The Vulnerability of *Grimm* and the Fourth Circuit as Protector of Transgender Rights

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INTRODUCTION

Litigation challenging a Gloucester County School Board ("the Board") policy defined Gavin Grimm's high school experience. The Board's policy "declared that access to the boys' and girls' restrooms would be limited to students of 'the corresponding biological genders,' and also declared that students who are unable to use such restrooms because of 'gender identity issues' would be relegated to 'an alternative appropriate private facility.'"[1] At the end of a winding procedural history, Grimm was victorious; the Fourth Circuit held the school board's restrictive bathroom policy unconstitutional because the policy violated Equal Protection principles and Title IX of the Education Amendments of 1972.[2] The Fourth Circuit articulated two important rules in *Grimm*. First, the Fourth Circuit held that transgender people constituted a quasi-suspect class. Therefore, policies classifying on the basis of transgender status must be substantially related to an important governmental interest in order to comply with the protections of the Equal Protection Clause of the Fourteenth Amendment.[3] Second, the Fourth Circuit determined that the policy discriminated on the basis of sex because it punished Grimm for his gender-nonconformity and imposed a harmful social stigma on him.[4]

While it has been over ten years since Grimm filed suit, the issue of bathroom access for transgender people is far from settled. The rights of transgender people are being challenged across the nation, and the states comprising the Fourth Circuit are no exception.[5] Statutes and policies continue to limit the rights of transgender people seemingly on the basis of transgender status, and litigation has not given a national answer as to whether such acts violate the Constitution. Considering the political pressure on transgender rights, an evaluation of *Grimm*'s precedential value carries informative value for the parents of transgender students who look to the judiciary to vindicate their children's rights. Historically, the judiciary was considered the protector of civil rights,[6] but the judiciary may not provide the avenue of relief that it once did for transgender youth in the Fourth Circuit. This Note asks two questions. First, this Note asks to what extent the key holdings in *Grimm v. Gloucester County School Board*

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[1] Complaint at 7, Grimm v. Gloucester Cnty. Sch. Bd., 972 F.3d 586 (4th Cir. 2020), *as amended* (Aug. 28, 2020) (No. 4:15-CV-00054), 2015 WL 4086446 (quoting Gloucester County School Board Minutes, Nov. 11, 2014 at 4).

[2] *See generally* Grimm v. Gloucester Cnty. Sch. Bd., 972 F.3d 586 (4th Cir. 2020), *as amended* (Aug. 28, 2020).

[3] *Id.* at 607.

[4] *Id.* at 616–19.

[5] *See infra* Part I.

[6] Thurgood Marshall, *The Supreme Court as Protector of Civil Rights: Equal Protection of the Laws*, 275 THE ANNALS OF THE AM. ACAD. OF POL. AND SOC. SCI. 101, 101–02 (1951) (discussing the role of the Supreme Court in defining the scope of the Equal Protection Clause of the Fourteenth Amendment).

have been set aside or watered down by courts within the geographic bounds of the Fourth Circuit. Second, this Note asks to what extent the stability of *Grimm*'s treatment informs the litigation strategies for transgender students, who are often in desperate need of the vindication of their rights.

Before answering these questions, this Note traces the legal and political changes that have occurred since *Grimm* and evaluates whether public sentiment is aligned with these changes. Recent statutes, policies, and litigation indicate increasing hostility toward transgender individuals since 2020.[7] For example, the Supreme Court delivered a major setback in *United States v. Skrmetti* and limited the scope of protections promised by the Equal Protection Clause of the Fourteenth Amendment.[8] Additionally, the Supreme Court will soon decide the scope of Title IX of the Education Amendments of 1972 in relation to transgender athletics in the school setting.[9] Some entities within the Fourth Circuit are already treating *Grimm* as precedent that is not worthy of deference, such as the South Carolina legislature.[10] Despite these political and legislative developments, it is possible that transgender youth litigants can rightfully place their hope in the Fourth Circuit because *Grimm* is still good precedent and actively defended.

First, to discern how *Grimm* is treated by courts within the Fourth Circuit, this Note analyzes eighty-one cases that formally cite to *Grimm* at least once over the last five years.[11] These cases reveal that transgender youth litigants are correct to view the Fourth Circuit as a protector of their rights because *Grimm* is defended as binding precedent in the school and medical contexts, and it retains informative value in the prison context. For instance, the Fourth Circuit has fiercely defended *Grimm* as binding precedent in the public-school context, despite developments at the Supreme Court level. In *B.P.J. v. West Virginia*, the Supreme Court could spare *Grimm* by deciding the case on narrower grounds.[12] And, until the axe falls in *B.P.J.* and the damage to transgender rights can be assessed, bathroom access and other gender-affirming measures available in the public-school context are strongly protected in the Fourth Circuit. In the healthcare context, *Grimm* supports litigation concerning access to gender-affirming care, despite the blows dealt to the transgender community following

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[7] *See infra* Part I.

[8] United States v. Skrmetti, 605 U.S. 495 (2025).

[9] W. Virginia v. B. P. J. *ex. rel.* Jackson, 146 S. Ct. 57 (2025).

[10] John E. Tyler, *Update on Title IX and Budget Proviso 1.120*, State of South Carolina Department of Education Memorandum (Aug. 27, 2024), https://perma.cc/5749-GFEZ.

[11] Cases were considered up until November 27, 2025, which was a practical restriction on this research. As a suggestion for further research, updates are encouraged.

[12] *Compare* Grimm v. Gloucester Cnty. Sch. Bd., 972 F.3d 586, 613-14, 618-19 (4th Cir. 2020) (holding a school board's restrictive bathroom policy as violative of Grimm's Equal Protection and Title IX rights), *as amended* (Aug. 28, 2020), *with* B.P.J. *ex. rel.* Jackson v. W. Virginia State Bd. of Educ., 98 F.4th 542, 556 (4th Cir. 2024) (holding the Save Women's Sports Act unconstitutional for its restrictions to the transgender plaintiff's ability to participate in scholastic athletics), *cert. denied sub nom.* W. Virginia Secondary Sch. Activities Comm'n v. B.P. J. *ex. rel.* Jackson, 145 S. Ct. 568 (2024), and *cert. granted sub nom.* W. Virginia v. B. P. J. *ex. rel.* Jackson, 146 S. Ct. 57 (2025).

the Supreme Court's decision in *United States. v. Skrmetti*.[13] Of note, in the aftermath of *Skrmetti*, the Supreme Court vacated a critical gender-affirming precedent in the Fourth Circuit.[14] Additionally, while the fight continues in the healthcare context, *Grimm* bolsters the ability of transgender plaintiffs to challenge the conditions of their confinement in the prison setting. Despite the incorporation of *Grimm*'s principles, the claims of transgender litigants in the prison setting often fail for other reasons. The conclusion that transgender youth litigants are correct to view the federal judiciary as a protector of their constitutional and statutory rights emerges from an analysis of cases in these three contexts. The continued application of *Grimm* as binding in the Fourth Circuit protects transgender rights.

PART I: SUMMARY OF CHANGES TO THE POLITICAL AND LEGAL LANDSCAPE SINCE *GRIMM*

A. IMPORTANCE OF BATHROOM ACCESSIBILITY AND OTHER GENDER-AFFIRMING MEASURES TO TRANSGENDER YOUTH'S HEALTH AND WELL-BEING

The ability to use bathrooms that match one's gender identity is a critical component of a transgender child's social and medical transition. When transgender youth are denied access or discouraged from utilizing bathrooms that correspond to their gender identity, their mental and physical health is likely to suffer. Considering social development, the ability to use bathrooms that match gender identity affirms a child's gender identity among their peers. Considering medical health, restrictive bathroom policies can encourage bathroom avoidance for transgender children. Bathroom avoidance leads to physical consequences, and the stigma of restrictive policies can negatively affect mental health.[15] The amicus briefs in *Grimm* provide a snapshot of the medical understanding of the harms to transgender youth at the time of *Grimm*'s litigation.[16] However, these harms have been studied further since *Grimm* reached finality. Of youth in the United States, transgender youth are a very small

[13] *Compare* United States v. Skrmetti, 605 U.S. 495, 526 (2025) (upholding laws restricting medical treatments for transgender minors under rational basis review), *with* Am. Ass'n of Physicians for Hum. Rts., Inc. v. Nat'l Insts. of Health, 795 F. Supp. 3d 678, 691 (D. Md. 2025) (enjoining the National Institutes of Health and the Department of Health and Human Services from enforcing directives that prohibit federal funding based on the research's relation to transgender issues and applying heightened scrutiny to the federal actions).

[14] Folwell v. Kadel, 145 S. Ct. 2838, 2838 (2025) (vacating the judgment and remanding to the United States Court of Appeals for the Fourth Circuit for further consideration in light of *Skrmetti*).

[15] Jonah P. DeChants, Myeshia N. Price, Ronita Nath, Steven Hobaica & Amy E. Green, Transgender and nonbinary young people's bathroom avoidance and mental health, 26 INT'L J. OF TRANSGENDER HEALTH 351, 355-56 (2024) (discussing the prevalence of health issues from avoiding public bathrooms and the connection between bathroom avoidance and mental health in transgender and nonbinary participants).

[16] Brief of American Academy of Pediatrics & American Psychiatric Association et al. as Amici Curiae Supporting Respondent at 24-37, Gloucester Cnty. School Board v. G.G., 2017 WL 1057281 (U.S., 2017) (arguing, among other things, that exclusionary policies lead to negative health outcomes due to stigma and discrimination and due to bathroom avoidance).

minority.[17] Of this very small group, it is common for transgender children to experience hostility in relation to their use of a bathroom that aligns with their gender identity. For example, a majority of transgender and/or nonbinary youth sampled (58%) reported being prevented or discouraged from using a bathroom that corresponds to their gender identity.[18] There is a correlation between experiencing such prevention or discouragement and negative mental health outcomes. For example, "[a]fter adjusting for demographic variables and general discrimination due to one's gender identity, bathroom discrimination significantly increased the odds of reporting depressive mood," seriously considering suicide, a suicide attempt, and multiple suicide attempts.[19] Overall, "[m]ental health care providers should consider bathroom discrimination as a possible contributor to psychological distress, physical health outcomes, and risk behaviors among [transgender and/or nonbinary] youths."[20] In short, bathroom access for transgender and nonbinary youth plays a critical role in the fight for their lives.

Outside of the school context, additional measures can be taken to protect the health and well-being of transgender youth. In the healthcare context, for example, access to gender-affirming care strongly correlates with health outcomes for transgender youth.[21] And, in the carceral context, housing assignments of transgender women with men, alternative placement in solitary confinement, and denial of access to gender-affirming commissary items such as makeup contribute to negative health outcomes of incarcerated transgender individuals.[22] Given the disproportionate rate of contact of transgender youth with the juvenile justice system,[23] litigation is an

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[17] Estimates of this number vary, but studies suggest that, among the general population, 0.6% to 1.0% of people in the U.S. identify as transgender. *See e.g.*, Myeshia Price-Feeney, Amy E. Green, Samuel H. Dorison, *Impact of Bathroom Discrimination on Mental Health Among Transgender and Nonbinary Youth*, 68 J. OF ADOLESCENT HEALTH 1142, 1142 (2021) ("Among youth ages 13 to 17 in the U.S., 3.3% (about 724,000 youth) identify as transgender.").

[18] Myeshia Price-Feeney, Amy E. Green, Samuel H. Dorison, *Impact of Bathroom Discrimination on Mental Health Among Transgender and Nonbinary Youth*, 68 J. OF ADOLESCENT HEALTH 1142, 1142 (2021). While this Note specifically discusses the constitutional rights of transgender youth in the Fourth Circuit, it will refer to transgender and nonbinary youth in tandem when a source has selected both populations for analysis.

[19] *Id.*

[20] *Id.*

[21] Diana M. Tordoff, Jonathan W. Wanta, Arin Collin, Cesalie Stepney, David J. Inwards-Breland, and Kym Ahrens, *Mental Health Outcomes in Transgender and Nonbinary Youths Receiving Gender-Affirming Care*, 5 JAMA NETWORK OPEN 1, (2022) (observing 60% lower odds of depression and 73% lower odds of suicidality among youths who had initiated puberty blockers or gender-affirming hormones compared with youths who had not).

[22] *See generally* Elida Ledesma & Chandra L. Ford, *Health Implications of Housing Assignments for Incarcerated Transgender Women*, 110 AM. J. PUB. HEALTH 650 (2020).

[23] *Unjust: How the Broken Juvenile and Criminal Justice Systems Fail LGBTQ Youth*, MOVEMENT ADVANCEMENT PROJECT AND CTR. FOR AM. PROGRESS at 1 (2016) (stating that "20% youth in juvenile justice facilities identify as LGBTQ compared to 7–9% of youth in general."), https://perma.cc/L75E-JQKN.

important tool in the civil rights toolbox that can be used to mitigate the harmful consequences of incarceration for transgender youth.

B. STATUTORY CHANGES INDICATING POLITICAL HOSTILITY TOWARD TRANSGENDER MINORS

Despite the continued push-back, *Grimm* remains good law. Recent developments, however, cast some of *Grimm's* analytical foundations into question. For example, in *United States v. Skrmetti*, the Supreme Court skirted the issue of whether the law at issue, Tennessee SB-1, drew a classification based on sex. Instead, the Court determined that the statute contained one classification based on age and another classification based on medical use.[24] *Skrmetti*'s legacy is still unfolding, but it poses a threat to transgender litigants' ability to vindicate their rights to be free from sex discrimination. Additionally, the Supreme Court will soon decide whether Title IX or the Equal Protection Clause prohibit a state from categorically assigning students to girls' and boys' sports teams based on their biological sex determined at birth.[25]

With the success of SB-1 and the looming challenge in *B.P.J.*, states continue to test the bounds of Title IX and the Equal Protection Clause through statutes. For example, despite the Fourth Circuit's ruling in *Grimm*, South Carolina passed Budget Proviso 1.120. (SDE: Student Physical Privacy), which would have required public school districts to designate multi-occupancy public school restrooms and changing facilities "for use only by members of one sex."[26] The proviso defined sex as "a [person's] biological sex, either male or female, as objectively determined by anatomy and genetics existing at the time of birth."[27]

South Carolina's challenge to the Fourth Circuit's defense of transgender students' bathroom access from *Grimm* must wait in the wings, however. The district court initially stayed the entire case because of the Supreme Court's "decision to grant certiorari in *West Virginia v. B.P.J.*, . . . as well as other developments in this area of the law over the past year [that have] rendered *Grimm* 'unsettled' precedent."[28] Then, the Fourth Circuit granted the motion for an injunction pending appeal and denied the motion to expedite the appeal.[29] Lastly, the Fourth Circuit wrote a strong defense of *Grimm*, writing: "In *Grimm*, the Court held that a school board policy that was in all material respects identical to the Proviso violated Title IX and the Equal Protection Clause of the Fourteenth Amendment. *Grimm* remains the law of this Circuit and is thus binding on all the district courts within it."[30] Ultimately, the Supreme Court denied the application for a stay pending appeal.[31]

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[24] *See generally*, United States v. Skrmetti, 605 U.S. 495 (2025).

[25] *West Virginia v. B.P.J. (Transgender Athletes)*, SCOTUSBLOG, https://perma.cc/UG88-LEFP.

[26] John E. Tyler, *Update on Title IX and Budget Proviso 1.120*, State of South Carolina Department of Education Memorandum (Aug. 27, 2024), https://perma.cc/5749-GFEZ.

[27] *Id.*

[28] Doe *ex. rel.* Doe v. South Carolina, No. 25-1787, 2025 WL 2375386, at *3 (4th Cir. Aug. 15, 2025).

[29] *Id.* at *1.

[30] *Id.* at *8.

[31] *Id.* at *1.

The number of anti-trans bills continues to increase annually, and when signed into law, they endanger the constitutional and statutory rights of transgender people. For instance, "2024 was the fifth consecutive record-breaking year for total bills considered. This followed the unprecedented surge in 2023, which more than tripled the record set the year before."[32] There have been 1,012 anti-trans bills introduced across forty-nine states in 2025.[33] Among these bills, 506 are currently active, 382 have failed, and 124 have passed.[34] Fifty-nine of these bills are bathroom bills.[35] State legislatures are acting aggressively to restrict the rights of transgender people. For example, twenty states ban transgender people from using bathrooms and facilities consistent with their gender identity in K-12 schools.[36] Thirty states have no ban on transgender people's use of bathrooms or facilities consistent with their gender identity.[37] Additionally, eighteen states have laws or policies that define "in ways that may impact transgender people's access to bathrooms or facilities according to their gender identity."[38] But it is not just states getting in on the action. As of 2025, 117 anti-trans bills were introduced in the 119th Congress.[39] And, in circuits where pro-trans precedent remains good law, municipalities are caught in the crossfire. For example, in Virginia, some school systems are refraining from complying with the Trump Administration's Department of Education's interpretation of Title IX in defense of their transgender and nonbinary students' rights, ultimately putting their federal funding at risk.[40] These school districts are stuck between a rock and a hard place. If they capitulate and change their bathroom access policies, they risk violating the anti-discrimination principles of the Equal Protection Clause and Title IX, as interpreted in *Grimm*. If they do not capitulate, they will lose key federal funding.[41]

C. SHIFTING PUBLIC OPINION ON TRANSGENDER RIGHTS

The increase in legislative and policy restrictions on transgender rights, including the right to access a bathroom corresponding to one's gender identity, has been mirrored by a change in public opinion that more dramatically supports anti-transgender policies and sentiments. A recent Pew Research article compares the changes in public opinion between 2022 and 2025 to conclude that "Americans [have]

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[32] *2025 anti-trans bill tracker*, TRANS LEGISLATION TRACKER.

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] Nondiscrimination/LGBTQ Youth: Bans on Transgender People's Use of Bathrooms & Facilities In Government-Owned Buildings & Spaces, MOVEMENT ADVANCEMENT PROJECT, https://perma.cc/D8RR-4CLT.

[37] *Id.*

[38] *Id.*

[39] *2025 anti-trans bill tracker*, TRANS LEGISLATION TRACKER.

[40] Tyler Thrasher, *5 Virginia school districts stand firm against federal transgender bathroom policy demands*, FOX 5 WASHINGTON, D.C. (Aug. 15, 2025), https://perma.cc/2G4S-Z8C8.

[41] *Id.*

becom[e] more supportive of restrictions for transgender people."[42] The extent of hostility is clear when examining increased support for anti-transgender bathroom access restrictions. Pew Research concluded that more people favor or strongly favor laws or policies that "[r]equire trans people to use public bathrooms that match their sex assigned at birth" in 2025 than they did in 2022.[43] This number rose from 41% to 49% among all adults.[44] Even separating the poll responses by respondents' political leanings, the increase in public support for these hostile laws and policies is consistent. For example, in 2022, 20% of people who identified as Democrats or indicated that they leaned Democratic responded that they favored or strongly favored such bathroom-access restrictions compared with 25% in 2025.[45] On the other hand, in 2022, 67% of people who identified as Republicans or indicated that they leaned Republican responded that they favored or strongly favored such bathroom-access restrictions compared with 74% in 2025.[46] These shifts reveal that restrictive policy choices are increasingly aligned with prevailing public sentiment. Legislative efforts to curtail transgender rights are not occurring in isolation and are reinforced by a measurable rise in public support.

The stakes for transgender youth have never been higher. These children face hostile policies that restrict their rights to live as themselves, not how society thinks they ought to be. As public opinion trends against their lives, they face increasing scrutiny. Taken together, in a setting where bathroom access is restricted, the mental health of transgender youth is likely to suffer. The judiciary is an indispensable forum to securing transgender rights and ultimately preventing psychological and physical harm to transgender children.

PART II: ASSESSING THE STEADINESS OF *GRIMM* IN THE FOURTH CIRCUIT

A. METHODOLOGY

This research expects that courts will give *Grimm* the binding deference and respect that it should have in the Fourth Circuit, but that some cases will minimize the value of the opinion within these bounds. With the increase in hostility surrounding transgender rights at the policy level and among public opinion, this research is skeptical that individual judges will adhere to this precedent without casting doubts, even as dicta, asv to the broadly interpreted scope of the Equal Protection Clause and Title IX as set forth in *Grimm*. This research expects that some opinions will express hostility towards transgender youths' rights, even if the case technically treats *Grimm* with strong precedential value. This research expects that, if these sentiments are present at all, they will most often appear in cases that deal with transgender rights as the heart of the litigated issue.

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[42] Michael Lipka, *Americans have grown more supportive of restrictions for trans people in recent years*, PEW RSCH. CTR., Feb. 26, 2025, https://perma.cc/C83X-WM6U.

[43] *Id.*

[44] *Id.*

[45] *Id.*

[46] *Id.*

When identifying cases for examination, I first identified the cases directly citing *Grimm*[47] by narrowing the citing references with the KeyCite tool. I selected the content type of cases, narrowing the results to 181. I then narrowed my search by jurisdiction, capturing all federal courts and state courts lyinithe Fourth Circuit.[48] This search yielded seventy-eight federal court decisions that directly cite *Grimm*. Additionally, this research captures two decisions coming from the Supreme Court of Virginia and one from the Appellate Court of Maryland. I have included state court opinions, as they are an additional measure of treatment of *Grimm*. In total, there are eighty-one cases contributing to the summary of findings.[49]

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[47] Grimm v. Gloucester Cnty. Sch. Bd., 972 F.3d 586 (4th Cir. 2020), *as amended* (Aug. 28, 2020).

[48] These courts are the Fourth Circuit, the District Court for the District of South Carolina, the District Court for the Eastern District of North Carolina, the District Court for the Middle District of North Carolina, the District Court for the Western District of North Carolina, the District Court for the District of Maryland, the District Court for the Eastern District of Virginia, the District Court for the Western District of Virginia, the District Court for the Northern District of West Virginia, and the District Court for the Southern District of West Virginia.

[49] *See* Dillard v. Wilson, No. 7:24-CV-00592, 2025 WL 2672570 (W.D. Va. Sep. 18, 2025); Spiller-Holtzman v. Univ. of Maryland, Baltimore, No. 1:22-CV-00514-JRR, 2025 WL 2653768 (D. Md. Sep. 16, 2025); N. Carolina A. Philip Randolph Inst. v. N. Carolina State Bd. of Elections, 155 F.4th 298 (4th Cir. 2025); Schlacter v. United States, 804 F. Supp. 3d 592 (D. Md. 2025); Fairfax Cnty. Sch. Bd. v. McMahon, 798 F. Supp. 3d 563 (E.D. Va. 2025); Lee v. Boyd, 799 F. Supp. 3d 507 (W.D. Va. 2025); Doe v. South Carolina, No. 25-1787, 2025 WL 2375386 (4th Cir. Aug. 15, 2025); Am. Ass'n of Physicians for Hum. Rts., Inc. v. Nat'l Insts. of Health, 795 F. Supp. 3d 678 (D. Md. 2025); Payne v. Wexford Med., No. 7:24-CV-00761, 2025 WL 2364992 (W.D. Va. Aug. 14, 2025); Anderson v. S.C. Dep't of Corr., No. 9:25-CV-03993-SAL-MHC, 2025 WL 2654793 (D.S.C. July 30, 2025), *report and recommendation adopted*, No. 9:25-CV-3993-SAL, 2025 WL 2654352 (D.S.C. Sep. 16, 2025); Doe v. South Carolina, No. CV 2:24-6420-RMG, 2025 WL 2397833 (D.S.C. July 8, 2025); Banks v. Vitalcore Health Strategies LLC, No. CV 0:23-5819-MGL-PJG, 2025 WL 2917925 (D.S.C. July 1, 2025), *report and recommendation adopted*, No. CV 0:23-5819-MGL, 2025 WL 2701745 (D.S.C. Sep. 23, 2025); Cano v. S.C. Dep't of Corr., No. 9:22-CV-04247-JDA-MHC, 2025 WL 2919054 (D.S.C. June 16, 2025), *report and recommendation adopted in part, rejected in part*, No. 9:22-CV-04247-JDA, 2025 WL 2608137 (D.S.C. Sep. 9, 2025); Bonds v. Clarke, No. 7:23-CV-00583, 2025 WL 1262051 (W.D. Va. Apr. 30, 2025); Zinski v. Liberty Univ., Inc., 777 F. Supp. 3d 601 (W.D. Va. 2025); Alessa v. Phelan, No. CV DLB-21-0924, 2025 WL 974391 (D. Md. Mar. 31, 2025); PFLAG, Inc. v. Trump, 769 F. Supp. 3d 405 (D. Md. 2025); Zinski v. Liberty Univ., Inc., No. 6:24-CV-00041, 2025 WL 581052 (W.D. Va. Feb. 21, 2025), *motion to certify appeal granted*, No. 6:24-CV-00041, 2025 WL 1001163 (W.D. Va. Apr. 3, 2025); PFLAG, Inc. v. Trump, 766 F. Supp. 3d 535 (D. Md. 2025); Polk v. Montgomery Cnty. Pub. Schs., No. CV DLB-24-1487, 2025 WL 240996 (D. Md. Jan. 17, 2025), *aff'd*, 166 F.4th 400 (4th Cir. 2026); Gilliam v. Dep't of Pub. Safety & Corr. Servs., No. CV MJM-23-1047, 2024 WL 5186706 (D. Md. Dec. 20, 2024); Stevens v. Montreat Coll., No. 1:23-CV-00284-MR-WCM, 2024 WL 4667169 (W.D.N.C. Nov. 4, 2024), *motion for relief from judgment denied*, No. 1:23-CV-00284-MR-WCM, 2025 WL 3140805 (W.D.N.C. Nov. 10, 2025); Scearce v. Ingram, No. 4:23-CV-00012, 2024 WL 4615748 (W.D. Va. Oct. 30, 2024); Doe v. Hanover Cnty. Sch. Bd., No. 3:24CV493, 2024 WL 4445963 (E.D. Va. Oct. 8, 2024); Doe v. Hanover Cnty. Sch. Bd., No. 3:24CV493, 2024 WL 3850810 (E.D. Va. Aug. 16, 2024); Lumley v. Town of Knightdale, N. Carolina, No. 5:23-CV-663-FL, 2024 WL 3678348 (E.D.N.C. Aug. 6, 2024); Reid v. James Madison Univ., No. 5:21-CV-00032, 2024 WL 3656775 (W.D. Va. Aug. 5, 2024); Zayre-Brown v. N. Carolina Dep't of Adult Corr., No. 24-6477, 2024 WL 3534690 (4th Cir. July 25, 2024); Ratcliffe v. Hamilton, No. 7:22-CV-00730, 2024 WL 3503468 (W.D. Va. July 22, 2024); Kadel v. Folwell, 100 F.4th 122 (4th Cir. 2024), *cert. granted, judgment vacated sub nom*. Crouch v. Anderson, 145 S. Ct. 2835 (2025), *and cert. granted, judgment vacated,* 145 S. Ct. 2838 (2025); N.

Carolina A. Philip Randolph Inst. v. N. Carolina State Bd. of Elections, No. 1:20CV876, 2024 WL 1717482 (M.D.N.C. Apr. 22, 2024), *aff'd*, 155 F.4th 298 (4th Cir. 2025); B.P.J. *ex. rel.* Jackson v. W. Virginia State Bd. of Educ., 98 F.4th 542 (4th Cir.), *cert. denied sub nom.* W. Virginia Secondary Sch. Activities Comm'n v. B.P. J. *ex. rel.* Jackson, 145 S. Ct. 568 (2024), and *cert. granted sub nom.* W. Virginia v. B. P. J. *ex. rel.* Jackson, 146 S. Ct. 57 (2025); Carter v. Collins, No. 7:22-CV-00025, 2024 WL 1260588 (W.D. Va. Mar. 25, 2024); Farnsworth v. Northam, No. 7:21-CV-00463, 2024 WL 989491 (W.D. Va. Mar. 5, 2024), *aff'd*, No. 24-6273, 2025 WL 3034702 (4th Cir. Oct. 30, 2025); Boone v. Carvajal, No. CV 6:21-3053-JD-KFM, 2024 WL 3052064 (D.S.C. Feb. 5, 2024), *report and recommendation adopted*, No. 6:21-CV-3053-JD-KFM, 2024 WL 3052046 (D.S.C. May 3, 2024), *aff'd*, No. 24-6588, 2025 WL 1098543 (4th Cir. Apr. 14, 2025); Zayre-Brown v. N. Carolina Dep't of Pub. Safety, No. 3:22-CV-191-MOC-DCK, 2024 WL 410243 (W.D.N.C. Feb. 2, 2024); Vlaming v. W. Point Sch. Bd., 302 Va. 504, 895 S.E.2d 705 (2023); Caroline Cnty. Branch of Nat'l Ass'n for the Advancement of Colored People v. Town of Federalsburg, 702 F. Supp. 3d 410 (D. Md. 2023); Darr v. Stout, No. 7:23CV00298, 2023 WL 7549864 (W.D. Va. Nov. 14, 2023); Graham v. Robinson, No. 7:22-CV-00112, 2023 WL 5808923 (W.D. Va. Sep. 7, 2023); Green v. Sterling, No. CV 0:22-1634-SAL-PJG, 2023 WL 6396194 (D.S.C. July 20, 2023), *report and recommendation adopted*, No. CV 0:22-1634-SAL, 2023 WL 6357991 (D.S.C. Sep. 29, 2023); Synopsys, Inc v. Risk Based Sec., Inc., 70 F.4th 759 (4th Cir. 2023); Cano v. S.C. Dep't of Corr., No. 9:22-CV-04247-DCC-MHC, 2023 WL 6644277 (D.S.C. May 31, 2023), *report and recommendation adopted as modified*, No. 9:22-CV-04247-DCC, 2023 WL 5767678 (D.S.C. Sep. 7, 2023); Hammons v. Univ. of Maryland Med. Sys. Corp., 649 F. Supp. 3d 104 (D. Md. 2023); B. P. J. v. W. Virginia State Bd. of Educ., 649 F. Supp. 3d 220 (S.D.W. Va. 2023), *vacated and remanded sub nom.* B.P.J. *ex. rel.* Jackson v. W. Virginia State Bd. of Educ., 98 F.4th 542 (4th Cir. 2024), and *vacated in part*, No. 2:21-CV-00316, 2024 WL 6979999 (S.D.W. Va. May 16, 2024), and *cert. granted sub nom.* W. Virginia v. B. P. J. *ex. rel.* Jackson, 146 S. Ct. 57, 222 L. Ed. 2d 1154 (2025); Farm Lab. Org. Comm. v. Stein, 56 F.4th 339 (4th Cir. 2022); *Emilien v. Weeks*, No. CV 0:21-2330-RMG-PJG, 2022 WL 18635150 (D.S.C. Dec. 6, 2022); Kadel v. Folwell, No. 1:19CV272, 2022 WL 17415050 (M.D.N.C. Dec. 5, 2022), *aff'd*, 100 F.4th 122 (4th Cir. 2024), *cert. granted, judgment vacated sub nom.* Crouch v. Anderson, 145 S. Ct. 2835 (2025), and *cert. granted, judgment vacated*, 145 S. Ct. 2838 (2025), and *vacated and remanded*, No. 22-1721, 2025 WL 2740363 (4th Cir. Sept. 23, 2025); Kadel v. Folwell, No. 1:19CV272, 2022 WL 11166311 (M.D.N.C. Oct. 19, 2022); John & Jane Parents 1 v. Montgomery Cnty. Bd. of Educ., 622 F. Supp. 3d 118 (D. Md. 2022), *vacated and remanded*, 78 F.4th 622 (4th Cir. 2023); Williams v. Kincaid, 45 F.4th 759 (4th Cir. 2022); Kadel v. Folwell, 620 F. Supp. 3d 339 (M.D.N.C. 2022); Fain v. Crouch, 618 F. Supp. 3d 313 (S.D.W. Va. 2022), *aff'd sub nom.* Kadel v. Folwell, 100 F.4th 122 (4th Cir. 2024), *cert. granted, judgment vacated sub nom.* Crouch v. Anderson, 145 S. Ct. 2835 (2025), and *cert. granted, judgment vacated*, 145 S. Ct. 2838 (2025), and *rev'd in part, vacated in part sub nom.* Anderson v. Crouch, 169 F.4th 474 (4th Cir. 2026); McArthur v. Brabrand, 610 F. Supp. 3d 822 (E.D. Va. 2022); Boone v. Carvajal, No. CV 6:21-3053-JD-KFM, 2022 WL 4001154 (D.S.C. June 28, 2022), *report and recommendation adopted as modified*, No. 6:21-CV-3053-JD-KFM, 2022 WL 4000849 (D.S.C. Sep. 1, 2022); Peltier v. Charter Day Sch., Inc., 37 F.4th 104 (4th Cir. 2022); Kadel v. Folwell, No. 1:19CV272, 2022 WL 2106270 (M.D.N.C. June 10, 2022), *order corrected and superseded*, 620 F. Supp. 3d 339 (M.D.N.C. 2022); Q.C. v. Winston-Salem/Forsyth Cnty. Sch. Bd. of Educ., No. 1:19CV1152, 2022 WL 1686905 (M.D.N.C. May 26, 2022); Kadel v. Folwell, No. 1:19CV272, 2022 WL 1046313 (M.D.N.C. Apr. 7, 2022); Carter v. Bowie State Univ., No. GJH-20-2725, 2022 WL 717043 (D. Md. Mar. 9, 2022); Indus. Servs. Grp., Inc. v. Dobson, No. 1:21-CV-00090-MR-WCM, 2022 WL 954999 (W.D.N.C. Jan. 7, 2022), *report and recommendation adopted*, No. 1:21-CV-00090-MR-WCM, 2022 WL 949876 (W.D.N.C. Mar. 29, 2022), *aff'd*, 68 F.4th 155 (4th Cir. 2023); B. P. J. v. W. Virginia State Bd. of Educ., No. 2:21-CV-00316, 2021 WL 5711543 (S.D.W. Va. Dec. 1, 2021); Dove v. Patuxent Facility, No. CV DKC 18-1847, 2021 WL 5053095 (D. Md. Nov. 1, 2021); *In re K.L.*, 252 Md. App. 148, 258 A.3d 932 (2021); Kadel v. N. Carolina State Health Plan for Tchrs. & State Emps., 12 F.4th 422 (4th Cir. 2021), *as amended* (Dec. 2, 2021); Loudoun Cnty. Sch. Bd. v. Cross, No. 210584, 2021 WL 9276274 (Va. Aug. 30, 2021); Loper v. Howard Cnty. Pub. Sch. Sys., No. CV ELH-20-3789, 2021 WL 3857857 (D. Md. Aug. 27, 2021); Doe v. Maryland, No. CV CCB-20-2213, 2021 WL 3666460 (D. Md. Aug. 18, 2021); Peltier v. Charter Day Sch., Inc., 8 F.4th 251 (4th Cir. 2021), *on reh'g*

Cases were selected based on their direct citation to *Grimm*, regardless of whether the issue concerns transgender rights. By keeping a wide scope, this research intends to capture the precedential value of *Grimm* outside of transgender rights. Regardless of the political and public opinion hostility surrounding transgender rights, *Grimm* contains one of the most recent articulations of the protections contained in Title IX of the Education Amendments of 1972 and the Equal Protection Clause of the Fourteenth Amendment. It is the hope of this research that the decisions studied will signal respect of this recent articulation rather than its progeny.

B. SUMMARY OF FINDINGS

Several patterns emerge from the dataset. First, *Grimm* is overwhelmingly treated as the binding precedent that it is within the Fourth Circuit. Seventy-four of the eighty-one cases selected for analysis cite *Grimm* positively. Second, the reasons behind the citation to *Grimm* vary significantly. Given the case's sprawling procedural history, *Grimm* is cited during discussions of mootness and the award of fees and costs.[50] Additionally, transgender plaintiffs can rely on *Grimm* to bolster their constitutional or statutory rights in the contexts of public schools, healthcare, and conditions of confinement.

a. *GRIMM* IN THE PUBLIC-SCHOOL CONTEXT

Within the context of public-school policies, *Grimm* retains great precedential value such that transgender youth litigants can view the judiciary as a viable route to vindicate their constitutional rights. As a preliminary matter, the Fourth Circuit and courts within the Fourth Circuit have mounted staunch defenses of *Grimm*'s binding

en banc, 37 F.4th 104 (4th Cir. 2022); Sanford v. City of Franklin, No. 3:21CV46, 2021 WL 3268394 (E.D. Va. July 30, 2021); Hammons v. Univ. of Maryland Med. Sys. Corp., 551 F. Supp. 3d 567 (D. Md. 2021); B. P. J. v. W. Virginia State Bd. of Educ., 550 F. Supp. 3d 347 (S.D.W. Va. 2021); Doe *ex. rel.* Pullen-Smith v. Qually, No. 5:20-CV-523-FL, 2021 WL 2546456 (E.D.N.C. June 21, 2021); Padgett v. City of Columbia Police Dep't, No. CV 3:21-1157-JMC-PJG, 2021 WL 2813718 (D.S.C. May 17, 2021), *report and recommendation adopted*, No. 3:21-CV-01157-JMC, 2021 WL 2349750 (D.S.C. June 9, 2021); Sheppard v. Visitors of Virginia State Univ., 993 F.3d 230 (4th Cir. 2021); Pronin v. Al Cannon, No. 5:19-CV-0594-DCN, 2021 WL 960510 (D.S.C. Mar. 15, 2021), *aff'd sub nom.* Pronin v. Cannon, No. 21-6517, 2022 WL 42466 (4th Cir. Jan. 5, 2022); Farm Lab. Org. Comm. v. Stein, No. 1:17CV1037, 2021 WL 736712 (M.D.N.C. Feb. 25, 2021), *report and recommendation adopted*, No. 1:17CV1037, 2021 WL 1195803 (M.D.N.C. Mar. 30, 2021), *aff'd in part, rev'd in part*, 56 F.4th 339 (4th Cir. 2022); Doe v. Bd. of Visitors of Virginia Mil. Inst., 494 F. Supp. 3d 363 (W.D. Va. 2020); Monegain v. Dep't of Motor Vehicles, 491 F. Supp. 3d 117 (E.D. Va. 2020); Borkowski v. Baltimore Cnty., 492 F. Supp. 3d 454 (D. Md. 2020); Coble v. Lake Norman Charter Sch. Inc., No. 320CV00596MOCDSC, 2021 WL 1685969 (W.D.N.C. Mar. 4, 2021).

[50] *E.g.*, McArthur v. Brabrand, 610 F. Supp. 3d 822, 836 (E.D. Va. 2022) (quoting Grimm v. Gloucester Cnty. Sch. Bd., 972 F.3d 586, 604 (4th Cir. 2020)) ("'[E]ven if a plaintiff's injunctive relief claim has been mooted, the action is not moot if the plaintiff may be entitled to at least nominal damages.'"); Coble v. Lake Norman Charter Sch. Inc., No. 320CV00596MOCDSC, 2021 WL 1685969, at *2 (W.D.N.C. Mar. 4, 2021) (citing Grimm v. Gloucester Cty. Sch. Bd., 972 F.3d 586 (4th Cir. 2020)) (concluding that the case was moot despite the plaintiff's inclusion of a claim for nominal damages, which was a successful strategy to defeat mootness in *Grimm*).

nature.[51] *Doe by Doe v. South Carolina* is the most recent articulation of the precedential value of *Grimm* in the public-school context by the Fourth Circuit.[52] South Carolina Budget Proviso 1.120. (SDE: Student Physical Privacy) required public school districts to designate multi-occupancy public school restrooms and changing facilities "for use only by members of one sex."[53] Sex is defined as "a [person's] biological sex, either male or female, as objectively determined by anatomy and genetics existing at the time of birth."[54] As a result of the proviso, Doe, a transgender boy, was classified as female and prohibited from using the boys' multi-stall restrooms.[55] The effects of these changes on Doe were significant, with his parents enrolling their child in an online education program after their child was threatened with disciplinary action for continuing to use the bathroom that aligned with his gender identity.[56] Doe did not prosper in this online setting, leading to reenrollment in the public school system, where he faces the same issues from his time as an eighth grader.[57] The district court referred to the bathroom-access area of law as "unsettled" and stayed the entire case.[58]

Among the school policy cases, *Doe by Doe v. South Carolina* stands as a fierce defense of *Grimm* as binding precedent. The Fourth Circuit rejected the implied ambiguity in circuit precedent, stating that "[a]s the law stands, South Carolina's proviso is unconstitutional and violates Title IX."[59] The Fourth Circuit proceeded to affirm the precedential value of *Grimm*'s core conclusions. First, "*Grimm*'s conclusion that heightened constitutional scrutiny applies to a prohibition on transgender students' use of gender-affirming restrooms remains good law."[60] Second, "*Grimm*'s holding that transgender people are at least a quasi-suspect class" remains good law.[61] Most importantly, the Fourth Circuit directly defended the precedential value of *Grimm* after *Skrmetti*, stating that the case "said nothing whatsoever to cause doubt as to the vitality of *Grimm*'s Title IX holding."[62] Lastly, the Fourth Circuit stated that, as for the Supreme Court's future decision in *B.P.J. v. West Virginia*, "the law today is *Grimm*,"[63]

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[51] *E.g.*, Fairfax Cnty. Sch. Bd. v. McMahon, No. 1:25-CV-1432 (RDA/LRV), 2025 WL 2598622, at *2 (E.D. Va. Sep. 5, 2025) (quoting Doe v. South Carolina, 2025 WL 2375386, at *8 (4th Cir. Aug. 15, 2025)) ("This Court unconditionally recognizes that *Grimm* 'remains the law of this Circuit' and thus binds both this Court and parties within the Fourth Circuit."), *appeal filed* Sep. 16, 2025.

[52] *See generally* Doe v. South Carolina, No. 25-1787, 2025 WL 2375386 (4th Cir. Aug. 15, 2025).

[53] John E. Tyler, *Update on Title IX and Budget Proviso 1.120*, State of South Carolina Department of Education Memorandum (Aug. 27, 2024), https://perma.cc/5749-GFEZ.

[54] *Id.*

[55] Doe v. South Carolina, No. 25-1787, 2025 WL 2375386, at *2 (4th Cir. Aug. 15, 2025).

[56] *Id.*

[57] *Id.*

[58] *Id.* at *3.

[59] *Id.* at *10 (citing Grimm v. Gloucester Cnty. Sch. Bd., 972 F.3d 586, 607, 619 (4th Cir. 2020)).

[60] *Id.*

[61] South Carolina, 2025 WL 2375386, at *10.

[62] *Id.*

[63] *Id.* (citing Bethlehem Mines Corp. v. Henderson, 939 F.2d 143, 151 n.7 (4th Cir. 1991)).

and that "[t]he bottom line is that *Grimm* is binding until the Supreme Court tells us otherwise."[64] This case contains the strongest articulation of *Grimm*'s staying power.

Considering this recent circuit-level defense of *Grimm*, transgender youth litigants can continue to rely on federal courts in the Fourth Circuit to vindicate their rights violated in the public-school context because *Grimm* has made it easier for such plaintiffs to successfully bring Equal Protection claims and Title IX claims. First, the subjective discretion of individual judges is mitigated by the adoption of *Grimm*'s medical definitions. Second, transgender litigants have less of a gap to bridge because Equal Protection and Title IX rule statements have been defined with the rights of transgender people in mind. Lastly, transgender plaintiffs are more easily able to plead individual elements of their Equal Protection or Title IX claims, respectively, given the availability of the highly analogous fact set in *Grimm* when forming factual analogies. Taken together, *Grimm* enables transgender litigants to bring claims arising in the public-school context in federal court where their claims are insulated from judicial bias, strongly aligned with *Grimm*'s clear rule statements, and closely analogous to *Grimm*'s factual patterns.

First, the strong, positive treatment of *Grimm*'s definitional scheme by courts within the Fourth Circuit minimizes the role that individual judges' views of transgender issues can play in setting the tone of an opinion. For example, the Fourth Circuit incorporated definitions from the American Psychiatric Association's Diagnostic & Statistical Manual of Mental Disorders, noting that "[i]ncongruence between gender identity and assigned sex must be manifested by at least two" of six markers: "(1) '[a] marked incongruence between one's experienced/expressed gender and primary and/or secondary sex characteristics'; (2) '[a] strong desire to be rid of one's primary and/or secondary sex characteristics because of a marked incongruence with one's experienced/expressed gender'; (3) '[a] strong desire for the primary and/or secondary sex characteristics of the other gender'; (4) '[a] strong desire to be of the other gender'; (5) '[a] strong desire to be treated as the other gender'; or (6) '[a] strong conviction that one has the typical feelings and reactions of the other gender.'"[65]

By importing *Grimm*'s definitions of key terms into new claims on the basis of transgender status, a court effectively minimizes the spin a judge may be able to put on a transgender plaintiff's experiences. Transgender youth plaintiffs may rely on the definition of terms researched in *Grimm*. For example, "[f]or a definition of terms such as gender identity, gender dysphoria, cisgender, etc.," the District Court for the Eastern District of Virginia "refer[red] to the meticulously researched and written opinion in *Grimm* . . . ."[66] Even though these definitions are technically dicta in *Grimm*, their importation into additional litigation limits the possibility that judicial hostility toward transgender litigants will affect the outcome of cases. These personal beliefs are second to the recognized definitions of terms.

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[64] *Id.* at *11.

[65] *Grimm*, 972 F.3d at 595 (citing AM. PSYCH. ASS'N, Diagnostic and Statistical Manual of Mental Disorders (DSM 5-TR ed. 2022)).

[66] Doe v. Hanover Cnty. Sch. Bd., No. 3:24CV493, 2024 WL 3850810, at *1 n.3 (E.D. Va. Aug. 16, 2024).

Second, courts within the Fourth Circuit cite *Grimm* for its clear rule statements regarding the Equal Protection Clause and Title IX. Transgender youth litigants facing discrimination in the public-school context may leverage these rule statements when they pursue the vindication of their constitutional and statutory rights.[67] *Grimm*'s rule statements were concluded in contemplation of the protection of transgender rights. For example, in *Grimm*, the Fourth Circuit concluded that the Gloucester County School Board's bathroom policy constituted sex-based discrimination as to Grimm and thus triggered intermediate scrutiny under the Equal Protection Clause on two bases, both of which explicitly contemplated Grimm's status as a transgender student. First, a policy constitutes sex discrimination if it relies on "biological genders," such that the policy "cannot be stated without referencing sex"[68] and because Grimm "fail[ed] to conform to the sex stereotype propagated by the Policy," by being gender non-conforming.[69] Second, the Fourth Circuit held that "transgender people constitute at least a quasi-suspect class."[70] Between these three bases, the court held that the school board's bathroom policy must be subjected to heightened scrutiny.

The Fourth Circuit recently relied on *Grimm*'s framework when reviewing a transgender student's Equal Protection and Title IX challenge to West Virginia's Save Women's Sports Act, which "requires public school and collegiate sports teams to be designated based on 'biological sex' and excludes individuals identified as male at birth from participating on female teams.'"[71] The *B.P.J.* court incorporated *Grimm*'s articulation of intermediate scrutiny to conclude that the Act, whose purpose and effect was the exclusion of transgender girls from participation on girls sports teams,

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[67] Note that the utility of *Grimm*'s holdings is not limited to transgender plaintiffs. *Grimm*'s holdings lend clarity to plaintiffs alleging sex discrimination on bases other than transgender status, such as same-sex harassment. For example, in *Doe ex. rel. Pullen-Smith v. Qually*, a female student alleged that school defendants failed "to address the bullying, harassment, and abuse perpetrated against her by another female student." No. 5:20-CV-523-FL, 2021 WL 2546456, at *3 (E.D.N.C. June 21, 2021). The District Court for the Eastern District of North Carolina stated that this "plaintiff plausibly allege[d] that she experienced harassment on the basis of sex," citing *Grimm*, among other sources, for its conclusion "that, under Title IX, discrimination against a person for being transgender or homosexual constitutes discrimination o[n] the basis of sex.'" *Id.* at *6 (quoting Grimm v. Gloucester Cty. Sch. Bd., 972 F.3d 586, 616 (4th Cir. 2020)) (citing Oncale v. Sundowner Offshore Servs., Inc., 523 U.S. 75, 80 (1998); Doe on Behalf of Doe v. Dallas Indep. Sch. Dist., 153 F.3d 211, 219 (5th Cir. 1998); Dunlap v. Monroe Cty. Bd. of Educ., No. CV 1:16-11535, 2017 WL 4684181, at *4 (S.D.W. Va. Oct. 18, 2017); Grimm v. Gloucester Cty. Sch. Bd., 972 F.3d 586, 616 (4th Cir. 2020)). Additionally, the District Court for the Western District of Virginia utilized *Grimm*'s articulation of the elements of a Title IX claim in a case where a cis-gender male student alleged sex discrimination in relation to a hazing incident at the institute. Doe v. Bd. of Visitors of Virginia Mil. Inst., 494 F. Supp. 3d 363, 375 (W.D. Va. 2020).

[68] Grimm v. Gloucester Cnty. Sch. Bd., 972 F.3d 586, 608 (4th Cir. 2020) (quoting Whitaker *ex. rel.* Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ., 858 F.3d 1034, 1051 (7th Cir. 2017)), *as amended* (Aug. 28, 2020).

[69] *Id.* (quoting Grimm v. Gloucester Cnty. Sch. Bd., 302 F. Supp. 3d 730, 750 (E.D. Va. 2018)).

[70] Grimm v. Gloucester Cnty. Sch. Bd., 972 F.3d 586, 610 (4th Cir. 2020) (engaging with the suspect class test articulated in Bowen v. Gilliard, 483 U.S. 587, 602 (1987) and City of Cleburne, Tex. v. Cleburne Living Ctr., 473 U.S. 432, 440 (1985)), *as amended* (Aug. 28, 2020).

[71] *West Virginia v. B.P.J*, OYEZ, https://perma.cc/M5F6-MVPF (last visited Dec 17, 2025).

"is a facial classification based on gender identity" that is subject to intermediate scrutiny.[72] Thus, the transgender plaintiff in *B.P.J.* benefitted from *Grimm*'s rules regarding when public school policies must pass intermediate scrutiny.

Third, *Grimm* introduced a bank of facts that transgender plaintiffs can build on to leverage any factual incongruities of their cases to *Grimm* to their advantage. *Grimm* held that the school board's policy banning transgender students from using bathrooms aligned with their gender identity violated Title IX and the Equal Protection Clause of the Fourteenth Amendment.[73] In *B.P.J.*, for instance, the Fourth Circuit analogized the harm of the "'stigma of being' unable to participate with one's friends and peers" that is imposed by the Act's application to B.P.J. to the stigma Grimm suffered because of the bathroom policy.[74] The Fourth Circuit proceeds to conclude that the Act required "B.P.J. to take on *additional* harms to avoid forfeiting the ability to play school sports altogether."[75] This demonstrates that, in the public-school context, plaintiffs can benefit from factual incongruity with *Grimm* when the factual basis for their claim exceeds the facts present in *Grimm*. Indeed, the Fourth Circuit in *B.P.J.* criticized West Virginia's Save Women's Sports Act for "go[ing] beyond even what this Court concluded was impermissible in *Grimm*. Under this Act, a transgender boy like Gavin Grimm may play on boys teams but a transgender girl like B.P.J. may not play on girls teams."[76] *B.P.J.* illustrates that *Grimm* can be viewed as a factual floor, which positions transgender plaintiffs to better challenge state policies that impose greater harms than those imposed in *Grimm*.

Ultimately, transgender litigants who experience sex discrimination as a product of public-school policies can accurately view the judiciary as a protectorate of constitutional and statutory rights because of the Fourth Circuit's continued defense of *Grimm*. *Grimm* protects claims of sex discrimination in violation of the Equal Protection Clause and Title IX from judicial hostility toward transgender issues. Additionally, *Grimm* provides clear rule statements for the parameters of a transgender person's constitutional and statutory rights to be free from state-imposed sex discrimination. Lastly, the facts alleged in *Grimm* welcome the formation of generous analogies by transgender plaintiffs for claims arising in the public-school context.

b. *Grimm* in the Healthcare Context

Plaintiffs with pro-transgender causes are continuing to challenge state and federal actions that restrict action based on transgender status, despite recent setbacks. Important among these setbacks is the fact that the critical judgment of *Kadel v. Folwell*

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[72] B.P.J. *ex. rel.* Jackson v. W. Virginia State Bd. of Educ., 98 F.4th 542, 556 (4th Cir.) (". . . [U]nder this Court's binding precedent, such classifications trigger intermediate scrutiny."), *cert. denied sub nom.* W. Virginia Secondary Sch. Activities Comm'n v. B.P. J. *ex. rel.* Jackson, 145 S. Ct. 568 (2024), and *cert. granted sub nom.* W. Virginia v. B. P. J. *ex. rel.* Jackson, 222 L. Ed. 2d 1154 (July 3, 2025).

[73] *Grimm*, 972 F.3d at 615–16 (4th Cir. 2020).

[74] *B.P.J.*, 98 F.4th at 563–64 (quoting Grimm v. Gloucester Cnty. Sch. Bd., 972 F.3d 586, 617–18 (4th Cir. 2020), *as amended* (Aug. 28, 2020)).

[75] *Id.* at 564 (emphasis added).

[76] *Id.* at 563.

has been vacated and remanded to the Fourth Circuit for further consideration in light of the Supreme Court's holding in *Skrmetti*.[77] Prior to *Skrmetti*, the Fourth Circuit had maintained that the categorical exclusion of coverage for gender-affirming care by state-operated insurance violated the Equal Protection Clause of the Fourteenth Amendment and § 1557 of the Affordable Care Act.[78] In forming this position, the Fourth Circuit relied on *Grimm*'s articulation of "gender identity [a]s a protected characteristic under the Equal Protection Clause."[79]

In the post-*Skrmetti* landscape, *Grimm*'s binding influence continues to drive litigation concerning access to and efficacy of gender-affirming care. For example, in *American Association of Physicians for Human Rights, Inc. v. National Institutes of Health,* the District Court for the District of Maryland issued a preliminary injunction enjoining the National Institutes of Health and the Department of Health and Human Services from enforcing administrative policies that prohibit federal funding "because the research relates to 'gender identity,' 'transgender issues,' 'diversity,' 'equity,' 'equity objectives,' 'inclusion,' 'accessibility,' 'DEI,' 'LGBTQI+ health,' 'sexual orientation,' and/or 'gender ideology.'"[80] The *American Association of Physicians for Human Rights, Inc.* court applied *Grimm*'s determination that transgender people constitute a quasi-suspect class and required the government's funding actions that were classified on the basis of transgender status to pass heightened scrutiny.[81] This analysis indicates that *Grimm* remains a useful tool for transgender litigants wishing to challenge classifications that restrict access to information about gender-affirming care on the basis of transgender status.

c. *GRIMM* IN THE PRISON CONTEXT

It is essential to examine the obstacles transgender litigants face when seeking to enforce their rights within the prison system, especially considering the overrepresentation of LGBTQ youth in the criminal justice system.[82] Therefore, understanding the following barriers is key to answering whether transgender youth can ultimately rely on the judiciary for the vindication of their rights. Even where *Grimm* is cited positively by federal courts in cases with previously or presently incarcerated plaintiffs, significant barriers remain for transgender plaintiffs who attempt to bring Equal Protection claims that arise in the prison context. The

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[77] Folwell v. Kadel, 145 S. Ct. 2838, 2838 (2025) (citing United States v. Skrmetti, 605 U.S. 495 (2025)) (vacating the judgment and remanding to the United States Court of Appeals for the Fourth Circuit for further consideration in light of *Skrmetti*).

[78] *See generally* Kadel v. Folwell, 100 F.4th 122, 143 (4th Cir. 2024), *cert. granted, judgment vacated sub nom.* Crouch v. Anderson, 145 S. Ct. 2835 (2025), and *cert. granted, judgment vacated*, 145 S. Ct. 2838 (2025).

[79] *Id.*

[80] Am. Ass'n of Physicians for Hum. Rts., Inc. v. Nat'l Institutes of Health, 795 F. Supp. 3d 678, 700 (D. Md. 2025).

[81] *Id.* at 691.

[82] *Unjust: How the Broken Juvenile and Criminal Justice Systems Fail LGBTQ Youth*, MOVEMENT ADVANCEMENT PROJECT AND CENTER FOR AMERICAN PROGRESS,1 (2016) (stating that 20% youth in juvenile justice facilities identify as LGBTQ compared to 7–9% of youth in general."), https://perma.cc/JK9P-TM3K.

sufficiency of a transgender litigant's claims is harshly dissected in three ways. First, many courts within the Fourth Circuit subject Equal Protection claims arising in the prison context to a deferential standard of review, which carries a presumption of reasonableness that is rebuttable only in rare cases. Second, while *Grimm* is used to highlight the elements of an Equal Protection claim, it is not uncommon for federal courts to throw out the claims of transgender litigants for factual insufficiencies at the pleadings stage. Lastly, despite the Fourth Circuit's extensive discussion of the World Professional Association for Transgender Health (WPATH) Standards in *Grimm*, lower courts remain able to decenter the WPATH Standards during an analysis of Eighth Amendment claims, which are commonly brought alongside Equal Protection claims. The sum of these three setbacks reveals that *Grimm* provides minimal assistance to incarcerated transgender litigants pursuing constitutional claims.

First, constitutional claims arising in the prison context are analyzed under a deferential standard of review that weeds out claims that, if brought outside of the prison context, might otherwise be sufficiently pled. Perhaps most prominently, the U.S. Supreme Court articulated in *Turner v. Safley* that prison-based restrictions that infringe on constitutional rights must be only reasonably related to legitimate penological interests.[83] While courts within the Fourth Circuit follow the *Turner* analysis, courts also recognize that some facts may be sufficient to rebut the presumption that a policy or actions taken are rationally related to legitimate penological interests.[84]

One such court is the District Court for the District of Maryland, which found the presumption rebutted in *Gilliam v. Department of Public Safety & Correctional Services*.[85] In *Gilliam*, the three plaintiffs alleged egregious harassment, attempted rape, and restrictive confinement based on their status as transgender women.[86] The *Gilliam* court viewed *Grimm* as providing a clear statement that "[E]qual [P]rotection claims based upon transgender status or gender identity warrant intermediate scrutiny," bolstering the court's view of claims based on transgender status.[87] Ultimately, however, the *Gilliam* court held that the proper standard of review for Equal Protection challenges arising in the prison context is rational basis review, unless the plaintiff "'allege[s] facts sufficient to overcome the presumption of reasonableness applied to prison policies.'"[88] The *Gilliam* court stated that it was unable to make findings on *Turner v. Safley* factors at such an early stage of the litigation and instead assumed the facts alleged to be true with all reasonable inferences drawn in the

[83] *Turner v. Safley*, 482 U.S. 78, 99 (1987).

[84] *E.g.*, Dove v. Patuxent Facility, No. CV DKC 18-1847, 2021 WL 5053095, at *10 (D. Md. Nov. 1, 2021) (citing *Fauconier v. Clarke*, 966 F.3d 265, 277 (4th Cir. 2020)) (explaining that in addition to pleading sufficient facts to demonstrate plausibility as to the two Equal Protection elements, "[p]risoners must also plausibly allege that the different treatment was not valid because it 'was not reasonably related to any legitimate penological interests'").

[85] Gilliam v. Dep't of Pub. Safety & Corr. Servs., No. CV MJM-23-1047, 2024 WL 5186706, at *19 (D. Md. Dec. 20, 2024).

[86] *Id.* at *3–4.

[87] *Id.* at *19.

[88] *Id.* (quoting Veney v. Wyche, 293 F.3d 726, 732 (4th Cir. 2002)).

plaintiffs' favor.[89] Additionally, the *Gilliam* court determined that it "must give due consideration to the [E]qual [P]rotection concerns that, outside the prison context, would warrant application of intermediate scrutiny."[90] Bearing these points in mind, the *Gilliam* court denied in part of the DPSCS Defendants' motion to dismiss "as to Plaintiff's claims in Count VII against Housing and Custody [Defendants]" because the "Plaintiff's allegations suggest that DPSCS Defendants lacked a rational basis for their alleged discriminatory conduct."[91] The *Gilliam* court also granted in part the motion to dismiss the Equal Protection claim as to the named DPSCS officials in their individual capacities and the "Health Care Does."[92]

The *Gilliam* court's reasoning is a primary example of how *Grimm* strengthens the ability of transgender individuals to reach discovery, despite the high bar of *Turner*. Informed by *Grimm*'s articulation of intermediate scrutiny for Equal Protection claims based on transgender status outside of the prison context, the court found the transgender plaintiffs' allegations sufficient to overcome the presumption that the challenged prison policies were reasonable.[93] However, the presumption of reasonableness for prison policies that infringe on constitutional rights remains difficult to overcome.[94] Additionally, while *Grimm* articulates a strong protection of transgender rights through the application of intermediate scrutiny in general contexts, "[n]either the Fourth Circuit nor the Supreme Court has explained what level of scrutiny applies to gender-based [E]qual [P]rotection claims in a prison setting."[95] Consequently, "many courts within the Fourth Circuit have continued to apply Turner's more deferential standard . . . ."[96] Until higher courts provide clarification, incarcerated transgender litigants face a harsh reality; while *Grimm* stands to protect their Equal Protection rights generally, in the carceral context, their factual allegations must be egregious in nature and plentiful in pattern to sufficiently overcome the presumption of reasonableness.

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[89] *Id.* at *21 (citing Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); King v. Rubenstein, 825 F.3d 206, 211 (4th Cir. 2016)).

[90] *Id.* at *21 (citing Veney v. Wyche, 293 F.3d 726, 732 (4th Cir. 2002)).

[91] *Gilliam*, 2024 WL 5186706, at *21.

[92] *Id.*

[93] *Id.* at *19 (citing Veney v. Wyche, 293 F.3d 726, 732 (4th Cir. 2002)); *see also* Pronin v. Al Cannon, No. 5:19-CV-0594-DCN, 2021 WL 960510, at *4 n.6 (D.S.C. Mar. 15, 2021) (emphasis added) (finding that the District Court of the District of South Carolina need not engage with *Grimm*'s quasi-suspect class analysis as the transgender plaintiff's "*lone allegation*" failed the pleading standard articulated in *Veney*), *aff'd sub nom.* Pronin v. Cannon, No. 21-6517, 2022 WL 42466 (4th Cir. Jan. 5, 2022).

[94] *See* Anderson v. S.C. Dep't of Corr., No. 9:25-CV-03993-SAL-MHC, 2025 WL 2654793, at *3 (D.S.C. July 30, 2025) (explaining that the plaintiff's allegations regarding the improperly healed bones in his foot did not indicate a lack of rational basis for the difference in treatment), *report and recommendation adopted*, No. 9:25-CV-3993-SAL, 2025 WL 2654352 (D.S.C. Sep. 16, 2025).

[95] Cano v. S.C. Dep't of Corr., No. 9:22-CV-04247-JDA-MHC, 2025 WL 2919054, at *21 (D.S.C. June 16, 2025), *report and recommendation adopted in part, rejected in part*, No. 9:22-CV-04247-JDA, 2025 WL 2608137 (D.S.C. Sep. 9, 2025).

[96] *Id.*

Second, even where courts do not specify which level of scrutiny a prison-based Equal Protection claim will be subjected to, plaintiffs will struggle to allege sufficient facts to survive the pleadings stage.[97] In these cases, it is not uncommon for *Grimm* to first be cited positively as part of the general outline of an Equal Protection claim, and then for a court to restrict the availability of judicial relief to transgender plaintiffs based on the facts alleged. For example, in *Ratcliffe v. Hamilton*, the District Court for the Western District of Virginia first cited *Grimm* positively as contributing to the definition of the Equal Protection Clause's protections.[98] The *Ratcliffe* court then held that the allegations of a lesbian inmate that she was subjected to different hardships than straight women, including prolonged periods of restrictive housing, were insufficient to create a material fact "as to whether she was treated differently than similarly situated inmates."[99] In the prison context, providing sufficient facts to support this comparative element of an Equal Protection Claim is difficult, but transgender plaintiffs may be able to overcome this difficulty where there is direct evidence of discriminatory animus.[100] Where the allegations, if true, would amount to direct evidence of a discriminatory motive based on the litigant's transgender status, it may not be necessary to sufficiently plead that one is similarly situated to other inmates.[101] While many plaintiffs may experience constitutional harms as products of prison policies that treat them differently than the general prison population based on their transgender status, only the most egregious cases of discrimination on the basis of transgender status are able to survive to the discovery stage of litigation. Even though *Grimm* brings good tidings for transgender plaintiffs in courts within the

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[97] *E.g.*, Padgett v. City of Columbia Police Dep't, No. CV 3:21-1157-JMC-PJG, 2021 WL 2813718, at *3 (D.S.C. May 17, 2021) (holding that the non-transgender plaintiff failed to "plausibly allege that he was treated differently from other similarly situated individuals or that such treatment was the result of intentional or purposeful discrimination" without identifying the requisite level of scrutiny), *report and recommendation adopted*, No. 3:21-CV-01157-JMC, 2021 WL 2349750 (D.S.C. June 9, 2021).

[98] Ratcliffe v. Hamilton, No. 7:22-CV-00730, 2024 WL 3503468, at *7 (W.D. Va. July 22, 2024).

[99] *Id.* at *1–5, *8.

[100] Note that sufficient pleadings as to the comparator evidence element is not necessarily excused. *Compare* Lee v. Boyd, No. 7:24-CV-00287, 2025 WL 2467706, at *4 (W.D. Va. Aug. 27, 2025) ("Defendant also told Plaintiff point blank, 'If you[were] straight I could move you today but you said you['re] gay so I'm not getting involved.' . . . Plaintiff's allegations establish that Defendant had the decision-making authority to move Plaintiff to another pod to avoid harassment from other prisoners but that he would only exercise that authority for an inmate he understood to be heterosexual."), *with* Carter v. Collins, No. 7:22-CV-00025, 2024 WL 1260588, at *14 (W.D. Va. Mar. 25, 2024) (citing Equity in Athl., Inc. v. Dep't of Educ., 639 F.3d 91, 108 (4th Cir. 2011)) (describing the elements of an Equal Protection claim in a conjunctive manner); *compare Farnsworth v. Northam*, No. 7:21-CV-00463, 2024 WL 989491, at *7 (W.D. Va. Mar. 5, 2024) (emphasizing the necessity of pleading sufficient facts on both elements of an Equal Protection claim), *aff'd*, No. 24-6273, 2025 WL 3034702 (4th Cir. Oct. 30, 2025), *with* Darr v. Stout, No. 7:23CV00298, 2023 WL 7549864 at *4 (W.D. Va. Nov. 14, 2023) (emphasis added) (quoting Morrison v. Garraghty, 239 F.3d 648, 654 (4th Cir. 2001)) (finding that the non-transgender plaintiff failed to allege facts sufficient to satisfy either element of the Equal Protection claim, but defining the insufficiencies in a disjunctive manner, such that the plaintiff did "not allege . . . similarly situated [element] *or* that any disparity in treatment resulted from 'intentional or purposeful discrimination'").

[101] *See id.*

Fourth Circuit, the allegations of transgender plaintiffs for Equal Protection claims arising in the prison context face additional challenges regarding their sufficiency.

Third, while the Fourth Circuit in *Grimm* wrote a detailed background of the history of transgender healthcare, the centrality of the World Professional Association for Transgender Health Standards to the Eighth Amendment cruel and unusual punishment analysis remains ambiguous. In *Grimm*, the Fourth Circuit described the WPATH Standards as the only "evidence-based standards... accepted by any nationality or internationally recognized medical professional groups,"[102] providing a hopeful foundation for transgender litigants.[103] This led some lower courts, including the District Court for the Western District of North Carolina, to treat *Grimm* as a clear statement of the Fourth Circuit's "recognition of the WPATH Standards as 'authoritative.'"[104] Despite the strong endorsement of the WPATH Standards in the Equal Protection context, the centrality of the WPATH Standards to the Eighth Amendment cruel and unusual punishment analysis remains ambiguous. The ambiguity of the role of "medical necessity" allows lower courts to diminish the importance of requested gender-affirming care.[105] This lack of clarity is evidenced by the dissent in *Zayre-Brown v. North Carolina Department of Adult Corrections*, where Judge Alison Jones Rushing noted that the Fourth Circuit has "has declined to 'offer an opinion one way or the other' regarding the 'the necessity of sex reassignment surgery' in connection with the 'WPATH Standards of Care' for 'Eighth Amendment deliberate-indifference' claims, noting that other circuits have rejected such medical necessity arguments."[106] Furthermore, in *Boone v. Carvajal*, the District Court for the District of South Carolina, while acknowledging *Grimm*'s recognition of the WPATH Standards as "'modern accepted treatment protocols for [Gender Dysphoria],'" proceeded to decentralize the standards from its deliberate indifference analysis, stating that "courts within this circuit have never held that the [Bureau of Prisons] must precisely follow the Standards of Care in their entirety to avoid being deliberately indifferent . . . ."[107] Given the ambiguity of the role of the WPATH Standards in the

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[102] *Grimm* at 595–96.

[103] Transgender plaintiffs with diagnoses of gender dysphoria may also challenge conditions of their incarceration as violations of their statutory rights from the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. *See* Williams v. Kincaid, 45 F.4th 759, 769 (4th Cir. 2022). *But see id.* at 785 (J. Quattlebaum, J., concurring in part) (criticizing the majority's reliance on the WPATH Standards in its statutory analysis).

[104] Zayre-Brown v. N. Carolina Dep't of Pub. Safety, No. 3:22-CV-191-MOC-DCK, 2024 WL 410243, at *5 (W.D.N.C. Feb. 2, 2024).

[105] *See generally* Position Statement on Medical Necessity of Treatment, Sex Reassignment, and Insurance Coverage in the U.S.A., WORLD PROFESSIONAL ASSOCIATION FOR TRANSGENDER HEALTH (Dec. 21, 2016), https://perma.cc/BE5Z-VF63.

[106] Zayre-Brown v. N. Carolina Dep't of Adult Corr., No. 24-6477, 2024 WL 3534690, at *2 (4th Cir. 2024) (Rushing, J., dissenting) (citing Grimm v. Gloucester Cnty. Sch. Bd., 972 F.3d 586, 595 n.2 (4th Cir.), *as amended* (Aug. 28, 2020)).

[107] Boone v. Carvajal, No. CV 6:21-3053-JD-KFM, 2024 WL 3052064, at *12 (D.S.C. Feb. 5, 2024) (citing Grimm v. Gloucester Cnty. Sch. Bd., 972 F.3d 586, 595 (4th Cir. 2020)), *report and recommendation adopted*, No. 6:21-CV-3053-JD-KFM, 2024 WL 3052046 (D.S.C. May 3, 2024), *aff'd*, No. 24-6588, 2025 WL 1098543 (4th Cir. Apr. 14, 2025).

Eighth Amendment context, transgender plaintiffs bringing Eighth Amendment claims alongside their Equal Protection claims are at the interpretative mercy of the deciding court when seeking gender-affirming care.

In *Grimm*, the Fourth Circuit envisioned the Equal Protection Clause to be capable of protecting the rights of transgender litigants, but formidable barriers threaten their ability to challenge the conditions of their confinement. Consequently, transgender litigants must be equipped with egregious facts that can both rebut the presumption of reasonableness for prison policies and, if viewed as true, be sufficient to establish the elements of an Equal Protection claim. Compounding this difficulty, the Fourth Circuit's explanation of the international regard for WPATH Standards in *Grimm* is not automatically incorporated into a federal court's analysis of Eighth Amendment claims, leaving transgender litigants at the interpretative mercy of a lower court in lieu of further clarification by the Fourth Circuit. While *Grimm* ushers in a more inclusive view of the Equal Protection Clause of the Fourteenth Amendment, when faced with the power of the state within the prison setting, transgender litigants may still struggle to find judicial relief to the violation of their constitutional rights.

PART III: CONCLUSION

While there have been significant political and doctrinal developments since *Grimm* reached its final outcome, *Grimm* continues to serve as a critical safeguard for transgender youth who pursue the vindication of their constitutional and statutory rights through litigation. Despite the bloom of anti-transgender legislation and policies, polarized public opinion on transgender rights, and the aftermath of the Supreme Court's decision in *Skrmetti*, the analysis of 81 citing decisions demonstrates that courts within the Fourth Circuit still overwhelmingly treat *Grimm* as doctrinally sound. Transgender youth litigants can still view the Fourth Circuit as a protector of their rights based on Grimm's status as binding precedent in the public-school and healthcare contexts, and its informative value in the prison context. The claims of transgender plaintiffs in these three contexts are bolstered by *Grimm*'s core holdings regarding Equal Protection principles and anti-discrimination principles expressed by Title IX. The public-school context, the regulation of healthcare, and incarceration are three likely ways that a transgender child encounters state action. Thus, the firmness of *Grimm*'s holdings in these areas provides hope for transgender youth litigants.

For transgender children making their way through the public school system, a narrow, and time-limited hope might still be the hope they need. Where a child may only need four years to finish their schooling, the ability to achieve an injunction may create the safe educational space they need, and one that will not stigmatize them every time they require the bathroom. The Fourth Circuit has expressed that it will protect bathroom access for these vulnerable children until it is told that it can no longer.[108] Even if the axe that falls from *B.P.J.* falls hard on *Grimm*, advocacy and litigation can bring awareness to the harms that transgender children face from bathroom access restrictions, possibly impacting the tide of public opinion in a positive manner. It is possible, however, that the Supreme Court will decide *B.P.J.* on narrowed grounds,

[108] Doe v. South Carolina, No. 25-1787, 2025 WL 2375386, at *10 (4th Cir. Aug. 15, 2025).

leaving *Grimm* well alone. If this is the case, it is likely that challenges to *Grimm*, like that posed by *Doe by Doe v. South Carolina,* will fail. Absent contrary action by the Supreme Court, the Fourth Circuit has carved out a stable niche for *Grimm* in its Equal Protection and Title IX caselaw.