

In The
Supreme Court of the United States

—◆—
GLOUCESTER COUNTY
SCHOOL BOARD, PETITIONER

v.

G. G., BY HIS NEXT FRIEND
AND MOTHER DEIRDRE GRIMM

—◆—
*ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT*

—◆—
**BRIEF FOR MILLS COLLEGE AS AMICUS
CURIAE SUPPORTING RESPONDENT**

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BRIEF FOR MILLS COLLEGE AS AMICUS CURIAE SUPPORTING RESPONDENT

Mills College respectfully submits this brief as amicus curiae in support of respondent.¹

INTEREST OF AMICUS CURIAE

Mills College is an independent liberal-arts college for women, with graduate programs for women and men. Founded in 1852 as the Young Ladies' Seminary in Benicia, California, Mills boasts a rich history as a leader in women's education. Mills educates students to think critically and communicate responsibly and effectively, to accept the challenges of their creative visions, and to acquire the knowledge and skills necessary to effect thoughtful changes in a global, multicultural society. Mills encourages openness to experimentation in the context of established academic disciplines. Programs are designed to reflect the importance of global issues, provide an understanding of the natural world, and enhance opportunities for women in their developing roles throughout society. The curriculum combines traditional liberal arts with new educational initiatives that recognize the value of cultural, racial, and ethnic diversity. Inspired by a

¹ Letters from petitioner providing blanket consent to the filing of amicus briefs and from respondent providing consent to the filing of this brief are on file with the Clerk of the Court. No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amicus curiae or its counsel made a monetary contribution to the preparation or submission of this brief.

teaching philosophy that grows out of its longstanding dedication to women's education, Mills provides a dynamic learning environment that encourages intellectual exploration. The faculty of nationally and internationally respected scholars and artists is dedicated to developing the strengths of every student, preparing them for lifelong intellectual, personal, and professional growth.

Mills College was the first women's college to adopt a formal policy permitting the admission of transgender women.² Mills adopted that policy because it views educating transgender women as consistent with its mission of educating and empowering women to be leaders in society.

² This brief uses "transgender" as an umbrella term to describe people whose gender identity or expression differs from the sex they were assigned at birth, "gender fluid" to describe people who do not identify themselves as having a fixed gender, and "cisgender" to describe people whose gender identity and expression correspond to the sex they were assigned at birth.

INTRODUCTION AND SUMMARY OF ARGUMENT

Women's colleges were founded for the purpose of providing higher-education opportunities for students who were excluded from mainstream colleges and universities on the basis of their gender. For most of the history of higher education in the United States, those excluded students have been women.

Today, several women's colleges have adopted policies formally opening up admission to all women—including transgender women. They have done so because educating transgender women fits naturally within their missions of educating and empowering those who have been disadvantaged because of their gender. More fundamentally, educating transgender women is consistent with women's colleges' missions of educating *women*: transgender women are women and deserve to be treated as such.

Transgender women have successfully integrated into women's college classrooms and campuses. As the first women's college to admit transgender women, Mills College has the longest experience with transgender women on campus, and Mills's experience has been positive. Admitting transgender women has not significantly altered the classroom environment. Mills has successfully adopted transgender-inclusive policies toward dormitories, restrooms, locker rooms, and other facilities. Transgender women have been welcomed by their cisgender sisters. Concerns about permitting transgender women to self-select the facilities

that correspond with their gender identity are thus unfounded.

ARGUMENT

A. Mills College Admits Transgender Women Because It Is Consistent With Its Mission Of Educating And Empowering Women

1. Women's colleges have a long history of providing equal educational opportunities and countering gender oppression

From their inception, women's colleges have existed to create access for those who have been excluded from or disadvantaged in the higher educational system in the United States. Emily A. Langdon, *Women's Colleges Then and Now: Access Then, Equity Now*, 76 PEABODY J. EDUC. 5, 5-6 (2001). Women's colleges have a long history of countering gender oppression by empowering women to break societal barriers and become leaders.

Women's colleges came into existence around the time of the Civil War, when very few colleges and universities in the United States admitted women. Irene Harwarth, et al., *WOMEN'S COLLEGES IN THE UNITED STATES: HISTORY, ISSUES, AND CHALLENGES 1* (1997). At that time, the only options generally available to women seeking an education were academies and three-year private girls' seminaries. *Ibid.* Although these secondary schools offered more educational opportunities than otherwise existed, their purpose was not to provide women with a curriculum equivalent to

that available to men. Rather, the curriculum reinforced traditional gender roles. *Ibid.*; Susan B. Marine, Navigating Discourses of Discomfort: Women's College Student Affairs Administrators and Transgender Students 6-7 (2009) (unpublished Ph.D. dissertation, Boston College). "A major part of the woman's sphere was child-rearing, which included imparting civic virtue and knowledge." Harwarth, *supra*, at 2. "Part of the argument for women's education was based on the increasing realization that the republic needed an educated citizenry and that this in turn required the nurturing of the young by more educated mothers." *Ibid.*; see also Marine, *supra*, at 7 (education intended to "expand [women's] capacities for many tasks suited to their predestined roles as wives and mothers"). Thus, the seminaries and academies available to women "prepared women to be teachers, caretakers, and/or 'ladies' only." Marine, *supra*, at 7.

During and after the Civil War, a growing movement of "reformers asserted that women were endowed with capacities equal to those of men." Harwarth, *supra*, at 2. Leaders of the women's equality movement saw women's education as vital to effecting societal change. *Id.* at 2-3. "The colleges and universities for young men were the obvious standard for comparison. The reformers interested in educational equality asked why there could not be similar institutions for women." *Id.* at 3. Leaders argued that the seminary system was insufficient and urged that women's colleges be founded with permanent endowments, expanded

facilities, and rigorous curricula like that of men's colleges and universities. *Id.* at 1-2.

The founding of the "Seven Sisters"—Mount Holyoke, Vassar, Wellesley, Smith, Radcliffe, Bryn Mawr, and Barnard—marked a new era in women's education. These schools had much tougher admissions standards and for the first time offered women courses of study comparable to that of men's colleges. *Id.* at 6. Unlike seminaries, these institutions' purpose was not to foster women's abilities in the domestic realm. These schools were designed "as 'prestigious, selective, rigorous places of higher learning' for women excluded from the Ivy League colleges." Langdon, *supra*, at 7 (citations omitted). For example, Smith College was formed to "perfect [students'] intellect by the best methods which philosophy and experience suggest." Marine, *supra*, at 8. And Wellesley College was established to "help [women] in their search for self-knowledge, abiding principles, a broad cultural background, and honest, orderly processes of thought and methods of approaching situations." *Ibid.* (alteration in Marine).

Over the ensuing decades, women's participation in education steadily grew, and the founding of women's colleges flourished. Institutions such as Mills were established in the western United States. And southern women's colleges (often affiliated with religious denominations), black women's colleges, and Catholic women's colleges were formed to respond to the growing demand for education. Harwarth, *supra*, at 7-10. Substantially more women sought access to equal educational opportunities, particularly as the

women's suffrage movement gained traction and as women had greater access to work opportunities after World War I. Marine, *supra*, at 11-12. Although certain institutions of higher education were becoming coeducational, private women's colleges were the primary institutions that guaranteed women access to high-quality secondary educational opportunities.

By the 1960s—in the midst of the civil-rights era—women still were excluded from many schools or faced a more difficult time than men in being admitted. *See, e.g., Kirstein v. Rector & Visitors of Univ. of Va.*, 309 F. Supp. 184 (E.D. Va. 1970). In enacting Title IX in 1972, Congress sought to provide equal educational opportunities by prohibiting discrimination on the basis of sex. 20 U.S.C. § 1681(a). But Congress also recognized the important role that private women's colleges played in providing women high-quality secondary education. Congress therefore provided for the continued existence of private women's colleges by expressly exempting the admissions policies of private undergraduate institutions from Title IX. *Id.* § 1681(a)(1) (“[I]n regard to admissions to educational institutions, this section shall apply only to institutions of vocational education, professional education, and graduate higher education, and to public institutions of undergraduate higher education.”). Private women's colleges thus

remain free to further their educational missions by restricting admission on the basis of sex.³

Although educational opportunities for women have advanced profoundly—due in significant part to Title IX—women’s colleges continue to play an essential role. “Women’s colleges offer students an educational environment qualitatively different from the coeducational experience.” Langdon, *supra*, at 6. Women’s colleges today offer “positive, women-centered, supportive climates” that are unavailable at coeducational institutions. *Id.* at 10. They provide environments where women not only receive a superb education but also have unique opportunities to cultivate leadership skills. Students are empowered to break professional glass ceilings and bring about an end to disadvantages in the workplace. Alumnae consistently report that their college experiences living and learning among other intelligent, ambitious women transformed them into more effective leaders. Heidi Brown, *Why Women’s Colleges Are Still Relevant*, Forbes.com (Aug. 12, 2009).⁴

Studies have established that the unique campus and learning environments found in women’s colleges translate into greater success both during school and

³ With respect to public undergraduate institutions, Title IX does not preclude discrimination in admissions on the basis of sex if the public school “is an institution that traditionally and continually from its establishment has had a policy of admitting only students of one sex.” 20 U.S.C. § 1681(a)(5).

⁴ <http://www.forbes.com/2009/08/12/womens-colleges-student-forbes-woman-leadership-graduate.html>.

after graduation. Alumnae of women's colleges are more likely than other alumnae to graduate in four years and are more likely than any other group to complete a graduate degree. Hardwick Day, *What Matters in College After College: A Comparative Alumnae Research Study Prepared for the Women's College Coalition* 18, 37 (2012). Women attending women's colleges are 1.5 times more likely to obtain undergraduate degrees in math or the sciences than women at coeducational colleges. Jillian Kinzie, et al., *Women Students at Coeducational and Women's Colleges: How Do Their Experiences Compare?* 48 *J. OF C. STUDENT DEV.* 145, 146 (2007). Women's colleges also are more effective than all other colleges and universities at developing self-confidence, leadership, and initiative and at preparing students for their first job. *Id.* at 147; Hardwick Day, *supra*, at 38, 85, 87. "Women's colleges have documented a warmer and more favorable climate resulting in female students having higher self-confidence, more involvement both inside and outside the classroom, higher satisfaction with their undergraduate experiences and subsequently higher alumnae satisfaction, and higher occupational aspirations." Langdon, *supra*, at 14 (citations omitted); see also Leslie Miller-Bernal, *Changes in the Status and Functions of Women's Colleges Over Time*, in *CHALLENGED BY COEDUCATION: WOMEN'S COLLEGES SINCE THE 1960S* 1 (Susan L. Poulson & Leslie Miller-Bernal eds., 2006) (discussing studies).

2. Mills sees admitting transgender women as consistent with its educational mission

More recently, women's colleges are confronting the question whether their unique learning environments should be reserved only for those women who were assigned to the female sex at birth or should extend to other students who identify as women. At least ten women's colleges have now adopted transgender-inclusive admissions policies that allow the admission of students who identify as female regardless of the sex that was assigned to them. Some of these policies also permit the admission of applicants who identify as gender fluid. Other schools are actively considering adopting transgender-inclusive admissions policies.

For example, in 2014, amicus Mills College adopted the following policy:

Mills College admits students of all genders to its graduate programs, and "self-identified" women to its undergraduate programs. Mills shall not discriminate against applicants whose gender identity does not match their legally assigned sex. Students who self-identify as female are eligible to apply for undergraduate admission. This includes students who were not assigned to the female sex at birth but live and identify as women at the time of application. It also includes students who are legally assigned to the female sex, but who identify as transgender or gender fluid. Students assigned to the female sex at birth who have undergone a legal change of gender to male prior

to the point of application are not eligible for admission.

Where there is a conflict between the student's self-identified gender and the gender that appears on legal documentation such as an academic transcript or documents provided as part of the financial aid process, the student is strongly encouraged to contact the Office of Undergraduate Admissions for a discussion around their desire to attend a women's college and how they self-identify in terms of gender. This self-identification shall be the driving force behind the College's eligibility decision.

Once admitted, any student who completes the College's graduation requirements shall be awarded a degree.

Mills College, Applying For Admission.⁵

Other schools have adopted similar policies; indeed, all of the Seven Sisters schools now admit transgender women. Michelle Williams, MASSLIVE, *All Seven Sister schools now admit transgender students, including Mount Holyoke and Smith* (June 5, 2015).⁶ Mount Holyoke College formally changed its policy in 2014 and now accepts applications "from any qualified student who is female or identifies as a woman."

⁵ https://www.mills.edu/academics/undergraduate/catalog/admission_applying.php.

⁶ http://www.masslive.com/news/index.ssf/2015/06/all_seven_sister_schools_now_a.html.

Mount Holyoke, Admission of Transgender Students.⁷ In 2015, Smith College revised its admissions policy to extend eligibility to “[a]pplicants who were assigned male at birth but identify as women.” Smith College, Gender Identity & Expression.⁸ Also in 2015, Wellesley College formally altered its admissions policy and now “will consider for admission any applicant who lives as a woman and consistently identifies as a woman.” Wellesley College, Mission and Gender Policy.⁹

Schools that admit transgender women do so because they see it as furthering their missions of providing positive, supportive campuses and learning environments *to women*. Transgender women, fundamentally, are women. “Women” means all women—including cisgender women and transgender women—regardless of what sex was assigned at birth. Thus, the fact that women’s colleges exist specifically for women is a reason to *include* transgender women, not to *exclude* them.

Educating and empowering transgender women is a logical and natural fit for women’s colleges. And by making available to transgender women the same supportive environment that fosters educational and leadership development in cisgender women, women’s

⁷ <https://www.mtholyoke.edu/policies/admission-transgender-students>.

⁸ <https://www.smith.edu/about-smith/diversity/gender-identity-expression>.

⁹ <http://www.wellesley.edu/news/gender-policy>.

colleges are playing an important role in empowering transgender women to break professional and other societal barriers affecting transgender people, just as women's colleges have historically done for cisgender women.

Women's colleges' reasons for admitting transgender women support affirmance in this case. Students who identify as girls deserve to be treated as girls, and transgender boys deserve to be treated as boys, regardless of their birth-assigned sex.

B. Fully Integrating Transgender Women Into Classrooms And Campuses Has Been Successful

Contrary to fears that have been raised concerning allowing transgender students to use facilities that correspond with their gender identity, transgender women have successfully integrated into women's college classrooms and campuses. As the first women's college to admit transgender women, amicus Mills College has the most experience with transgender women on campus, and Mills's experience has been positive.

Admitting transgender women has not significantly altered the classroom environment at Mills. Mills has sought to ensure that classroom spaces are affirming of transgender identities by, for example, listing preferred names rather than legal names on class roll sheets, making available educational resources on transgender identities, and facilitating communication between transgender students and faculty when appropriate. These relatively minor changes

to the classroom environment have created a more welcoming environment for transgender students while maintaining a positive experience for all students. Classroom discussions have been enhanced, and students have continued to obtain a high-quality education.

Transgender women's use of the same campus facilities as cisgender women also has been successful. Mills has adopted transgender-inclusive housing policies, including transgender-inclusive restroom and shower locations. Residential-life staff are trained to understand a variety of issues that affect community life in the residence halls, including how best to include transgender students. Resident advisors are made aware of students' preferred names. Where possible, buildings on campus include at least one gender-neutral restroom. Students are permitted to self-select the appropriate restroom, including multi-stall restrooms. Transgender students also participate in athletics, physical education, and recreation and are permitted to use locker-room facilities that correspond with their gender identity.

The inclusion of transgender women has been generally uncontroversial and welcomed by Mills's students. See Britt Hart, *Trans Week of Visibility celebrates transgender lives at Mills*, THE CAMPANIL (Mar. 30, 2016).¹⁰ Some transgender students have become respected student leaders on campus. Indeed,

¹⁰ <http://www.thecampanil.com/trans-week-of-visibility/>.

transgender women are now a vital part of the campus community.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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