No. 22-1786

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

A.C., a minor child by his next friend mother and legal guardian, M.C.,

Plaintiff-Appellee,

v.

METROPOLITAN SCHOOL DISTRICT OF MARTINSVILLE, and PRINCIPAL, JOHN R. WOODEN MIDDLE SCHOOL, in his official capacity,

Defendants-Appellants.

On Appeal from the United States District Court for the Southern District of Indiana, Case No. 1:21-cv-2965-TWP-MPB
The Honorable Tanya Walton-Pratt, Chief Judge

BRIEF FOR *AMICUS CURIAE* INDIANA YOUTH GROUP & GLSEN

Joseph J. Wardenski
WARDENSKI P.C.
195 Plymouth Street, Suite 519
Brooklyn, NY 11201
(347) 913-3311
joe@wardenskilaw.com

Shannon Minter
Christopher Stoll
Asaf Orr
NATIONAL CENTER FOR LESBIAN RIGHTS
870 Market Street, Suite 370
San Francisco, California 94102
(415) 392-6257
sminter@nclrights.org
cstoll@nclrights.org
aorr@nclrights.org

Attorneys for Amici Curiae Indiana Youth Group & GLSEN

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 22-1786

Short Caption: A.C. v. Metropolitan School District of Martinsville

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

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(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):

Indiana Youth Group; GLSEN

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Wardenski P.C.; National Center for Lesbian Rights

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

None

ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

None

(4) Provide information required by FRAP 26.1(b) Organizational Victims in Criminal Cases:

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(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

n/a

Attorney's Signature: /s/ Joseph J. Wardenski Date: 8/2/2022

Attorney's Printed Name: Joseph J. Wardenski

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☑ **No** ☐

Address: Wardenski P.C., 195 Plymouth Street, Suite 519, Brooklyn, NY 11201

Phone Number: (347) 913-3311 Fax Number: (347) 467-7237

E Mail Address: joe@wardenskilaw.com

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n/a

Attorney's Signature: /s/ Shannon Minter Date: 8/2/2022

Attorney's Printed Name: Shannon Minter

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

Address: National Center for Lesbian Rights, 870 Market Street, Suite 370, San Francisco, CA 94102

Phone Number: (415) 392-6257 Fax Number: (415) 392-8442

E Mail Address: sminter@nclrights.org

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n/a

Attorney's Signature: /s/ Christopher Stoll Date: 8/2/2022

Attorney's Printed Name: Christopher Stoll

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

Address: National Center for Lesbian Rights, 870 Market Street, Suite 370, San Francisco, CA 94102

Phone Number: (415) 392-6257 Fax Number: (415) 392-8442

E Mail Address: cstoll@nclrights.org

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n/a

Attorney's Signature: /s/ Asaf Orr Date: 8/2/2022

Attorney's Printed Name: Asaf Orr

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

Address: National Center for Lesbian Rights, 870 Market Street, Suite 370, San Francisco, CA 94102

Phone Number: (415) 392-6257 Fax Number: (415) 392-8442

E Mail Address: aorr@nclrights.org

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

INTEREST OF AMICI CURIAE[1]

Amici are two nonprofit organizations dedicated to promoting the safety and well-being of transgender youth and providing support to their schools, families, and allies.

Indiana Youth Group (IYG) has been serving Indiana's LGBTQ+ youth and young adult population since 1987, working with people ages 12 through 24. IYG offers basic needs services, including food (it has a food pantry and also provides snacks and hot meals), clothing, showers, and laundry. IYG's rapid rehousing program for queer youth is the largest in the state. It offers case management services and counseling, supports student-led school groups (GSAs) throughout the state, and advocates statewide for the rights of Hoosier LGBTQ+ youth and young adults. IYG partners with legal advocates to help the youth and their families change their legal names and gender markers. And it offers a

[1] Counsel for Amici Curiae obtained consent from counsel of all parties prior to filing this brief. No party's counsel authored this brief in whole or in part, no party or party's counsel contributed money that was intended to fund preparing or submitting this brief, and no one other than Amici Curiae, their members, or their counsel contributed money intended to fund preparing or submitting this brief.

safe space and emotional support for this marginalized group of young people who so badly need it.

GLSEN is a non-profit education organization that works with students, parents, and educators across the country and around the world to make all schools safe and affirming for all students, regardless of sexual orientation, gender identity, or gender expression. Since 1990, GLSEN has partnered with educators, schools, and districts across the United States to develop, evaluate, and promulgate LGBTQ+-supportive policies, programs, and practices for K-12 schools. GLSEN's work has contributed to measurable improvements in the school experience of lesbian, gay, bisexual, and transgender students in all fifty states, and the organization is now recognized globally as a key contributor to educational access and opportunity for at-risk youth. GLSEN's expertise and experience informs the work of legislators and policymakers at all levels in the U.S., and individual schools and districts via our chapter network of 43 Chapters in 30 states. GLSEN also conducts quantitative and qualitative research on the experience of LGBTQ+ students in K-12 schools, and engagement and advocacy in support of a research-based public policy agenda. In addition, GLSEN's student leadership

development and student organizing programs have reached hundreds of thousands of students in all fifty states, mobilized via events like GLSEN's Day of Silence and Solidarity Week or through GLSEN youth summits or student club support programs and programming for educators and other adult allies. Thousands of alumni of GLSEN's student programs have gone on to lives of service, including work as public and elected officials, business leaders and entrepreneurs, and principals, counselors, and teachers.

INTRODUCTION

Amici submit this brief to address Defendants' erroneous claim that *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020), casts doubt on this Court's holding in *Whitaker v. Kenosha Unified School District No. 1 Board of Education*, 858 F.3d 1034 (7th Cir. 2017). In fact, the Supreme Court's opinion in *Bostock* is not only fully compatible with *Whitaker*, but strongly supports *Whitaker*'s application of well-settled gender stereotyping case law to a transgender plaintiff. As *Whitaker* correctly held, excluding a transgender boy from a boys' restroom penalizes him for actions that would be tolerated in a student identified as male at birth, just as *Bostock* held that firing Aimee Stephens for being

transgender "penalized a person identified as male at birth for traits or actions that [would be] tolerate[d] in an employee identified as female at birth." 140 S. Ct. at 1741. *Bostock* also strongly supports *Whitaker*'s recognition that a plaintiff seeking to challenge a sex-based restroom policy must, in order to establish unlawful discrimination, establish individual injury or harm. For that reason, as both *Whitaker* and *Bostock* show, holding that a school must permit a transgender boy to use the boys' restroom or a transgender girl to use the girls' restroom does not undermine a school's ability to provide separate restrooms based on sex or conflict with the express allowance for such separate facilities, if schools wish to provide them, in 34 C.F.R. § 106.33.

ARGUMENT

I. Discrimination Based on Sex Stereotyping Is a Well-Established Title IX Claim.

Interpretation of Title IX is guided by the statute's broad remedial purpose, and its language must be given a "sweep as broad as its language." *N. Haven Bd. of Educ. v. Bell*, 456 U.S. 512, 521 (1982). "Congress intended Title IX to serve two purposes: 'to avoid the use of federal resources to support discriminatory practices' and 'to provide individual citizens effective protection against those practices.'" *C.S. v.*

Madison Metro. Sch. Dist., 34 F.4th 536, 540 (7th Cir. 2022) (quoting *Cannon v. Univ. of Chicago*, 441 U.S. 677, 704 (1979)). Since its enactment, Title IX has been applied broadly to effectuate those goals. For example, the Supreme Court has interpreted Title IX to protect educators and other school personnel, not just students. *See, e.g.*, *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167 (2005) (holding that Title IX prohibits retaliation against teacher-coach). And it has also applied Title IX to prohibit teacher-on-student and peer-to-peer harassment and assault. *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629 (1999); *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274 (1998).

Contrary to Defendants' argument, the Supreme Court has never held that the scope of what constitutes prohibited sex discrimination under Title IX should be construed more narrowly than that prohibited under Title VII. To the contrary, both the Supreme Court and other federal courts have held just the opposite, repeatedly looking to Title VII case law to interpret and apply Title IX to cover the same broad scope of prohibited discriminatory conduct. *See, e.g.*, *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 616 n.1 (1999) (Thomas, J., dissenting) ("This Court has also looked to its Title VII interpretations of discrimination in

illuminating Title IX."); *Franklin v. Gwinnett Cnty. Pub. Schs.*, 503 U.S. 60, 75 (1992) (citing Title VII's prohibition of sexual harassment and holding that "the same rule should apply when a teacher sexually harasses and abuses a student"); *Davis*, 526 U.S. at 640–43 (drawing upon Title VII case law to hold that Title IX prohibits peer-on-peer sexual harassment).

To be sure, courts have recognized some pleading and evidentiary differences between Title VII and Title IX based on differences in their statutory structure. *See*, *e.g.*, *Smith v. Metro. Sch. Dist. Perry Twp.*, 128 F.3d 1014, 1023 (7th Cir. 1997) (holding that "constructive notice" is not sufficient to hold a school district liable for harassment under Title IX); *Milligan v. Bd. of Trs. of S. Ill. Univ.*, 686 F.3d 378, 388 (7th Cir. 2012) (noting that Title IX's "deliberate indifference" standard is more demanding than the negligence standard governing employer liability under Title VII). But neither this Court nor the Supreme Court has ever held that there is a different standard for what constitutes prohibited sex discrimination under Title VII than under Title IX. To the contrary, courts have consistently held that the substantive definition of prohibited sex discrimination under both statutes is the same. *See*, *e.g.*, *Smith v.*

Metro. Sch. Dist. Perry Twp., 128 F.3d at 1023 (stating that "it is helpful to look to Title VII to determine whether the alleged sexual harassment is severe and pervasive enough to constitute illegal discrimination on the basis of sex for purposes of Title IX"); *Milligan*, 686 F.3d at 388 ("The Title VII retaliation framework applies with equal force to retaliation claims brought under Title IX.").

In this regard, Defendants' citation to *Jackson v. Birmingham Board of Education*, 544 U.S. 167 (2005) is grossly misleading. Contrary to Defendants' misrepresentation of that case, *Jackson* held that Title VII and Title IX must be construed *consistently* with respect to the scope of prohibited discrimination. Specifically, the Court held that Title IX must be interpreted to prohibit retaliation, just as does Title VII, notwithstanding that Title VII specifically defines retaliation as a prohibited practice and Title IX does not. *Id.* at 173–74. As the Court noted, while Title VII "spells out in greater detail the conduct that constitutes discrimination under that statute," Title IX "is a broadly written general prohibition on discrimination." *Id.* at 175. Accordingly, "[b]ecause Congress did not list *any* specific discriminatory practices when it wrote Title IX, its failure to mention one such practice does not

tell us anything about whether it intended that practice to be covered." *Id*. at 176. It is in that limited context that the Court observes that Title VII "is a vastly different statute from Title IX"—not, as Defendants wrongly imply, to suggest that the two laws define what constitute sex discrimination in substantively different ways. To the contrary, the very holding of *Jackson* is that they do not, and that what is substantively prohibited as unlawful sex discrimination under Title VII is also unlawful sex discrimination under Title IX.

In *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989), the Supreme Court held that discrimination based on gender stereotypes violates Title VII. In the wake of that decision, courts in this Circuit and across the country have recognized that discrimination based on gender stereotypes also violates Title IX. *See, e.g.*, *Doe v. Brimfield Grade Sch.*, 552 F. Supp. 2d 816, 823 (C.D. Ill. 2008) ("Discrimination because one's behavior does not conform to stereotypical ideas of one's gender can amount to actionable discrimination based on sex.") (internal citations and quotation marks omitted); *N.K. v. St. Mary's Springs Acad. of Fond Du Lac Wisc., Inc.*, 965 F. Supp. 2d 1025, 1034 (E.D. Wis. 2013) ("[T]he Seventh Circuit and other courts have recognized that discrimination

based upon one's failure to conform to stereotypical gender ideals may result in a finding of gender discrimination."); *Chisholm v. St. Mary's City Sch. Dist. Bd. of Educ.*, 947 F.3d 342, 351 (6th Cir. 2020) ("[A] plaintiff can . . . demonstrate sex discrimination by showing that he or she was mistreated for failing to conform to traditional sex stereotypes."); *Wolfe v. Fayetteville, Ark. Sch. Dist.*, 648 F.3d 860, 867 (8th Cir. 2011) (recognizing that a Title IX plaintiff can state a claim by showing that the "harassment was motivated by . . . failure to conform with gender stereotype"); *cf. Pederson v. La. State Univ.*, 213 F.3d 858, 880 (5th Cir. 2000) ("If an institution makes a decision not to provide equal athletic opportunities for its female students because of paternalism and stereotypical assumptions about their interests and abilities, that institution intended to treat women differently because of their sex.").

II. Courts Across the Country Have Held that Discrimination Because a Person Is Transgender Is Discrimination Based on Gender Stereotypes.

In both Title VII and Title IX cases, courts have applied this well-established precedent to discrimination because a person is transgender, recognizing that such discrimination is inherently based on gender stereotypes. As the Eleventh Circuit has explained: "A person is defined

as transgender precisely because of the perception that his or her behavior transgresses gender stereotypes. The very acts that define transgender people as transgender are those that contradict stereotypes of gender-appropriate appearance and behavior." *Glenn v. Brumby*, 663 F.3d 1312, 1316 (11th Cir. 2011) (cleaned up). Many other courts have issued similar opinions. *See*, *e.g.*, *Smith v. City of Salem*, 378 F.3d 566 (6th Cir. 2004) (holding that transgender plaintiff was discriminated against "based on failure to conform to sex stereotypes"; *Barnes v. City of Cincinnati*, 401 F.3d 729 (6th Cir. 2005) (same); *Rosa v. Park West Bank & Trust Co.*, 214 F.3d 213 (1st Cir. 2000) (relying on *Price Waterhouse* to hold that a transgender customer was protected from discrimination based on gender nonconformity under the Equal Credit Opportunity Act); *Schwenk v. Hartford*, 204 F.3d 1187, 1202 (9th Cir. 2000) (relying on *Price Waterhouse* to hold that a transgender prisoner was protected from discrimination based on gender nonconformity under the Gender Motivated Violence Act); *see also Whitaker*, 858 F.3d at 1049 (collecting Title VII cases).

Courts have applied the same framework in cases brought by transgender students and teachers under Title IX. In *Whitaker*, this

Court held that Title IX protected a boy who was excluded from boys' restroom because of his transgender identity. As the Court explained: "A policy that requires an individual to use a bathroom that does not conform with his or her gender identity punishes that individual for his or her gender non-conformance, which in turn violates Title IX." 858 F.3d at 1049. Many other courts both in this circuit and across the country have issued similar decisions. *See*, *e.g.*, *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586 (4th Cir. 2020); *B.E. v. Vigo Cnty. Sch. Corp.*, 2022 WL 2291763 (S.D. Ind. June 24, 2022); *A.H. v. Minersville Area Sch. Dist.*, 408 F. Supp. 3d 536 (M.D. Pa. 2019); *J.A.W. v. Evansville Vanderburgh Sch. Corp.*, 323 F.Supp.3d 1030 (S.D. Ind. 2018); *M.A.B. v. Bd. of Educ. of Talbot Cnty.*, 286 F. Supp. 3d 704, 727 (D. Md. 2018); *Evancho v. Pine-Richland Sch. Dist.*, 237 F. Supp. 3d 267 (W.D. Pa. 2017); *Bd. of Educ. of the Highland Local Sch. Dist. v. U.S. Dep't of Educ.*, 208 F. Supp. 3d 850 (S.D. Ohio 2016).

III. *Bostock* Is Fully Compatible with *Whitaker* and Other Similar Cases.

Contrary to Defendants' argument, the Supreme Court's decision in *Bostock v. Clayton County* is fully compatible with *Whitaker* and other similar cases protecting transgender students from discrimination

because of their gender nonconformity. In fact, *Bostock* expressly affirmed and relied on *Price Waterhouse* in holding that Title VII protects transgender people from workplace discrimination because they have traits or engage in actions that would be tolerated in a person of the other birth sex—that is, because, simply by virtue of being transgender, they are gender nonconforming. Far from overruling *Price Waterhouse* or otherwise precluding or limiting its protections against discrimination based on gender nonconformity, the decision in *Bostock* went out of its way to endorse it. The Court in *Bostock* did not use the terms "gender stereotypes" or "gender nonconformity" in its analysis of Aimee Stephens's discrimination claim, but its analysis draws heavily on that framework and essentially restates it in plain terms. At a minimum, the Court's analysis in *Bostock* is fully compatible with the gender stereotyping analysis in *Whitaker* and other similar cases.

First, nothing in the *Bostock* opinion casts doubt on *Price Waterhouse*. To the contrary, the opinion cites *Price Waterhouse* approvingly, noting its "simple but momentous" message that a person's sex is "not relevant to the selection, evaluation, or compensation of employees." *Bostock*, 140 S. Ct. at 1741 (2020) (citing *Price Waterhouse*,

490 U.S. at 239); *see also id*. at 1742 (noting that "an employer who fires both Hannah and Bob for failing to fulfill traditional sex stereotypes doubles rather than eliminates Title VII liability"); and *id*. at 1749 (including discrimination based on "sexual stereotypes" in its list of cases in which the "simple test" is used). Applying that principle to the issues before it, the Court held that Title VII protects gay and transgender employees because "it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex." *Id*. at 1741.

Second, although *Bostock* did not expressly say the employer discriminated against Aimee Stephens based on gender stereotypes, it articulated, adopted, and relied on the essential components of a gender stereotyping analysis. As *Bostock* explained, an employer discriminates based on sex when "the employer intentionally penalizes a person identified as male at birth for traits or actions that it tolerates in an employee identified as female at birth." *Id* at 1741. A more direct and succinct description of gender stereotyping would be hard to imagine. In plain terms, the Court held that an employer discriminates based on sex when the employer "intentionally penalizes a person" for gender

nonconformity—i.e., for "traits or actions" that would be tolerated in a person who was identified as the other sex at birth. In *Bostock*, the gender-nonconforming actions were living, dressing, and working as a woman, which would have been tolerated if Aimee Stephens had been "identified as female at birth." *Id.* In *Whitaker*, the gender-nonconforming actions were living, dressing, and seeking to use restrooms as a boy, which would have been tolerated if Ash Whitaker had been identified as male at birth.

In sum, *Bostock* is fully compatible not only with *Whitaker*, but with the decisions of many other courts who have analyzed discrimination against a transgender person as discrimination based on gender nonconformity. *Glenn*, 663 F.3d at 1316–19 (citing and discussing cases holding discrimination against transgender people is discrimination based on sex stereotypes). Simply put, *Bostock* fully supports what *Whitaker* and many other courts have held: that it is impossible to discriminate based on gender nonconformity without treating an individual in a manner that, but for their identified sex at birth, would be different. And as *Bostock* also held, that principle must be applied to transgender people, just as it is to others—regardless of whether

Congress specifically intended to protect them. "[W]hen Congress chooses not to include any exceptions to a broad rule, courts apply the broad rule." 140 S. Ct. at 1747.

Third, while *Bostock* did not specifically address "sex-segregated bathrooms, locker rooms, and dress codes," *id.* at 1753, that in no way suggests—as Defendants argue—that the Court thereby "implicitly reject[ed] any suggestion that *Price Waterhouse* or its Title VII jurisprudence addressed these separate issues or should be relied upon in an apples-to-apples fashion as was done in *Whitaker*." (Br. at 22-23). As an initial matter, the Court's disclaimer is unremarkable given that decisions rarely if ever address issues not presented by a particular case. In *Bostock*, the issue was whether an employer violated Title VII by firing an employee because she is transgender—not whether it would violate Title VII for an employer to require a transgender woman to use the men's restroom. That the Court did not reach out to decide an issue not before it is simply its ordinary practice, not an indication that the Court "implicitly" ruled or suggested that *Price Waterhouse* has no relevance to discrimination cases relating to transgender people and restrooms.

Further, although the Court did not reach the restroom issue directly, *Bostock* strongly supports this Court's analysis of that issue in *Whitaker*. The employer in *Bostock* fired Aimee Stephens when he learned that she 'planned to 'live and work full-time as a woman' after she returned from an upcoming vacation." 140 S. Ct. at 1738. In particular, the employer voiced concern that Aimee would be wearing female, rather than male, clothing when she returned to work. *Id*. By ruling in Aimee's favor, the Court recognized that the employer's refusal to permit Aimee to dress as a woman discriminated against her based on her transgender status and thus on her sex. Importantly, the Court held that the proper framework in answering that question was to compare Aimee to other women, not to men. *See id.* at 1741–42. Like the Court in *Bostock*, in *Whitaker* this Court recognized that, for purposes of determining whether a policy discriminates based on sex, a transgender boy is similarly situated to other boys, and the relevant question is whether he is being penalized for "traits or actions that would be tolerated" in other boys. 858 F.3d at 1051–52 ("Since his diagnosis, [Ash Whitaker] has consistently lived in accordance with his gender identity.").

In contrast, Defendants argue that it is not discriminatory for employers and schools to treat transgender people as members of their birth sex with respect to (otherwise lawful) sex-segregated spaces or rules. If Defendants' argument were correct, however, the Court in *Bostock* would not have ruled in Aimee Stephens's favor. Instead, it would have ruled that the employer was entitled to require Aimee Stephens to dress based on her identified sex at birth, just as other employees are required to do. But if—as the Court in fact held—Aimee Stephens's employer discriminated based on sex by firing her because she wished to dress as a woman at work, then a school district similarly discriminates based on sex by prohibiting a transgender boy from using facilities as a boy at school. In each case, the defendant discriminated against a transgender person by penalizing them for behavior that would be tolerated if the transgender person were not transgender—*i.e.*, if they had been born the other sex.

This is not to say that restrooms, locker rooms, and dress codes present identical issues in all respects. Whether a policy discriminates based on sex is a distinct issue from any justifications for that sex-based discrimination that may be offered. For example, with respect to

restrooms, schools may raise defenses based on privacy or other potential purported justifications,[2] but that does not alter the correctness of this Court's conclusion in *Whitaker* that excluding a transgender boy from boys' restrooms discriminates based on sex. On this core legal issue, *Bostock* and *Whitaker* are in complete accord.

Finally, *Bostock* also supports *Whitaker* by noting that when considering whether a restroom policy discriminates based on sex, a threshold question is whether the policy has harmed the person bringing the claim. As the Court explained, in Title VII, "the term 'discriminate against' refers to 'distinctions or difference in treatment that injure protected individuals.'" *Id.* at 1753 (citing to *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 59 (2006)). Thus, "[w]hether other policies and practices [such as sex-segregated restrooms] might or might not qualify as unlawful discrimination . . . are questions for future cases" in which individual plaintiffs must show harm and otherwise make their case. *Id.*

[2] In *Whitaker*, this Court considered and correctly rejected the school district's asserted justifications based on privacy, as the district court also properly did here. *See Whitaker*, 858 F.3d at 1052 (finding that the school district's "privacy argument is based on sheer conjecture and speculation").

Without deciding the issue, in other words, *Bostock* provided an analytical framework for discrimination claims challenging sex-segregated restrooms.[3] Under that framework, while requiring individuals to use restrooms based on their birth sex might not be harmful to a non-transgender person and thus might not qualify as "discrimination," such a policy might well cause harm to a transgender person and thus qualify as "discrimination" under Title VII and other federal sex discrimination laws.

In *Whitaker*, this Court correctly—and presciently—applied that framework in finding that the school's policy caused Ash Whitaker serious harm. While other students who were identified as female at birth likely would not be harmed by a requirement that they use girls' restroom, Ash—because he is a transgender boy—was harmed. As this Court explained, the district court heard expert testimony and other evidence that the school's bathroom policy was "directly causing

[3] The court did so in response to the concern that "sex-segregated bathrooms, locker rooms, and dress codes will prove unsustainable after our decision today." *Bostock*, 140 S. Ct. at 1753. In response to that concern, the Court articulated an analytical framework requiring a plaintiff challenging a sex-segregated facility to show individual injury or harm, as the plaintiff in this case has amply done.

significant psychological distress and placing Ash at risk for experiencing life-long diminished well-being and life-functioning." 858 F.3d at 1045 (cleaned up). As the Supreme Court later noted in *Bostock*, finding that a policy causes injury or harm to a particular plaintiff is essential to finding that discrimination, in the legal sense, has occurred. 140 S. Ct. at 1753. That is why, as this Court noted in *Whitaker*, holding that a school must permit a transgender boy to use the boys' restroom does not undermine a school's ability to provide separate restrooms based on sex or conflict with the express allowance for such separate facilities, if schools wish to provide them, in 34 C.F.R. § 106.33. *Id*. at 1053 (rejecting claim that prohibiting discrimination against a transgender students will "result in the demise of gender-segregated facilities at schools"). For this reason, as well as the others described above. Defendants' contention that *Bostock* somehow undermines this Court's decision in *Whitaker* has no merit. In fact, just the opposite is true.

CONCLUSION

The Court should affirm the District Court's order entering a preliminary injunction.

Respectfully submitted this the 2nd day of August, 2022.

/s/ Joseph J. Wardenski
Joseph J. Wardenski
WARDENSKI P.C.
195 Plymouth Street, Suite 519
Brooklyn, NY 11201
T: (347) 913-3311
E: joe@wardenskilaw.com

Shannon Minter
Christopher Stoll
Asaf Orr
NATIONAL CENTER FOR
LESBIAN RIGHTS
870 Market Street, Suite 370
San Francisco, California 94102
T: (415) 392-6257
F: (415) 392-8442
E: sminter@nclrights.org
cstoll@nclrights.org
aorr@nclrights.org

Attorneys for Amici Curiae
Indiana Youth Group & GLSEN

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitations set forth in Seventh Circuit Rules 29 and 32(b). This brief contains 4,067 words in compliance with this Circuit's 7,000-word limit on briefs of amicus curiae set forth in Circuit Rule 29.

/s/ Joseph J. Wardenski
Joseph J. Wardenski

CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2022, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit using the Court's CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Joseph J. Wardenski
Joseph J. Wardenski