SCOTUS Blocks Order Requiring School to Allow Transgender Student Access to Bathroom Matching Their Gender Identity

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In a 5-3 decision yesterday, the United States Supreme Court temporarily blocked a lower court's order requiring a public high school in Virginia to allow a transgender male student to use the restroom corresponding with his gender identity. Supreme Court Justice Stephen Breyer concurred in the decision, stating that he voted in favor of blocking the order "as a courtesy" in order to "preserve the status quo" until the Court decides if it will hear the school board's appeal.

The case was originally filed in a Virginia district court in September of 2015 after the school board implemented a policy prohibiting students from using a restroom that did not correlate to their biological gender. Prior to the adoption of this policy, Gavin Grimm (the transgender student involved in the case) had been permitted to use the male restroom, despite being born biologically female. The new policy was adopted in direct response to complaints from parents of other students, voicing concerns over the practice of allowing a biologically female student to use the male restroom.

The U.S. District Court for the Eastern District of Virginia dismissed Grimm's claim that the policy discriminated against him on the basis of sex in violation of Title IX. However, on appeal to the Fourth Circuit Court of Appeals, the district court's holding was reversed. In its opinion, the Fourth Circuit found that, although the regulation permitting schools to provide separate restroom facilities on the basis of sex clearly referred to the male and female sexes, the regulation was "silent as to how a school should determine whether a transgender individual is a male or female for the purpose of access to sex-segregated restrooms." The Court ultimately held that, when a school provides separate restroom facilities based on sex, the school must treat transgender students consistent with their gender identity.

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The school board filed a petition for writ of certiorari in the United States Supreme Court to review the Fourth Circuit's decision. Along with this petition, an application was filed to delay the Fourth Circuit's mandate in the interim. Yesterday, the Supreme Court granted the application, blocking the Fourth Circuit's decision from taking effect until the Court decides whether or not it will review the case.

What You Need to Know

At the moment, courts are split about whether schools are required to permit transgender students to use the restroom corresponding with their gender identity. If the Supreme Court decides to hear the case, the Court's decision will be binding on school districts across the country. If the Court does not hear the case, the Fourth Circuit's decision will be final for states under its jurisdiction (Maryland, North Carolina, South Carolina, Virginia, and West Virginia) and in those states will effectively mean that allowing transgender students to use the restroom corresponding to their gender identity is consistent with applicable law. The Sixth Circuit (which has jurisdiction over Ohio) has not yet ruled on the issue. We continue to recommend handling transgender student issues on a case-by-case basis. Schools should continue to consult with their legal counsel regarding transgender student issues.

For more information, please contact Don Crain, Alex Ewing, Jack Hemenway or Joe Scholler in Frost Brown Todd's Government Services Practice Group.

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