight weeks after conception.⁵⁷ The hormonal changes that create a male versus a female brain are permanently determined at that time, in utero, even though many of the effects will not manifest until puberty.⁵⁸ Therefore, contrary to Dr. Money’s theory, “we’re not psychological hermaphrodites at birth, potentially masculine or feminine—we are

⁵² *Id.*

⁵³ *Id.* at 118.

⁵⁴ Miriam Grossman, M.D., *YOU’RE TEACHING MY CHILD WHAT?* 163-66 (2009).

⁵⁵ *Id.* at 164.

⁵⁶ *Id.*, citing Larry Cahill, *Why Sex Matters for Neuroscience*, 7 *NATURE REVIEWS NEUROSCIENCE* 477-84 (2006).

⁵⁷ *Id.* at 165.

⁵⁸ *Id.*

wired for one or the other in the womb.”⁵⁹ Consequently, as Dr. McHugh’s studies found, those who express a sense of “disquiet” between their biological sex and their “sexual identity” are suffering from a mental disorder, not an innate abnormality, and should be treated with therapy and care, not with medical and surgical mutilation as intervention.

Similarly, long-term studies of children have found that “gender identity disorder” or “GID” is the result of dysfunctional family relationships creating anxiety in an emotionally vulnerable child.⁶⁰ “When anxiety occurs at such a sensitive developmental period, the child may choose behaviors common to the other sex, because in his mind these will make him more secure or more valued.”⁶¹ Often the child is complimented or otherwise affirmed for his cross-gender behaviors, which feeds the idea that the child would be socially accepted and happy if he could become the other gender.⁶² “[T]hese are not happy, well-adjusted boys who just happen to think they are girls. They are troubled children from

⁵⁹ *Id.* at 168.

⁶⁰ Fitzgibbons at 103, citing Kenneth J. Zucker & Susan J. Bradley, GENDER IDENTITY DISORDER AND PSYCHOSEXUAL PROBLEMS IN CHILDREN AND ADOLESCENTS, 262–263 (1995) and Susan Bradley, AFFECT REGULATION AND THE DEVELOPMENT OF PSYCHOPATHOLOGY 201 (2003).

⁶¹ *Id.* at 104.

⁶² *Id.* at 113.

troubled homes.”⁶³ Studies show that at least 40 percent, and in some cases as many as 60 percent of those who seek hormonal treatments and “sex reassignment surgery” have been abused as children.⁶⁴ Scientists working with such children have found “that a sizeable number of children and their families achieve a great deal of change. In these cases, the gender identity disorder resolves fully.”⁶⁵

In other words, the evidence shows that “[i]t is physiologically impossible to change a person’s sex.”⁶⁶

Surgery can only create the appearance of the other sex. George Burou, a Casablancon physician who has operated on over seven hundred American men, explained, “I don’t change men into women. I transform male genitals into genitals that have a female aspect. All the rest is in the patient’s mind.”⁶⁷

However, once the hormone treatments and surgeries are completed, patients rarely get the psychological therapy they need and the mental health issues remain, as shown in two European studies which tracked patients who received sex reassignment surgery. The 2011 studies in the Netherlands and Sweden showed that those who underwent sex reassignment surgery and hormone treatments had increased mental illness and a much higher than average rate of premature death.

⁶³ *Id.* at 106, citing Kenneth J. Zucker *et al.*, *Psychopathology in the Parents of Boys with Gender Identity Disorder*, 42.1 JOURNAL OF THE AMERICAN ACADEMY OF CHILD AND ADOLESCENT PSYCHIATRY 2–4. (January 2003).

⁶⁴ *Id.* at 114.

⁶⁵ *Id.* at 107, citing Zucker, GENDER IDENTITY DISORDER, at 282.

⁶⁶ *Id.* at 118.

⁶⁷ *Id.*

The Netherlands study followed patients at a university gender clinic for an average of 18.5 years.⁶⁸ The study found that the patients' "total mortality was 51% higher than in the general population, mainly from increased mortality rates due to suicide, acquired immunodeficiency syndrome, cardiovascular disease, drug abuse, and unknown cause."⁶⁹ The Swedish study by the Karolinska Institute followed 324 people who had sex-reassignment surgery for up to 30 years.⁷⁰ The study found "[m]ortality from suicide was strikingly high among sex-reassigned persons, also after adjustment for prior psychiatric morbidity."⁷¹ The study found significantly higher rates of in-patient psychiatric hospitalizations, even when accounting for pre-existing psychiatric problems.⁷²

In addition, Vanderbilt University and London's Portman Clinic tracked children who reported transgender feelings but who did not undergo medical or surgical treatment. In both cases, 70 to 80 percent of the children spontaneously lost those feelings.⁷³

⁶⁸ Henk Asscheman, *et. al.*, *A long-term follow-up study of mortality in transsexuals receiving treatment with cross-sex hormones*, 164 EUROPEAN JOURNAL OF ENDOCRINOLOGY, 635 (2011).

⁶⁹ *Id.*

⁷⁰ Cecilia Dhejne, *et. al.* *Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden*, 6 PLoS ONE e16885. doi:10.1371/journal.pone.0016885, available at <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0016885>.

⁷¹ *Id.*

⁷² *Id.*

⁷³ McHugh, *Transgender Surgery Isn't the Solution*.

One of the major studies cited as evidence of the number of non-heterosexual youth, the National Longitudinal Study of Adolescent Health (Add Health), when examined over time has shown similar changes.⁷⁴ Researchers found that 80 percent of boys and 50 percent of girls who reported that they had at least some same-sex attractions when they were teenagers said they were only attracted to the opposite sex by their late 20s.⁷⁵ Researchers examined various explanations for the significant changes and concluded that they were due to “by-and-large, heterosexual adolescents who were either confused and did not understand the measure of romantic attraction or jokesters who decided, for reasons we were not able to detect, to dishonestly report their sexuality.”⁷⁶ This phenomenon points to the wisdom of Appellee’s policy to continue to use biological sex as a criterion for admission to sex-separate facilities, instead of adopting an artificial construct that most children do not embrace once they have reached puberty.

As Dr. McHugh observed, “[g]iven that close to 80% of such children would abandon their confusion and grow naturally into adult life if untreated, these

⁷⁴ Ritch C. Savin-Williams & Kara Joyner, *The Dubious Assessment of Gay, Lesbian, and Bisexual Adolescents of Add Health*, 43 ARCH SEX BEHAV. 413 (2014).

⁷⁵ *Id.* at 418.

⁷⁶ *Id.* at 420.

medical interventions come close to child abuse. A better way to help these children: with devoted parenting.”⁷⁷

B. School Environments Will Be Demonstrably More Hostile If Biological Sex Is Replaced With “Gender Identity.”

Empirical studies and scientific advancements have demonstrated that efforts to “redefine” gender and disassociate it from biological sex create an environment that is more harmful to students than is an environment in which biological sex remains the standard.⁷⁸ Evidence shows that children are actually put at risk when schools encourage them to identify themselves as “gay” or “transgender” at an early age.⁷⁹ In fact, for each year children delay labeling themselves as “LGBT,” their suicide risk is reduced by 20 percent.⁸⁰ In addition, studies have shown that up to 94 percent of children who identify as “transgender” in adolescence grow out of their desire to change genders if they are not pressured by society to undergo treatment.⁸¹

Sexual assaults by teachers, coaches and other trusted school employees are already significant issues in elementary and secondary schools. The problem will be exacerbated if biological sex is replaced with “gender identity” so that private

⁷⁷ McHugh, *Transgender Surgery Isn't the Solution*.

⁷⁸ See Walt Heyer, *Public School LGBT Programs Don't Just Trample Parental Rights. They Also Put Kids at Risk*. PUBLIC DISCOURSE, June 13, 2015, <http://www.thepublicdiscourse.com/2015/06/15118/>.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

spaces are limited only by how one “identifies” himself.⁸² In a 2004 study prepared for the DOE, Dr. Charol Shakeshaft found that that 9.6 percent of all students in grades 8 to 11 reported “unwanted” contact and/or noncontact educator sexual misconduct.⁸³ Thus, in 2004 more than 4.5 million students were subject to sexual misconduct by an employee of a school sometime between kindergarten and 12th grade.⁸⁴ A survey released in early 2015 found 781 reports of teacher-student sexual misconduct in the media throughout the United States in 2014.⁸⁵

Despite this acknowledgement that children are at risk of sexual harassment, bullying and abuse from teachers, coaches and other staff, the DOE insists that schools expand the sexually charged environment by requiring instruction in “gender fluidity,” “gender identity” and “gender expression,” which necessitates additional discussion of sexual feelings by children who might already be confused or even traumatized due to a history of abuse. Coercing schools to add “gender identity” to non-discrimination policies, and specifically forcing districts to open up private spaces to those who “identify” as a particular gender regardless of their

⁸² U.S. DEPARTMENT OF EDUCATION, OFFICE OF THE UNDER SECRETARY, EDUCATOR SEXUAL MISCONDUCT: A SYNTHESIS OF EXISTING LITERATURE, 2004 (prepared by Dr. Charol Shakeshaft).

⁸³ *Id.* at 17-18.

⁸⁴ *Id.* at 18.

⁸⁵ Ashley Collman, *From coaches sleeping with athletes to substitutes sexting with 15-year-olds: Alabama tops list of states with highest rate of teachers busted for sex with students ...an average of two a MONTH*, UK DAILY MAIL, January 15, 2015, <http://www.dailymail.co.uk/news/article-2912155/Alabama-s-shame-s-named-state-highest-rate-teacher-student-sex-cases-nation.html#ixzz3m1fTLgh4>.

biological sex provides potential predators with greater access to potential victims as they are less likely to be questioned for being in the “wrong bathroom.”

Students will also be at greater risk for assault by fellow students. Dr. Shakeshaft’s report found that 79 percent of the sexual misconduct reported at elementary and secondary schools involved student perpetrators and student victims.⁸⁶ DOE reports show that students are more likely to be victimized at school than away from school.⁸⁷ The recent high profile trial of a former prep school student accused of raping a 15-year-old freshman girl as part of a “senior salute tradition” reveals how sexual misconduct has become part of school “culture.”⁸⁸

Adopting “gender identity” policies that permit access to private spaces on the basis of self-proclaimed perceptions will provide such predators with greater access to potential victims. Predators will be better able to enter the private spaces of opposite sex students without detection. School personnel and students are

⁸⁶ EDUCATOR SEXUAL MISCONDUCT, at 18.

⁸⁷ NATIONAL CENTER FOR EDUCATION STATISTICS U.S. DEPARTMENT OF EDUCATION, AND BUREAU OF JUSTICE STATISTICS, OFFICE OF JUSTICE PROGRAMS, U.S. DEPARTMENT OF JUSTICE INDICATORS OF SCHOOL CRIME AND SAFETY: 2013 10-16 (2014), <http://nces.ed.gov/pubs2014/2014042.pdf>.

⁸⁸ Jennifer Levitz, *Rape Trial Casts Spotlight on New Hampshire Prep School, Case looks at alleged student ‘tradition’ at St. Paul’s School*, WALL STREET JOURNAL, August 25, 2015, <http://www.wsj.com/articles/rape-trial-casts-spotlight-on-new-hampshire-prep-school-1440515074>.

unlikely to report previously unauthorized students in private spaces because of concerns about being accused of discrimination.

Replacing biological sex with “gender identity” requires the very organizations and individuals who are obligated to protect children from sexual exploitation and assault—schools and governmental agencies—to actually create the very kind of toxic and hostile learning environment that they are obligated to prevent. By contrast, Appellee is fulfilling its obligation to the children of Gloucester County by adhering to biological sex as the determinative factor for access to sex-separate facilities.

C. Replacing Biological Sex With “Gender Identity” Will Threaten Children’s Physical And Mental Health.

Injecting the confusion and conflict of gender identity into the educational environment will assault young brains that are not sufficiently developed to understand sexual stimuli, let alone undefined, discordant concepts such as “gender identity,” “gender expression,” and “gender fluidity.”⁸⁹ Children first recognize the physical differences between boys and girls when they are toddlers.⁹⁰ Toddlers between one and one-half to two years of age can and do label their peers correctly

⁸⁹ Mary Beckman, *Crime, Culpability and the Adolescent Brain*, 305 SCIENCE 596 (July 30, 2004), citing neuroscientific developments which establish that the portions of the brain responsible for decision-making and risk-taking are not fully developed until ages 20-25. *See also* Jay N Giedd, *et. al.*, *The Teen Brain: Insights from Neuroimaging*, 42 JOURNAL OF ADOLESCENT HEALTH 335–43 (2008).

⁹⁰ Alice Sterling Honig, *Psychosexual Development in Infants and Young Children: Implications for Caregivers*, 55 YOUNG CHILDREN 70, 73 (2000).

by sex.⁹¹ Child development research has also shown that by age three children can answer the question of whether they are a boy or a girl correctly 75 percent of the time.⁹² It is an important part of children's cognitive development to categorize people as male or female in order to understand social relationships.⁹³ It is critical for young children to clearly understand the differences between boys and girls in order to attain a mature understanding of human relationships.⁹⁴ Replacing the objective and accurate understandings of "male" and "female" with undefined concepts of "gender identity" denies young children the ability to develop a baseline from which to order their social relationships. Without a foundation, children will become confused and anxious, even traumatized, as they will not know how to interact with others. This will be particularly true if they are instructed that they cannot refer to other people by sex-specific pronouns and cannot ask someone if he/she is a boy or girl for fear of violating a school policy against "harassing" other students based on "gender identity."

Advances in digital imaging have given neuroscientists unprecedented access to the developmental processes of the human brain. Scientists have been able to digitally map how the brain develops, and have found that the portions of the brain that permit processing of complex concepts, such as "gender identity,"

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.* at 74.

⁹⁴ *Id.*

evaluating risk and making informed decisions are the last to mature, usually in the early twenties.⁹⁵ Using increasingly sophisticated technology, neuroscientists have developed a more detailed understanding of how deeply and completely certain stimuli, including disgust, sexual arousal, fear and shame can hijack cognitive and memory-making processes and cause children to mislabel emotions.⁹⁶ Children become hyper-aroused and create coping mechanisms which cause confusion, emotional and developmental problems.⁹⁷

Psychiatrist Keith Ablow has discussed the potentially traumatic consequences of instructing children to deny biological reality.⁹⁸ “The mere fact that teachers and administrators will have to explain to kindergarten and first grade students that they might see girls in the boys’ restroom, or boys in the girls’ locker room, but that those really aren’t kids of the gender they appear to be, could do harm to their own developing sense of self by suggesting to them that their gender is fluid, that it well might change for them, too, and that they should be on the lookout for signs that they want to switch.”⁹⁹

⁹⁵ Beckman at 596. *See also*, Jay N. Giedd *et al.*, *Brain Development during Childhood and Adolescence: A Longitudinal MRI Study*, 2 NATURE NEUROSCIENCE, 861–63 (October 1999).

⁹⁶ *See* Giedd, *Brain Development during Childhood*, 861-63.

⁹⁷ *Id.*

⁹⁸ Keith Ablow, M.D., *All wrong in California, girls can use urinals in the boys' restroom*, Fox News, January 14, 2014, <http://www.foxnews.com/opinion/2014/01/14/allwrongincaliforniagirlscanuseurinalsinboysrestroom.html>

⁹⁹ *Id.*

Telling third grade or seventh grade or tenth grade children, adolescents or teenagers that this issue is settled to such an extent that they should feel comfortable with females walking in and seeing them urinating or pulling their pants down to change into football gear is a lie that can steal their ability to trust adults, shake their faith in any form of reality, traumatize them by shaming them and kindle waves of completely unnecessary anxiety related to whether they should be doing some sort of emotional inventory to determine whether they're really going to turn into men, once and for all, or find out they've been suppressing the truth that they're actually women. I don't see anything but toxicity from the notion of a person with female anatomy feeling free to use the urinal in the boys' rest room while a boy stands next to her and uses one, too....

[S]haking the certain knowledge in boys and girls of whether they can count on not being seen naked by the opposite gender, not to mention whether they are themselves actually the gender they thought they were, is a powerful, devious and pathological way to weaken them by making them question their sense of safety, security and certainty about anything and everything.¹⁰⁰

Children will explicitly and implicitly be told to question the truths they learn at home regarding their own identities as boys and girls. Students will be told that they should disregard their physical and psychological makeup and what their parents tell them and embrace the idea that "gender" is an "identity" that incorporates not only physical appearance, but also "a person's internal, deeply felt sense of being either male or female."¹⁰¹

Children whose cultural background teaches that a person with female genitals is a female and a person with male genitals is male, which comports with

¹⁰⁰ *Id.*

¹⁰¹ Samantha Levy, *Trans-Forming Notions of Equal Protection: The Gender Identity Class*, 12 TEMP. POL. & CIV. RTS. L. REV. 141,143 (2002).

biological reality, will be told by their teachers, librarians, counselors, etc., that this is not actually the case. Their parents provide them with the facts as established by medical science, but when they attend school, other trusted adults will tell them that “gender” is different from “sex” and that some people look male but are not male because they do not “feel” male, while some others look female but are not female because they do not “feel” female. Children will be confused and distressed by the conflict between what they are taught at home and what they are taught at school.

Students’ cultural values about privacy and modesty with people of the opposite sex will be in conflict with the values imposed upon them by school administrators who insist that students who are physically male but “feel” like they are female must be welcomed into females’ private spaces without question. Meanwhile, children whose cultural beliefs are violated by the presence of the opposite sex in their private spaces¹⁰² receive the message that their family, cultural, and religious values and cultural identity, and their psychological distress, are “bigoted.” Furthermore, students are told that no matter how distressed they might feel, they cannot say anything about someone of the opposite sex invading

¹⁰² In many cultures and religious traditions, such as Islam, adherents are prohibited from seeing a person of the opposite sex, other than a spouse, unclothed. See, e.g., Marcia Carteret M.Ed., *The Role of Religion in Providing Culturally Responsive Care*, Dimensions of Culture Newsletter, Fall 2011, <http://www.dimensionsofculture.com/2011/09/the-role-of-religion-in-providing-culturally-responsive-care/>.

their private spaces because that might “discriminate” on the basis of gender identity, which would result in public humiliation, condemnation or suspension.

CONCLUSION

Appellee’s policy of restricting bathroom access to biological sex complies with Title IX and protects the health, safety and rights of privacy for all students in the district. Appellee has appropriately rejected calls to move away from the scientifically sound definition of biological sex to embrace an artificial social construct based upon fraud and sexual abuse of children.

For these reasons, the district court's decision dismissing the case should be affirmed.

Dated: November 30, 2015.

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**CERTIFICATE OF COMPLIANCE WITH
FEDERAL RULE OF APPELLATE PROCEDURE 32(a)(7)(C)**

I hereby certify that this brief complies with the type-face and volume limitations set forth in Federal Rule of Appellate Procedure 32(a)(7). The brief contains 6,812 words.

/s/ Mary E. McAlister
Mary E. McAlister

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically on November 30, 2015 via the Court's CM/ECF system.

Service will be effectuated upon all parties and counsel of record via the Court's electronic notification system.

/s/ Mary E. McAlister
Mary E. McAlister