

No. 25-5413

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

ATLAS JONES and SOPHIE SMITH,

Plaintiffs-Appellants,

v.

DEBBIE CRITCHFIELD, in her official capacity as Idaho State Superintendent of
Public Instruction et al.,

Defendants-Appellees.

ON APPEAL FROM THE
UNITED STATES DISTRICT COURT OF IDAHO
No. 1:25-cv-00413-DCN

**BRIEF OF *AMICUS CURIAE* BY THE STATES OF WASHINGTON, NEW
YORK, CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE,
ILLINOIS, MAINE, MARYLAND, MASSACHUSETTS, MICHIGAN,
MINNESOTA, NEVADA, NEW JERSEY, OREGON, RHODE ISLAND,
VERMONT, VIRGINIA, AND THE DISTRICT OF COLUMBIA IN
SUPPORT OF APPELLANTS**

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INTERESTS OF THE AMICI STATES

The States of Washington, New York, California, Colorado, Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, Oregon, Rhode Island, Vermont, Virginia, and the District of Columbia file this brief as amici curiae in support of plaintiffs-appellants Atlas Jones and Sophie Smith, urging reversal and asking this Court to grant a narrow preliminary injunction that would preserve the status quo by allowing Jones and Smith to continue to use the restrooms at their universities that are consistent with their gender identity and appearance during the pendency of this lawsuit. *See* Fed. R. App. P. 29(a)(2).

Amici States strongly support the right of transgender people to live with dignity, be free from discrimination, and have equal access to education, government-sponsored opportunities, and other incidents of life, including equal access to campus restrooms. Discrimination against individuals solely because of their transgender status causes serious economic, educational, emotional, and health harms. To prevent these injuries, amici States have adopted policies aimed at combatting discrimination against transgender people. Amici States submit this brief to describe their experiences with administering such policies, including policies that maintain sex-separated restrooms at universities while allowing transgender students to use restrooms consistent with their gender identity. As amici's experiences show, ensuring transgender

students have access to common restrooms consistent with their gender identity benefits all, without compromising safety or privacy.

Amici States also share a strong interest in an interpretation of the United States Constitution in a manner that supports and supplements the efforts of amici States to protect against discrimination on the basis of sex or transgender status. The Idaho statute at issue here, H.B. 264, discriminates against transgender students without advancing safety or enhancing bodily privacy, which is already protected in restrooms, as this Court has previously observed. Because the law does not further any important government interest, its only function is to stigmatize students like Jones and Smith for being transgender. Such a law cannot stand, consistent with the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

ARGUMENT

I. PROTECTING TRANSGENDER PEOPLE FROM DISCRIMINATION CONFERS WIDE SOCIETAL BENEFITS WITHOUT COMPROMISING THE PRIVACY OR SAFETY OF OTHERS

Over 2.8 million people in the United States—including approximately 218,000 students between the ages of eighteen and forty—identify as transgender.¹ Transgender people have been part of cultures worldwide “from antiquity to the present day.”² They contribute to our communities in myriad ways, including as students, teachers, essential workers, firefighters, police officers, lawyers, nurses, and doctors.

Unfortunately, transgender people often experience discrimination that limits their ability to realize their potential. To combat such discrimination, States began providing civil rights protections for transgender people over a quarter century ago. Today, at least twenty-one States and the District of

¹ Jody L. Herman et al., Williams Inst., *How Many Adults and Youth Identify as Transgender in the United States?* 2, 7 (Aug. 2025); Kerith J. Conron et al., Williams Inst., *Educational Experiences of Transgender People* 2 (Apr. 2022). (For authorities available online, full URLs appear in the table of authorities. All URLs were last visited on August 4, 2026. Authorities not online are available from the amici states on request.)

² Am. Psych. Ass’n (APA), *Answers to Your Questions About Transgender People, Gender Identity, and Gender Expression* 1 (3d ed. 2014); *see also* APA, *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People*, 70 Am. Psych. 832, 834 (2015).

Columbia³ offer express protections against discrimination based on gender identity in areas such as education, housing, public accommodations, and

³ **California:** Cal. Civ. Code § 51(b), (e)(6) (public accommodations); Cal. Educ. Code § 220 (education); *id.* § 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(9), (10) (definitions); *id.* § 24-34-402 (employment); *id.* § 24-34-502 (housing); *id.* § 24-34-601 (public accommodations); *id.* § 22-1-143 (education). **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. § 489-2 (definition); *id.* § 489-3 (public accommodations); *id.* § 515-2 (definition); *id.* § 515-3 (housing). **Illinois:** 775 Ill. Comp. Stat. 5/1-102(A) (employment, real estate transactions, access to financial credit, public accommodations, including in education); *id.* 5/1-103(O-1) (definition); *id.* § 5/5-101(A)(11) (defining place of public accommodation to include “place of education”); *id.* § 5/5-102 (civil rights violations in public accommodations). **Maine:** Me. Rev. Stat. Ann. tit. 5, § 4553(5-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 and educational programs). **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). **Michigan:** Mich. Comp. Laws § 37.2102(1) (employment, housing, public accommodations, public service, education). **Minnesota:** Minn. Stat. § 363A.03(50) (definition); *id.* § 363A.08 (employment); *id.* § 363A.09 (housing and real estate transactions); *id.* § 363A.11 (public accommodations); *id.* § 363A.13 (education). **Nevada:** Nev. Rev. Stat. § 118.100 (housing); *id.* § 613.330 (employment); *id.* § 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 and real estate transactions, employment); *id.* § 18A:36-41(8) (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(T)-(U) (definitions); *id.* § 28-1-7(A) (employment); *id.* § 28-1-7(F) (public accommodations); *id.* § 28-1-7(G) (housing and real property). **New York:** N.Y. Exec. Law §§ 291, 296 (education, (continued on the next page)

employment.⁴ And at least 390 municipalities explicitly prohibit discrimination based on sexual orientation or gender identity in employment, housing, or public accommodations.⁵ Beginning in 1996, moreover, universities began adopting nondiscrimination policies that, among other things, allowed transgender students to access common restrooms consistent with their sex and gender identity.⁶ As the experiences of amici States and other jurisdictions show, these policies promote inclusive campus environments that benefit all.

employment, public accommodations, housing). **Oregon:** Or. Rev. Stat. § 174.100(4) (definition); *id.* § 659.850 (education); *id.* § 659A.006 (employment, housing, public accommodations). **Rhode Island:** R.I. Gen. Laws § 11-24-2 (public accommodations); R.I. Gen. Laws §§ 28-5-6(12), 28-5-7 (employment); 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(28)–(29) (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 and other real property transactions); *id.* § 2-1402.31 (public accommodations); *id.* § 2-1402.41 (education).

⁴ The U.S. Supreme Court has confirmed that longstanding federal law similarly prohibits employment discrimination based on gender identity. *See Bostock v. Clayton Cnty.*, 590 U.S. 644, 662, 140 S. Ct. 1731, 207 L. Ed. 2d 218 (2020).

⁵ Movement Advancement Project, [Equality Maps: Local Nondiscrimination Ordinances](#) (current as of June 4, 2026).

⁶ *See* Genny Beemyn, *Trans People in Higher Education*, Introduction xii–xiii (Genny Beemyn, ed., SUNY Press 2019).

A. Transgender Students Face Pervasive and Harmful Discrimination That Causes Them Serious Health and Academic Harms.

For transgender and gender-expansive students who wish to pursue postsecondary education, the potential for harassment and discrimination can cause fear and anxiety even before these students arrive on campus. In a 2022 survey of lesbian, gay, bisexual, transgender, and queer (LGBTQ+) teenagers, more than one in three (33.9%) transgender and gender-expansive youth feared that their gender identity would negatively affect their college and other higher education opportunities.⁷

Sadly, these fears are frequently borne out. Despite constituting only approximately 1.7% of undergraduate and graduate students,⁸ transgender students report experiencing high levels of discrimination and harassment on campus.⁹ For example, in the 2015 U.S. Transgender Survey, 24% of

⁷ Shoshana K. Goldberg et al., Hum. Rts. Campaign Found., 2023 LGBTQ+ Youth Report (Aug. 2023).

⁸ See David Cantor et al., Ass'n of Am. Univs. (AAU), Report on the AAU Campus Climate Survey on Sexual Assault and Misconduct 10 (Jan. 17, 2020); Kathryn K. O'Neill et al., Williams Inst., The Experiences of LGBTQ People in Four-Year Colleges and Graduate Programs: Findings From a National Probability Survey 4, 6 (May 2022).

⁹ Abbie E. Goldberg, Williams Inst., Transgender Students in Higher Education 2 (Aug. 2018); Abbie E. Goldberg et al., What Is Needed, What Is Valued: Trans Students' Perspectives on Trans-Inclusive Policies and Practices in Higher Education, J. of Educ. & Psych. Consultation 1, 7 (2018); Anneliese A. Singh et al., "It's Already Hard Enough Being a Student": Developing Affirming College (continued on the next page)

respondents who were “out” or perceived as transgender in college or vocational school reported being verbally, physically, or sexually harassed at that time—with 16% of those respondents choosing to leave school because the harassment was “so bad.”¹⁰ The same survey showed that students in Idaho face even higher levels of harassment, with 41% of respondents reporting verbal, physical, or sexual harassment during college or vocational school.¹¹

This harassment and discrimination, in turn, strongly affects transgender students’ wellbeing. More than one in seven (14.9%) transgender students nationwide did not feel safe at the higher education institutions that they had attended, and two out of five (42.5%) reported feeling they did not fully belong

Environments for Trans Youth, 10 J. of LGBT Youth 208, 208–09 (2013); John P. Dugan et al., *Transgender College Students: An Exploratory Study of Perceptions, Engagement, and Educational Outcomes*, 53 J. of College Student Development 719, 732 (2012).

¹⁰ Sandy E. James et al., Nat’l Ctr. for Transgender Equal., *The Report of the 2015 U.S. Transgender Survey* 136 (2016) (“2015 U.S. Transgender Survey”); see Tiana E. Krum et al., *Gender-Inclusive Housing Preferences: A Survey of College-Aged Transgender Students*, 10 J. LBGT Youth 64, 64–65 (2012) (39% of transgender and gender-nonconforming students, faculty, staff, and administrators reported harassment on campus); Sue Rankin et al., Q Rsch. Inst. for Higher Educ., *2010 State of Higher Education for Lesbian, Gay, Bisexual & Transgender People* 62 (Campus Pride, Charlotte, N.C. 2010) (31% to 39% of transgender and gender nonconforming students reported harassment); Cantor et al., *supra*, at viii, ix–x, 15 (nearly two-thirds (65.1%) of transgender, nonbinary, and gender questioning students experienced sexually harassing behavior).

¹¹ Nat’l Ctr. for Transgender Equal., *2015 U.S. Transgender Survey: Idaho State Report* 1 (Oct. 2017).

at school at some point in their lives because of their sexual orientation or gender identity.¹²

Discriminatory restroom policies constitute a common form of harassment. In one survey of 2,772 transgender students, almost a quarter (23.9%) were at some point not allowed to use restrooms or other facilities at school that aligned with their gender identity, due to being transgender or gender nonconforming.¹³ Transgender students of color faced additional discrimination.¹⁴ Compared to white transgender students, transgender students of color were 1.39 times as likely to be denied access to appropriate restrooms or other facilities on campus.¹⁵

The widespread unavailability of gender-inclusive restrooms on university campuses can exacerbate stress and anxiety for transgender students. In multiple surveys, less than half of college students reported that their college had at least one gender-neutral restroom.¹⁶ And in one survey of over 100 transgender college students from over sixty public, private, two-year,

¹² Conron et al., *supra*, at 2, 6.

¹³ Kristie L. Seelman, *Transgender Individuals' Access to College Housing and Bathrooms: Findings from the National Transgender Discrimination Survey*, 26 J. Gay & Lesbian Soc. Servs. 186, 191, 194 (2014).

¹⁴ *Id.* at 196, 198.

¹⁵ *Id.* at 196.

¹⁶ O'Neill et al., *supra*, at 4, 6; Conron et al., *supra*, at 10; Goldberg et al., What Is Needed, *supra*, at 13.

and four-year colleges, students cited the creation of more gender-inclusive restrooms as “the number-one issue . . . on their ‘wish list,’” “reflecting the fact that many students have few places on campus where they can use a facility without fear of harassment.”¹⁷

Students also reported that, when gender-inclusive restrooms did exist, they were few in number, inconveniently located (such as in basements or in buildings far from the center of campus), poorly maintained, rarely cleaned,¹⁸ or accessible only after obtaining permission from a staff member.¹⁹ That experience is reflected in this case, where the record is undisputed that gender-neutral restrooms at the University of Idaho and Boise State University (where they exist) may not appear on public-facing maps, may be located “in areas only generally available to staff and not easily accessible by the general public,” may “lack clear signage,” or may be inaccessible or inconvenient. (See Decl. of Christy Jordan ¶¶ 4–6, ECF No. 29-5; Ex. B. to Decl. of Rusty Vineyard, ECF No. 29-3.) For example, in a declaration, the University of Idaho identified single-occupancy restrooms located on the upper floors of the student health

¹⁷ See Goldberg et al., *What Is Needed*, *supra*, at 6, 18–19, 25, 33; Singh et al., “It’s Already Hard Enough Being a Student,” *supra*, at 216.

¹⁸ Goldberg et al., *What Is Needed*, *supra*, at 25.

¹⁹ Michael R. Woodford et al., *A Mixed-Methods Inquiry into Trans* Environmental Microaggressions on College Campuses: Experiences and Outcomes*, 26 *J. of Ethnic & Cultural Diversity in Social Work* 95, 103–04 (2017).

center (which may not be open to the public), as well as the basement of the gymnasium, the student bookstore, and the track-and-field dome (which are likely not convenient to access between classes). (See, e.g., Ex. B to Decl. of Rusty Vineyard, ECF No. 29-3.)

Discrimination against transgender students—including denial of access to appropriate restroom facilities—can have serious mental health consequences. At a macro level, research has consistently demonstrated that discrimination against LGBTQ+ people “increases the risks of poor mental and physical health” among an already vulnerable group.²⁰ Further, multiple studies have specifically linked the denial of access to appropriate restroom facilities on college campuses to increased stress and poor mental health.²¹ For example, in one survey of transgender students who had attended college, 60.5% of students who had been denied access to campus restrooms or other facilities due to being transgender had attempted suicide in their lifetime—approximately 1.45 times the number of students who had not been denied

²⁰ What We Know Project, Cornell Univ., *What Does the Scholarly Research Say About the Effects of Discrimination on the Health of LGBT People?* (2019).

²¹ See Seelman, *Transgender Individuals’ Access*, *supra*, at 187; Krum et al., *Gender-Inclusive Housing Preferences*, *supra*, at 65; Genny Beemyn et al., *Transgender Issues on College Campuses*, 111 *New Directions for Student Services* 49, 54–55 (2005).

access to a restroom or other facility.²² Likewise, in two other studies, denial of access to restroom facilities significantly increased the odds of transgender or nonbinary individuals ages 13 to 24 reporting depressive mood and attempting suicide.²³

Discriminatory restroom policies also carry severe physical health risks for transgender students. Many university students report that they avoid using campus restrooms altogether, to the detriment of their comfort and health, or forgo drinking water on campus to avoid needing to use the restroom.²⁴ And in one recent study, nearly three quarters (71%) of transgender youth ages 13 to 24 reported that they sometimes or always avoided public restrooms because they were afraid of facing barriers to access.²⁵ More than half (54%) of respondents in another study of transgender

²² Kristie L. Seelman, *Transgender Adults' Access to College Bathrooms and Housing and the Relationship to Suicidality*, 63 J. Homosexuality 1378, 1388–89 (2016).

²³ Myeshia Price-Feeney et al., *Impact of Bathroom Discrimination on Mental Health Among Transgender and Nonbinary Youth*, 68 J. Adolescent Health 1142 (2021); Jonah P. DeChants et al., *Transgender and nonbinary young people's bathroom avoidance and mental health*, 26 Int'l J. Transgender Health 351, 356 (2025).

²⁴ Beemyn et al., *Transgender Issues on College Campuses*, *supra*, at 55; see Seelman, *Transgender Adults' Access*, *supra*, at 1382.

²⁵ DeChants et al., *supra*, at 353–54.

people reported negative health effects from avoiding public rest rooms, such as kidney infections and other kidney-related problems.²⁶

Discrimination in higher education settings also carries negative academic consequences. In one survey, nearly three times as many transgender individuals (as compared to cisgender LGBTQ individuals) reported adverse treatment at school that negatively affected their academic success or educational attainment.²⁷ And one study found specifically that a lack of accessible restrooms for transgender students was associated with increased risk of negative academic outcomes, such as doing poorly on graded work.²⁸ Research suggests that negative academic outcomes may be especially detrimental to transgender students, who often seek postsecondary and graduate credentials to offset stigma-related disadvantages that they may face when seeking employment.²⁹

²⁶ Jody L. Herman, *Gendered Restrooms and Minority Stress: The Public Regulation of Gender and Its Impact on Transgender People's Lives*, 19 J. Pub. Mgmt. & Soc. Pol'y 65, 75 (2013).

²⁷ Conron et al., *supra*, at 2, 21.

²⁸ Woodford et al., *supra*, at 102–03, 106.

²⁹ See Abbie E. Goldberg et al., *Transgender Graduate Students: Considerations, Tensions, and Decisions in Choosing a Graduate Program*, 69 J. of Homosexuality 2 (Apr. 2021); Singh et al., “It’s Already Hard Enough Being a Student,” *supra*, at 209.

B. The Amici States’ Experiences Confirm That Protecting Transgender People from Discrimination Yields Broad Benefits Without Compromising Privacy or Safety, or Imposing Significant Costs.

Policies that allow transgender students to access facilities and activities consistent with their gender identity create campus climates that enhance students’ well-being and facilitate their ability to learn.³⁰ For example, the 2022 U.S. Transgender Survey found that 94% of adult transgender individuals reported being either “a lot more satisfied” (79%) or “a little more satisfied” (15%) after choosing to live at least some of the time consistent with their gender identity.³¹ These benefits redound to society as a whole because education advances not only the private interests of students, but also prepares them to contribute to society—socially, culturally, and economically. *See, e.g., Brown v. Board of Educ.*, 347 U.S. 483, 493, 74 S. Ct. 686, 98 L. Ed. 873 (1954).

To that end, several States and their public universities have enacted laws or issued guidance to ensure equal opportunities for transgender students, including with respect to restroom access.³² For example, both

³⁰ *See* Jason C. Garvey et al., *An Examination of Campus Climate for LGBTQ Community College Students*, 39 Cmty. Coll. J. of Rsch. & Prac., 527, 530 (2015) (citing studies).

³¹ Sandy E. James et al., *Early Insights: A Report of the 2022 U.S. Transgender Survey* 17 (2024) (“2022 U.S. Transgender Survey”).

³² *See, e.g., Arizona*: Univ. of Ariz., *Restroom Access* (n.d.). **Maryland**: Univ. of Maryland, *University of Maryland Policy of Non-Discrimination on the Basis of* (continued on the next page)

Connecticut State Community College and the University of Connecticut have adopted policies affirming the right of all employees, students, and visitors to use the restroom that corresponds with their gender identity, while making gender-neutral, single-stall restrooms available to anyone desiring increased privacy.³³ The University of Illinois Chicago has had a “Nondiscriminatory Bathroom Access” policy in place for nearly a decade, which states that “everyone at UIC has the right to use bathroom facilities that correspond to their sex or Gender Identity or to utilize single-stall bathroom facilities that are designated gender-inclusive.”³⁴ And the University of Hawai‘i guarantees that all employees, students, and visitors be free from “harassment or discrimination based on gender identity and gender expression,” which “means

Gender Identity or Expression in the Use of Gendered Facilities (Sept. 14, 2018). **Minnesota:** Minn. Stat. § 363A.13 (prohibiting educational institutions from discriminating against students based on gender identity); Minn. Dep’t of Educ., *A Toolkit for Ensuring Safe and Supportive Schools for Transgender and Gender Non-conforming Students* 10 (Sept. 25, 2017) (same). **New Jersey:** N.J. Transgender Equality Task Force, *Addressing Discrimination Against Transgender New Jerseyans* 29 (Nov. 20, 2019) (“Colleges and universities should have all gender inclusive restrooms in each building”). **District of Columbia:** D.C. Code § 2-1402.41 (prohibiting gender identity discrimination by educational institutions). **Wisconsin:** Univ. of Wis.–Madison, *Frequently Asked Questions – Gender Inclusive Restroom Facilities Policy* (Aug. 28, 2019).

³³ Conn. State Comm. Coll., *Creating an Equitable and Inclusive Environment for Transgender Students at Connecticut State Community College* (Apr. 13, 2026); Univ. of Conn., *Creating an Inclusive and Affirming Workplace for Transgender Employees: A Guide for Employees* 6–7 (Jan. 2019).

³⁴ Univ. of Ill. Chi., *Nondiscriminatory Bathroom Access* (May 10, 2017).

that everyone has the right to use the facilities that correspond with their gender identity, and that resources and opportunities not be denied to anyone as a result of their gender identity.”³⁵

1. Nondiscriminatory restroom policies pose no safety concerns, but discriminatory restroom policies, like Idaho’s H.B. 264, do.

Although defendants claim that H.B. 264 “protects women and girls from sexual advances that could otherwise be perpetrated by men in private spaces” (see Defs.’ Opp. to PI at 2–3), no evidence supports this assertion.³⁶ To the contrary, an empirical study that compared criminal incident reports in Massachusetts localities with and without gender-inclusive public accommodations laws found that passage of gender-inclusive laws was not related to the number or frequency of criminal incidents in public restrooms, locker rooms, or dressing rooms—which are exceedingly rare in any event.³⁷

³⁵ Univ. of Haw., *Inclusive Facilities* (Mar. 7, 2024).

³⁶ Jody L. Herman, Williams Inst., *Safety and Privacy in Public Restrooms and Other Gendered Facilities* 3 (Feb. 2025).

³⁷ Amira Hasenbush et al., *Gender Identity Nondiscrimination Laws in Public Accommodations: A Review of Evidence Regarding Safety and Privacy in Public Restrooms, Locker Rooms, and Changing Rooms*, 16 Sexuality Rsch. & Soc. Pol’y 70, 80–83 (2019). See also, e.g., Carlos Maza & Rachel Percelay, *Texas Experts Debunk the Transgender “Bathroom Predator” Myth Ahead of HERO Referendum*, Media Matters for Am. (Oct. 15, 2015) (officials in Austin, Dallas, and El Paso found no increase in restroom safety incidents as a result of cities’ policies allowing transgender people to use restrooms consistent with their gender identity); Fox News, *Manafort on* (continued on the next page)

Another study that reviewed incidents cited on websites as support for discriminatory public accommodations laws found only three cases nationwide in seventeen years in which a man was convicted of a crime involving entering a women's restroom or locker room dressed as a woman. Notably, none of the incidents occurred in cities with antidiscrimination ordinances or state laws, and it was not clear if any perpetrator was transgender.³⁸ News stories misleadingly cited by defendants likewise do not show that transgender individuals have assaulted girls in restrooms.³⁹ *See Sexuality & Gender All. v. Critchfield*, No. 1:23-cv-00315-DCN, 2025 WL 2256884, at *7 (D. Idaho Aug. 7, 2025) (finding same defendants' safety-related examples to be "unclear, exaggerated, or speculative").

Trump's Fight to Rally GOP, Defeat Democrats; Gov. McCrory on Showdown Over NC's Transgender Bathroom Law (updated Jan. 23, 2017) (no known cases of people in North Carolina committing crimes in restrooms under the cover of protections provided to transgender people).

³⁸ Will Doran, *Equality NC Director: No Public Safety Risks in Cities with Transgender Anti-Discrimination Rules*, PolitiFact (Apr. 1, 2016).

³⁹ *Compare* Appellees' Resp. in Opp'n to Mot. for an Inj. Pending Appeal at 15, CA9 DE 18 ("In New Mexico, a 12-year-old girl was raped by a transgender classmate in the girls' restroom at school."), *with* Kelsey Bolar, *Exclusive: Female Student Alleges She Was Raped in Trans-Inclusive Bathroom at New Mexico Middle School*, Post Millennial (June 20, 2023) (rapist of twelve-year-old girl repeatedly described as "male student" and never referred to as transgender).

These studies confirm amici States’ experience that gender-inclusive restroom policies do not increase safety concerns.⁴⁰ For instance, a former county sheriff noted that Washington State has protected transgender people from discrimination for a decade “with no increase in public safety incidents as a result”; he emphasized “that indecent exposure, voyeurism, and sexual assault[] are already illegal, and police use those laws to keep people safe.”⁴¹ And the Massachusetts Chiefs of Police Association and Massachusetts Majority City Chiefs expressed that allowing people to use public restrooms consistent with their gender identity “improve[s] public safety.”⁴²

Similarly, universities that allow transgender students to use restrooms corresponding to their gender identity—an estimated two-thirds (65%) of universities, in a 2018 study⁴³—have not reported instances of transgender students harassing others in restrooms. For instance, around the time that North Carolina enacted its (since-repealed) restroom law, four private colleges and

⁴⁰ See German Lopez, *Myth #3: Letting Trans People Use the Bathroom or Locker Room Matching Their Gender Identity Is Dangerous*, Vox (Nov. 14, 2018) (discussing States’ experience).

⁴¹ David Crary, *Debate Over Transgender Bathroom Access Spreads Nationwide*, Salt Lake Trib. (May 10, 2016) (quotation marks omitted).

⁴² Letter from William G. Brooks III, Mass. Chiefs of Police Ass’n, & Bryan A. Kyes, Mass. Majority City Chiefs, to Sen. William N. Brownsberger & Rep. John V. Fernandes, Joint Comm. on the Judiciary (Oct. 1, 2015).

⁴³ Goldberg et al., *What Is Needed*, *supra*, at 13.

universities in North Carolina with gender-inclusive restroom policies confirmed to investigative journalists that they had experienced no instances of inappropriate behavior by transgender students or instances of students posing as transgender to gain access to restrooms.⁴⁴ Likewise, the director of Harvard University’s Office of Sexual Assault Prevention and Response confirmed that Harvard’s designation of gender-neutral restrooms had not led to any instance of sexual assault in those restrooms.⁴⁵

Indeed, data show that—far from facing safety risks from transgender women and girls—cisgender women overwhelmingly face safety risks from cisgender men, whose behavior is not regulated by discriminatory laws like H.B. 264. For example, in a comprehensive survey of over 180,000 college and university students, women who had been victims of nonconsensual sexual penetration reported that, in 99.1% of cases, at least one of the offenders was a man, and by contrast, that in only 0.2% of cases was at least one of the offenders “other gender.”⁴⁶ And discriminatory restroom policies (and the harmful rhetoric surrounding them) may in fact *increase* the risk of

⁴⁴ Rachel Percelay, *Four North Carolina Universities Debunk Anti-LGBT “Bathroom Predator” Myth*, Media Matters for Am. (Apr. 5, 2016).

⁴⁵ Marco Chan, *Safe Bathrooms for All*, Harvard Crimson (Feb. 17, 2011).

⁴⁶ Cantor et al., *supra*, at A7-19. Respondents were asked to identify the gender(s) of the person(s) that committed the assault as “Man,” “Woman,” “Other gender identity,” or “Don’t Know.” *Id.* at A5-19. There is no indication that these assaults took place in restrooms or other sex-separated facilities.

harassment, violence, and privacy violations against cisgender women, who may be perceived as using the “wrong” restroom.⁴⁷ In multiple incidents, for example, college-age cisgender women have been harassed or interrogated while using public restrooms, and have felt pressured to show their intimate body parts to employees or law enforcement to prove that they belonged in the women’s restroom.⁴⁸

2. Nondiscriminatory restroom policies neither compromise personal privacy nor require significant expenditures.

In addition, contrary to the claims of defendants (*see, e.g.*, Defs.’ Opp. to PI at 2), the experience of amici States shows that gender-inclusive restroom access policies have neither generated privacy issues in women’s restrooms nor imposed substantial costs on schools. The risk that students will see others’ intimate body parts, or have their intimate body parts seen by others, is not presented by ordinary use of women’s restrooms, which usually have only

⁴⁷ See James et al., *The Report of the 2015 U.S. Transgender Survey*, *supra*, at 225–27; see also Matt Pearce, [What It’s Like to Live Under North Carolina’s Bathroom Law If You’re Transgender](#), L.A. Times (June 12, 2016); see, e.g., Brandon Truitt, [Woman Says Security Guard at Liberty Hotel in Boston Confronted Her in Bathroom, Asked to Prove Gender](#), CBS News (May 7, 2025); Christopher Wiggins, [Cis Woman Mistaken as Transgender Records Being Berated in Bathroom](#), Advocate (May 26, 2023); Matt DeRienzo, [Woman Mistaken for Transgender Harassed in Walmart Bathroom](#), News-Times (May 16, 2016).

⁴⁸ Gerika Mudra, [I Filed a Discrimination Charge for What Happened to Me in a Buffalo Wild Wings Bathroom](#), MS Now (Aug. 15, 2025); Christopher Wiggins, [Cis Woman Confronted by Police Officers in Arizona Walmart Restroom for Looking Too Masculine Speaks Out \(Exclusive\)](#), Advocate (Feb. 28, 2025).

private stalls. Indeed, as this Court previously explained, “[c]ommon sense tells us that the communal restroom is a place where individuals act in a discreet manner to protect their privacy and those who have true privacy concerns are able to utilize a stall.” *Roe v. Critchfield*, 137 F.4th 912, 924 (9th Cir. 2025) (quoting *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1052 (7th Cir. 2017)); see *A.C. v. Metropolitan Sch. Dist. of Martinsville*, 75 F.4th 760, 773 (7th Cir. 2023) (“Gender-affirming facility access does not implicate the interest in preventing bodily exposure, because there is no such exposure.”). And in any event, even considering both men’s and women’s restrooms, concerns about the presence of others in restrooms (whether or not transgender) can be addressed by individual students’ choosing to utilize a restroom stall or single-user restroom, or by increasing privacy options for all students, without singling out transgender people for stigmatizing treatment. Indeed, transgender college students, staff, and faculty *agree* that privacy is an important concern and have “voiced the importance of ensuring that campus facilities are safe and private by having locking stall doors and privacy barriers[.]”⁴⁹

⁴⁹ Kristie L. Seelman, *Recommendations of transgender students, staff, and faculty in the USA for improving college campuses*, 26 Gender and Educ. 618, 630 (2014); see also Seelman, *Transgender Individuals’ Access*, *supra*, at 189.

Colleges and universities in the amici States have identified a variety of free and cost-effective options to maximize privacy for all users of restrooms while avoiding discrimination. For instance, many universities, including Michigan State University, Minnesota State University, and the University of Washington, have adopted policies recommending that all single-user restrooms on campus be designed as “universal” or “all gender restrooms.”⁵⁰ This simple and efficient redesignation gives all students with privacy concerns—including students who are concerned about “shield[ing] one’s unclothed body from the opposite sex” (*see* Defs.’ Opp. to PI at 6)—the option to use a separate restroom.

Universities in amici States and beyond have also identified low-cost physical measures to enhance privacy for all restroom users. For example, the University of Maryland and Cal Poly University have installed or require the installation of “privacy strips,” which are inexpensive pieces of material that can be affixed to stall doors to close gaps and reduce sightlines.⁵¹ Indeed, some

⁵⁰ *See* Mich. State Univ., Promising Practices for All Gender Restrooms at Colleges and Universities (n.d.); Minn. State Univ., Gender Neutral Restrooms (adopted Aug. 1, 2015).

⁵¹ Cal Poly Univ., San Luis Obispo, Standard Specifications: Section 10 21 13 – Toilet Compartments 1 (2026); Univ. of Maryland, Transmittal #16-17-32: Gender-Inclusive Facilities 4 (2018); *see* Partitions and Stalls, Aluminum Partition Privacy Strip 60” (n.d.); Home Depot, 58 in. Restroom Stall Door Privacy Cover Opaque/Smoke Self-Adhesive (2-Pack) (n.d.); *see also* *Grimm v. Gloucester Cnty. Sch.* (continued on the next page)

restrooms at defendants University of Idaho and Boise State University *already* include privacy strips, which eliminates the visual privacy concerns described by defendants. (See Decl. of Rusty Vineyard ¶ 8, ECF No. 29-1; Decl. of Christy Jordan ¶ 11, ECF No. 29-5.) Similarly, the University of Pittsburgh recommends installing occupancy indicators (“Occupied/Vacant” or red/green) on stall doors, which can eliminate the need to check gaps to assess vacancy.⁵²

Last, in recognition that modern architectural design standards for multi-user restrooms are trending toward enhanced overall privacy, the University of Washington’s design standards for renovation and construction now require, where feasible, full-height partitions between stalls.⁵³ Indeed, some restroom stalls at defendant Boise State University *already* have floor-to-ceiling partitions. (Decl. of Christy Jordan ¶ 13, ECF No. 29-5.) Inclusive policies such as these maintain sex-separated spaces and enhance privacy, while not singling out transgender students for differential treatment.⁵⁴

Bd., 972 F.3d 586, 600 (4th Cir. 2020), as amended (Aug. 28, 2020) (school board approved “addition of privacy strips to the doors of stalls in all restrooms”).

⁵² See, e.g., Univ. of Pittsburgh, *Division Y: Architectural Design Guidelines for Restrooms, Showering Facilities, Locker Rooms and Lactation Rooms* Y-5–Y-6 (draft of Sept. 5, 2019).

⁵³ Doug Simpson et al., Univ. of Wash., *Gender Inclusive Restroom Design Guidelines* (Feb. 2026).

⁵⁴ See 20 U.S.C. § 1686; 34 C.F.R. § 106.33.

II. THE EQUAL PROTECTION CLAUSE PROHIBITS THE GENDER-IDENTITY DISCRIMINATION IN THIS CASE

As the Supreme Court has long recognized, the Constitution’s guarantee of equal protection prohibits government policies that serve only to express “negative attitudes, or fear,” toward people viewed as “different.” *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 448, 105 S. Ct. 3249, 87 L. Ed. 2d 313 (1985). “[V]ague, undifferentiated fears” about a class of persons further no legitimate state interest and cannot be used to “validate” a policy of different treatment. *Id.* at 449. Classifications based on “archaic and overbroad generalizations” similarly do not pass constitutional muster. *See Clark v. Arizona Interscholastic Ass’n*, 695 F.2d 1126, 1131 (9th Cir. 1982) (quotation marks omitted).

H.B. 264 is just such a policy. Regardless of what standard of judicial review applies, the law’s categorical prohibition on transgender individuals using restrooms that align with their gender identity violates the equal protection clause because it cannot survive even rational basis review. The prohibition does not advance safety, as the sponsor in the Idaho Legislature acknowledged during the law’s passage. (*See Decl. of Abigail K. Bessler* ¶ 10(a), ECF No. 12-4 (quoting sponsor’s statement that, despite anticipating colleague’s questions about safety, sponsor could cite no instances of inclusive policies causing safety-related incidents)). Nor does the law advance any

concrete interest in bodily privacy—which is already protected by stall doors in any event. *See Roe*, 137 F.4th at 924; *A.C.*, 75 F.4th at 773 (restroom use “does not implicate the interest in preventing bodily exposure, because there is no such exposure”). And although defendants have asserted that other private activities (such as changing clothes) occur in restrooms, *see Appellees’ Resp. in Opp’n to Mot. for an Inj. Pending Appeal*, CA9 DE 18, at 13–14, individuals concerned about privacy may choose to change their clothes in stalls or single-occupancy restrooms rather than to undress in the common areas of multi-user restrooms—which may be used by students, faculty, and staff alike.⁵⁵

Moreover, the experiences of amici States belie the Act’s key assumption: that permitting transgender university students to utilize restrooms consistent with their gender identity will threaten safety or privacy. In many amici States, transgender students have long been permitted to use restrooms consistent with their gender identity without any corresponding decrease in safety or diminution of privacy. *Supra* at 19–22. Amici States have adopted means by which to effectively protect privacy for *all* students, including (i)

⁵⁵ Defendants’ cite cases that recognize a right to bodily privacy in factually distinct contexts. *See, e.g., Byrd v. Maricopa Cnty. Sheriff’s Dep’t*, 629 F.3d 1135, 1136 (9th Cir. 2011) (opposite-sex strip search of pretrial detainee’s genital area); *Sepulveda v. Ramirez*, 967 F.2d 1413, 1415 (9th Cir. 1992) (officer entered stall where parolee was seated on toilet and watched parolee urinate).

expanding access to existing single-occupancy restrooms; (ii) adding privacy strips or other low-cost retrofits to existing multi-occupancy restrooms; and (iii) adopting architecturally modern design features (such as full-height partitions) when renovating or constructing new restrooms. *Id.* By contrast, because H.B. 264 does not provide any additional protections for safety or privacy that were not available under the preexisting legal scheme allowing sex-separated restrooms (and in fact *increases* the risk of harassment against cisgender women, who may be perceived as using the “wrong” restroom), the law serves only to stigmatize and concretize “vague, undifferentiated fears” about transgender students, thereby denying those students the equal protection of the laws. *City of Cleburne*, 473 U.S. at 448.

H.B. 264’s text and structure further demonstrate that the law lacks a substantial relationship to the State’s interest in preserving bodily privacy. H.B. 264 defines a “female” restroom user as “an individual who has, had, will have, or, but for a developmental or genetic anomaly or historical accident, would have the reproductive system that at some point produces, transports, and utilizes eggs for fertilization.” Idaho Code § 73-114(2)(c); *see id.* § 67-9801(5). And the law defines a “male” restroom user as “an individual who has, had, will have, or, but for a developmental or genetic anomaly or historical accident, would have the reproductive system that at some point produces, transports, and utilizes sperm for fertilization.” *Id.* § 73-114(2)(g); *see id.* § 67-

9801(7). These classifications turn on genetic or medical information that is not readily discernible to other users of a restroom and are thus so unrelated to the asserted state interest in privacy that compliance with the law may be more likely to *create* privacy concerns than to prevent them. In the case of plaintiffs, for instance, the Idaho statute requires a transgender male who is perceived as male to use the women’s restroom, and it requires a transgender female who is perceived as female to use the men’s restroom. The entry of a person who appears male into a women’s restroom, or of a person who appears female into a men’s restroom, is more likely to increase privacy concerns for other users than to avoid such concerns. And, because enforcement of this law will likely require increased restroom policing, cisgender women in Idaho may suffer further injury to their privacy and dignity if they are required to prove that they are female under the state’s definition in order to enter the women’s restroom. *Supra* at 18–19 & nn.47–48.

These aspects of H.B. 264 are also distinguishable from the Idaho Fairness in Women’s Sports Act, which the Supreme Court recently upheld. *See West Virginia v. B. P. J.*, No. 24–38, 2026 WL 1868739, at *4 (U.S. June 30, 2026). In upholding that law, the Supreme Court repeatedly emphasized that the “distinctive” sports context was “crucial” to its reasoning in *B. P. J.* 2026 WL 1868739, at *12; *see id.* at *13–14, 16 (repeatedly emphasizing “the sports context” of the case). By contrast, in the context of restrooms, the

experiences of amici States show that the law may actually exacerbate the privacy and safety concerns that defendants claim the law is intended to address.

CONCLUSION

This Court should reverse the decision below.

Dated: Seattle, Washington
August 5, 2026

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FOR THE NINTH CIRCUIT

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