

PUBLICATION

United States Supreme Court to Review Student Transgender Bathroom Access Case

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On October 28, 2016, the Justices of the United States Supreme Court announced that they would hear the appeal of the Gloucester County School Board's appeal from the United States Court of Appeals for the Fourth Circuit in the matter of *Gloucester County School Board v. G.G.*

The plaintiff in the lawsuit is Gavin Grim, a 17-year-old transgender boy who has been diagnosed with gender dysmorphia, a condition characterized by clinically significant distress caused by an incongruence between a person's gender identity and the person's birth-assigned sex. In his lawsuit, Mr. Grim claims that a school policy banning him from using the boys' restroom impermissibly discriminates against him in violation of Title IX of the Education Amendments Act of 1972 as well as the Equal Protection Clause of the United States Constitution.

The United States District Court for the Eastern District of Virginia held, among other conclusions, that Title IX prohibited discrimination based on sex, but not based on other concepts such as gender identity. Accordingly, the district court dismissed Mr. Grim's Title IX claim and denied his request for a preliminary injunction that would have permitted him to use the boy's bathroom. On appeal, the Fourth Circuit cited recent guidance issued by the United States Department of Education indicating that transgender students should be permitted to use restrooms and locker rooms consistent with their gender identities. That court concluded that the district court failed to afford that guidance sufficient deference in rendering its determination. The Fourth Circuit reinstated Mr. Grim's claims. On remand, the district court granted Mr. Grim's claims for an injunction permitting him to use the boy's restroom at school.

In August, the Supreme Court split 5 to 3 in deciding to put Mr. Grim's injunction on hold in order to maintain the status quo pending a decision from the Court on whether to review the propriety of the proceedings to date. Mr. Grim urged the Court not to take the case. In deciding to grant review, the Supreme Court indicated that it will focus on whether the Department of Education's guidance on the transgender bathroom access issue should be viewed as having the force of law.

Although the *Gloucester* matter does not directly concern employment laws or the rights of employees in the workplace, it does represent an important development in the rapidly changing landscape of United States civil rights. A decision in Mr. Grim's favor from the Supreme Court would suggest that should federal employment-related agencies such as the Department of Labor issue guidance similar to that of the Department of Education in the *Gloucester* matter, that guidance may also be upheld.