

**IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

No. 11-2067

B.H., a minor, by and through her mother, JENNIFER HAWK, and
K.M., a minor, by and through her mother, AMY MCDONALD-MARTINEZ,
Plaintiffs-Appellees,

v.

EASTON AREA SCHOOL DISTRICT,
Defendant-Appellant.

On Appeal from the United States District Court
For the Eastern District of Pennsylvania Case No. 10-6283

**BRIEF OF *AMICI CURIAE* DEDICATED TO GENDER EQUALITY
IN SUPPORT OF PLAINTIFFS-APPELLEES
AND SUPPORTING AFFIRMANCE**

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**Corporate Disclosure Statement and
Statement of Financial Interest**

No. 11-2067

B.H., et al., Plaintiffs-Appellees

v.

EASTON AREA SCHOOL DISTRICT, Defendant-Appellant.

Instructions

Pursuant to Rule 26.1, Federal Rules of Appellate Procedure any nongovernmental corporate party to a proceeding before this Court must file a statement identifying all of its parent corporations and listing any publicly held company that owns 10% or more of the party's stock.

Third Circuit LAR 26.1(b) requires that every party to an appeal must identify on the Corporate Disclosure Statement required by Rule 26.1, Federal Rules of Appellate Procedure, every publicly owned corporation not a party to the appeal, if any, that has a financial interest in the outcome of the litigation and the nature of that interest. This information need be provided only if a party has something to report under that section of the LAR.

In all bankruptcy appeals counsel for the debtor or trustee of the bankruptcy estate shall provide a list identifying: 1) the debtor if not named in the caption; 2) the members of the creditors' committee or the top 20 unsecured creditors; and, 3) any entity not named in the caption which is an active participant in the bankruptcy proceedings. If the debtor or the bankruptcy estate is not a party to the proceedings before this Court, the appellant must file this list. LAR 26.1(c).

The purpose of collecting the information in the Corporate Disclosure and Financial Interest Statements is to provide the judges with information about any conflicts of interest which would prevent them from hearing the case.

The completed Corporate Disclosure Statement and Statement of Financial Interest Form must, if required, must be filed upon the filing of a motion, response, petition or answer in this Court, or upon the filing of the party's principal brief, whichever occurs first. A copy of the statement must also be included in the party's principal brief before the table of contents regardless of whether the statement has previously been filed. Rule 26.1(b) and (c), Federal Rules of Appellate Procedure.

If additional space is needed, please attach a new page.

Pursuant to Rule 26.1 and Third Circuit LAR 26.1, Amici Curiae listed on next page makes the following disclosure:

1) For non-governmental corporate parties please list all parent corporations:

Pennsylvania NOW is affiliated with the National Organization for Women (NOW) in Washington DC.

2) For non-governmental corporate parties please list all publicly held companies that hold 10% or more of the party's stock:

None

3) If there is a publicly held corporation which is not a party to the proceeding before this Court but which has as a financial interest in the outcome of the proceeding, please identify all such parties and specify the nature of the financial interest or interests:

None

4) In all bankruptcy appeals counsel for the debtor or trustee of the bankruptcy estate must list: 1) the debtor, if not identified in the case caption; 2) the members of the creditors' committee or the top 20 unsecured creditors; and, 3) any entity not named in the caption which is active participant in the bankruptcy proceeding. If the debtor or trustee is not participating in the appeal, this information must be provided by appellant.

None

/s/Terry L. Fromson
(Signature of Counsel or Party)

Dated: September 1, 2011

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CALIFORNIA WOMEN'S LAW CENTER
EDUCATION LAW CENTER-PA
FEMINIST MAJORITY FOUNDATION
GIRLS FOR GENDER EQUITY, INC.
HEALTHY TEEN NETWORK
JUVENILE LAW CENTER
LEGAL MOMENTUM
NAN D. STEIN, ED.D, ON BEHALF OF HERSELF AND THE
CENTER FOR RESEARCH ON WOMEN AT WELLESLEY COLLEGE
OUR BODIES OURSELVES
PHILADELPHIA WOMEN'S CENTER
PENNSYLVANIA NOW
SOUTHWEST WOMEN'S LAW CENTER
WOMEN'S LAW CENTER OF MARYLAND, INC.
WOMEN'S LAW PROJECT

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STATEMENT OF INTEREST OF *AMICI CURIAE*

Amici are dedicated to advancing the status of girls and women and promoting gender equality through education, research, legal advocacy, and access to health care. They include fifteen organizations and one individual that provide direct legal services and impact litigation, health services, public education, and research. Many of the *amici* engage in policy advocacy geared toward ending sex discrimination, including eradicating gender stereotypes, promoting women's equality, creating opportunities for girls, and preventing sexual harassment in schools. These efforts include law reform, as well as education and training programs designed to raise the awareness of the public, schools, and courts about the dangers of gender stereotyping.

Amici curiae have special expertise in the areas of sexual harassment prevention and the harmful effects on young girls' mental and physical health caused by gender stereotypes. They submit this brief to assist the Court in understanding the nature of sex discrimination, the harms associated with imposing gender stereotypes on adolescents, the importance of encouraging self-expression and advocacy, and appropriate and research-based methods of preventing sexual harassment in schools.

The individual statements of interest of the *amici curiae* are contained in the appendix to this brief.

STATEMENT PURSUANT TO RULE 29(c)(5)

Pursuant to Federal Rule of Appellate Procedure 29(c)(5), *amici curiae* state that: (1) no party's counsel authored this brief in whole or in part; (2) no party or party's counsel contributed money intended to fund preparing or submitting this brief; and (3) no person – other than *amici curiae*, their members or their counsel – contributed money intended to fund preparing or submitting this brief.

SUMMARY OF ARGUMENT

The Easton Area School District's policy prohibiting students from campaigning for breast cancer awareness by wearing "I ♥ Boobies! Keep A Breast" bracelets is based on discriminatory attitudes about the female body and outdated stereotypes concerning girls and boys and perpetuates a viewpoint that ultimately harms women.

The view that the bracelets are primarily or exclusively about sex perpetuates a male-centered perspective of women as sexualized objects and reinforces discrimination based on sex and male domination that the Constitution forbids. Defining the breast as inherently sexual socializes girls and women to believe that there is only one acceptable body type and negatively affects their sense of self-worth. The ban sends a message that girls should be more demure, polite, passive, and less controversial and assumes that boys are reckless and aggressive, qualities that fit within outdated stereotypes about how girls and boys should and do act. It also communicates to young women that their bodies are likely to elicit violence and that they bear the burden of preventing violence by adapting their behavior. These messages can cause girls to doubt their own capabilities, suppress their opinions and beliefs, and engage in risky behaviors.

Instead of preventing sexual assault and sexual harassment, one of the district's stated goals for its ban of the bracelets, the District's sexualization of the

breast is more likely to make the young women sexual objects and subject to harassment. By restricting girls' actions rather than telling boys not to sexually harass, the District legitimizes sexual harassment as a reasonable consequence of having a female body. Sexual harassment is better addressed through established expert-recommended programs that neither stereotype nor harm young women.

ARGUMENT

I. ADOPTION OF THE SCHOOL DISTRICT’S PERSPECTIVE OF THE BRACELETS WOULD REINFORCE HARMFUL AND DISCRIMINATORY NOTIONS OF WOMEN’S BODIES AND PERPETUATE OUTDATED STEREOTYPES OF BOYS AND GIRLS THAT THE SUPREME COURT HAS STATED ARE UNCONSTITUTIONAL.

A. The School District’s View of Breasts as Sexual and Lewd Is a Male-Centric and Discriminatory Perspective That Harms Women.

The Easton Area School District’s (the District) view of the bracelets relies on the belief that breasts are exclusively or primarily sexual, a notion that is rooted in male-centered conceptions of the female body. By assuming that every use of the words “boobies” and “breasts” is lewd or vulgar, the District perpetuates misconceptions of the female body that are rooted in sex discrimination and male dominance and harm women and girls in distinct ways.

Assuming that female breasts are sexual and thus spark a prurient interest is a “suspect cultural artifact rooted in centuries of prejudice and bias toward women.” *People v. Santorelli*, 600 N.E.2d 232, 237 (N.Y. 1992) (Titone, J., concurring). A scholar of the history of the breast concluded, after examining thousands of years of history and literature, that “the eroticization of women’s breasts has been predominantly a male affair.” Marilyn Yalom, *A History of the Breast* 90 (1997). Breasts have, historically, been “offered up for the pleasure of [the male], with the intent of arousing him, not her.” *Id.* Under this view, they

“are considered sexual ornaments, particularly by men, that have both erotic and pornographic meaning.” Sylviane Colombo, *Battling Cancer: Law and Life*, 24 Harv. Women’s L.J. 1, 16 (2001).

Adoption of the specifically male idea that breasts are inherently sexual devalues other views of the breast. Yalom, *supra*, at 275. For example, where the District sees only sex, babies see food, doctors see disease, girls see adulthood, and some religious institutions see spiritual symbols. *See id.* Moreover, while sexuality is an important part of how women experience their breasts, women also point to their breasts as symbols of age, health, motherhood, physical appearance, and womanhood. Raymond L. Schmitt, *Embodied Identities: Breasts as Emotional Reminders*, in *7 Studies in Symbolic Interactions* 229, 243 (Norman K. Denzin ed., 1986).

The District’s view that the words “boobies” and “boobs” are themselves inherently lewd or vulgar is likewise based on male-centered notions of the female body and the English language. Far from conveying a prurient interest, “as the prevailing breast term, ‘boobs’ is the most innocuous and the only one that has gained widespread acceptance.” Susan Seligson, *Stacked: A 32DDD Reports from the Front* 17 (2007). Examples of the widespread, innocuous use of “boobs” and its diminutive form “boobies” are abundant in books, news and academic articles, motherhood websites, and medical information resources. *See, e.g.*, Elisabeth

Squires, *bOObs: A Guide to Your Girls* (2007); Boobie Fed, Breastfeeding News & Advocacy, <http://boobiefed.com> (last visited July 26, 2011); Supporting the Supporters, <http://www.boobiehealth.com> (last visited Aug. 29, 2011). As just one example, the New York Times, which censors lewd and profane words from its newspaper, does not remove the word “boobies” from quotes, as a simple search of any New York Times database shows.

The innocent connotation of “boobies” may very well stem from its prevalence as a child’s word. Seligson, *supra*, at 18. Young children are taught to refer to breasts as “boobs” or “boobies.” Laura Nathanson, *The Portable Pediatrician* 307 (2002). A study of families who visited a Toronto emergency room shows that 67% of children and 48% of caretakers of children use the word “boobs.” Dennis Scolnik et al., *Words Used by Children and Their Primary Caregivers for Private Body Parts and Functions*, 169 *Can. Med. Ass’n J.* 1275, 1277 (2003). Sources that discuss terms for body parts classify “boobies” in the “childhood” or “baby talk” categories, alongside words such as “wee wee,” “weenie,” and “doodle.” Sarah Attwood, *Making Sense of Sex: A Forthright Guide to Puberty, Sex and Relationships for People with Asperger’s Syndrome* 304 (2008); Linda J. Brock & Glen Jennings, *Sexuality and Intimacy*, in *Handbook of Gerontology: Evidence-Based Approaches to Theory, Practice, and Policy* 244, 255 (James A. Blackburn & Catherine N. Dulmus eds., 2007). Furthermore,

“boobies” is a word that professionals use when broaching difficult topics, such as sexual abuse, with children. *See* Sandra K. Hewitt, *Assessing Allegations of Sexual Abuse in Preschool Children: Understanding Small Voices* 171 (1999).

The widespread use of the word “boobies” also goes beyond young children. In communicating with adolescents about puberty and health issues, “boobs” proves to be useful vocabulary. *See, e.g.*, Marisa C. Weiss & Isabel Friedman, *Taking Care of Your “Girls”: A Breast Health Guide for Girls, Teens, and In-Betweens* (2008). It is hard to believe that a word used in all of these different situations, particularly with young children, can be seen as inherently lewd and profane.

Various harms to women inevitably flow from the District’s view of the breast. When breasts are viewed as solely sexual and controlled, geared toward, or owned by men, women’s bodies are subject to demands of attractiveness that are beyond their control, and women learn to prioritize appearance over health. Carolyn Latteier, *Breasts: The Women’s Perspective on an American Obsession* 10 (1998). In this male-dominated society, breasts are commercialized and ubiquitous in advertising geared towards men. *See* Yalom, *supra*, at 159. In the United States, women are exposed to cover girls and Barbie dolls, which socialize them to believe that there is only one acceptable body type. Accordingly, there is widespread dissatisfaction among women about the way their bodies look, and

women risk the dangers of breast augmentation in order to obtain the idealized breast size and shape. Katherine A. Dettwyler, *Beauty and the Breast: The Cultural Context of Breastfeeding in the United States*, in *Breastfeeding: Biocultural Perspectives* 167, 175-77 (Patricia Stuart-Macadam & Katherine A. Dettwyler eds., 1995); Reena N. Glazer, Note, *Women's Body Image and the Law*, 43 *Duke L.J.* 113, 137 (1993). In addition, teaching middle school girls that sexualized breasts are the only acceptable kind affects whether they view themselves with a sense of self-worth and as important as their male counterparts. Tamara R. Piety, *Onslaught: Commercial Speech and Gender Inequality*, 60 *Case W. Res. L. Rev.* 47, 69 (2009).

Focusing solely on the sexual meaning of the breast is damaging in other ways as well. The breast is inappropriately sexualized in breast cancer discourse; women who have had a mastectomy are considered disfigured and damaged, Colombo, *supra*, at 16-17, and subjected to messages about lost sexuality. Rachael Andersen-Watts, *The Failure of Breast Cancer Informed Consent Statutes*, 14 *Mich. J. Gender & L.* 201, 207 (2008).

The sexualization of the breast also promotes a view that breastfeeding is either disgusting, because a child should not interact with a sexual object, or incompatible with a woman's sexual attractiveness. Ingrid Johnston-Robledo et al., *Indecent Exposure: Self-Objectification and Young Women's Attitudes Toward*

Breastfeeding, 56 *Sex Roles* 429, 430 (2007). The consequences are twofold: an overall lack of breastfeeding, even though it has significant health benefits, and for those who do breastfeed, pressure to stay home to do so, even if it means giving up a career or an active role in society. Dettwyler, *supra* at 167, 204.

Finally, defining the breast as inherently sexual leads to sexual assault and sexual harassment. Sexualization of the breast establishes it as an area of the female body to be looked at, commented upon, or touched in an unwelcome manner, rendering it a vulnerable area. Helen Pundurs, *Public Exposure of the Female Breast: Obscene and Immoral or Free and Equal?*, 14 *In Pub. Interest* 1, 28 (1995). Therefore, the District's perpetuation of the female breast as inherently sexual could potentially lead to, rather than prevent, sexual assault and sexual harassment.

Vestiges of this country's "long and unfortunate history of sex discrimination," *Frontiero v. Richardson*, 411 U.S. 677, 684 (1973) (Brennan, J., plurality), are present today in laws and government practices that are applied to only one gender, furthering the social and economic subordination of women. The District's perception of breasts as purely sexual and lewd serves as a prime example of modern-day sex discrimination and perpetuates a viewpoint that ultimately harms women.

B. The School District's Views Regarding the Bracelets Are Based on Pernicious and Gendered Stereotypes of Girls and Boys, Which Are Inconsistent with the Core Purpose of the Fourteenth Amendment's Equal Protection Clause.

Preventing sex-role stereotyping is one of the central goals of constitutional anti-discrimination law. As the Supreme Court has repeatedly stated, stereotyping both men and women, boys and girls, violates the Equal Protection Clause. By telling the girls to cease wearing the bracelets, the school is essentially telling them that there are more appropriate ways to raise awareness on this issue and is sending a message that girls should be more demure, polite, and passive, and less controversial—qualities that fit within outdated stereotypes about how girls should act. By assuming that the boys in the school will respond to the bracelets with reckless and aggressive (hetero-)sexuality, the school is likewise stereotyping boys. Under the Constitution, the school cannot stereotype in this way.

In almost all of the Supreme Court's modern cases addressing sex discrimination under the Constitution, one of the Court's central concerns was overbroad stereotyping. The Court has been particularly clear about this in the educational setting. For instance, in *Mississippi University for Women v. Hogan*, 458 U.S. 718, 725 (1982), a case involving a male nurse attempting to gain admission to the all-female Mississippi University for Women, Justice O'Connor's opinion for the Court targeted policies that rely on "archaic and stereotypic notions" about "the roles and abilities of males and females" as unconstitutional.

The opinion makes clear that states cannot “perpetuate the stereotyped view of nursing as an exclusively woman’s job.” *Id.* at 729.

In the more recent *United States v. Virginia*, 518 U.S. 515 (1996), decision, which required the Virginia Military Institute (VMI) to admit women, Justice Ginsburg wrote extensively about sex-role stereotypes, explaining that “supposed ‘inherent differences’” are prohibited as the basis of classification when they “create or perpetuate the legal, social, and economic inferiority of women.” *Id.* at 534. The opinion stated, “[G]eneralizations about ‘the way women are,’ estimates of what is appropriate for most women, no longer justify denying opportunity to women whose talent and capacity place them outside the average description.” *Id.* at 550. In both *Virginia* and *Hogan*, the Court clearly articulated that sex-based stereotyping is unconstitutional.

This concern about stereotyping permeates the non-education equal protection cases as well. In 1977, when the Court adopted the “intermediate scrutiny” test for sex-based classifications in *Craig v. Boren*, 429 U.S. 190 (1977), the Court described some of its past cases as forbidding sex-role stereotyping:

“[A]rchaic and overbroad” generalizations concerning the financial position of servicewomen and working women could not justify use of a gender line in determining eligibility for certain governmental entitlements. Similarly, increasingly outdated misconceptions concerning the role of females in the home rather than in the “marketplace and world of ideas” were rejected as loose-fitting

characterizations incapable of supporting state statutory schemes that were premised upon their accuracy.

Id. at 198-99 (citations omitted).

Similarly, in *Orr v. Orr*, 440 U.S. 268 (1979), the Court wrote that classifications based on sex “carry the inherent risk of reinforcing stereotypes about the ‘proper place’ of women and their need for special protection.” *Id.* at 283. More recently, the Court clearly stated that “[w]e have made abundantly clear in past cases that gender classifications that rest on impermissible stereotypes violate the Equal Protection Clause” *J.E.B. v. Ala. ex rel. T.B.*, 511 U.S. 127, 140 (1994).

Here, the District’s reaction to the bracelets relies on stereotypes of girls and young women that the Constitution forbids. At root, the school is telling the girls that if they want to raise awareness of breast cancer, they have to do so in a way that is more polite and appropriate than using a word that the District dislikes. The school is requiring the girls to be compliant and less assertive, two stereotypes of girls that are rooted in sexism. Not only are girls censored when they act in “unladylike” manners, but when they simply act in ways that do not conform to the “niceness” stereotype imposed on girls and women, they are silenced or rejected as unfeminine. See Evelyn K. Sommers, *The Tyranny of Niceness: Unmasking the Need for Approval* 77-78 (2005). Studies have found that this stereotype results in damaging discipline to girls in situations when boys would not be disciplined. Nan

Stein, *Classrooms & Courtrooms: Facing Sexual Harassment in K-12 Schools* 74 (1999) [hereinafter *Classrooms & Courtrooms*]. Moreover, a meta-analysis of sixty studies that looked at people's reactions to male and female leaders found greater disapproval of female leaders who exhibited characteristics that were otherwise approved of in men, such as independence and assertiveness. Alice H. Eagly, Mona G. Makhijani & Bruce G. Klonsky, *Gender and the Evaluation of Leaders: A Meta-Analysis*, 111 *Psychol. Bull.* 11, 16-18 (1992). The District's views of the bracelets here rely upon these archaic, discriminatory, and unconstitutional stereotypes of girls and young women.

The constitutional concern about sex-role stereotyping extends to government actions that stereotype men as well as women. *Stanley v. Illinois*, 405 U.S. 645 (1972), struck down a state statute that declared that children of unmarried fathers were automatically wards of the state upon the death of their mother. The Court rejected the argument that "unmarried fathers are so seldom fit that [a state] need not undergo the administrative inconvenience of inquiry in any case," stating instead that "all unmarried fathers are not in this category; some are wholly suited to have custody of their children." *Id.* at 654-56. In *Califano v. Westcott*, 443 U.S. 76 (1979), the Court compared the stereotyping of men to the stereotyping of women in noting that the classification at issue there "presumes the father has the 'primary responsibility to provide a home and its essentials,' while

the mother is the ‘center of home and family life.’” *Id.* at 89 (citation omitted). Likewise, the law in *Stanton v. Stanton*, 421 U.S. 7 (1975), which declared women reach majority at eighteen while men reach it at twenty-one, reflected the stereotype that “generally it is the man’s primary responsibility to provide a home and its essentials” so he needed more time to mature and to get education or training than women did. *Id.* at 10. The Court declared, “No longer is the female destined solely for the home and the rearing of the family, and only the male for the marketplace and the world of ideas.” *Id.* at 14-15.

In this case, the school is viewing the boys as aggressive and universally heterosexual. The school believes that upon seeing bracelets that mention “boobies” and “breast,” the boys will be unable to control their heterosexual aggression toward girls and will sexually harass them. This view of boys relies on stereotypes about them that run deep in our society. David S. Cohen, *No Boy Left Behind? Single-Sex Education and the Essentialist Myth of Masculinity*, 84 *Ind. L.J.* 135, 153-58 (2009). Although thinking about boys, especially middle school boys, as aggressive and heterosexual might seem natural, in reality it creates the expectation that all boys are that way, something that harms boys who do not fit the mold, as well as girls who are forced to bear the brunt of boys who try to fit the mold expected of them by entities such as the District. *Id.* at 170-74.

Ultimately, here, the District is doing exactly what the Supreme Court has consistently stated violates the Constitution's guarantee of equal protection: stereotyping girls and boys in ways that are discriminatory and harmful. Like its view of breasts, the District's views of girls and boys cannot be countenanced by this Court.

II. BANNING THE WEARING OF THE BRACELETS AND PUNISHING THE GIRLS FOR WEARING THEM SILENCES YOUNG WOMEN AND DOES NOT PREVENT SEXUAL HARASSMENT.

A. Prohibiting Plaintiffs from Expressing Their Views in the Manner That They Believe Best Accomplishes Their Goals Silences Young Women, Harming Them at a Critical Time in Their Development.

One of the most important developments over the past forty or fifty years with respect to women's rights is that law has given effect to women's autonomy. Women, originally considered property of their fathers and then of their husbands, now have all the rights of self-determination that men have always had under the law. Choice and autonomy are central components not only to the development of women's rights under law, but also to democratic political philosophy. Yet, by insisting that its female students cease delivering their message about women's health in the way they think most effective, the District limited their autonomy in a way that is particularly harmful to young women.

Adolescence is an important transition period between childhood and adulthood and is marked by rapid physical and emotional growth. Research shows

that significant brain development occurs during adolescence, contributing to greater cognitive functioning and increased autonomy. Suparna Choudhury, Sarah-Blakemore & Tony Charman, *Social Cognitive Development During Adolescence*, 1 Soc. Cognitive & Affective Neuroscience 165, 165-66 (2007).

Adolescence is marked by sexual maturity and brings increasingly complex group interactions and social behavior. *Id.* at 165. During this time, girls and boys develop their own identities and learn how they fit into the world around them. *Id.* They assert increased control over their actions, emotions, and decisions, and become increasingly self-reliant. *Id.*; Melanie J. Zimmer-Gembeck & W. Andrew Collins, *Autonomy Development During Adolescence*, in *Blackwell Handbook of Adolescence* 175, 176 (Gerald Adams & Michael Berzonsky eds., 2006). In fact, achieving autonomy has been described as “one of the key normative psychosocial developmental issues of adolescence,” and researchers emphasize “the problematic outcomes that may follow from a lack of appropriate support for autonomy.” *Id.* 177.

Adolescence is a particularly sensitive time for young women’s mental and physical health. *See, e.g.*, Deborah Tolman, *Doing Desire: Adolescent Girls’ Struggle for/with Sexuality*, 8 Gender & Soc’y 324 (1994). During this period, young women navigate cultural messages concerning sexualization, beauty, and adult femininity while trying to develop authentic and multi-faceted identities.

Adolescent girls are learning about themselves, while at the same time receiving explicit and implicit messages about male-centric social structures that can cause girls to doubt their own capabilities, feel silenced, and as a result, refrain from expressing their opinions and beliefs. Michael A. Hoyt & Cara L. Kennedy, *Leadership and Adolescent Girls: A Qualitative Study of Leadership Development*, 42 Am. J. Community Psychol. 203, 205, 217 (2008). The District's decision to ban girls' self-motivated health advocacy has contributed to this silencing.

As they navigate puberty and the public's increasing sexualization of their bodies, girls often begin to objectify their own bodies. See Nita McKinley & Janet Hyde, *The Objectified Body Consciousness Scale*, 20 Psychol. of Women Q. 181, 182-83 (1996). Sexual objectification is the experience of being treated *as a body* that is valued predominantly for its consumption by others. Barbara L. Fredrickson & Tomi-Ann Roberts, *Objectification Theory: Toward Understanding Women's Lived Experiences and Mental Health Risks*, 21 Psychol. of Women 173, 174 (1997). Early adolescence is a pivotal time for this process; "empirical studies document that with the changes of puberty, a girl's new body in a sense becomes "public domain": it is increasingly looked at, commented on, and otherwise evaluated by others." *Id.* at 193. As girls continue to experience objectification, they begin to internalize how others look at them. When young women begin to self-objectify, they learn to disassociate their minds from their bodies and "treat

themselves as objects to be looked at and evaluated.” *Id.* at 177. Researchers have consistently found “an erosion of self-confidence in girls during the ages of 11-15.” *Oxford Handbook for Girls’ and Women’s Psychological Health* 305 (Judith Worell & Carol Goodheart, eds., 2005).

This potential for self-objectification is serious, since “girls who objectify their own bodies may not be able to act in accordance with, or even know their own desires, and as a result, may. . . engage in risky behaviors that pose a serious threat to their sexual well-being.” Emily Impett et al., *To Be Seen and Not Heard: Femininity Ideology and Adolescent Girls’ Sexual Health*, 35 *Archives of Sexual Behav.* 129, 133 (2006). Among the behaviors associated with body objectification is engaging in unprotected sexual activity. *Id.* at 140. Furthermore, self-objectification increases the already high risk for disordered eating and depression in adolescents. Andrea Mercurio & Laura Landry, *Self-Objectification and Well-Being: The Impact of Self-Objectification on Women’s Overall Sense of Self-Worth and Life Satisfaction*, 58 *Sex Roles* 458, 458 (2008); Marika Tiggemann & Julia Kuring, *The Role of Body Objectification in Disordered Eating and Depressed Mood*, 43 *British J. Clinical Psychol.* 299, 300 (2004).

To counteract the risks associated with adolescence and self-objectification and enhance young girls’ future opportunities, providing them with opportunities for leadership and self-expression is essential. Hoyt & Kennedy, *supra*, at 203.

Allowing young girls to take moral action, speak their voice, and feel empowered can significantly help them sustain their mental and physical health in the face of a hostile culture. *Oxford Handbook for Girls and Women's Psychological Health*, *supra*, at 305. Research suggests that engaging in activism—such as breast cancer awareness advocacy—can be a particularly effective way of empowering adolescent girls, by allowing them to use their moral identities, as measured by self-perceived moral character. Student and moral identities are “significant positive predictors of self worth and self affirmation, and [are] negative predictors of self-depreciation.” Robert W. Roeser et al., *Identity Representations in Patterns of School Achievement and Well-Being Among Early Adolescent Girls*, 28 *J. Early Adolescence* 115, 126 (2008). Furthermore, girls’ student and moral identities account for almost all of the variance in school grades. *Id.* at 128.

In addition to the fact that promoting breast cancer awareness is likely to bolster self esteem, empowerment, and the “moral identity” that has proved predictive of school grades, the “I ♥ Boobies” advocacy bracelets also help young girls reclaim their “boobies” for themselves. By focusing on girls’ health and wellness rather than their sexual desirability, the “I ♥ Boobies” campaign fights objectification. See Laura Choate & Jennifer R. Curry, *Addressing the Sexualization of Girls Through Comprehensive Programs, Advocacy, and Systemic Change*, 12 *Prof. School Counseling* 213, 215, 219 (2009). These bracelets

represent an opportunity for young girls to take control of the discussion about their bodies, to enhance their knowledge about their physical health, and to think about their breasts—possibly for the first time—beyond their capacity to sexually excite men. Furthermore, by focusing on the body’s functionality rather than its appearance, the campaign develops an “appreciation of body functionality (versus body appearance), [which] is a protective factor against the development of negative body image and maladaptive eating practices.” *Id.* at 219.

The District’s decision to limit young women’s ability to talk about health issues harkens to a time when other laws prohibited speech about women’s health issues. Though framed as attempts at protecting women’s chastity, such laws restricted women’s freedom to discuss health issues and to protect themselves from disease and unwanted or unplanned pregnancy. For example, the Comstock Act, passed in 1873, made it a jailable crime to disseminate material about birth control through the mail or across state lines, under the claim that medical images of female organs were sexual and obscene. Act of Mar. 3, 1873, ch. 258, § 2, 17 Stat. 598, 599 (1873). Legislators were concerned with controlling women’s sexuality, commenting that without such a law, there would not be “virtue among women any longer[,] . . . it would tend to put men and women on the same standard[,] and . . . it would increase immorality by removing the fear of pregnancy.” Brietta Clark, *Erickson v. Bartell Drug Co.: A Roadmap for Gender Equality in Reproductive*

Health Care or An Empty Promise?, 23 *Law & Ineq.* 299, 327 (2005) (citing Collection of Margaret Sanger Papers, *Birth Control and the Good Old Boys in Congress*, Margaret Sanger Papers Project Newsl., Winter 2000-01, available at http://www.nyu.edu/projects/sanger/secure/newsletter/-articles/good_old_boys.html (citing interview by Alice Palache with Andrew J. Montague, U.S. Rep., U.S. Cong., (Jan. 11, 1932))). Through enforcement of the Comstock Act, information about birth control, despite its widespread medical support, was kept away from women, restricting access to health care and opportunities for decision-making for almost 100 years. Finally, in 1971, the prohibition on dissemination of birth control information was removed, yet the prohibition on disseminating abortion information remains in the U.S. Code, *see* 18 U.S.C. § 1462, despite its inconsistency with *Roe v. Wade*, 410 U.S. 113 (1973).

B. Suspending Two Students for Wearing Bracelets Targeted Toward Breast Cancer Awareness Does Not Contribute Toward Eliminating Sexual Harassment in School but Rather Exacerbates the Problem.

The District’s justification for banning the bracelets and punishing young women for wearing them—to eliminate the potential for sexual harassment by boys seeing the word “boobies”—is, at best, completely wrong, as there is no evidence that such a ban would help eliminate sexual harassment. In fact, the District’s actions are much more likely to harm young women.

The ban on the plaintiffs' breast cancer bracelets communicates to young women, at a sensitive developmental moment, that their bodies are likely to elicit violence and that they alone bear the burden of preventing violence by adapting their behavior. As Justice Marshall wrote in *Dothard v. Rawlinson*, 433 U.S. 321 (1977), “[W]ith all respect, this rationale regrettably perpetuates one of the most insidious of the old myths about women—that women, wittingly or not, are seductive sexual objects. The effect of the decision . . . is to punish women because their very presence might provoke sexual assaults. It is women who are made to pay the price” *Id.* at 345 (Marshall, J., dissenting).

The threat of sexual violence is an extremely effective means of social control. The District's decision to leverage this gender-based fear of sexual assault, however well intended, is unacceptable and potentially damaging to the young women it purports to protect. If the District's concerns regarding sexual harassment are genuine, it should be focusing its energy on educating students and disciplining perpetrators rather than focusing on changing potential victims' behavior. *See Adams ex rel. Adams v. Baker*, 919 F. Supp. 1496, 1504 (D. Kan. 1996) (“A school district best avoids sexual harassment litigation by acting to prevent sexual harassment rather than excluding females from participating in activities.”).

By banning the plaintiffs' breast cancer bracelets, the school is reinforcing the message to young women that their bodies are sites of violence and sexualization and that they alone bear the burden of preventing such violence and harassment by adapting their behavior, rather than the school changing the offender's behavior. Studies have shown that girls become adult women who limit their choices because of a deeply ingrained fear of gender-based violence. As one researcher explains, "[M]any of their apparently 'taken for granted' choices of how and when to go to a destination are in fact the product of 'coping strategies' women adopt to stay safe." Gill Valentine, *The Geography of Women's Fear*, 21 Area 385, 385-86 (1989) (citing Stephanie Riger et al., *Coping with Urban Crime: Women's Use of Precautionary Behavior*, 10 Am. J. of Community Psychol. 369 (1982); Stephanie Riger & Margaret Gordon, *The Fear of Rape: A Study in Social Control*, 37 J. Soc. Issues 71 (1981); Elizabeth Stanko, *Typical Violence, Normal Precaution: Men, Women, and Interpersonal Violence in England, Wales, Scotland, and U.S.A.*, in *Women, Violence and Social Control* (Hanmer & Maynard eds., 1987)). In one study, while less than 10% of men reported having "avoided going out alone" or "avoided going out at night," over 40% of women had done so. Mike Warr, *Fear of Rape Among Urban Women*, 32 Soc. Probs. 238, 248 (1985). The 2010 Gallup poll not only confirms these findings from the 1980s, but also suggests that the problem is only getting worse: women were "twice as likely as

men to say they are afraid to walk alone at night near their home, 50% vs. 22%.”

Lydia Saad, *Nearly 4 in 10 Americans Still Fear Walking Alone at Night*, Gallup,

[http://www.gallup.com/poll/144272/nearly-americans-fear-walking-alone-](http://www.gallup.com/poll/144272/nearly-americans-fear-walking-alone-night.aspx)

[night.aspx](http://www.gallup.com/poll/144272/nearly-americans-fear-walking-alone-night.aspx) (last visited Aug. 28, 2011). Other studies have found that fear of rape

affects a wider range of women’s activities; for example, “many women avoid

going out at night without a male protector, wear modest shoes and dress when out

alone, and often avoid preferred public activities if alone because of rape fear.”

Andrew E. Taslitz, *Patriarchal Stories I: Culture Rape Narratives in the*

Courtroom, 5 S. Cal. Rev. L. & Women’s Studies 387, 397-400 (1996); *see also*

Hannah Scott, *Stranger Danger: Explaining Women’s Fear of Crime*, 4 W. Crim.

Rev. 203, 206 (2003) (reporting, among other findings, that 78% of women report

only using public transportation less than once a week after dark when they are

alone).

In essence, by restricting the girls’ actions rather than telling the boys not to sexually harass, the school is making room for young men’s potentially harassing behavior. Doing so legitimizes and normalizes sexual harassment as a reasonable consequence of having a female body. While “learning to live in a woman’s body” unavoidably involves “internalizing a male gaze,” schools should be helping young women establish critical distance between themselves and the forces of sexualization and objectification. Impett, *supra*, at 133. Schools hurt girls by

imagining them as aggrieved victims of sexual harassment and respond by limiting their speech in the name of protection. *See id.* at 80. Young women neither benefit from nor need such “protection,” as most girls are not passive when they encounter sexual harassment. Nan D. Stein et al., Wellesley Ctrs. for Women, *Secrets in Public: Sexual Harassment in Our Schools* 8 (1993). On the contrary, they do something about it, whether it is walking away, telling the harasser to stop, or responding with physical force. *Id.* Girls’ strong responses, therefore, negate the argument of school personnel that “they are speaking for voiceless, passive girls.” Stein, *Classrooms and Courtrooms*, *supra*, at 79.

C. Sexual Harassment Can Be Better Addressed Through Recommended Programs that Neither Stereotype Nor Harm.

If the District wanted to take sexual harassment prevention seriously, there are countless other ways it could have approached the problem rather than restricting young women’s activism, which is essentially another form of blaming the victim. Title IX requires schools to undertake certain actions to address and prevent sexual harassment. Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-88 (“Title IX”); Office for Civil Rights, *Dear Colleague Letter: Sexual Violence* (Apr. 4, 2011) [hereinafter OCR, *2011 Dear Colleague*]; Office for Civil Rights, *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, of Third Parties* (Jan. 2001). In addition, there are several well-respected prevention programs, many supported by evaluative

research studies and recommended by authorities in the field, available for school districts that want to make a positive change in their school's environment. Most importantly for this case, none of these programs suggests punishing a potential victim as a way of preventing sexual harassment.

In order to comply with Title IX, schools that receive federal funding must take certain measures to protect students from discrimination based on sex, which includes peer sexual harassment. The Office for Civil Rights of the Department of Education (OCR), which enforces Title IX, requires schools to adopt and disseminate non-discrimination policies, establish prompt and equitable grievance procedures, and designate an employee who is responsible for coordinating Title IX compliance. 34 C.F.R. §§ 106.8-106.9; *see* OCR, *2011 Dear Colleague, supra*, at 6. OCR also requires that when schools receive notice of possible sexual harassment, they must “conduct a prompt, impartial, and thorough investigation to determine what happened and must take appropriate steps to resolve the situation.” Office for Civil Rights, *Sexual Harassment: It's Not Academic* 9 (2008). Schools must also take steps to prevent retaliation and further harassment against a victim who reports sexual harassment. Office for Civil Rights, *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, of Third Parties* 17 (Jan. 2001).

Beyond their Title IX mandates, schools can seek the guidance of experts in the field of student sexual harassment in determining how to appropriately prevent and respond to sexual harassment. Research-based evaluative studies offer guidance on how schools should prevent sexual harassment. Two recent studies, one conducted in Cleveland area schools and one in New York City, have evaluated the effectiveness of gender-based violence and harassment protection programs. The Cleveland study tested two classroom-based curriculums, one that was “interaction based” and one that focused more on “law and justice.” Bruce Taylor et al., ICF International, *Experimental Evaluation of Gender Violence/Harassment Prevention Programs in Middle Schools* v (2008). This project found that classroom-based educational programs that emphasize laws, definitions, and consequences (the law and justice approach)—rather than the subjective nature of interpersonal communication—are the most successful at fighting gender-based violence and harassment in middle schools. *Id.* at 46. The second study, conducted in New York City public middle schools, found that prevention measures taken outside the classroom were also extremely effective. This study found significant reductions in incidents of sexual harassment after implementing a “building-wide” intervention, which involved asking students to map out safe and unsafe areas in and around school buildings, a poster campaign to increase awareness and encourage student reporting, and the use of Respecting

Boundaries Agreements, forms that assist victims and perpetrators in processing the alleged interaction and reinforce the concept of personal boundaries. Bruce Taylor & Nan D. Stein, *Shifting Boundaries: A Summary of Findings from a National Institute of Justice Experimental Evaluation of a Youth Dating Violence Prevention Program in New York City Middle Schools* (2010), available at <http://www.wcwoonline.org/proj/datingviolence/NIJFindingsSummary10.08-12.10.pdf>; Nan D. Stein et al., *Shifting Boundaries: Lessons on Relationships for Students in Middle School 12* (2010), available at <http://www.nij.gov/topics/crime/intimate-partner-violence/teen-dating-violence/shifting-boundaries-all-schools.pdf>.

Another type of research-based prevention is bystander education. The bystander model is based on social psychology research, which suggests that one way to change the community norms that reinforce sexual violence is by changing the attitudes and actions of community members whose inaction “maintain[s] and perpetuate[s] such norms and attitudes.” Mary M. Moynihan & Victoria L. Banyard, *Educating Bystanders Helps Prevent Sexual Assault and Reduce Backlash*, 3 *Fam. & Intimate Partner Violence Q.* 293, 295 (2011). Bystander education asks participants to play an active role in ending sexual harassment and sexual violence and equips them with specific skills for navigating, and hopefully intervening in, a situation that involves sexual harassment or violence. *Id.* at 297.

Bystander education programs also focus on helping participants think about how they can interrupt these incidents while protecting themselves. *Id.* Bystander programs have proven to produce positive changes in the attitudes and behaviors of participants. *Id.* (citing Victoria Banyard, *Sexual Violence Prevention through Bystander Education*, 35 J. Community Psychol. 463 (2004); Kristin J. Ward, *Mentors in Violence Prevention Program Evaluation 1999-2000*, Unpublished, Northeastern Univ. (2001)).

Other experts in the field, such as OCR, the American Association of University Women (AAUW), and the National Association of Secondary School Principals (NASSP), offer recommendations on how schools should seek to prevent sexual harassment. These recommendations include making sure their sexual harassment policies are well-publicized, such as by placing information on school websites and in pamphlets and posters around the school, OCR, *Dear Colleague, supra*, at 15; American Association of University Women, *Harassment-Free Hallways: How to Stop Sexual Harassment in School* 17 (2004) [hereinafter AAUW, *Harassment-Free Hallways*]; L. Dean Webb, Kay Hartwell Hunnicutt & Arlene Metha, *What Schools Can Do to Combat Student-to-Student Sexual Harassment*, 81 NASSP Bull. 72, 74-75 (1997) [hereinafter Webb et al., *What Schools Can Do*], implementing education programs for students and staff, OCR, *Dear Colleague, supra*, at 15; AAUW, *Harassment-Free Hallways, supra*,

at 17; Webb et al., *What Schools Can Do, supra*, at 74, and periodically assessing the extent of the problem and the effectiveness of programs in place. OCR, *Dear Colleague, supra*, at 18; Webb et al., *What Schools Can Do, supra*, at 74. Schools may wish to involve students in the drafting of these policies, AAUW, *Harassment-Free Hallways, supra*, at 34, or to utilize student leaders to monitor the effectiveness of programs and communicate with the administration. OCR, *Dear Colleague, supra*, at 18. Schools should also ensure that all staff is modeling good behavior, post pamphlets and posters around the school, and reach out to vulnerable students to ensure they know about available resources. AAUW, *Harassment-Free Hallways, supra*, at 15, 17.

When sexual harassment occurs, OCR offers guidance on how to respond to best protect the victim from ongoing harm. Although OCR notes that the response will depend on the specific circumstances, some examples proposed by OCR include separating the victim from the harasser (while minimizing the burden on the victim as much as possible), disciplining the harasser, providing counseling or medical services where needed, and providing academic support, such as tutoring for victims. OCR, *Dear Colleague, supra*, at 16. If a school finds that sexual harassment is a widespread problem, it may choose school-wide remedies, such as educating staff and students, notifying all students of counseling, health, and

mental health services, and designating a school employee to be available anytime to assist victims of sexual harassment. *Id.*

Notably missing from every expert's recommendations for schools in dealing with sexual harassment is any suggestion that schools penalize or censor potential victims as an appropriate method of preventing and responding to sexual harassment. Though the District may have had laudatory goals behind its actions here, censoring the plaintiffs and punishing them for wearing these bracelets does not help prevent sexual harassment.

CONCLUSION

For all of the foregoing reasons, as well as those set forth in Brief for Appellees, *amici curiae* respectfully request the Court to affirm the decision below.

Respectfully submitted,

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APPENDIX
INDIVIDUAL STATEMENTS OF INTEREST OF *AMICI CURIAE*

AMERICAN ASSOCIATION OF UNIVERSITY WOMEN

For 130 years, the American Association of University Women (AAUW), an organization of over 100,000 members and donors, has been a catalyst for the advancement of women and their transformations of American society. In more than 1,000 branches across the country, AAUW members work to break through barriers for women and girls. AAUW plays a major role in mobilizing advocates nationwide on AAUW's priority issues, and chief among them is gender equity in education. AAUW supports affirmative action programs that establish equal opportunity for women and minorities and encourage equitable treatment in educational institutions and workplaces. AAUW advocates for equitable climates free of harassment and bullying, protection from censorship, and bias-free education.

CALIFORNIA WOMEN'S LAW CENTER

Founded in 1989, the California Women's Law Center ("CWLC") is dedicated to addressing the comprehensive and unique legal needs of women and girls. Through systemic change, CWLC seeks to ensure that opportunities for women and girls are free from unjust social, economic, and political constraints. CWLC is committed to eradicating invidious discrimination, including the perpetuation of gender stereotypes.

EDUCATION LAW CENTER-PA

The Education Law Center-PA is a nonprofit legal advocacy organization dedicated to ensuring that all Pennsylvania children have access to quality public schools. From many years of work with students, families, and community organizations, we know that an essential function of the school in our democracy is to encourage students to express their own thoughts, feelings, and ideas. Thus, we strongly support efforts to protect "personal intercommunication" among students, an activity that the Supreme Court itself has described as "an important part of the educational process." *Tinker v. Des Moines Independent Community School*

District, 393 U.S. 503, 512 (1969). We also know that the language preferred by young people will sometimes differ from that of adults; we believe, however, that that fact should not lead to censorship of student voices except in the most extreme situations. We join in this brief in order to offer our views on how these principles should be applied to this case.

FEMINIST MAJORITY FOUNDATION

The Feminist Majority Foundation (FMF) is a non-profit organization dedicated to eliminating sex discrimination and to the promotion of women's equality and empowerment. FMF programs focus on advancing the legal, social, economic, education, and political equality of women with men; countering the backlash to women's advancement; and recruiting and training young feminists to encourage future leadership for the feminist movement. To carry out these aims, FMF engages in research and public policy development, public education programs, litigation, grassroots organizing efforts, and leadership training programs. FMF's Education Equity Program has created a major review of research in its *Handbook for Achieving Gender Equity through Education, 2d Edition, 2007*, co-chairs the single-sex education task force of the National Coalition for Women and Girls in Education and has been providing leadership in the development of a national, state, and local Title IX Action Network to work with the required Title IX Coordinators to help all involved end sex discrimination in publicly supported education. The school district's response to the breast cancer bracelets not only reinforces sex stereotyping and sex discrimination but it reflects adherence to zero tolerance policies which many have found to be harmful in an education context.

GIRLS FOR GENDER EQUITY, INC.

Girls for Gender Equity, Inc. (GGE) is an intergenerational organization in Brooklyn, NY, committed to the physical, psychological, social and economic development of girls and women. Through education, youth organizing and physical fitness, GGE encourages communities to remove barriers and create opportunities for girls and women to live self-determined lives. GGE believes that widespread violence against women and girls points to deeply rooted gender discrimination that must be tackled as a peace-building and human rights priority. After ten years of working with youth in NYC public schools, GGE has found that students endure hostile school environments, experiencing and observing sexual harassment and gender-based violence every day, with little to no idea of their

rights or who they can turn to at school. The rampant nature of this behavior violates students' federal civil rights, perpetuates inequalities, and negatively impacts their academic achievement, attendance, graduation rates, and self esteem. Sexual harassment and gender-based violence are seen as "normal" in large part due to the many ways schools perpetuate them: by engaging in gender stereotyping, creating excuses such as "boys will be boys", prioritizing standardized tests over safety, punishing both the harassers and harassed, ignoring these behaviors completely, disbelieving the victims, etc. In order for schools to be safe learning environments, where girls and boys are afforded the same educational opportunities, all school districts must be held to the highest standards of gender equality that not only address sexual harassment effectively but discourage it by respecting student's First Amendment rights, actively disputing gender stereotypes, being inclusive of girls' and women's issues, and respecting students' bodies and unique health concerns.

HEALTHY TEEN NETWORK

Located in Baltimore, MD, Healthy Teen Network has been making a difference in the lives of teens and young families since its founding in 1979. Healthy Teen Network is the only national membership network that serves as a leader, a national voice, and a comprehensive educational resource to professionals working in the area of adolescent reproductive health - specifically teen pregnancy prevention, teen pregnancy, teen parenting and related issues. Healthy Teen Network is uniquely able to have an impact on a large number of teens and young families because of its comprehensive approach and its direct and immediate links to a grassroots network of reproductive health care professionals throughout our nation's communities. Healthy Teen Network supports young people and their ability to effect change in their communities. Breast cancer is a very serious problem for women in the United States. Young people are a powerful force to draw attention to this disease, and advocacy that draws attention to this matter should be encouraged, not deterred.

JUVENILE LAW CENTER

Founded in 1975, the Juvenile Law Center is the oldest multi-issue public interest law firm for children in the United States. Juvenile Law Center advocates on behalf of youth in the child welfare and criminal and juvenile justice systems to promote fairness, prevent harm, and ensure access to appropriate services.

Recognizing the critical developmental differences between youth and adults, Juvenile Law Center works to ensure that the child welfare, juvenile justice, and other public systems provide vulnerable children with the protection and services they need to become healthy and productive adults. Amicus, Juvenile Law Center, urges courts to recognize the important constitutional guarantees that protect children's liberty interests. Juvenile Law Center participates as amicus curiae in state and federal courts throughout the country, including the United States Supreme Court, in cases addressing the rights and interests of children.

LEGAL MOMENTUM

Legal Momentum, formerly NOW Legal Defense and Education Fund, is the nation's oldest women's legal rights organization. Throughout its over 40-year history, Legal Momentum has advocated in the courts and with federal, state, and local policymakers, as well as with schools, unions and private business, to secure equality and justice for women across the country. Legal Momentum pioneered the implementation of Title IX with PEER, its nationwide Project on Equal Education Rights, from 1974-1992, by giving parents and educators tools to eradicate sex stereotypes and discrimination in schools. It was co-counsel in *Garrett v. Board of Education*, 775 F. Supp. 1004 (E.D. Mich. 1991), which successfully challenged the establishment of all-male academies by the Detroit Public Schools as a violation of the Equal Protection clause of the Fourteenth Amendment, and has appeared as *amicus curiae* in numerous cases concerning the right to be free from sex discrimination, sex stereotyping or sexual harassment in education, including *Fitzgerald v. Barnstable School Committee, et al.*, 129 S. Ct. 788 (2009), and *U.S. v. Virginia*, 518 U.S. 515 (1996).

NAN D. STEIN, ED.D, ON BEHALF OF HERSELF AND THE CENTER FOR RESEARCH ON WOMEN AT WELLESLEY COLLEGE

Nan D. Stein, Ed.D. is a senior research scientist at the Center for Research on Women at Wellesley College, the largest and oldest women's research center in the U.S. For over 30 years, first at the Massachusetts Department of Education (1978-1992) and since 1992 at Wellesley College, Dr. Stein has conducted research on peer-to-peer sexual harassment in schools, written curriculum on sexual harassment and gender violence in schools for students in grades 6-12, and has trained educators and school officials on strategies and policies to prevent peer sexual harassment. She has also served as an expert witness and/or consulting

expert in over a dozen sexual harassment lawsuits and complaints and is a former middle school social studies teacher in Dayton Ohio. She has written dozen of academic articles, several law review articles, op-ed/opinion commentaries, and a book (1999) and has provided expert opinion to the media (print and electronic) for several decades. Dr. Stein joins in the amicus brief due to her strong belief that in order to prepare students for participation in our democracy, students need to practice democracy. To censor students' speech is to deny them experiences of the messiness of democracy. Moreover, to censor student speech about female body parts and the epidemic of breast cancer is inherently and explicitly sexist and flies in the face of public health and good education practice.

OUR BODIES OURSELVES

Our Bodies Ourselves (OBOS), also known as the Boston Women's Health Book Collective, is a Cambridge, MA based nonprofit women's health education, advocacy, and consulting organization. OBOS is committed to providing clear, accurate, and research-based information about health, sexuality and reproduction. Because OBOS believes that women, as informed health consumers, are exceptional catalysts for social change, OBOS works to engage women in the political aspects of sustaining good health for themselves and their communities. In doing so, OBOS challenges the institutions and systems that limit women's control over their bodies. By empowering women to become their own advocates and health experts, OBOS affirms the importance of making women's voices central to women's healthcare.

PENNSYLVANIA NOW

Pennsylvania NOW, Inc. is a statewide grassroots, nonprofit volunteer organization with over 13,000 contributing members. Pennsylvania NOW is the state-level chapter of the National Organization for Women, which is based in Washington, DC. Nationwide, there are over 500,000 contributing members. NOW members are women and men, young and old, all colors, classes, and backgrounds, working together to bring about equal rights for all women. Through grassroots organizing efforts, Pennsylvania NOW works to eliminate all forms of discrimination against women, including discrimination based on race, economic status, age, sexual orientation, religious affiliation, ethnic origin, and/or disability. Over the years, Pennsylvania NOW has been actively opposed sex discrimination based on gender stereotyping.

PHILADELPHIA WOMEN'S CENTER

Established in 1972, the Philadelphia Women's Center (PWC) is an outpatient reproductive health care provider located in downtown Philadelphia. We are dedicated to providing women's medical care that meets the highest standards of excellence, kindness, integrity, and service. We regard patient education to be of paramount importance to women's health and wellbeing, and offer nonjudgmental, compassionate patient counseling as an integral part of our services. We see firsthand the importance of giving women the knowledge and information they need to care for their own health, particularly in the reproductive health context where stigma and shame have historically kept women in ignorance. The Easton School District's punishment of young women for promoting knowledge of breast health is contrary to the young women's best interests and in conflict with public health strategies to encourage early detection and treatment of breast cancer.

SOUTHWEST WOMEN'S LAW CENTER

The Southwest Women's Law Center is a nonprofit women's legal advocacy organization based in Albuquerque, New Mexico. Its mission is to create the opportunity for women to realize their full economic and personal potential by eliminating gender discrimination, helping to lift women and their families out of poverty, and ensuring that women have control over their reproductive lives. The Southwest Women's Law Center is committed to eliminating gender discrimination in all of its forms and ensuring broad and meaningful enforcement of anti-discrimination laws and constitutional prohibitions on sex discrimination.

WOMEN'S LAW CENTER OF MARYLAND, INC.

The Women's Law Center of Maryland, Inc. is a nonprofit, membership organization established in 1971 with a mission of improving and protecting the legal rights of women, particularly regarding gender discrimination, employment law, family law and reproductive rights. Through its direct services and advocacy the Women's Law Center seeks to protect women's legal rights and ensure equal access to resources and remedies under the law.

WOMEN'S LAW PROJECT

The Women's Law Project (WLP) is a nonprofit public interest law firm with offices in Philadelphia and Pittsburgh, Pennsylvania. The WLP's mission is to create a more just and equitable society by advancing the rights and status of all women throughout their lives. Through impact litigation, public policy advocacy, and community education, WLP strives to achieve social and economic justice and expand opportunities for women and girls. WLP is committed to the eradication of gender discrimination premised on outdated stereotypes, ostensible differences between males and females, and unsubstantiated assertions about the alleged consequences that flow from differences between the sexes. Achieving gender equity in education and eliminating sexual harassment through methods that support women and girls without penalizing them are high priorities of the Women's Law Project.

CERTIFICATIONS

CERTIFICATE OF IDENTICAL COMPLIANCE AND VIRUS CHECK

I hereby certify that the foregoing Brief of *Amici Curiae* In Support of Appellees and Supporting Affirmance electronically filed with the Court is identical to the brief served upon counsel electronically and is identical to the brief filed with the Court in paper format, and has been virus checked with the program Symantec Corporate Edition Version 10.1.9.9000 and no viruses found.

Date: September 1, 2011

/s/Terry L. Fromson
Terry L. Fromson

CERTIFICATE OF BAR MEMBERSHIP

I, Terry L. Fromson, hereby certify that I am admitted to practice before the United States Court of Appeals for the Third Circuit, and that I am currently a member in good standing.

Date: September 1, 2011

/s/Terry L. Fromson
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CERTIFICATE OF COMPLIANCE WITH FED. R. APP. P. 32(a)

Certificate of Compliance With Type-Volume Limitation, Typeface Requirements, and Type Style Requirements

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) and R. 29(d) because: This brief contains 6,641 words, excluding the

Appendix and parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii) and 3d Cir. App. R. 29.1(b).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because: This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in 14 Point font size and Times New Roman type style.

Date: September 1, 2011

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CERTIFICATE OF SERVICE

I hereby certify that on this date, I have caused a true and correct copy of the foregoing Brief of *Amici Curiae* In Support of Appellees and Supporting Affirmance to be served on the persons and in the manner set forth below:

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