

21-1365

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

Selina Soule, a minor by Bianca Stanescu, her mother, Chelsea Mitchell, a minor,
by Christina Mitchell, her mother, Alanna Smith, a minor, by Cheryl
Radachowsky, her mother, Ashley Nicoletti, a minor, by Jennifer Nicoletti, her
mother,
Plaintiff-Appellants,

v.

Connecticut Association of Schools, Inc, DBA Connecticut
Interscholastic Athletic Conference, Bloomfield Public Schools Board of
Education, Cromwell Public Schools Board of Education, Glastonbury Public
Schools Board of Education, Canton Public Schools Board of Education, Danbury
Public Schools Board of Education,
Defendants-Appellees,

and

Andraya Yearwood, Thania Edwards on behalf of her daughter T.M.,
and Commission on Human Rights and Opportunities,
Intervenor Defendants-Appellees.

On Appeal from the United States District Court
for the District of Connecticut, No. 3:20-cv-00201 (RNC)

**BRIEF OF AMICUS CURIAE THE TREVOR PROJECT, INC.
IN SUPPORT OF DEFENDANTS-APPELLEES AND IN FAVOR OF
AFFIRMANCE**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(a)(4)(A), the undersigned counsel certifies that The Trevor Project, Inc. (“The Trevor Project”) is a 501(c)(3) organization. The Trevor Project does not have a parent corporation. The Trevor Project is not a publicly traded company, and no publicly held corporation owns 10% or more of its stock.

Dated: October 12, 2021

Respectfully submitted,

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INTEREST OF THE TREVOR PROJECT

Founded in 1998, The Trevor Project, Inc. (“The Trevor Project”) is the nation’s largest lesbian, gay, bisexual, transgender, queer, and questioning (“LGBTQ”) youth crisis intervention and suicide prevention organization. It is the only nationwide organization that offers accredited, free, and confidential phone, instant message, and text messaging crisis intervention services for LGBTQ youth. These services are used by thousands of individuals each month. Through analyzing and evaluating data obtained from these services and conducting national surveys, The Trevor Project produces innovative research and insights that bring new knowledge, with clinical implications, regarding issues affecting LGBTQ youth.

The Trevor Project has a special interest in supporting state actions premised on preventing discrimination against the transgender youth it serves. For decades, The Trevor Project has worked firsthand with transgender youth, many of whom have shared the joy of being able to participate in school sports in a manner that is consistent with their gender identity as well as the pain and stigma of being excluded. The Trevor Project is therefore uniquely aware of the lifesaving effect that inclusive and equitable policies like that of the Connecticut Interscholastic Athletic Conference can have on transgender youth, and can provide a critical perspective for

the Court regarding the health and wellness benefits that would continue to flow to transgender youth if the District Court’s decision is affirmed.¹

SUMMARY OF ARGUMENT

Transgender people, meaning people whose gender identity² differs from their sex assigned at birth, have “traditionally been unrecognized, unrepresented, and unprotected.”³ Enforcement of the transgender participation policy of the Connecticut Interscholastic Athletic Conference (“CIAC”) allows transgender youth to continue participating in high school athletics—an activity that for many is a hallmark of the educational experience—consistent with their gender identity. Affirming the District Court’s order will ensure that transgender youth continue to have an equal opportunity to participate in and enjoy the health and wellness benefits from sports participation.

¹ 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. No person other than amicus curiae, its members, or its counsel contributed money that was intended to fund preparing or submitting the brief. All parties have consented to the filing of this brief.

² The term “gender identity” refers to an individual’s “deeply felt, inherent sense of their gender.” *Edmo v. Corizon, Inc.*, 935 F.3d 757, 768 (9th Cir. 2019). An individual’s gender identity is durable and cannot be changed by medical intervention. See *GLAAD Media Reference Guide - Transgender*, GLAAD, <https://www.glaad.org/reference/transgender>. Cisgender individuals have a gender identity aligning with the sex assigned at birth. *Id.*

³ *Grimm. v. Gloucester Cty. Sch. Bd.*, 853 F.3d 729, 730 (4th Cir. 2017) (Davis, J., concurring); see also *F.V. v. Barron*, 286 F. Supp. 3d 1131, 1145 (D. Idaho 2018) (“[T]ransgender people are unarguably a politically vulnerable minority.”).

The Trevor Project’s daily experiences with transgender youth, corroborated by years of research, confirm that policies allowing transgender youth to have an equal opportunity to join sports teams that align with who they are provide a myriad of benefits to their mental and physical health and wellbeing. In sharp contrast, denying transgender youth this opportunity is a serious form of discrimination, which sends a harmful message of stigmatization and exclusion and deprives transgender youth of the physical, psychological, and emotional benefits of school sports. The Trevor Project therefore urges the Court to affirm the District Court’s order in favor of Defendants-Appellees.

ARGUMENT

I. Inclusive and Equitable Policies and Laws Benefit Transgender Youth’s Health and Well-Being.

By their inclusive nature, policies and laws like that of the CIAC help remove the stigma that transgender youth—a group that already experiences significant harassment and discrimination—routinely face.⁴ Equitable participation policies like that of the CIAC are inherently beneficial to transgender youth as those policies ensure that transgender youth are included and therefore send the positive message that those athletes are deserving of respect and equal opportunity.⁵ The Biden

⁴ See *Grimm*, 972 F.3d at 610–12.

⁵ See, e.g., *Parents for Privacy v. Barr*, 949 F.3d 1210, 1239 n.21 (9th Cir. 2020) (recognizing the government’s interest in “assuring that [transgender youth] do not

Administration recently interpreted the U.S. Supreme Court’s decision in *Bostock v. Clayton County* as prohibiting discrimination under Title IX on the basis of gender identity and extended Title IX’s protections to the context of school sports participation.⁶ The Trevor Project’s telephone lifeline and chat and messaging crisis services are routinely contacted by transgender youth expressing the positive impact of sports participation as well as the heartbreaking effects of exclusion. Further, The Trevor Project has seen increases in crisis contacts from transgender youth when harmful and disparaging rhetoric is used against transgender people.⁷ This year alone, The Trevor Project received more than 3,900 crisis contacts (through calls, texts, and chats) from transgender or nonbinary youth in Texas—an increase of 150 percent over the same time period the prior year—during a season where high-profile bills that would prohibit transgender youth from participating were being debated.⁸

suffer the stigmatizing injury of discrimination by being denied access to multi-user bathrooms that match their gender identity”).

⁶ Executive Office of the President, *Executive Order 13988: Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation*, 86(14) Federal Register 7023–25 (2021), <https://www.federalregister.gov/documents/2021/01/25/2021-01761/preventing-and-combating-discrimination-on-the-basis-of-gender-identity-or-sexual-orientation>.

⁷ Think Progress, *Transgender people turned to safety hotlines in droves in response to Trump’s erasure memo* (Oct. 30, 2018), <https://archive.thinkprogress.org/trans-erasure-memo-causes-spike-calls-lgbtq-safety-hotlines-70508959958e/>.

⁸ The Trevor Project, *New Data Illuminates Mental Health Concerns Among Texas’ Transgender Youth Amid Record Number of Anti-Trans Bills* (Sept. 27,

The Trevor Project documented the empirical impact of affirming policies and environments on transgender youth through a national cross-sectional survey of nearly 35,000 LGBTQ youth between the ages of 13 and 24, with over a third of respondents identifying as transgender and/or nonbinary.⁹ It is one of the largest and most diverse surveys of LGBTQ youth mental health ever conducted.¹⁰ Of the LGBTQ youth surveyed, 75% reported that they had experienced discrimination based on their sexual orientation or gender identity.¹¹ Nevertheless, the survey revealed a clear link between affirming support and a decreased risk of suicide: LGBTQ youth who had access to spaces that affirmed their sexual orientation and gender identity reported *lower rates* of attempting suicide.¹² Similarly, an earlier study conducted by The Trevor Project surveyed over 40,000 LGBTQ youth between December 2019 and March 2020 and found that those who reported having at least one gender-affirming space had 25% reduced odds of reporting a suicide

2021), <https://www.thetrevorproject.org/blog/new-data-illuminates-mental-health-concerns-among-texas-transgender-youth-amid-record-number-of-anti-trans-bills/>.

⁹ The Trevor Project, *National Survey on LGBTQ Youth Mental Health* (2021), <https://www.thetrevorproject.org/wp-content/uploads/2021/05/The-Trevor-Project-National-Survey-Results-2021.pdf> [hereinafter Trevor Project National Survey].

¹⁰ *Id.* at 1.

¹¹ *Id.* at 2.

¹² *Id.*

attempt in the past year.¹³ While only 55% of transgender and non-binary youth reported that their school was gender-affirming, gender-affirming schools had the strongest association with reduced suicide attempts and reduced the odds of reporting a suicide attempt by 34%.¹⁴ These findings clearly demonstrate the benefits that affirming school environments have on a group of youth that faces widespread institutional and daily discrimination.

The Trevor Project's findings are corroborated in peer-reviewed research. Several studies similarly detail the importance of inclusive and affirming policies, programs, and environments for transgender and nonbinary youth's health and wellbeing.¹⁵ Research from GLSEN's 2019 School Climate Survey further

¹³ The Trevor Project, *The Trevor Project Research Brief: LGBTQ & Gender-Affirming Spaces* (Dec. 2020), <https://www.thetrevorproject.org/2020/12/03/research-brief-lgbtq-gender-affirming-spaces/#:~:text=Affirming%20environments%20are%20associated%20with,a%20past%2Dyear%20suicide%20attempt.>

¹⁴ *Id.*

¹⁵ See Myeshia Price-Feeney, Amy E. Green, and Samuel Dorison, *Understanding the Mental Health of Transgender and Nonbinary Youth*, 66 *J. Adolescent Health* 684, 689–90 (2020), [https://www.jahonline.org/article/S1054-139X\(19\)30922-X/pdf](https://www.jahonline.org/article/S1054-139X(19)30922-X/pdf); Stephen T. Russell, Amanda M. Pollit, Gu Li, and Arnold H. Grossman, *Chosen Name Use Is Linked to Reduced Depressive Symptoms, Suicidal Ideation, and Suicidal Behavior Among Transgender Youth*, 63 *J. Adolescent Health* 503, 503–05 (2018) (finding that when adjusted for personal characteristics and social support, chosen name usage in multiple contexts is associated with lower depression, suicidal ideation, and suicidal behavior); Erin C. Wilson et al., *The impact of discrimination on the mental health of trans*female*

corroborates The Trevor Project’s findings, revealing that 59.1% of LGBTQ students reported experiencing LGBTQ-related discriminatory policies or practices at school, and that LGBTQ students who did not experience LGBTQ-related discrimination at school were less likely to have missed school in the past month, had higher GPAs, and had lower levels of depression.¹⁶

Recent research has also found that when transgender youth are supported and affirmed, they benefit significantly. For example, one study found that “allowing children to present in everyday life as their gender identity rather than their natal sex is associated with developmentally normative levels of depression and anxiety.”¹⁷ When transgender youth are supported by their families, there is “clear evidence that transgender children have levels of anxiety and depression no different from their nontransgender siblings.”¹⁸ Transgender students experience a greater incidence of emotional distress not because of their gender identity, but because of persistent

youth and the protective effect of parental support, 20 *Aids and Behavior* 1, 7–8 (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5025345/>.

¹⁶ GLSEN, *The 2019 National School Climate Survey* (2020), at xix, xx, <https://www.glsen.org/sites/default/files/2020-11/NSCS19-111820.pdf>.

¹⁷ Kristina R. Olson et al., *Mental Health of Transgender Children Who Are Supported in Their Identities*, 137 *Pediatrics* 1, 5, 7 (2016), <https://pediatrics.aappublications.org/content/pediatrics/137/3/e20153223.full.pdf>.

¹⁸ *Id.* at 7.

discrimination by those around them.¹⁹ By ensuring that transgender youth are able to participate in school athletics consistent with their gender identities, the CIAC's policy removes a painful line of exclusion and provides transgender youth with equal opportunity and access in education. Affirming the District Court's order in favor of Defendants-Appellees is necessary to support the health and wellbeing of transgender youth and protect them from the harms caused by discrimination.

II. Allowing Transgender Youth Access to Participation on Sports Teams That Correspond with Their Gender Identities Provides a Myriad of Benefits.

The Trevor Project maintains data regarding the people who use its crisis and suicide prevention services.²⁰ Supervisors for The Trevor Project's crisis services regularly assist transgender youth in navigating sports-related issues.²¹ Many transgender youth have reached out to The Trevor Project with specific concerns about participation in sports at their high schools.²² Terms like "sports" and

¹⁹ Joanna Almeida et al., *Emotional Distress Among LGBT Youth: The Influence of Perceived Discrimination Based on Sexual Orientation*, 38 J. Youth & Adolescence 1001, 1002 (2009), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3707280/pdf/nihms261853.pdf>.

²⁰ This information is derived from anonymized data that The Trevor Project has collected, compiled, and reviewed on its platforms—TrevorLifeline, TrevorText, TrevorChat, and TrevorSpace—pertaining to youth expressing concerns regarding school athletics. To protect the privacy of the youth using its services, The Trevor Project does not make this data publicly available.

²¹ *Id.*

²² *Id.*

“athlete” appear on TrevorText and TrevorChat hundreds of times.²³ The Trevor Project’s data confirm that the fear of being denied the opportunity to participate in sports is a recurring theme for transgender youth.²⁴

Furthermore, The Trevor Project’s 2021 research on LGBTQ youth sports participation found that 68% of LGBTQ youth had never participated in sports for a school or community league or club.²⁵ Of the 32% of LGBTQ youth that did participate in sports, only 16% reported that they had heard positive things about LGBTQ people from a sports leader or coach.²⁶ Further, The Trevor Project’s 2020 research into the well-being of LGBTQ youth athletes found that transgender and/or nonbinary youth had significantly lower rates of participation in sports compared to their cisgender LGBQ peers; youth who identified as transgender or nonbinary were nearly half as likely to report sports participation (17%) compared to cisgender LGBQ youth, 27% of whom reported participating in sports.²⁷ Even so, Trevor’s research also revealed that transgender and nonbinary youth’s participation in sports is associated with positive well-being indicators. For example, 27% of

²³ *Id.*

²⁴ *Id.*

²⁵ *See supra* note 13.

²⁶ *Id.*

²⁷ The Trevor Project, *Research Brief: The Well-Being of LGBTQ Youth Athletes* (Aug. 31, 2020), <https://www.thetrevorproject.org/research-briefs/the-well-being-of-lgbtq-youth-athletes/>.

transgender/nonbinary youth who participated in sports reported receiving mostly A's, whereas only 19% of transgender/nonbinary youth reported receiving mostly A's in school when they did not participate in sports.²⁸

Building on its commitment to prevent suicide among LGBTQ youth athletes, The Trevor Project spent months meeting with LGBTQ athletes to understand the challenges they face in youth sports.²⁹ Participants shared that when surrounded by support and encouragement from teammates, transgender youth athletes thrived.³⁰ This is consistent with The Trevor Project's experience in its crisis services, as transgender youth regularly report to counselors that their participation in sports teams is an integral part of their lives and a source of positive energy.³¹ Many students expressed that participating in sports built their self-esteem, created bonds with their peers, and supported their academic success.³² For one transgender student who had been kicked out of her home after she transitioned, participating on a track team was a source of resilience and hope for the future.³³ Another student

²⁸ *Id.*

²⁹ These accounts are derived from anonymized interviews of LGBTQ athletes conducted by The Trevor Project in the summer of 2020.

³⁰ *Id.*

³¹ *See supra* note 20.

³² *Id.*

³³ *Id.*

shared that their team is their only refuge.³⁴ A third shared that their coach was their “go-to” person that they were able to talk to about their challenges as a transgender youth.³⁵ Participation policies like that of CIAC are essential to ensuring that transgender youth maintain these positive experiences and are included in an important source of community and support. This is especially true given another statistic identified through The Trevor Project’s research; LGBTQ youth who report having at least one accepting adult were 40% less likely to report a suicide attempt in the past year.³⁶ Coaches, trainers, and others associated with sports can serve as that critical adult.

Inclusive participation policies remove the barriers and emotional hardships transgender youth already experience when participating in sports. Transgender students frequently express that they hope to be valued for their contributions to their school sports teams, just as other students are, and that they will not be excluded from participation simply for being transgender.³⁷ Yet, many transgender students express fear and distress that they will be prevented from playing, kicked off, or

³⁴ *Id.*

³⁵ *Id.*

³⁶ The Trevor Project, *Research Brief: Accepting Adults Reduce Suicide Attempts Among LGBTQ Youth* (June 27, 2019), <https://www.thetrevorproject.org/2019/06/27/research-brief-accepting-adults-reduce-suicide-attempts-among-lgbtq-youth/>.

³⁷ *See supra* note 20.

excluded from sports that they love.³⁸ A transgender basketball player who had played since childhood worried that if they transitioned they would not be able to play the sport in college.³⁹ A disabled transgender student expressed that they would have to give up on training for a Paralympic team because of the policies excluding transgender athletes.⁴⁰ Transgender students in Connecticut will experience similar forms of emotional turmoil and pain if this Court does not allow CIAC's policy to be enforced, as the policy removes unnecessary attention from a youth's transgender status and ensures that they are welcome on teams that align with who they are.

Many transgender students who contacted the Trevor Project expressed their pain and distress at being excluded from sports because they are transgender. While the fear of losing their team was agonizing for many transgender students, the pain of being excluded from participation was even worse.⁴¹ One student told a counselor that their sport was the thing they loved most in the world—and that the only thing that would ever make them happy again would be getting it back.⁴²

In surveying youth sports participation across nearly 35,000 LGBTQ youth, The Trevor Project received numerous responses from transgender, nonbinary, and

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

gender questioning youth regarding the importance of sports participation in their lives.⁴³ Many transgender youth described how participating in sports helped their mental health.⁴⁴ One young person noted that sports “help me cope with gender dysphoria and depression.”⁴⁵ Another agreed, “I find that sports are a good way to distract me from negative thoughts.”⁴⁶ Many transgender youth shared that participating in sports helped reduce anxiety.⁴⁷ Several others described how sports helped them manage various stressors, such as pressure at school, difficult home environments, or tension around their gender identity.⁴⁸

Comradery, community, and personal wellness were common reasons why LGBTQ people reported choosing to participate in sports.⁴⁹ Many LGBTQ youth who participated in sports emphasized the value of the connections and friendships they developed with their teammates as well as the benefits to their personal

⁴³ The Trevor Project’s 2020 survey asked LGBTQ youth two short-answer questions about sports participation. While not all responses were included in the research brief, *see supra* note 13, The Trevor Project shares additional responses it received from transgender, nonbinary, and gender-questioning youth this brief.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

wellness.⁵⁰ One transgender youth noted that having the structure of scheduled times to play sports helps them stay active, while another reported that they enjoy being healthy and that being part of a team pushes them.⁵¹ In particular, a number of transgender youth that participate in track and field emphasized that it was a great way to stay in shape, challenge their body, and find a community.⁵² Several other transgender youth emphasized that being part of a team provides a community that values them for who they are.⁵³ A high school player shared, “I’ve met some of my closest friends through being an athlete.”⁵⁴ Another shared that their teammates were like their family.⁵⁵

The common thread is that inclusive policies like that of CIAC send a message that transgender youth are wanted and welcome in their school community. In sharp contrast, exclusionary policies send the message that transgender youth are unwanted and alone. No young person should be barred from the benefits of sports participation—friendship, fun, and stress relief—due to their gender identity. Transgender youth fundamentally need and deserve the same respect, support, and

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

access to school sports as their peers. CIAC's participation policy is a significant step in the right direction.

CONCLUSION

Transgender youth simply want the same opportunities as their classmates. CIAC's inclusive participation policy ensures that transgender youth are able to participate in sports and takes a significant step in preventing incredibly harmful prejudices and stigma against transgender youth. Even for those transgender youth who may never join a sports team, benefits flow from knowing that their schools welcome them with equal opportunity under the law. For the foregoing reasons, The Trevor Project respectfully requests that this Court affirm the District Court's order granting Defendants-Appellee's motion to dismiss and enter judgement in favor of Defendants-Appellees.

Dated: October 12, 2021

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 29(a)(5)(G) and Local Rules 29.1(c) and 32.1(a)(4)(A), I certify that this brief complies with the length limitation because this brief contains 3,061 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

Pursuant to Fed. R. App. P. 32(a)(5) and 32(a)(6), as well as Local Rule 32.1, this brief complies with the typeface and type style requirements because this brief has been prepared in a proportionately spaced typeface using Microsoft Word 2010 Times New Roman 14-point font.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was electronically filed with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

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