

CERTIFICATE OF SERVICE

The undersigned, counsel of record for the Defendant-Appellants hereby certifies that on March 7, 2017, an electronic copy of the Rule 28(j) letter was served on counsel for Plaintiff-Appellee through the ECF system as all parties are registered users.

Dated this 7th day of March, 2017.

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March 7, 2017

Office of the Clerk
United States Court of Appeals for the Seventh Circuit
Everett McKinley Dirksen U.S. Courthouse
219 S. Dearborn Street, Room 272
Chicago, IL 60604

RE: *Ashton Whitaker v. Kenosha Unified
School District No. 1, et al.*
Case No. 16-3522

Dear Clerk:

Pursuant to Fed. R. App. P. 28(j), Defendants-Appellants hereby submit the attached Supreme Court opinion in *Gloucester Cty. Sch. Bd. v. G. G. ex rel. Grimm*, No. 16-273, 2017 WL 855755, at *1 (U.S. Mar. 6, 2017).

The Supreme Court vacated the judgment in *G.G. ex rel. Grimm v. Gloucester Cty. Sch. Bd.*, 822 F.3d 709 (4th Cir. 2016), and remanded the case to the United States Court of Appeals for the Fourth Circuit for further consideration after the Department of Education's previous position on the scope of Title IX was withdrawn on February 22, 2017. In entering the now-vacated judgment, the Fourth Circuit had deferred to the Department of Education's interpretation.

This supplemental citation pertains to Defendants-Appellants' Brief at Sections II.A-B, D, pages 7-21, 28-29 discussing how the term "sex" as used in Title IX does not encompass transgender status as a matter of law and that one cannot unilaterally declare their "sex". Additionally, Supreme Court's opinion pertains to Defendants-Appellants' Reply Brief at Section I.A.1, pages 3-5 discussing that Title IX does not extend beyond the binary concept of sex.

While *G.G.* was merely persuasive authority, its persuasive value is now non-existent considering the Supreme Court's decision to vacate the judgment. This Court should not rely on the Fourth Circuit's analysis in *G.G.* in evaluating this appeal.

Respectfully submitted,

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2017 WL 855755

Only the Westlaw citation is currently available.
Supreme Court of the United States

GLOUCESTER COUNTY SCH. BD. V. G. G.

No. 16-273.

|
March 6, 2017.

Opinion

*1 The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Fourth Circuit for further consideration in light of the guidance document issued by the Department of Education and Department of Justice on February 22, 2017.

All Citations

--- S.Ct. ----, 2017 WL 855755 (Mem)

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RULE 28(j) CERTIFICATION

I certify that the body of this Rule 28(j) letter does not exceed 350 words.

Dated this 7th day of March, 2017.

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