

EXHIBIT 1

**UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS**

STATE OF KANSAS, et al.,

Plaintiffs,

v.

U.S. DEPARTMENT OF EDUCATION, et al.,

Defendants.

Case No. 5:24-cv-04041-JWB-ADM

District Judge John W. Broomes
Magistrate Judge Angel D. Mitchell

**BRIEF OF AMICI CURIAE NEW JERSEY, CALIFORNIA, PENNSYLVANIA,
COLORADO, DELAWARE, DISTRICT OF COLUMBIA, HAWAII, ILLINOIS,
MASSACHUSETTS, MICHIGAN, MINNESOTA, NEW YORK, OREGON, RHODE
ISLAND, VERMONT, AND WASHINGTON IN SUPPORT OF DEFENDANTS'
OPPOSITION TO PLAINTIFFS' MOTION FOR A STAY AND/OR PRELIMINARY
INJUNCTION**

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INTRODUCTION AND INTERESTS OF AMICI CURIAE

Amici Curiae States (“Amici”) submit the instant brief in support of the U.S. Department of Education’s (“ED”) opposition to Plaintiffs’ motion for a stay and/or preliminary injunction.

Amici have compelling governmental interests in the robust enforcement of Title IX of the Education Amendments Act of 1972 (“Title IX”), 20 U.S.C. § 1681, to ensure that our schools operate free from sex discrimination. *See Mahanoy Area Sch. Dist. v. B.L.*, 594 U.S. 180, 189-90 (2021) (noting states have a duty to protect students from harm). Sex discrimination and harassment based on gender identity causes direct economic, physical, and emotional harms to students. Amici have adopted laws and policies that combat sex discrimination against students on the basis that they appear and identify as a sex different from their sex assigned at birth. And Amici have seen that preventing sex-based discrimination and sexual harassment, and ensuring equal access to educational opportunities confers wide benefits without imposing substantial costs on schools or compromising student privacy or safety.

ED’s new final rule, *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 89 Fed. Reg. 33,474 (Apr. 29, 2024) (“Final Rule”) assists Amici in protecting all students because it includes protections for transgender students and rectifies the harm caused to our schools through ED’s prior rule (“2020 Rule”), which arbitrarily narrowed the scope of Title IX’s sexual harassment protections. In clarifying that sex discrimination includes discrimination based on gender identity, the Final Rule is consistent with Title IX, Supreme Court precedent, decisions in at least eight circuits, and congressional intent. Amici submit this brief to present sovereign states’ unique experience as to how sex-based discrimination can cause economic, physical, and emotional harms to students, their community, and society, and that the balance of equities and public interest cut against the relief Plaintiffs seek.

Amici encourage full implementation of the Final Rule nationwide.

ARGUMENT

I. AMICI'S EXPERIENCE CONFIRMS THAT THE FINAL RULE WILL YIELD BROAD BENEFITS WITHOUT COMPROMISING PRIVACY OR SAFETY, OR IMPOSING SIGNIFICANT COSTS.

Amici's experience demonstrates that allowing students to use bathroom and locker rooms consistent with their gender identity significantly benefits those students without risking student privacy or safety. Allowing transgender students to use bathrooms consistent with their gender identity safeguards against significant health impacts, such as forgoing drinking or eating during the school day to avoid using the restroom for fear of exclusion, reprimand, or bullying.¹ In contrast, when students are subjected to such discrimination and harassment, including through restroom exclusion, LGBTQ students suffer significant educational harm.² For example, LGBTQ students who face discriminatory policies and practices have lower grade point averages, lower levels of educational achievement and aspiration, lower self-esteem, and higher levels of depression than students who do not encounter such discrimination.³ One 2021 survey showed that LGBTQ students who experienced discrimination in their schools were almost three times as likely (43.3% versus 16.4%) to have missed school because they felt unsafe or uncomfortable.⁴

While discriminatory environments that cause fear and anxiety weaken a child's cognitive

¹ See Assemb. B. 1266, 2013-2014 Sess. (Cal. 2013); Alexa Ura, *For Transgender Boy, Bathroom Fight Just Silly*, Tex. Trib. (June 14, 2016), <https://tinyurl.com/mtpescst>. See also The Trevor Project, *2023 U.S. National Survey on the Mental Health of LGBTQ Young People 5* (2023), <https://tinyurl.com/mvbmabrw> (noting approximately half of transgender and nonbinary youth reported in 2023 having seriously considered suicide in the past twelve months).

² Joseph G. Kosciw et al., GLSEN, *The 2021 National School Climate Survey: The Experiences of LGBTQ+ Youth in Our Nation's Schools* xix, 36 (2022), <https://tinyurl.com/2aabcfe4>.

³ *Id.* at 42-45; Joseph G. Kosciw et al., GLSEN, *The 2015 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Youth in Our Nation's Schools* xviii, 53-54 (2016) ("2015 NSC Survey"), <https://tinyurl.com/5av274d3>.

⁴ Kosciw 2021, *supra* note 2, at 36.

capacity and disrupt effective learning, supportive school environments allow students to develop positive relationships, regulate emotions and behavior, and maintain physical, psychological, and academic well-being.⁵ Accordingly, transgender students in gender-affirming environments—including schools that permit them to use restrooms and locker rooms consistent with their gender identity—experience mental health outcomes more comparable to their cisgender peers.⁶ Providing equal access to facilities in accordance with the Final Rule promotes these positive outcomes and helps reduce harms that LGBTQ students face. This, in turn, benefits society as a whole, since equal education better prepares students to contribute to society, both culturally and economically. *Cf. Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954).

Amici's experience also shows that public schools are unlikely to face either general privacy or safety concerns, or specific instances of transgender students harassing others when using restrooms or locker rooms consistent with their gender identity.⁷ The experience of school administrators in thirty-one states and the District of Columbia demonstrates that gender-identity-based protections in bathroom- and locker room-use policies result in no safety or privacy risks, nor is there evidence that cisgender students pose as transgender to gain improper restroom access.⁸

⁵ See Linda Darling-Hammond et al., *Implications for educational practice of the science of learning and development*, 24 *Applied Developmental Sci.* 97-98, 102 (Feb. 17, 2019), <https://tinyurl.com/5f97nkbx>.

⁶ See Kristina R. Olson et al., *Mental Health of Transgender Children Who Are Supported in Their Identities*, 137 *Pediatrics* e20153223, at 5-7 (Mar. 2016); Br. of Amici Curiae Sch. Adm'rs from Thirty-One States & D.C. in Supp. of Resp't at 4 [hereinafter Br. of Amici Curiae Sch. Adm'rs], *Gloucester Cnty. Sch. Bd. v. G.G. ex rel. Grimm*, 137 S. Ct. 1239 (2017) (No. 16-273), 2017 WL 930055.

⁷ See Alberto Arenas et al., *7 Reasons for Accommodating Transgender Students at School*, Phi Delta Kappa (Sept. 1, 2016); Beatriz Pagliarini Bagagli et al., *Trans Women and Public Restrooms: The Legal Discourse and Its Violence*, 6 *Frontiers Socio.* 1, 8 (Mar. 31, 2021).

⁸ See Br. of Amici Curiae Sch. Adm'rs at 14-16; Off. of Elementary & Secondary Educ., U.S. Dep't of Educ., *Safe & Supportive Schools* (May 30, 2023), <https://tinyurl.com/yv397h94>.

The Final Rule affords flexibility to implement policies to address privacy concerns, and Amici have already increased privacy options for all students in a cost-effective manner without singling out any one student. For example, in Washington, where districts must allow students to use the restroom or locker room consistent with their gender identity, schools provide any student “who has a need or desire for increased privacy, regardless of the underlying reason,” with “access to an alternative restroom,” “a reasonable alternative changing area, . . . , or a separate changing schedule.”⁹ At least thirteen other states and the District of Columbia offer comparable guidance to ensure that school districts can comply with nondiscrimination policies and privacy concerns.¹⁰ Solutions range from offering privacy curtains to separate restroom and changing rooms to all who desire them, none of which require costly construction or remodeling.

⁹ See Susanne Beauchaine et al., *Prohibiting Discrimination in Washington Public Schools* 30-31 (Wash. Off. of Superintendent of Pub. Instruction 2012), <https://tinyurl.com/yk26eb96>.

¹⁰ **California:** Cal. Sch. Bds. Ass’n, Final Guidance: AB 1266, Transgender and Gender Nonconforming Students, Privacy, Programs, Activities & Facilities 2 (2014). **Colorado:** Colo. Ass’n of Sch. Bds. et al., Guidance for Educators Working with Transgender and Gender Nonconforming Students 4-5 (n.d.). **Connecticut:** Conn. Safe Sch. Coal., Guidelines for Connecticut Schools to Comply with Gender Identity and Expression Non-Discrimination Laws 9-10 (2012). **Illinois:** Ill. Dep’t of Hum. Rts., Non-Regulatory Guidance: Relating to Protection of Transgender, Nonbinary, and Gender Nonconforming Students Under the Illinois Human Rights Act 6-7 (2021); Ill. State Bd. of Educ., Non-Regulatory Guidance: Supporting Transgender, Nonbinary and Gender Nonconforming Students 10-11 (2020); Affirming & Inclusive Schs. Task Force, *Strengthening Inclusion in Illinois Schools* 19-21 (2020). **Maryland:** Md. State Dep’t of Educ., Providing Safe Spaces for Transgender and Gender Non-Conforming Youth: Guidelines for Gender Identity Non-Discrimination 13-14 (2015). **Massachusetts:** Mass. Dep’t of Elementary & Secondary Educ., Guidance for Massachusetts Public Schools: Creating a Safe and Supportive School Environment (Oct. 28, 2021). **Michigan:** Mich. Dep’t of Educ., State Board of Education Statement and Guidance on Safe and Supportive Learning Environments for Lesbian, Gay, Bisexual, Transgender, and Questioning (LGBTQ) Students 5-6 (2016). **Minnesota:** Minn. Dep’t of Educ., A Toolkit for Ensuring Safe and Supportive Schools for Transgender and Gender Nonconforming Students 10 (2017). **New Jersey:** N.J. State Dep’t of Educ., Transgender Student Guidance for School Districts 7 (2018). **New York:** N.Y. State Educ. Dep’t, Creating a Safe, Supportive, and Affirming School Environment for Transgender and Gender Expansive Students: 2023 Legal Update and Best Practices 22-24 (June 2023). **Oregon:** Or. Dep’t of Educ., Supporting Gender Expansive Students: Guidance for Schools 24-26 (2023). **Rhode Island:** R.I. Dep’t of Educ., Guidance for Rhode Island Schools on Transgender and Gender Nonconforming Students 8-9 (2016). **Vermont:** Vt. Agency of Educ., Continuing Best Practices for Schools Regarding Transgender and Gender Nonconforming Students 6, 8 (2017). **District of Columbia:** D.C. Pub. Schs., Transgender and Gender-Nonconforming Policy Guidance 9 (2015).

Maintaining sex-separated spaces while allowing transgender students to use facilities that align with their gender identity results in positive educational and health outcomes for students, and promotes Amici’s compelling interest in “removing the barriers to economic advancement and political and social integration that have historically plagued certain disadvantaged groups.” *Roberts v. U. S. Jaycees*, 468 U.S. 609, 626 (1984). Equal access to facilities that align with gender identity is therefore not only consistent with Title IX’s provision for sex-separated facilities, 20 U.S.C. § 1686, but also with the constitutional guarantee that education be “made available to *all* on *equal terms*,” *Brown*, 347 U.S. at 493 (emphasis added).

II. AMICI’S EXPERIENCE CONFIRMS THAT THE FINAL RULE WILL NOT IMPOSE SIGNIFICANT COSTS.

Plaintiffs overstate the expense of updating policies, training, and construction, arguing that Final Rule compliance will inflict irreparable harm. Amici’s experience confirms that these concerns are unfounded. Plaintiffs fail to note that *every* state is already required to prohibit discrimination based on LGBTQ identity for all employees in its school districts under Title VII. *See Bostock v. Clayton County*, 590 U.S. 644, 659-62 (2020). Training staff members and implementing policies so that the same protections extend to students under Title IX is not a “significant expenditure[],” as compared to the “construction of new facilities or creation of new programs.” 89 Fed. Reg. at 33,876; *see also id.* at 33,862-77. Further, at least twenty-three states and the District of Columbia¹¹ already offer express protections against discrimination based on

¹¹ **California:** Cal. Civ. Code § 51(b), (e)(5) (public accommodations); Cal. Educ. Code §§ 220 (education), 221.5(f) (education and school athletic participation); Cal. Gov’t Code §§ 12926(o), (r)(2), 12940(a), 12949 (employment); *id.* § 12955 (housing); Cal. Penal Code §§ 422.55, 422.56(c) (hate crimes). **Colorado:** Colo. Rev. Stat. § 24-34-301(7) (definition); *id.* § 24-34-402 (employment); *id.* § 24-34-502 (housing); *id.* § 24-34-601 (public accommodations). **Connecticut:** Conn. Gen. Stat. § 10-15c (schools); *id.* § 46a-51(21) (definition); *id.* § 46a-60 (employment); *id.* § 46a-64 (public accommodations); *id.* § 46a-64c (housing). **Delaware:** Del. Code Ann. tit. 6, § 4501 (public accommodations); *id.* tit. 6, § 4603(b) (housing); *id.* tit. 19, § 711 (employment). **Hawai‘i:** Haw. Rev. Stat. § 368D-1 (education); *id.* § 302A-461 (school athletics); *id.* § 489-2 (definition); *id.* § 489-3 (public accommodations); *id.* § 515-2 (definition); *id.* § 515-3

LGBTQ identity in areas such as education, housing, public accommodations, and employment—all demonstrating that the Final Rule’s protections are entirely feasible. By comparison, a return to the 2020 Rule’s regulatory scheme also comes with weighty costs to students who are denied protections under Title IX, including increased costs from absenteeism and student dropout, as well as unemployment and health service costs that redound to states when students experience

(housing). **Illinois:** 775 Ill. Comp. Stat. 5/1-102(A) (housing, employment, access to financial credit, public accommodations); *id.* 5/1-103(O-1) (definition). **Iowa:** Iowa Code § 216.2(10) (definition); *id.* § 216.6 (employment); *id.* § 216.7 (public accommodations); *id.* § 216.8 (housing); *id.* § 216.9 (education). **Kansas:** Kan. Hum. Rts. Comm’n, *Kansas Human Rights Commission Concurs with the U.S. Supreme Court’s Bostock Decision* (Aug. 21, 2020) (advising that Kansas laws prohibiting discrimination based on “sex” in “employment, housing, and public accommodation” contexts “are inclusive of LGBTQ and all derivatives of ‘sex’”). **Maine:** Me. Rev. Stat. Ann. tit. 5, § 4553(9-C) (definition); *id.* § 4571 (employment); *id.* § 4581 (housing); *id.* § 4591 (public accommodations); *id.* § 4601 (education). **Maryland:** Md. Code Ann., State Gov’t § 20-304 (public accommodations); *id.* § 20-606 (employment); *id.* § 20-705 (housing); Md. Code Ann., Educ. § 26-704 (schools). **Massachusetts:** Mass. Gen. Laws ch. 4, § 7, fifty-ninth (definition); *id.* ch. 76, § 5 (education); *id.* ch. 151B, § 4 (employment, housing, credit); *id.* ch. 272, §§ 92A, 98 (public accommodations) (as amended by Ch. 134, 2016 Mass. Acts). **Minnesota:** Minn. Stat. § 363A.03(44) (definition); *id.* § 363A.08 (employment); *id.* § 363A.09 (housing); *id.* § 363A.11 (public accommodations); *id.* § 363A.13 (education). **Nevada:** Nev. Rev. Stat. §§ 118.075, 118.100 (housing); *id.* §§ 613.310(4), 613.330 (employment); *id.* §§ 651.050(2), 651.070 (public accommodations). **New Hampshire:** N.H. Rev. Stat. Ann. § 354-A:2(XIV-e) (definition); *id.* § 354-A:6 (employment); *id.* § 354-A:8 (housing); *id.* § 354-A:16 (public accommodations); *id.* § 354-A:27 (education). **New Jersey:** N.J. Stat. Ann. § 10:5-5(rr) (definition); *id.* § 10:5-12 (public accommodations, housing, employment); *id.* § 18A:36-41 (directing issuance of guidance to school districts permitting transgender students “to participate in gender-segregated school activities in accordance with the student’s gender identity”). **New Mexico:** N.M. Stat. Ann. § 28-1-2(Q) (definition); *id.* § 28-1-7(A) (employment); *id.* § 28-1-7(F) (public accommodations); *id.* § 28-1-7(G) (housing). **New York:** N.Y. Exec. Law §§ 291, 296 (education, employment, public accommodations, housing). **Oregon:** Or. Rev. Stat. § 174.100(4) (definition); *id.* § 659.850 (education); *id.* § 659A.006 (employment, housing, public accommodations). **Pennsylvania:** 43 P.S. § 953; 16 Pa. Code § 41.206 (defining sex to include gender identity). **Rhode Island:** 11 R.I. Gen. Laws § 11-24-2 (public accommodations); 28 R.I. Gen. Laws §§ 28-5-6(11), 28-5-7 (employment); 34 R.I. Gen. Laws §§ 34-37-3(9), 34-37-4 (housing). **Utah:** Utah Code Ann. § 34A-5-106 (employment); *id.* § 57-21-5 (housing). **Vermont:** Vt. Stat. Ann. tit. 1, § 144 (definition); *id.* tit. 9, § 4502 (public accommodations); *id.* tit. 9, § 4503 (housing); *id.* tit. 21, § 495 (employment). **Washington:** Wash. Rev. Code Ann. § 28A.642.010 (education); *id.* § 49.60.030(1)(a)-(e) (employment, public accommodations, real estate transactions, credit transactions, and insurance transactions); *id.* § 49.60.040(27) (definition); *id.* § 49.60.180 (employment); *id.* § 49.60.215 (public accommodations); *id.* § 49.60.222 (housing). **District of Columbia:** D.C. Code § 2-1401.02(12A-i) (definition); *id.* § 2-1402.11 (employment); *id.* § 2-1402.21 (housing); *id.* § 2-1402.31 (public accommodations); *id.* § 2-1402.41 (education).

un-remediated incidents of discrimination and harassment.¹²

III. AMICI'S EXPERIENCE CONFIRMS THAT THE FINAL RULE WILL FOSTER POSITIVE HEALTH OUTCOMES FOR LGBTQ STUDENTS.

LGBTQ students who are denied Title IX protection suffer concrete harms, including greater risk of mental health issues and worse educational outcomes. Indeed, neuroscience research and developmental studies indicate that a child's social, emotional, and academic development is closely related to their educational environment,¹³ and discrimination and harassment can impede a child's cognitive development, disrupt learning, and endanger their psychological well-being. Of students known or perceived to be transgender, 77% reported negative experiences at school, including harassment and physical assault.¹⁴ As many as 75% of transgender students surveyed in 2017 felt unsafe at school as a result of their gender identity or gender expression.¹⁵ Transgender students are up to five times more likely to report being bullied, threatened or injured with a weapon at school, and being sexually assaulted.¹⁶ And in a 2022 survey, 64% of transgender and nonbinary youth reported being discriminated against because of their gender identity.¹⁷ On the largest survey of transgender people to date, 17% of respondents reported leaving K-12 school

¹² Discrimination against LGBT individuals directly threatens the interests of all states. See, e.g., Christy Mallory et al., Williams Inst., *Impact of Stigma and Discrimination Against LGBT People in Michigan* 56 (2019), <https://tinyurl.com/2s48w3hu>; Crosby Burns et al., Ctr. for Am. Progress & AFSCME, *Gay and Transgender Discrimination in the Public Sector: Why It's a Problem for State and Local Governments, Employees, and Taxpayers* 18 (2012), <https://tinyurl.com/mtfjhm3>.

¹³ Darling-Hammond et al., *supra* note 5, at 97-98.

¹⁴ Sandy E. James et al., Nat'l Ctr. for Transgender Equal., *The Report of the 2015 U.S. Transgender Survey* 132-34 (Dec. 2016), <https://tinyurl.com/njnruycn>.

¹⁵ *Separation and Stigma: Transgender Youth and School Facilities*, Movement Advancement Project & GLSEN 4 (2017), <https://tinyurl.com/ukvkv8tf>.

¹⁶ Michelle M. Johns et al., *Transgender Identity and Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High School Students—19 States and Large Urban School Districts, 2017*, 68 *Morbidity & Mortality Wkly. Rep.* 67, 69 (2019), <https://tinyurl.com/bdf64cbs>.

¹⁷ The Trevor Project 2023, *supra* note 1, at 16.

because of the mistreatment they suffered due to their gender expression.¹⁸ And a 2009 study found that 40% of students who experienced frequent verbal harassment because of their gender expression did not plan to continue on to college.¹⁹

By contrast, LGBTQ students who are supported by school staff are less likely to feel unsafe, miss school, or say they may not graduate high school; and are more likely to have higher GPAs and feel a greater sense of belonging to their school community.²⁰ And when transgender youth do not suffer discrimination and have their gender identity affirmed, their mental health mirrors that of their cisgender peers: they experience reduced self-harm ideation and behavior, reduced suicidal ideation, fewer suicide attempts, and enhanced well-being and functioning.²¹

CONCLUSION

This Court should deny Plaintiffs' motion for emergency and preliminary relief.

¹⁸ James et al., *supra* note 14, at 135.

¹⁹ Emily A. Greytak et al., GLSEN, *Harsh Realities: The Experiences of Transgender Youth in Our Nation's Schools* 14, 27 (2009), <https://tinyurl.com/343un6u7>.

²⁰ Kosciw 2015, *supra* note 3, at xviii-xx, 41-42, 126.

²¹ Olson et al., *supra* note 6, at 5-7; *see also* World Professional Association for Transgender Health, *Standards of Care for the Health of Transgender and Gender Diverse People*, Version 8, *Int'l J. of Transgender Health* S107 (Sept. 2022); Stephen Russell et al., *Chosen Name Use Is Linked to Reduced Depressive Symptoms, Suicidal Ideation, and Suicidal Behavior Among Transgender Youth*, *J. of Adolescent Health* 503 (2018); *The Trevor Project Research Brief: LGBTQ & Gender-Affirming Spaces*, The Trevor Project (Dec. 2020), <https://tinyurl.com/2c2p7z kf>.

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