

# Supreme Court Poised to Weigh in on Transgender Rights

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In recent years, state and federal courts have consistently ruled in favor of those seeking to define their gender identity. However, the Supreme Court has yet to weigh in — a situation that is about to change as the accelerating national discussion of transgender rights finally makes its way to the Supreme Court.

In 2015, G.G., a transgender high school student attending school in Gloucester County, Virginia, challenged his school's policy requiring students to use restrooms and locker rooms that match their genders assigned at birth. G.G. alleged that the policy violated both the Constitution's guarantee of equal protection under the laws and Title IX. The District Court ignored the constitutional claim and ruled that a 1975 regulation that allows school to provide "separate toilets, locker room, and shower facilities on the basis of sex," barred his Title IX claim.

This April, the [Court of Appeals for the Fourth Circuit reversed the lower court's decision](#). It pointed to the Department of Education's January 7, 2015 [opinion letter](#) from the Department of Education's Office of Civil Rights, which concluded that if schools opt to separate students in restrooms based on their sex, a school generally must treat transgender students consistent with their gender identity. Ultimately, a divided Fourth Circuit deferred to the Department of Education's interpretation of its own regulations. The Fourth Circuit's ruling was the first by an appeals court to find that transgender students are protected under federal laws that bar sex-based discrimination. Further, the Fourth Circuit declined to stay its ruling and remanded the case to the District Court, which issued a preliminary injunction requiring the school board to allow G.G. to use the boys' restroom while the parties litigate the case on its merits.

Although the school board has promised to file a petition for review by August 29, the Supreme Court will not decide whether to take the case before school starts in September. Thus, when school begins, the high school must allow G.G. to use the boys' restroom. Last week, the school board filed an emergency appeal for a stay while the case is litigated on the merits. The school board argued that some parents would withdraw their children from school if a federal district court's order takes effect. The school board's request goes to Chief Justice Roberts, who is responsible for emergency appeals from Virginia (where the school is located).

Justice Roberts can act on his own or refer it to the full Court (which is more likely). The school board needs the votes of at least five Justices to halt the lower-court rulings. On July 14, Chief Justice Roberts requested a response from attorneys for G.G. The response is due by 4 p.m. on Wednesday, July 27.

All the pertinent Court documents are located here, [Grimm v. Gloucester County School Board](#).

Kelley Drye & Warren LLP will continue to monitor this case. In the meantime, employers should heed legal and public opinion trends. Based on recent court rulings, federal regulations, and public opinions trends, it is advisable for employers to allow individuals to use the bathroom with the gender the individual identifies with, not the one assigned at birth.