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Subject:

Virginia student urges Court to deny stay in transgender bathroom case

Posted Tue, July 26th, 2016 7:32 pm by Amy Howe

A Virginia school board has “utterly failed” to show that it will suffer lasting harm if “G.G.,” a seventeen-year-old transgender student, is allowed to use the boys’ restroom until the Supreme Court can rule on the school board’s request to review the dispute on the merits, attorneys for the student told the Court [in a filing today](#). Earlier this month, the Gloucester County school board had asked the Court to block both a federal district court’s preliminary order requiring the board to permit G.G. to use the boys’ restroom and an earlier ruling by a federal appeals court; Chief Justice John G. Roberts had instructed G.G.’s attorneys to respond to the board’s request by tomorrow afternoon. (I covered the case and the board’s filing in a post [for this blog](#).)

The very purpose of a stay is to avoid irreversible harm, wrote G.G.’s legal team, headed by Joshua Block of the American Civil Liberties Union. This means, the attorneys argued, that a stay should be denied when – as here – there is no irreversible harm. G.G.’s team emphasized that the scope of the district court’s temporary order is in fact quite narrow: it only applies to G.G., it applies only to the boys’ restrooms, and it “applies only at Gloucester High School,” where G.G. is about to start his senior year. G.G. and his attorneys dismiss the board’s concerns about the possible effects of the district court’s order on other students at the school. If male students are uncomfortable using the boys’ restroom when G.G. is there, they contended, they can always use one of the three new single-user restrooms installed at the school. On the other hand, they counter, G.G. “experiences painful urinary tract infections and daily psychological harm as a result of the” board’s policy, because he tries to avoid using the restroom at all while he is at school.

Beyond the lack of irreparable harm, G.G.’s legal team adds, the board’s request to halt the lower courts’ rulings cannot meet the other basic criteria that the Court normally looks for when deciding whether to grant a stay. There is currently no division among the lower courts on the questions presented by G.G.’s case, they say. And they contend that there is no reason to believe that four Justices will vote to grant review on the merits – particularly when the Court just passed up the same question in another case less than three months ago – much less that five Justices will vote to reverse the decision below.

The Chief Justice can rule on the school board’s request on his own, or he could refer the application to the whole Court. Even if the Court does not step in now to block the lower courts’ rulings, though, the issue of transgender bathrooms could be back before the Justices again soon, after either a final ruling in this case or decisions in other cases pending around the country that raise similar issues.

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