No. A19-1944

State of Minnesota
In Court of Appeals

N.H.,

Respondent,

and Rebecca Lucero,
Commissioner of the Minnesota Department of Human Rights,

Plaintiff-Intervenor, Respondent,

v.

Anoka-Hennepin School District No. 11,

Petitioner.

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AMICI IDENTITY, INTEREST, AND AUTHORITY TO FILE

The Minnesota State Bar Association ("MSBA")[1] is the largest statewide organization representing the legal profession. It is made up of approximately 14,000 members and represents more than half of Minnesota's licensed attorneys.[2]

Diversity and inclusion are core values to the MSBA. As an organization, the MSBA recognizes the power of diversity in persons, viewpoints, beliefs, and human understanding. To this end, the MSBA has adopted two principal goals as relating to diversity and inclusion: (1) making the MSBA a model for diversity within all areas of the organization; and (2) supporting the work of Minnesota's affinity bar associations (*e.g.*, Minnesota Lavender Bar Association, Minnesota Association of Black Lawyers, Minnesota Hispanic Bar Associations, etc.). The MSBA therefore has an institutional interest in ensuring that the interpretation of Minnesota law (including the Minnesota

[1] Pursuant to Minn. R. Civ. P. 129.03, the MSBA certifies that (1) no counsel for any party in this action authored this brief, in whole or in part, and (2) no person or entity other than *amicus curiae*, its members, and its counsel made any monetary contribution to the preparation or submission of this brief.

[2] MSBA membership also includes members of the judiciary. Neither this brief nor the decision to file it should be interpreted to reflect the view of any judicial member of the MSBA. No judicial member participated in the adoption or endorsement of any positions in this brief, and the brief was not circulated to any judicial member of the MSBA prior to filing.

Human Rights Act and the Minnesota Constitution) fosters and promotes these concepts of diversity and inclusion.

Additionally, as the State's largest organization representing the legal profession, the MSBA has a vested interest in addressing the achievement gap in the State's educational system. "The legal profession does not only exist in the courtroom and the job of lawyers extends far from the courthouse steps. . . . If nothing else, the legal profession can no longer see the education crises as some other profession's problem, especially because the legal profession has shaped the boundaries in which other professions operate." Edward Williams, *Diversity, The Legal Profession, and the American Education Crisis: Why the Failure to Adequately Educate American Minorities is an Ethical Concern for the Legal Profession*, 26 GEORGETOWN J. OF LEGAL ETHICS, 1107, 1120 (2013).

On December 19, 2019, the MSBA petitioned this court for leave to participate in this matter as *amicus*. That petition was granted on January 2, 2020.

ARGUMENT

I. DISCRIMINATION AGAINST TRANSGENDER PERSONS VIOLATES MINNESOTA'S COMMITMENT TO PROVIDING EQUAL ACCESS TO EDUCATIONAL OPPORTUNITIES AND FULL PARTICIPATION IN PUBLIC LIFE.

The promise of educational opportunity and the goal of eliminating discrimination based on invidious stereotypes has a deep constitutional and statutory pedigree in Minnesota. The Education Clause of the Minnesota Constitution, for example, gives special solicitude to public education, and recognizes the connection between access to education and full and vigorous participation in one's duties as a public citizen. A "thorough and efficient system of public schools" is a constitutional requirement in Minnesota because, as the Clause explains, the "stability of the republican form of government depend[s] mainly on the intelligence of the people." Minn. Const. art. XIII, § 1. The provision of public education is critical to the State's well-being, so that "all may be enabled to acquire an education which will fit them to discharge intelligently their duties as citizens of the republic." *Bd. of Educ. of Sauk Ctr. v. Moore*, 17 Minn. 412, 416 (Minn. 1871).

These values are echoed in Minnesota's civil rights and antidiscrimination laws, which are nearly as old as the state itself. In 1885, the Legislature passed the Minnesota Human Rights Act's ("MHRA") first ancestor, "An Act to Protect All Citizens in their Civil and Legal Rights." The

act provided that people in Minnesota "of every race and color" are entitled to the "full and equal enjoyment" of public accommodations and services "regardless of any previous condition of servitude." Act of March 7, 1885, ch. 224, § 1, 1885 Minn. Laws 295, 296. In the nearly 135 years since, Minnesota has consistently expanded the MHRA's bulwark against discrimination to other settings and other vulnerable minority groups. Act of July 1,1955, ch. 516, 1955 Minn. Laws 802, 802-12 (adding prohibition against housing discrimination); Act of June 6, 1969, ch. 975, 1969 Minn. Laws 1934, 1937 (adding prohibition against sex discrimination); Act of May 25, 1967, ch. 897, 1967 Minn. Laws 1932, 1938-39 (adding prohibition against discrimination in education); Act of April 1, 1993, ch. 22, 1993 Minn. Laws 121, 122 (adding prohibition against sexual-orientation discrimination). The 1993 amendment specifically included protections for transgender persons in educational settings.

Discrimination against transgendered persons in the educational environment violates Minnesota's core values, which demonstrate a commitment to providing equal access to the benefits of education and equal opportunity for full participation in public life to all Minnesotans, regardless of their individual gender identity. These values are well established in the history and text of the MHRA.

a. For the past 50 years, the Minnesota Legislature has sought to promote equality in education and eliminate harmful stereotypes from the school environment.

In 1967, the Minnesota Legislature enacted a sweeping overhaul of the state's anti-discrimination enforcement, replacing the State Commission Against Discrimination and Governor's Human Rights Commission with the first executive-branch department dedicated to discrimination issues, the Minnesota Department of Human Rights.[3] *See* Act of May 25, 1967, ch. 897, 1967 Minn. Laws 1932. Included in, and inextricably connected to, the 1967 legislation was the Legislature's prohibition against discrimination in public schools. *See id.* at 1938-39 (making discrimination in "educational institutions" an unfair discriminatory practice).

Minnesota's effort to provide an educational environment free from discrimination was a bicameral legislative project, and the final bill passed both houses with overwhelming support. J. Minn. Senate, 65th Leg., at 2489 (noting passage in the Senate on May 19, 1967 by a vote of 55-2); J. Minn. House of Reps., 65th Leg., at 3257 (noting re-passage on May 20, 1967 by a

[3] MINNESOTA AGENCIES: INFORMATION ON MINNESOTA STATE AGENCIES, BOARDS, TASK FORCES, AND COMMISSIONS, https://www.leg.state.mn.us/lrl/agencies/detail?AgencyID=2028 (last visited Feb. 5, 2020) (noting predecessor commissions to the Minnesota Department of Human Rights).

vote of 112-6). The language prohibiting discrimination in education remains part of the MHRA and is virtually unchanged.[4]

The Legislature's commitment to removing harmful and stigmatizing discriminatory treatment from the school environment did not exist in a vacuum. Rather, it was one voice in a larger national conversation recognizing that equality in education is a baseline to fulfilling the promise that every person has a right to access and participate publicly in the life of the community. By 1970, the United States House Special Subcommittee on Education had held congressional hearings, which led to the passage of Title IX. Those hearings shined a bright light on how discrimination in the formative school environment harms the greater community as well as the individual victim, because she or he is deprived of the opportunity to "ma[ke] the[] maximum possible contribution to improving the quality of life in the Nation." *Discrimination Against Women: Hearings on § 805 of H.R. 16098 Before the Spec. Subcomm. On Educ. Of the H. Comm. on Educ. & Labor*, 91st Cong., at 622 (1970). Senator Birch Bayh, who sponsored Title IX, recognized the link between unequal educational opportunities and discrimination in the

[4] The language of the 1967 act reads: "It is an unfair discriminatory practice: (1) to discriminate in any manner in the full utilization of or benefit from any educational institution, or the services rendered thereby to any individual because of race, color, creed, religion, or national origin." *Id.* As noted above, Minnesota Statutes section 363A was amended to prohibit discrimination on the basis of sex and sexual orientation in 1969 and 1993, respectively.

professional world: "The field of education is just one of many areas where differential treatment . . . has been documented but because education provides access to jobs and the financial security, discrimination here is doubly destructive." 118 Cong. Rec. at 5806-5807.

The MHRA embodies Minnesota's commitment to preventing the harmful effects that discrimination in schools has on individual and community prosperity. Replacing the earlier act's focus on "foster[ing] equal employment," the 1967 act states that "as a guide to the interpretation and application of this chapter, . . . the public policy of this state is to *secure for individuals in this state, freedom from discrimination . . . in connection with . . . education.* Such discrimination threatens the rights and privileges of the inhabitants of this state and menaces the institutions and foundations of democracy." Act of May 25, 1967, ch. 897, 1967 Minn. Laws 1932, 1950. Minnesota courts, in giving effect to the MHRA, have recognized that the act's antidiscrimination provisions "seek to enforce legislative policies that aim to 'change society's biases or prejudices' that emerge from 'society's discriminatory tendencies.'" *Daniel v. City of Minneapolis*, 923 N.W.2d 637, 651 (Minn. 2019) (quoting *Wirig v. Kinney Shoe Corp.*, 461 N.W.2d 374, 378 (Minn. 1990)).

b. The MHRA was amended in 1993 to thwart deeply entrenched societal prejudices against sexual minorities.

The Legislature amended the MHRA in 1993 to prohibit sexual-orientation discrimination in any setting, and discrimination against students in public schools was an integral aspect of the bill.

The definition of sexual orientation encompasses transgendered persons, as "sexual orientation" includes "having or being perceived as having a self-image or identity not traditionally associated with one's biological maleness or femaleness."[5] Minn. Stat. § 363A.03, subd. 44. This language has not changed from the initial bill that was introduced.[6]

The 1993 legislation grew out of a 1991 report issued by Governor Arne Carlson's Task Force on Lesbian and Gay Minnesotans. Although the term "transgender" was not yet in common nomenclature in 1993, it is clear that a cornerstone of the Task Force's report was its recommendation to add sexual orientation as a prohibited classification under the MHRA because it would "do

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[5] *See* H.F. 585, 78th Minn. Leg., § 2 (1993); S.F. 444, 78th Minn. Leg., § 2 (1993).

[6] In fact, the MHRA's definition of sexual orientation closely mirrors the language in a 1975 Minneapolis antidiscrimination ordinance, which is considered to be the first city ordinance to extend civil rights protections to transgender people in the United States. Emma Margolin, *How Minneapolis became the first city in the country to pass trans protections*, MSNBC (June 3, 2016, 1:25 p.m.) http://www.msnbc.com/msnbc/how-minneapolis-became-the-first-city-the-country-pass-trans-protections.

much to eliminate or reduce" the "wide-spread" problem of discrimination based on sexual orientation. Report of the Governor's Task Force on Lesbian and Gay Minnesotans, 6-7 (1991) ("Report"). Sexual-orientation discrimination in schools was one of the issues that received specific attention by the Task Force. The Report observed that "schools in Minnesota, K-12 and postsecondary, play a crucial role in developing attitudes and in providing an atmosphere for learning and for acceptance." Report at 21; *see also id.* at 23 ("The public schools can and must take the lead in developing a climate where diversity is respected and protected.").

According to a survey of sexual minorities in the Twin Cities, attached to the Report, fifty percent of respondents said they were aware of their sexual identity before they were 13 years old. Northstar Project, OUT AND OUTED, A SURVEY OF THE TWIN CITIES GAY & LESBIAN COMMUNITY, at 23. It explained that if sexual identity was "not adequately dealt with, these issues may lead to self-damaging behaviors, such as suicide, eating disorders, and chemical dependency." *Id.* at 24.

Testimony provided by both public officials and private individuals on the 1993 amendments focused on the need to ensure that unfounded, unfair stereotypes and attitudes about sexual orientation, including transgendered persons, would not be perpetuated by cultural institutions like the public-school system. *See, e.g.,* Hearing on S.F. 444, S. Jud. Comm. 78th Minn. Leg.,

March 1, 1993 (audio recording) (comments of Tracy Elftmann, Deputy Commissioner of the Department of Human Rights, noting that the legislation was aimed at eliminating "environment[s] of bias and injustice," at timestamp 15:30-16:30)[7]; Hearing on H.F. 1585, H. Jud. Comm., 78th Minn. Leg., March 3, 1993 (audio recording) (comments of Judy Ulseth describing need to remove her son from public schools and enroll him in out-of-state private boarding school due to unchecked bullying and discrimination, at timestamp 1:00-2:30); *id*. (audio recording) (comments of Nancy Biehl, Violence Prevention Planner, Office of Public Safety, describing violence against transgendered woman, at timestamp 30:00-:32:30); *id.* (audio recording) (comments of Todd Otis, DFL Chairman, expressing need for legislation to prohibit discrimination in schools, at timestamp 35:00); *see also* Letter from Hubert H. Humphrey, to Allan H. Spear, Minnesota State Senator (Mar. 1, 1993) ("We cannot tolerate discrimination in employment, education, housing and public accommodations unrelated to job or contract performance. Basic civil rights protections for gays and lesbians . . . would promote an atmosphere of tolerance."); Joint Religious Legislative Coalition Position on Human Rights With Regard to Sexual Orientation (Feb. 25, 1993) ("Civil authority exists to protect the dignity of all persons and the claim each of us has to basic human rights. No person,

[7] Audio recordings of the House and Senate Judiciary Committee meetings are publicly available at https://www.leg.state.mn.us/.

regardless of ethnicity, national origin, color, religion, gender, age, disability, or sexual orientation should be discriminated against or unjustly barred from opportunities to meet food, shelter, employment, education, and other basic needs.")

c. The MHRA unambiguously prohibits school policies that prevent transgender students from using facilities consistent with their gender identity.

The MHRA makes it "an unfair discriminatory practice to discriminate in any manner in the full utilization of or benefit from any educational institution, or the services rendered thereby to any person because of . . . sexual orientation." Minn. Stat. § 363A.13, subd. 1. The statutory definition of sexual orientation unambiguously encompasses transgendered persons. Minn. Stat. § 363A.03, subd. 44 (emphasis added).[8]

As the district court recognized, under a straightforward statutory analysis, Petitioner's decision to require N.H. to use an "enhanced privacy locker room" is impermissible discrimination because of his sexual orientation.

[8] The Legislature was aware, and intended, these protections to extend broadly. Opponents of the 1993 amendments objected to the definition of "sexual orientation," but an amendment to narrow the definition was proposed and rejected on the floor of the Senate. *See* Hearing on H.F. 1585, H. Jud. Comm., 78th Minn. Leg., March 3, 1993 (audio recording) (comments of comments of Dr. Wallace Alcorn, at timestamp 37:00-37:30); *id.* (audio recording) (comments of attorney Chuck Scheffler, at timestamp 43:00-43:30); *see also* J. Minn. Senate, 78th Minn. Leg., 588 (motion to amend S.F. 444 to narrow its definition of "sexual orientation" denied).

(*See* Order Denying Motion to Dismiss and Granting the Motion to Intervene, at 15–16.) Requiring N.H. to use a segregated locker room separates N.H. from other biologically male students who identify as boys based solely on his "sexual orientation"—*i.e.,* because N.H. "has, or is perceived as having, a self-image or identity not associated with his biological sex." Minn. Stat. § 363A.03, subd. 44. And in light of the legislative history detailed above, the district court appropriately concluded that the ruling in *Goins v. West Group*, 635 N.W.2d 717 (Minn. 2001), has no bearing on the MHRA's protections against discrimination in the school setting.

Based on the factual allegations, which must be accepted as true at this stage, the school's decision has prevented N.H. from full, uninhibited participation in school life and N.H. is not able to obtain full utilization and benefit of the education institution.[9] In short, because Appellant segregates N.H. based on a classification protected by the MHRA—sexual orientation—the policy is unlawful.

Policies that make distinctions based on whether the person's identity matches his or her biological maleness or femaleness are exactly the forms of discrimination the MHRA is directed at, because at bottom, they give effect to widely-held stereotypes that "deprive[] persons of their individual dignity."

[9] The district court concluded that N.H. "pled sufficient facts to assert a claim that Defendant's actions violated Minn. Stat. [§] 363A.13, subd. 1." (*Id.*)

Roberts v. U.S. Jaycees, 468 U.S. 609, 625 (1984). History has taught that even well-intended distinctions must be viewed with suspicion, as they all too frequently carry a double-edge. *See, e.g. Weinberger v. Wiesenfeld*, 420 U.S. 636, 643 (1975) (striking down Social Security Act provision as based on the "archaic and overbroad generalization that male workers' earnings are vital to the support of their families while the earnings of female wage earners do not significantly contribute to their families' support" (quotations omitted)). The purpose of the MHRA is, and always been, to break this cycle: to "abolish[] the pernicious societal prejudices and biases" against vulnerable minority populations that "impede the equal opportunity due them in our democracy." *Wirig*, 461 N.W.2d at 378.

II. EQUAL ACCESS TO EDUCATIONAL OPPORTUNITIES—INCLUDING ACCESS FOR TRANSGENDER PERSONS—IS CRITICAL TO EXPANDING ACCESS TO PROFESSIONAL LIFE AND HELPING THE LEGAL PROFESSION BETTER REFLECT AND SERVE THE PEOPLE OF MINNESOTA.

The United States Supreme Court has long recognized that fostering inclusiveness and diversity are signal achievements of America's public schools. For example, in the context of race-conscious admission programs at public universities, the Court noted that bringing together students from disparate backgrounds and with different experiences fosters a "robust exchange of ideas [and] exposure to differing cultures." *Fisher v. University of Tex. at Austin*, 136 S. Ct. 2198, 2211 (2016). By encouraging such exchange,

schools may directly "promote[] learning outcomes." *Grutter v. Bollinger*, 539 U.S. 306, 330 (2003). Similarly, the mission statement of Minnesota's Education Code provides "[t]he mission of public education in Minnesota, a system for lifelong learning, is to ensure individual academic achievement, an informed citizenry, and a highly productive workforce," noting that the system "focuses on the learner [and] promotes and values diversity." Minn. Stat. § 120A.03. The state's public schools are charged with "serv[ing] the needs of the students by cooperating with the students' parents and legal guardians to develop the students' intellectual capabilities and lifework skills in a safe and positive environment." *Id.*

The lessons about tolerance and respect imparted by a diverse school community are crucial to well-functioning pluralistic society. Students who are exposed to those with different experiences are more likely to appreciate and respect those differences and to gain an understanding about which differences matter—and which do not. *See Fisher*, 136 S. Ct. at 2210 (noting that racially integrated classrooms "promote[] cross-racial understanding, help[] to break down racial stereotypes, and enable[] students to better understand persons of different races" (quoting *Grutter*, 539 U.S. at 330)).

Just as the Supreme Court has recognized the role of schools in exposing students to diversity and teaching inclusion, it has long emphasized the role of schools in strengthening the fabric of civil society. Justice Frankfurter

observed that public schools are "[d]esigned to serve as perhaps the most powerful agency for promoting cohesion among a heterogeneous democratic people." *Illinois ex rel. McCollum v. Board of Educ.*, 333 U.S. 203, 216 (1948) (Frankfurter, J., concurring); *see also id.* at 231 (calling schools "at once the symbol of our democracy and the most pervasive means for promoting our common destiny"). In the decades since, the Court has emphasized—repeatedly and emphatically—that schools are the crucible in which good citizenship and common identity are forged. *See, e.g., School Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 241-242 (1963) ("[T]he public schools serve a uniquely public function: the training of American citizens in an atmosphere free of parochial, divisive, or separatist influences of any sort—an atmosphere in which children may assimilate a heritage common to all American groups and religions.") (Brennan, J., concurring); *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 782 (2007) (Kennedy, J., concurring) ("The Nation's schools strive to teach that our strength comes from people of different races, creeds, and cultures uniting in commitment to the freedom of all."); *State v. Newstrom*, 371 N.W.2d 525, 532 (Minn. 1985) (noting that the Court has recognized "that the circumstances under which a child is educated can and do impart to children social messages of their claims to equality and self-respect which 'may affect their hearts and minds in a way unlikely ever to be undone'" (citing *Brown*, 374 U.S. at 494, 74 S. Ct. at 691)). Threaded

together with the Court's emphasis on the benefits of diversity and inclusion, this line of jurisprudence sends a clear message: The school system remains our most powerful tool both for teaching respect for others' differences and for teaching that the embrace of differences is what brings unity to the diverse communities of our state.

The Court has also observed that the benefits of diversity and inclusion in schools do not end with a student's formal education. The lessons learned at a formative age play a critical role in students' ability to succeed as they navigate adulthood. Specifically, the Court has observed that "student body diversity . . . better prepares students for an increasingly diverse workforce and society." *Fisher*, 136 S. Ct. at 2210 (quoting *Grutter*, 539 U.S. at 330). "These benefits are not theoretical but real, as major American businesses have made clear that the skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints." *Grutter*, 539 U.S. at 330; *see also*; *Regents of Univ. of California v. Bakke*, 438 U.S. 265, 313, 98 S. Ct. 2733, 2760 (1978) ("[I]t is not too much to say that the nation's future depends upon leaders trained through wide exposure to the ideas and mores of students as diverse as this Nation of many peoples." (quotation omitted.)).

The benefits of diversity and inclusion in education are apparent in the context of the legal profession. Lawyers serve as zealous advocates for a wide

variety of clients. Policies that promote inclusion in education—from the elementary level through law school—ensure that justice in our legal system is available to all and improve the ability of lawyers to effectively serve the interests of those with different experiences. *See Grutter*, 539 U.S. at 332 ("[L]aw schools 'cannot be effective in isolation from the individuals and institutions with which the law interacts.'" (quoting *Sweatt v. Painter*, 339 U.S. 629, 634 (1950))). Similarly, inclusive policies can help students belonging to otherwise marginalized groups set their academic sights higher, thus improving the flow through the educational pipeline to the legal profession. *See* Rhode & Ricca, *Diversity in the Legal Profession: Perspectives from Managing Partners & General Counsel*, 83 FORDHAM L. REV. 2483, 2492-2493 (2015) (noting that increasing intake of diverse groups of law students improves diversity in the legal profession).

Diversity among members of the legal profession improves the ability of the profession to serve its clients. A bar that draws from a broad cross-section of the community "is the richer for the diversity of background and experience of its participants. It is the poorer, in terms of evaluating what is at stake and the impact of its judgments, if its members . . . are all cast from the same mold." Justice Ruth Bader Ginsburg, *The Supreme Court: A Place for Women*, 32 SW. U. L. REV. 189, 190 (2003); *see also* ABA Presidential Initiative Comm'n on Diversity, *Diversity in the Legal Profession: The Next Steps* 5 (2010) ("[A]

diverse legal profession is more just, productive and intelligent because diversity, both cognitive and cultural, often leads to better questions, analyses, solutions, and processes.").

The Supreme Court's decades of equality jurisprudence provide the following lesson: Excluding transgender students from the full scope of the school community harms both those students and their classmates by undercutting the mission of the school system and by hindering students as they enter the workforce. Exclusion and division of those students from other members of the student body impair their education—in terms of their academic achievement, educational aspirations, and sense of safety at school. That exclusion harms the entire school community as well. Rather than reaping the benefits of diversity and inclusion, students are deprived of the full expression of their peers' points of view and of the opportunity to break down stereotypes. Counter to the mission of schools as a critical force in teaching tolerance, understanding, and respect, the public, differential treatment of certain students based on gender stereotyping can serve to reinforce prejudices inconsistent with Minnesota's commitment to equality.

These negative effects only compound over time, entrenching disadvantages faced by transgender people in the workplace and depriving non-transgender people of the skills they need to successfully navigate diverse workplace relationships. Just as racial diversity enables workers to bridge

cultural gaps, so too does inclusion of openly transgender people allow workers to better understand transgender and gender-nonconforming people that they encounter in their professional lives.

III. THE STABILITY AND FAIRNESS OF MINNESOTA'S LEGAL SYSTEM DEPENDS ON EQUAL ACCESS TO EDUCATIONAL OPPORTUNITIES FOR MINORITY GROUPS SUCH AS TRANSGENDER PERSONS.

As important as it is to minority students—including transgender students—to have equal access to education, it is also critical to our legal system as a whole. The "stability of the republican form of government depend[s] mainly on the intelligence of the people." Minn. Const. art. XIII, § 1. An educated population is better equipped to vote, to sit on juries, and to participate in local government.

Research shows that inclusive school policies make a meaningful difference in ensuring transgender people are able to participate fully in public life by, among other things, preventing significant harms that may inhibit transgender people, making it more likely transgender person will achieve educational and professional goals, and promoting better awareness among non-transgender people.

At their ugliest, policies that promote segregation can put transgender youth at risk and harm the community by setting the stage for mistreatment and violence. A 2019 study showed that transgender youth are significantly more likely to be sexually assaulted in communities in which they are

segregated from bathrooms and locker rooms that comport with their gender identities. *See* Gabriel R. Murchison, Madina Agénor, Sari L. Reisner, and Ryan J. Watson, *School Restroom and Locker Room Restrictions and Sexual Assault Risk Among Transgender Youth,* Vol. 143, Issue 6 Pediatrics, e20182902 (June 2019). Policies that promote mistreatment and exclusion detract from the experience of every student and undermine the public school system's goal of nurturing an inclusive and just society.

The path from inclusive school policies, by contrast, leads to a visibly open and effective justice system. Students whose identities are embraced at school are more likely to succeed there and to move on to higher education, and those who see respect modeled are more likely to act with respect themselves. When these people become community leaders, policymakers, or join the bar (or the bench), our system of government is then better equipped to see past stereotypes and to understand how the experiences of individual people shape their needs.

Inclusive policies also make it more likely that transgender students will pursue higher education. Transgender students who are not fully included in their school communities are less likely to pursue post-secondary education, including law school. Greytak et al., Gay, Lesbian & Straight Educ. Network, *Harsh Realities: The Experiences of Transgender Youth in our Nation's Schools* (2009). This deprives the legal profession of a critical voice capable of speaking

up for those marginalized for their gender. Similarly, other attorneys will be less exposed to—and thus less understanding of—transgender or gender-nonconforming people and the issues they face, leaving them less equipped to represent clients facing these problems or to fully understand the impact of the claims these clients ask them to pursue. *See* Eric H. Holder, Jr., *Fifty-Third Cardozo Memorial Lecture: The Importance of Diversity in the Legal Profession*, 23 CARDOZO L. REV. 2241, 2247 (2002) (noting that lack of diversity within the legal profession "adversely impacts our ability as lawyers to serve those most in need of assistance").

The need for empathic representation is particularly strong in the transgender community, as many transgender people have experienced discrimination and, in turn, expect hostility from the legal system (and even from their lawyers). *See* Transgender Law Ctr., *Tips for Lawyers Working with Transgender Clients & Coworkers* (2016) (noting that transgender clients "are not fundamentally different from non-transgender clients" but that their experiences with discrimination—possibly leading to "war[iness] about opening up to a lawyer"—can be a barrier to effective representation, even where the representation is not about the client's transgender status); National Ctr. for Lesbian Rights, *Tips for Legal Advocates Working with Lesbian, Gay, Bisexual, & Transgender Clients* (2013) ("Often, LGBT people will assume that a lawyer's office is unfriendly to LGBT people until he or she

receives a clear indication otherwise."). But by fostering understanding and respect for transgender and gender-nonconforming people from an early age, schools can ensure that the legal system is better prepared to handle the needs of these clients—both through the inclusion of more transgender people in law schools and the broader profession and through the fostering of a bar better able to see past stereotypes.

The school district's policies here inflict a distinct discriminatory injury on N.H. by segregating him to a separate locker room. A change to a more inclusive policy will protect N.H. But, importantly, it will also foster growth for all N.H.'s classmates and prepares them for a public life that will include other minority groups, including transgender people.

Respectfully submitted,

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CERTIFICATION OF BRIEF LENGTH

I hereby certify that this brief conforms with the requirements of Minn. R. Civ. App. P. 132.01, subd. 1 and 3, for a brief produced with proportional font. The length of this brief is 4,907 words, as calculated by the word count of the word-processing software used to prepare the brief. The brief was prepared using the Word application in Microsoft Office 365.

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