Supreme Court Sends Transgender Bathroom Case Back to Court of Appeals

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As we anticipated in our recent client advisory, today the Supreme Court of the United States sent *Grimm v. Gloucester County School Board* back to the Court of Appeals to determine transgender student rights in schools. It is very likely that the Supreme Court will not hear the case this term.

As a result, we recommend schools look to local binding precedent for direction on these difficult issues. The Sixth Circuit (which binds Ohio) recently ruled in favor of a transgender student in a preliminary injunction ruling regarding the student's right to use a bathroom based on their gender identity in *Highland Local School District*. In that ruling, the Sixth Circuit stated that sex stereotyping based on gender nonconformity—which includes transgender status—is impermissible discrimination. However, this was merely a preliminary injunction ruling, and the Sixth Circuit has not yet ruled on the merits of the case. The Sixth Circuit was awaiting the Supreme Court's decision in *Grimm* to provide binding guidance to resolve *Highland*, but because the Supreme Court will not hear *Grimm* this term, the Sixth Circuit will likely have to rule on the merits of the *Highland* case. Until we receive further clarity, schools are advised to consult their attorneys 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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