

No. 18-107

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In the  
**Supreme Court of the United States**

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R.G. & G.R. HARRIS FUNERAL HOMES, INC.,  
*Petitioner,*

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AND  
AIMEE STEPHENS,  
*Respondents.*

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**On Writ of Certiorari to the United States  
Court of Appeals for the Sixth Circuit**

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**BRIEF OF ANTI-SEXUAL ASSAULT,  
DOMESTIC VIOLENCE, AND GENDER-BASED  
VIOLENCE ORGANIZATIONS AS *AMICI  
CURIAE* IN SUPPORT OF RESPONDENT**

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## STATEMENT OF INTEREST

*Amici curiae* anti-sexual assault and domestic violence organizations respectfully submit this brief in support of Respondent Aimee Stephens.<sup>1</sup> *Amici* are 18 organizations that advocate for victims of sexual assault, domestic violence, and other gender-based violence. The form of their advocacy varies, but their purpose is uniform: to eliminate sexual assault, domestic violence, and other gender-based violence, and to support and empower all survivors of these crimes.

As organizations that support, empower, and advocate for victims, *amici* reject attempts by R.G. & G.R. Harris Funeral Homes, Inc. (“Harris Homes”) to discriminate against transgender people, which would defeat the purpose of Title VII and contribute to heightened risks of violence faced by this group.

There is no evidence that Title VII’s nondiscrimination requirements (or any nondiscrimination protections for transgender

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<sup>1</sup> Petitioner consented to the filing of *amicus* briefs by letter to the Court dated May 10, 2019. Respondent EEOC consented to the filing of *amicus* briefs by letter to the Court dated May 30, 2019. Pursuant to Supreme Court Rule 37.3(a), *amici* certify that Respondent Aimee Stephens has consented to the filing of this brief. Pursuant to Rule 37.6, *amici* certify that no counsel for any party authored this brief in whole or in part, no party or party’s counsel made a monetary contribution to fund its preparation or submission, and no person other than *amici* or their counsel made such a monetary contribution. A full list of *amici curiae* is included in the Appendix.

people) impose any harm on cisgender (that is, non-transgender) people. But without protection, transgender people face real risks to their safety and well-being. Transgender individuals, and the LGBT community generally, experience sexual assault, harassment, and abuse at greater rates than the rest of the population. By firing transgender employees who plan to live openly in their gender identities, actions like those taken by Harris Homes increase the risk that transgender people (and people who are mistakenly perceived as transgender) will suffer from continued social marginalization and related risks of violence. The Court should, therefore, affirm the judgment of the Sixth Circuit.

### SUMMARY OF THE ARGUMENT

Harris Homes and its supporters have insisted that Title VII permits an employer to terminate a transgender individual's employment *because* that person is transgender, arguing that such discrimination is necessary to protect the interests of employers and customers. As the Sixth Circuit recognized, that argument has no basis in fact. It also contradicts the experience and expertise of *amici*, who have spent decades working to eliminate sexual assault, domestic violence, and other gender-based violence.

Allowing employers to discriminate against transgender employees does nothing to protect the interests of cisgender people. What's more, these policies place transgender people—who are victims of sexual assault, domestic violence, and other gender-based violence at higher reported rates than the rest of the population—in harm's way by legitimizing the

biases and marginalization that contribute to violence against them.

Harris Homes terminated Aimee Stephens based on the admitted bias of its owner and the presumed biases of its customers, notwithstanding Ms. Stephens' by all accounts excellent job performance. *See* Pet. App. 16a, 24a. Title VII's animating purpose is to eliminate such considerations from employment decisions, ensuring that all Americans have equal access to employment opportunities. *See Price Waterhouse v. Hopkins*, 490 U.S. 228, 240, 251 (1989) (plurality opinion) (Under Title VII, "gender must be irrelevant to employment decisions" because "Congress intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes."); *see also id.* at 259 (White, J., concurring); *id.* at 272 (O'Connor, J., concurring). Indeed, in the experience of the 21 states and more than 225 municipalities that have enacted laws expressly prohibiting discrimination based on gender identity, such laws help dispel harmful biases that marginalize transgender individuals and subject them to increased risk of violence. None of these jurisdictions has reported a rise in sexual violence or other public safety issues affecting cisgender people following the enactment of these laws.

In light of this background, *amici* submit this brief to aid the Court in discerning fact from fiction. Rigorous research and the experience of organizations that work to eliminate gender-based violence show that prohibiting discrimination against transgender people provides the concrete benefit of reducing the risk of violence against them and results in no harm to others.

## ARGUMENT

Prior to her transition, Ms. Stephens worked for Harris Homes for years as an apprentice, then as a Funeral Director/Embalmer. Pet. App. 5a. In July 2013, Ms. Stephens provided Thomas Rost, the majority owner of the company and its primary operator, with a letter stating that she intended to transition to live as a woman, and would return from a planned vacation as Aimee Stephens, “in appropriate business attire.” *Id.* at 8a. Just before she left for vacation, however, Mr. Rost terminated her, testifying that “he fired Stephens because ‘[Stephens] was no longer going to represent himself as a man. He wanted to dress as a woman.’” *Id.* at 9a. Mr. Rost admitted that “he did not fire Stephens for any performance-related issues.” *Id.* at 16a. Ms. Stephens then filed a complaint with the EEOC, alleging that “management” had informed her that “the public would [not] be accepting of [her] transition.” *Id.* at 10a (alterations in original). Mr. Rost, for his part, averred that he would be “violating God’s commands” by continuing to employ Ms. Stephens if she presented as a woman, and contended that “allowing a funeral director to wear the uniform for members of the opposite sex would often create distractions for the deceased’s loved ones and thereby hinder their healing process.” *Id.* at 9a, 47a. That is, Harris Homes’ position is that an employer can, consistent with Title VII’s prohibition on discrimination on the basis of sex, fire a transgender individual because that person is transgender.

Permitting such open discrimination is not only inconsistent with Title VII, it is affirmatively

harmful to transgender people, while providing no protection or benefit to cisgender people. As the Sixth Circuit recognized, the “factual premise” that the presence of a transgender person would harm workplace function is “wholly unsupported in the record” and “premised on presumed biases” that should not be enshrined in law. Pet. App. 48a. And academic research, empirical data, and the expertise and experience of *amici* show that employment discrimination harms not only the economic well-being of transgender people, but also their physical safety.

**I. TRANSGENDER PEOPLE ARE MORE LIKELY TO BE VICTIMS OF SEXUAL ASSAULT AND OTHER VIOLENT CRIMES.**

Legally sanctioned discrimination against transgender people directly causes economic harm and reinforces biases and marginalization, contributing to the increased risk of violence transgender people already face.

Reported crimes against transgender people, including sexual assault and other sex crimes, continue to grow. In 2015, the National Coalition of Anti-Violence Programs found that 26 percent of all reported incidents of anti-LGBTQ hate violence involved anti-transgender bias. *See* Emily Waters et al., Nat’l Coal. of Anti-Violence Programs, Lesbian, Gay, Bisexual, Transgender, Queer and HIV-Affected Hate Violence in 2015 (2016).<sup>2</sup> The Human Rights Campaign reported that 2015 saw a record number

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<sup>2</sup> Available at [https://avp.org/wp-content/uploads/2017/04/ncavp\\_hvreport\\_2015\\_final.pdf](https://avp.org/wp-content/uploads/2017/04/ncavp_hvreport_2015_final.pdf).

of homicides of transgender people. Human Rights Campaign, *Violence Against the Transgender Community in 2016*.<sup>3</sup> Excluding the 49 lives lost at Pulse Nightclub in Orlando on June 12, 2016, there was still a 17% increase in LGBTQ hate-violence homicides in 2016. Sixty-eight percent of these victims were transgender or gender nonconforming. See Emily Waters et al., *Nat'l Coal. of Anti-Violence Programs, Lesbian, Gay, Bisexual, Transgender, Queer and HIV-Affected Hate Violence in 2016* at 9 (2017).<sup>4</sup> In 2017, 52 percent of the victims of LGBTQ hate-violence homicides nationwide were transgender women. Beverly Tillery et al., *Nat'l Coal. of Anti-Violence Programs, Lesbian, Gay, Bisexual, Transgender, Queer and HIV-Affected Hate and Intimate Partner Violence in 2017* at 7 (2018).<sup>5</sup>

LGBT people in the United States are exposed to staggeringly high levels of violence. Academic analysis of criminal data shows that “lesbian, gay, bisexual, and transgender (LGBT) victims were more likely to be victims of sexual assault” than others. Robert J. Cramer et al., *Mental Health and Violent Crime Victims, Does Sexual Orientation Matter?*, 36 *L. & Hum. Behav.* 87, 87 (2012). These high rates of hate crimes, sexual assault crimes, and crimes of violence are well documented. See, e.g., *id.* at 90

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<sup>3</sup> <https://www.hrc.org/resources/violence-against-the-transgender-community-in-2016>.

<sup>4</sup> Available at [https://avp.org/wp-content/uploads/2017/06/NCAVP\\_2016HateViolence\\_REPORT.pdf](https://avp.org/wp-content/uploads/2017/06/NCAVP_2016HateViolence_REPORT.pdf).

<sup>5</sup> Available at <http://avp.org/wp-content/uploads/2019/01/NCAVP-HV-IPV-2017-report.pdf>.

(finding that “LGBT victims were 2.3 times more likely to be victims of sexual assault than heterosexual victims”); Osman Ahmed & Chai Jindasurat, Nat’l Coal. of Anti-Violence Programs, Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Hate Violence in 2014 (2015) (“NCVAP 2014”) (finding that “transgender women were almost twice as likely (1.6) to experience sexual violence [than other hate-violence victims surveyed], highlighting a disproportionate impact of sexual violence against transgender women”).<sup>6</sup> As reported in 2009, “anti-LGBT crimes have increased over the last decade, with particular increases in both sexual assault and murder.” Cramer et al., *supra*, at 88 (citing Avy A. Skolnik et al., Nat’l Coal. of Anti-Violence Programs, Hate Violence Against Lesbian, Gay, Bisexual, and Transgender People in the United States: 2008 (2009)).<sup>7</sup> And since 2014, “the total number [of hate crimes motivated by anti-LGBTQ bias] has increased every year,” Tim Fitzsimons, *Anti-LGBTQ Hate Crimes Rose 3 Percent in ‘17, FBI Finds*, NBC News (Nov. 14, 2018) (citing FBI 2017 Hate Crime Statistics),<sup>8</sup> including the most ever recorded homicides of transgender individuals

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<sup>6</sup> Available at [https://avp.org/wp-content/uploads/2017/04/2014\\_HV\\_Report-Final.pdf](https://avp.org/wp-content/uploads/2017/04/2014_HV_Report-Final.pdf).

<sup>7</sup> Available at [https://avp.org/wp-content/uploads/2017/04/2008\\_NCAVP\\_HV\\_Report.pdf](https://avp.org/wp-content/uploads/2017/04/2008_NCAVP_HV_Report.pdf).

<sup>8</sup> <https://www.nbcnews.com/feature/nbc-out/anti-lgbtq-hate-crimes-rose-3-percent-17-fbi-finds-n936166>.

in 2017. Human Rights Campaign, *Violence Against the Transgender Community in 2018*.<sup>9</sup>

These disquieting statistics are likely just the tip of the iceberg. “Existing official crime statistics, victim surveys, and self-report surveys provide a very limited glimpse of LGBTQ people’s victimization and offending because they exclude sexual orientation and gender identity as key variables \* \* \*.” J. B. Woods, “*Queering Criminology*”: *Overview of the State of the Field*, in *Handbook of LGBT Communities, Crime, and Justice* 15, at 18 (D. Peterson and V. R. Panfil eds., 2013). Even where sexual orientation and gender identity are studied, experts believe the existing statistics *underestimate* the actual rates of crimes against transgender people.<sup>10</sup> In other words, it is likely that

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<sup>9</sup> <https://www.hrc.org/resources/violence-against-the-transgender-community-in-2018>.

<sup>10</sup> Transgender people underreport violence in part because they are more likely to be the victims of police violence than other survivors of sexual assault, domestic violence, and other gender-based violence. Transgender people have been found to be 3.7 times more likely to experience police violence and seven times more likely to experience physical violence in interactions with the police than other survivors of assault and abuse. See NCVAP 2014, *supra*. A national survey of transgender individuals found that almost half of the respondents (46%) were “uncomfortable seeking police assistance.” J. Grant et al., Nat’l Ctr. for Transgender Equality, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey 6* (2011), *available at* [https://www.transequality.org/sites/default/files/docs/resources/NTDS\\_Report.pdf](https://www.transequality.org/sites/default/files/docs/resources/NTDS_Report.pdf). All sexual assault crimes are

LGBT individuals, and transgender people in particular, experience these crimes at higher rates than currently available statistics suggest.

The primary environment in which violence against transgender people has been rigorously studied is the prison population. While not wholly analogous, these statistics are representative of the ways in which transgender individuals experience victimization compared to a general population. These surveys and studies support a clear conclusion: “Gay, bisexual, transgender, and effeminate prisoners face greatly elevated risks of sexual abuse.” Kim Shayo Buchanan, *Our Prisons, Ourselves: Race, Gender, and the Rule of Law*, 29 *Yale L. & Pol’y Rev.* 1, 15 (2010); *see also generally Farmer v. Brennan*, 511 U.S. 825, 848 (1994) (recounting how the petitioner’s transgender status and feminine appearance alerted prison officials to a heightened risk of sexual abuse).

A study of California state prison inmates found that transgender inmates are 13 times more likely to be sexually assaulted in prison; 59 percent reported sexual assault.<sup>11</sup> Valerie Jenness et al., *Univ. of*

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underreported, but this is especially true for transgender survivors. *See* C. Kruttschnitt et al., *Nat’l Res. Council, Estimating the Incidence of Rape and Sexual Assault* 37 (2014) (noting that 65% of all sexual assault crimes in the United States go unreported and that 13% of those crimes are not reported because of the belief that the police would not help).

<sup>11</sup> “In California state prisons, transgender inmates are housed with members of their gender at birth, not the gender they identify with, unless they have had sexual

Cal., Irvine, Ctr. for Evidence-Based Corr., *Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault 2* (2007).<sup>12</sup> “[T]he American Psychological Association and the National Commission on Correctional Health Care have both issued statements recognizing that transgender inmates are at especially high risk of abuse and calling for their protection.” Brenda V. Smith et al., *Nat’l Inst. of Corr., Policy Review and Development Guide: Lesbian, Gay, Bisexual and Intersex Persons in Custodial Settings 7* (2013).<sup>13</sup>

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reassignment surgery.” Maureen Cavanaugh, *Transgender in Prison: How California’s New Guidelines Will Be Implemented*, KPBS (Oct. 26, 2015), <http://www.kpbs.org/news/2015/oct/26/transgender-prison-how-californias-new-guidelines-/>; *see also* Cal. Dep’t of Corr. & Rehab., *Operations Manual 574* (2016) (recommending that transgender inmates be placed in prisons consistent with their gender at birth), [http://www.cdcr.ca.gov/Regulations/Adult\\_Operations/docs/DOM/DOM%202016/2016\\_DOM.PDF](http://www.cdcr.ca.gov/Regulations/Adult_Operations/docs/DOM/DOM%202016/2016_DOM.PDF).

<sup>12</sup> Available at [http://ucicorrections.seweb.uci.edu/files/2013/06/PREA\\_Presentation\\_PREA\\_Report\\_UCI\\_Jenness\\_et\\_al.pdf](http://ucicorrections.seweb.uci.edu/files/2013/06/PREA_Presentation_PREA_Report_UCI_Jenness_et_al.pdf).

<sup>13</sup> Available at <https://www.prearesourcecenter.org/sites/default/files/library/lgbtipolicyguideaugust2013.pdf>.

## **II. PERMITTING EMPLOYMENT DISCRIMINATION INCREASES THE RISK THAT TRANSGENDER PEOPLE WILL BE THE VICTIMS OF VIOLENT CRIMES.**

Harris Homes and its *amici* would permit employers across the United States to fire transgender employees based solely on discriminatory views. Due largely to such attitudes, transgender people suffer high levels of employment discrimination, which exposes them to poverty, homelessness, and violence. Moreover, permitting such actions—against the plain text and underlying purpose of Title VII—would give credence to those who harbor prejudice against transgender individuals as fundamentally suspect or worthy of mistreatment. In this way, discriminatory policies increase the already-serious risks of violence and harassment discussed previously by validating the biases of people who harbor ill will toward transgender people and feel entitled to harm them. Depriving transgender people of basic employment opportunities based on their transgender status, as Harris Homes did, legitimizes that animus, and both safety and privacy suffer.

### **A. The Economic Consequences of Employment Discrimination Leave Transgender People More Vulnerable to Violence.**

As *amici* have seen first-hand and as studies have shown, employers routinely discriminate against transgender applicants and employees, and transgender employees who have suffered workplace

discrimination are exposed to violence at substantially higher rates than even transgender people generally.

The U.S. Transgender Survey indicates that 67% of respondents who held a job in the past year suffered an adverse employment action, including being fired or forced to resign from a job, not being hired for a job they applied for, and/or being denied a promotion; 27% of respondents who held a job in the past year specifically identified their gender identity as the cause for an adverse employment action. Sandy E. James et al., Nat'l Ctr. for Transgender Equality, *The Report of the 2015 U.S. Transgender Survey 150-51 (2016)* (“U.S. Transgender Survey”).<sup>14</sup> This discrimination leads to adverse economic consequences such as joblessness, working in the underground economy, and homelessness, which can be long-term. Unsurprisingly, transgender people suffer disproportionately high rates of unemployment and poverty. Indeed, they report unemployment rates of 15%, three times the national average at the time of the survey. *Id.* at 5. And transgender people of color report an even higher unemployment rate—four times higher than the national average. *Id.* at 6. Additionally, 29% of

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<sup>14</sup> The U.S. Transgender Survey is the “largest survey ever conducted to examine the experiences of transgender people living in the United States.” U.S. Transgender Survey at 21. The Survey’s final sample included respondents from all 50 states, American territories, and U.S. overseas military bases. *Id.* The final sample included 27,715 respondents, all individuals 18 years of age or older. *Id.* at 21, 213.

transgender people live in poverty, more than twice the rate of the U.S. population. *Id.* at 5. Such economic insecurity exposes transgender people to outsized risks of violence.

Likely as a result of employment discrimination and poverty, many transgender people participate in the underground economy, including sex work, in order to survive. Indeed, transgender people who lost their jobs because of discrimination were specifically more likely to have participated in the underground economy (at a rate of 37%) than transgender people broadly speaking (20%). *Id.* at 14, 158. Twelve percent of respondents engaged in sex work at some point, and 9% engaged in sex work in the past year. *Id.*

Transgender people who participate in the underground economy, particularly those engaged in sex work, are exposed to a higher risk of violence than those who do not. *Id.* at 202, 205. Respondents to the U.S. Transgender Survey who were currently working in the underground economy were *three times* more likely to report being physically attacked in the past year (41%) as transgender people not participating in the underground economy. *Id.* at 202. Furthermore, nearly half of respondents (47%) reported being sexually assaulted at some point in their lives, and a staggering 72% of respondents who had engaged in sex work during their lifetime reported having been sexually assaulted. *Id.* at 205.

Given the pervasive employment discrimination against transgender people as well as their high rates of unemployment and poverty, it is unsurprising that transgender people also experience

high rates of homelessness. *Id.* The homelessness rate among transgender people who lost a job because they are transgender is a distressing 55%. *Id.* at 178. More generally, nearly one-third of respondents experienced homelessness at some point in their lifetime. Twelve percent experienced homelessness in the past year. *Id.* at 5. Like those who participate in the underground economy, homeless transgender people experience higher rates of sexual assault than other transgender people. *Id.* at 205. Whereas 47% of respondents reported being sexually assaulted in their lifetime, 65% of respondents who experienced homelessness reported such assaults. *Id.*

Put simply, employment discrimination against transgender people contributes to higher risks of violence. Transgender people face disproportionately high rates of unemployment, poverty, and homelessness. They work in the underground economy at high rates. Violence against transgender people is common, but it is pervasive against those working in the underground economy. Therefore, to the extent transgender people participate in the underground economy or experience homelessness as a result of employment discrimination, this discrimination directly exposes them to an even higher risk of violence than they would otherwise suffer.

**B. The Stigma of Employment  
Discrimination Also Contributes to a  
Heightened Risk of Violence.**

*Amici*, academic commentators, and others who advocate against sexual violence all recognize that

permitting open discrimination, including in the employment context, is a cause of—not merely incidental to—transphobia, social stigma, and marginalization that leads to violence. “[S]exual minority victimization experiences are hypothesized to be a function of society-induced stigma \* \* \* [that is] continually reinforced through subtle and overt means such as anti-LGBT legislation \* \* \*.” Cramer et al., *supra*, at 87 (citing G. M. Herek, *Hate Crimes and Stigma-Related Experiences Among Sexual Minority Adults in the United States*, 24 J. Interpersonal Violence 54 (2009)). In other words, permitting employers to terminate transgender employees based on that status reinforces the prejudices that were on display when Harris Homes fired Ms. Stephens. See Pet. App. 9a (“[Harris Homes’ owner] testified that he fired Stephens because ‘he was no longer going to represent himself as a man. He wanted to dress as a woman.’”); *id.* at 9a-10a (EEOC complaint alleged that Ms. Stephens was told upon her termination that “the public would [not] be accepting of [her] transition” (alterations in original)). And these biases feed the stigma that makes sexual assault and violence a legitimate fear for many transgender people.

Indeed, many transgender people have experienced violence at work. Fifteen percent of respondents to the U.S. Transgender Survey who held a job in the past year reported being verbally harassed, physically attacked, and/or sexually assaulted at work because of their gender identity. U.S. Transgender Survey at 153. Employment discrimination and violence against transgender employees because of their gender identity are linked

by a common thread: animus toward transgender people.

*Amici* have seen similar dynamics emerge specifically in the context of restrooms, which have been a frequent target of proposed discriminatory laws. See Julie Moreau, *No Link Between Trans-Inclusive Policies and Bathroom Safety, Study Finds*, NBC News (Sept. 19, 2018) (noting that, since 2016, at least 20 states have considered legislation “restrict[ing] transgender people’s usage of sex-segregated public facilities” such as restrooms and locker rooms).<sup>15</sup> Proponents of such laws frequently argue that they are necessary to prevent violence against women because, they contend, non-transgender men and boys will take advantage of anti-discrimination rules to circumvent criminal laws against sexual assault. See, e.g., *G.G. ex rel. Grimm v. Gloucester Cty. Sch. Bd.*, 822 F.3d 709, 716 (4th Cir. 2016), *vacated*, 137 S. Ct. 1239 (2017) (mem.) (recounting public comments in favor of a policy prohibiting transgender students from using restrooms corresponding with their gender identities, including that “boys would come to school wearing dresses in order to gain access to the girls’ restrooms”); *Adams v. Sch. Bd. of St. Johns Cty.*, 318 F. Supp. 3d 1293, 1305 (M.D. Fla. 2018) (recounting the School Board’s argument that prohibiting transgender students from using restrooms corresponding with their gender identity was necessary to avoid “the risks of danger posed to a

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<sup>15</sup> <https://www.nbcnews.com/feature/nbc-out/no-link-between-trans-inclusive-policies-bathroom-safety-study-finds-n911106>.

female freshman student who might find herself alone in the restroom with an 18-year old male student”).

Setting aside the obvious fact that criminal laws prohibit assault and other violent crimes no matter the perpetrator, the first empirical, peer-reviewed study of the relationship between “reports of safety or privacy violations in public restrooms, locker rooms, and dressing rooms” and nondiscrimination ordinances “found *no evidence* that privacy and safety in public restrooms change as a result of the passage of” such ordinances. 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 Res. & Social Pol’y* 70, 73, 78 (2019) (emphasis added).

These results confirm the anecdotal experiences of many public officials, members of law enforcement, and anti-sexual-assault organizations such as *amici*. A law enforcement official from Baltimore, for instance, stated in response to an email survey about negative safety effects of gender identity nondiscrimination laws that “[i]t’s the most ridiculous thing I’ve ever heard . . . . I’m more concerned in going to the bathroom about someone reaching under and trying to snatch my purse.” See Lou Chibbaro Jr., *Predictions of Trans Bathroom Harassment Unfounded*, Wash. Blade (Mar. 31, 2016).<sup>16</sup> A school official in St. Paul, Minnesota

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<sup>16</sup> <http://www.washingtonblade.com/2016/03/31/predictions-of-trans-bathroom-harassment-unfounded/>.

noted that, in the more than 25 years since the Minnesota Human Rights Act was amended to protect transgender individuals, there was “no correlation between the Act and incidences of bullying or harassment.” Rachel Percelay, *17 School Districts Debunk Right-Wing Lies about Protections for Transgender Students*, Media Matters for Am. (June 3, 2015).<sup>17</sup> School administrators testified similarly in the *Adams* case, with one high-school principal noting that she had “never heard of a transgender student (or adult) going into a restroom for the purpose of engaging in any inappropriate predatory behavior and ha[d] never heard of a cisgender student pretending to be transgender to gain access to a bathroom opposite of their true gender identity,” and that existing “disciplinary guidelines” were sufficient to address any issue that could arise. *Adams*, 318 F. Supp. 3d at 1310. The CEO of the Dallas Area Rape Crisis Center not only denied any problems, but noted that “those that cite this proposition as an ‘opportunity’ to victimize someone are simply doing so in ignorance; not understanding the mentality of perpetrators.” Carlos Maza & Rachel Percelay, *Texas Experts Debunk the Transgender “Bathroom Predator” Myth Ahead of HERO Referendum*, Media Matters for Am. (Oct. 15, 2015).<sup>18, 19</sup>

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<sup>17</sup> <http://mediamatters.org/research/2015/06/03/17-school-districts-debunk-right-wing-lies-abou/203867>.

<sup>18</sup> <http://mediamatters.org/research/2015/10/15/texas-experts-debunk-the-transgender-bathroom-p/206178>.

<sup>19</sup> See also Carlos Maza & Luke Brinker, *15 Experts Debunk Right-Wing Transgender Bathroom Myth*, Media

To the contrary, restrooms in particular have become a common site of violence *against transgender people* as those who harbor bias feel

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Matters for Am. (Mar. 20, 2014), <http://mediamatters.org/research/2014/03/20/15-experts-debunk-right-wing-transgender-bathro/198533>; Rachel Percelay, *Florida Experts Debunk the Transgender “Bathroom Predator” Myth*, Media Matters for Am. (Jan. 12, 2016), <http://mediamatters.org/research/2016/01/12/florida-experts-debunk-the-transgender-bathroom/207916>; Joe Garofoli, *Texan Needs to Be Schooled in San Francisco on Transgender Rights*, S.F. Chron. (May 15, 2016), <http://www.sfchronicle.com/politics/article/Texan-needs-to-be-schooled-in-San-Francisco-on-7469979.php>; Michael Scherer, *Battle of the Bathroom*, Time (May 30, 2016); Nat’l Task Force to End Sexual and Domestic Violence Against Women, National Consensus Statement of Anti-Sexual Assault and Domestic Violence Organizations in Support of Full and Equal Access for the Transgender Community (Apr. 21, 2016), <https://www.scribd.com/doc/309946430/National-Consensus-Statement-of-Anti-Sexual-Assault-and-Domestic-Violence-Organizations-in-Support-of-Full-and-Equal-Access-for-the-Transgender-Commun>; Rachel Percelay, *National Expert: Anti-LGBT “Bathroom Predator” Fears Are “Very Misinformed,”* Media Matters for Am. (Apr. 21, 2016), <http://mediamatters.org/blog/2016/04/21/national-expert-anti-lgbt-bathroom-predator-fears-are-very-misinformed/210001>; Carlos Maza, *An Expert Explains Why the Right-Wing “Bathroom Predator” Myth Is Wrong and Dangerous*, Media Matters for Am. (Oct. 15, 2015), <http://mediamatters.org/blog/2015/10/15/an-expert-explains-why-the-right-wing-bathroom/206163>.

empowered to act on those biases. In a recent survey of transgender residents of Washington, D.C., for example, nearly 70 percent of all respondents reported that they had been verbally harassed or physically assaulted in public restrooms. Jody L. Herman, Williams Inst., *Gendered Restrooms and Minority Stress* 71 (2013).<sup>20</sup> The findings of this study are also borne out in anecdotal reporting. See Edecio Martinez, *Suspects in Beating of Transgender Woman Chrissy Lee Polis Could Face Hate Crime Charges*, CBS News (Apr. 26, 2011) (Chrissy Lee Polis, a 22-year-old Maryland transgender woman, was brutally attacked by two teenage girls when she attempted to use a McDonald's restroom; the girls spit in her face, ripped her hair, threw her to the floor, and kicked her in her face while others stood by laughing);<sup>21</sup> see also, e.g., Associated Press, *Report: Transgender Teen Attacked in Bathroom of Northern California High School*, *The Oregonian* (Mar. 4, 2014) (transgender student who "identifies as male, told officers he was leaving a boy's bathroom at Hercules Middle/High School when three teenage boys pushed him inside a large stall and assailed him").<sup>22</sup>

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<sup>20</sup> Available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Herman-Gendered-Restrooms-and-Minority-Stress-June-2013.pdf>.

<sup>21</sup> <http://www.cbsnews.com/news/suspects-in-beating-of-transgender-woman-chrissy-lee-polis-could-face-hate-crime-charges/>.

<sup>22</sup> [http://www.oregonlive.com/today/index.ssf/2014/03/report\\_transgender\\_teen\\_attack.html](http://www.oregonlive.com/today/index.ssf/2014/03/report_transgender_teen_attack.html).

Actions of private employers like Harris Homes—which terminated a productive, respected employee because she was transgender—send a message to the public that it is acceptable to treat transgender people with prejudice and deny them equal opportunity to participate in public life. These messages directly contribute to the heightened threat of violence transgender people face.

### CONCLUSION

Permitting employment discrimination against transgender people directly contributes to severe economic hardship for an already at-risk group, and fosters biased and prejudicial attitudes. Among transgender people who have lost a job due to their gender identity, homelessness is the *most prevalent outcome*. These impacts produce heightened risks of violence against transgender people, particularly for those who are forced into the underground economy. *Amici*, as anti-violence organizations, have seen these outcomes first-hand. Contrary to the position of Funeral Homes and its *amici*, Title VII's basic purpose is to prevent such hardships from falling disproportionately on one group of Americans due to their sex. For the foregoing reasons, *amici* respectfully request that the Court affirm the judgment of the Sixth Circuit.

Respectfully submitted,

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July 3, 2019

## APPENDIX

***List of Amici Curiae***  
**National Organizations**

1. Asian Pacific Institute on Gender-Based Violence
2. Casa de Esperanza: National Latina Network for Healthy Families and Communities
3. FORGE, Inc.
4. National Alliance to End Sexual Violence
5. National Coalition Against Domestic Violence
6. National Domestic Violence Hotline
7. National Resource Center on Domestic Violence
8. Ujima: The National Center on Violence Against Women in the Black Community
9. Women of Color Network, Inc.
10. YWCA USA

**State Organizations**

11. Arizona Coalition to End Sexual & Domestic Violence
12. Colorado Coalition Against Sexual Assault
13. DC Coalition Against Domestic Violence
14. Illinois Coalition Against Sexual Assault
15. Indiana Coalition Against Domestic Violence
16. Maine Coalition to End Domestic Violence

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17. Missouri Coalition Against Domestic and  
Sexual Violence

**Local Organizations**

18. Los Angeles LGBT Center