

In the  
UNITED STATES COURT OF APPEALS  
for the Seventh Circuit

Docket No. 95-3634

JAMIE STUART NABOZNY,	)	Appeal from the United
	)	States District Court
<i>Plaintiff-Appellant,</i>	1	for the Western
	)	District of Wisconsin
v.	1	
	1	
MARY PODLESNY, individually, and in her)	1	No. 95-C-0086-S
capacity as Principal at Ashland	1	
Middle School; WILLIAM DAVIS,	.1	
individually, and in his capacity as )		
Principal of-Ashland High School; )	= )	John C. Shabaz
THOMAS BLAUERT,' individually, and in )	)	~ Judge Presiding
his capacity as Assistant Principal of )	)	
Ashland High School; and the )	)	
ASHLAND PUBLIC. SCHOOL DISTRICT,	)	
<i>Defendants-Appellees.</i>	)	

BRIEF OF AMICI CURIAE THE NATIONAL ASSOCIATION OF  
SCHOOL PSYCHOLOGISTS, THE NATIONAL ASSOCIATION OF SOCIAL  
WORKERS, PARENTS, FAMILIES AND FRIENDS OF LESBIANS AND GAYS,  
AND HORIZONS COMMUNITY SERVICES

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CERTIFICATE OF INTEREST

Cause No: 95-3634

Short Title: NABbZNY v. PODLESNY

To enable the judges to determine whether rec<sup>usa</sup>1 is **necessary** or appropriate, an attorney for a non-governmental Party or amicus curiae, or a private attorney representing a government party, must furnish a certificate of interest stating the following information in compliance with Circuit Rule 26.1:

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THE NATIONAL ASSOCIATION OF SCHOOL PSYCHOLOGISTS; THE NATIONAL ASSOCIATION OF SOCIAL WORKERS; PARENTS, FAMILIES AND FRIENDS OF LESBIANS AND GAYS; HORIZONS COMMUNITY SERVICES

(2) If such party or amicus is a corporation:

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Attorney's Signature: Cynthia H. Hyndman

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Declared: December 18, 1995

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## INTRODUCTION

Amici the National Association of School Psychologists, the National Association of Social Workers, Parents, Families and Friends of Lesbians and Gays, and Horizons Community Services. -submit this brief in support of appellant Jamie Nabozny. Amici will show, through a summary of journal articles and studies, the devastating effects of anti-gay violence, especially upon gay and lesbian adolescents. In Brown v. Board of Education, 347 U.S. **483 (1954)**, the United States Supreme Court relied on social science literature to assess the effect of racial discrimination on African-American children. The Court observed that discrimination reaching children "generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone."<sup>11</sup> \*Id.. at 494. The social science literature discussed here should lead this Court to conclude that anti-gay harassment and violence are similarly harmful. Because of these effects, it is important that policies and laws designed to prevent the occurrence of harassment and violence in schools are fairly and consistently applied and that remedies exist in the event that they are not.

## ARGUMENT ;

### I. Anti-gay Harassment And Violence Are Prevalent In Our Schools.

The violence Jamie Nabozny experienced in the Ashland Public School District is not an unusual or isolated occurrence. Anti-gay violence by teenagers is widespread, as documented in multiple studies of lesbians and gays who suffered violence

during their youth. One study found that 45% of 'gay males and almost 20% of lesbians have experienced verbal abuse or physical assault in high school; about 28% of those students dropped out of school.. Paul Gibson, ~~Gay Male and Lesbian Youth Suicide~~, in ~~Report of the Secretary's Task Force on Youth Suicide~~ 3-110, >3-112-3-113 (U.S. Dept. of Health & Human Services Pub., No.

(ADM)89-1623, 1989)-1 Another report shows:

'Between 33% and 49% of the respondents in studies conducted in-Maine, Wisconsin, Pennsylvania, and in eight U.S. cities had experienced harassment, threats and/or violence while in high school or junior high school. According to the [New York] Governor's Task Force on Bias-related Violence (1988), teenagers surveyed about their biases against a variety of minorities reacted more, negatively to gay people than to any other group. The report described this aversion as alarming and concluded that gay men and lesbians "are perceived as legitimate targets that can be openly attacked." The report noted that teenagers' written comments about gays were "often openly vicious, and that 'A number of students threatened violence against gays."

Kevin T. Berrill, Anti-Gay Violence and Victimization in the United States, 5 J. Interpersonal Violence 274, 286 (1990)(citation~s omitted).

Threats of violence against gay youth often escalate to actual violence, but the fear of retribution for reporting the violence often leaves it unaddressed. The State of Washington has attempted to address the violence against lesbian and gay youth in schools through an outreach effort that has documented shocking results:

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<sup>1</sup> At the Court's request, amici will provide copies of any journal articles or studies cited herein.

Incidents reported ,[in one twelve-month period from 1994-1995] ranged from name-calling to rape. Overall, assailants outnumbered targeted persons by about three to one. Two severe beating incidents resulted in emergency room care for three people and in-patient mental health treatment for one. Fourteen incidents reported this year' involved some form of sexual assault . . . . Of these fourteen sexual assaults, six were gang rapes, with a total of eight people raped. This year's incidents have caused four youths to begin or increase their use of alcohol or other drugs. One of those youths and two others attempted suicide and another killed- himself.

Safe Schools Coalition of Washington, Safe Schools Anti-Violence Documentation Project Second Annual Report 1 (1995).

Schools play a crucial role in the growth and development of young people -- second only to the family -- because of the amount of 'time spent there -and because social interactions between students and teachers and students and their peers teach - young people about relationships. Joyce Hunter and Robert Schaecher, Lesbian and Gay Youth, in Plannins to Live; 297, 306 (Mary Jane Rotheram-Borus, et al. eds., 1990). Gay and lesbian youth who experience harassment and violence in school are, not surprisingly, profoundly affected. That the harassment and violence are experienced during adolescence, a crucial time for a young person's development, also has profound effects.

## II. Gay And Lesbian Adolescents Are Particularly Vulnerable To Harassment And Violence.

It is now widely accepted that the factors or combination of factors' which determine sexual orientation do so by the age of five in a child, only manifesting itself, in sexual terms later in adolescence or adulthood. Joyce Hunter and Robert Schaefer, Stresses on Lesbian and Gay Adolescents in Schools, 9 Social Work in Education 180, 181 '(1987). See generally Gregory M. Herek, Myths About Sexual Orientation: A Lawyer's- Guide to Social Science Research, 1 Law & Sexuality 133, 150 (1991).

It is significant that the awareness of same-sex attractions occurs during adolescence because it is then that an individual begins to expand the sense of self/including managing social roles, which are essential to the growth of autonomy.

Emery S. Hetrick & A. Damien Martin,, Developmental Issues and

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<sup>2</sup> While the exact factors influencing sexual orientation are not known, studies showing a connection between DNA and sexual orientation suggest a genetic influence. Dean H. Hamer, et al., A Linkage Between DNA Markers on the X Chromosome and Male Sexual Orientation, 261 Science 321 (1993). Studies of identical twins further suggest a genetic influence, with genetic factors determining sexual orientation somewhere between thirty and seventy-five percent of the time. J. Michael Bailey, et al., Heritable Factors Influence Sexual Orientation in Women, 50 Arch. Gen. Psychiatry 217 (1993); J. Michael Bailey & Richard C. Pillard, A Genetic Study of Male Sexual Orientation, 48 Arch. Gen. Psychiatry 1089 (1991); Frederick L. Whitam, et al., Homosexual Orientation in Twins: A Report of 61 Pairs and Three Triplet Sets, 22 Archives of Sexual Behavior 187 (1993). A study of the hypothalamus in the brain suggests an anatomical influence. Simon LeVay, A Difference in Hypothalamic Structure Between Heterosexual and Homosexual Men, 253 Science 1034 (1991). And a study of prenatal levels of sex hormones suggests a biological influence. Green, The Immutability of (Homo)sexual Orientation: Behavioral Science Implications for a Constitutional (Lesal) Analysis, 16 J. Psychiatry & Law 537 (1988).

Their Resolution for Gay and Lesbian Adolescents, 14 J. Homosexuality 25, 26 (1987). But, in a society that unquestionably expects children to be heterosexual, gay and lesbian adolescents are unprepared for their emerging identity, and there is no readily available framework in which young homosexuals can come to understand and accept their sexual orientation.<sup>1</sup> Gary Mallon, Gay and No Place to Go: Assessing the Needs of Gay and Lesbian Adolescents in Out-of-Home Care Settings, 71 Child Welfare 547, 552 (1992). Lesbian and gay adolescents, thus, begin to realize that they are members of a stigmatized minority group. Hetrick & Martin, Developmental Issues, supra at 26. The negative attitudes of the majority take many forms, from 'negative statements and beliefs about gay and lesbian people, to discrimination and separation of the group, to violence. Id. at 27-29.

This stigmatization, for many adolescents, leads to feelings of extreme isolation. The isolation is three-fold: cognitive, social, and emotional.<sup>1</sup> A. Damien Martin & Emery S. Hetrick, The Stigmatization of the Gay and Lesbian Adolescent, 15 J. Homosexuality 163, 165 (1981). Cognitive isolation arises from a lack of accurate information available to gay and lesbian adolescents from which they can learn what it means to be gay. [O]ther minority adolescents, no matter how terrible the social or economic deprivation under which they may exist, have a chance to develop a sense of the 'we' versus 'they,' the very essence of group identity; homosexual young people do not." Hetrick &

Martin, Developmental Issues, supra at 29 (1987). Gay adolescents most often stand alone, in desolation, without family, without friends, without clergy-and without any positive role models in their lives.<sup>3</sup>

The social isolation manifests itself in a denial of other roles for which an adolescent has been socialized; gay and lesbian adolescents are often sent the message that homosexuals cannot, for example, be teachers or serve in the military. Martin & Hetrick, Stigmatization, supra at 168. To avoid being socially isolated, many gay and lesbian adolescents will deny their sexual orientation. That denial leads to a fear of discovery, which can be equally isolating. Id. Families and clergy and friends, often the key to emotional stability for adolescents in general, rarely provide such support to gay adolescents.

A Black, Jewish, or Hispanic youngster does not run the risk of being thrown out of the family for being Black, Hispanic, or Jewish; a homosexual adolescent does run that risk. A Black, Jewish, or Hispanic adolescent does not run the risk of losing a religious social identity for being Black, Jewish, or Hispanic; the homosexual adolescent does run that risk. Other minority adolescents do not run the risk of being expelled from their peer groups if they are discovered; the homosexual adolescent does run that risk.

-Id; at 170.

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<sup>3</sup> One persistent stereotype is that gay men molest children, even though there is no evidence of any positive correlation between a gay sexual orientation and child molestation. Carole Jenny, et al., Are Children At Risk for Sexual Abuse by Homosexuals? 94 Pediatrics 41, 44 (1994). Science has shown, to the contrary, that "gay men are no more likely than heterosexual men to molest children." Herek, supra at 156 (1991).

The emotional isolation causes gay and lesbian adolescents . . . to feel alone, feel as if no one else feels the way they do, and feel as if there is no one with whom to share their feelings. Far too often for gay adolescents, emotional isolation leads to suicide. "[Gay youth are 2 to 3 times more likely to attempt suicide than other young people," comprising up to thirty percent of completed suicides. Gibson, suora at 3-115. As many as three thousand gay and lesbian young people take their lives each year. Id. at 3-110. "The root of the problem of gay youth suicide is a society that discriminates against and stigmatizes homosexuals . . . ."<sup>4</sup> Id.

Although anti-gay violence and harassment in school are not the only causes of feelings of isolation and the alarming rate of suicide among gay and lesbian youth, they are well-documented causes.<sup>4</sup> Name-calling, ostracization, and physical abuse by peers lead to "isolation, run-away behavior, homelessness, domestic violence, depression, suicide, substance abuse, and school or job failure." Committee on Adolescence: Homosexuality and Adolescence, 92 Pediatrics 631, 633, (1993). One study found suicide attempts were as high as 41% for girls and 34% for boys who reported violent assaults. Joyce Hunter, Violence Against Lesbian and Gay Male Youths, 5 J. Interpersonal Violence 295, 297 (1990). See also Safe Schools Anti-Violence Project, supra, at 4,

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<sup>4</sup> If gay adolescents manage to make it to adulthood free of these obstacles, they are then able to lead healthy and productive lives in their communities. Hetrick & Martin, Developmental Issues, suora at 34.

6, 11, 12 (documenting "devastating" behavioral and emotional effects of harassment and violence such as truancy, less participation, in class, inattention to lessons, self-consciousness, fear, loneliness, and suicide); Makins Schools Safe for Gay and Lesbian Youth 12-14, 17-19 (Massachusetts Governor's Commission on Gay and Lesbian Youth 1993) (providing examples of students who reacted to violence by feeling isolated; dropping out of school, and attempting suicide); Gary Remafedi, Adolescent Homosexuality: Psychosocial and Medical Implications, 79 Pediatrics'331 (1987) (reporting 28% drop out rate for adolescents-who had been subjected to verbal and physical abuse in school); Joyce Hunter and Robert Schaecher, Gay and Lesbian Adolescents, -in Encyclopedia of Social Work, 1055, 1058 (19th ed. ~1995) (a "hostile climate" in school creates problems for gay and lesbian youths including isolation, suicide and school failure).

III. A Safe School Environment Can Alleviate The Developmental Problems Gay And Lesbian Youth Face.

But recognizing the isolation and other emotional problems experienced by homosexual adolescents is not to say "that the homosexually oriented, as a group, are less well-adjusted than their heterosexual counterparts. . . . The major developmental issues revolve around their entry into a stigmatized social identity. The fact of stigmatization creates situations and problems that must be resolved." Hetrick & Martin, Developmental Issues, supra at 40.

Certainly one way of eliminating the effects of stigmatization is to understand it. But many gay-and lesbian adolescents are less able to cope with the stigma and isolation than older persons. Gary Remafedi, et al., Risk Factors for Attempted Suicide in Gay and Bisexual Youth, 87 Pediatrics 869, 874 (1991). In fact, one study has shown that "suicide attempters were significantly younger than nonattempters when they became aware of their homosexual orientation and were more likely to "come out" . : . in isolation and to be rejected by others for their, homosexuality." Mary J. Rotheram-Borus, Suicidal Behavior and Gay-Related Stress Among Gay and Bisexual Male Adolescents, 9 Journal of Adolescent Research 498, 499 '(1994) ' .

Those gay and lesbian youths who- have a higher-functioning support system will have ,greater internal and external resources to enable them to cope with the 'isolation and loneliness they feel, and to find alternatives other than suicide to assuage their pain. Curtis D. Proctor and Victor K. Groze, Risk Factors for Suicide Among Gay, Lesbian and Bisexual Youth, 39 Social Work 504, 509-10 (1994). 'IA climate of safety and inclusiveness can 'contribute incalculably to the development of respect for self and others and alleviate isolation for those in the process of adjusting to minority status." T. Richard Sullivan, Obstacles to Effective-Child Welfare Service with Gay and Lesbian Youths, 73 Child Welfare 291, 300 (1994).

Schools can provide such a safe environment. For example, one young lesbian testifying at public hearings held by the Massachusetts Governor's Commission on Gay and Lesbian Youth found such support: "I never slashed, I never swallowed, I never jumped; I was much luckier than [others]. . . . As different as each episode was, the reasons for stopping short were the same. Every time, I was able to call on someone from the Concord Academy Gay/Straight Alliance, or someone who I'd come out 'to, through the strength and support, I received' there, and call out for help." Making Schools Safe for Gay and Lesbian Youth, suora at 15. But instead of providing this safe environment, as noted above, "incidents of verbal and physical violence [in schools] occur with disturbing frequency and often are not punished." Report on Lesbian, Gay, and Bisexual Youth 11 (Austin Human Rights Commission 1995).-

By not punishing these attacks, the message sent to non-gay youth is that it is acceptable to hate and discriminate. Hunter & Schaefer, Gay and Lesbian Adolescents at 1059. Hate, which too often leads to violence, is a form of dehumanization, which harms all members of a free society. Such dehumanization of those who are different from the majority. unfortunately. has occurred throughout history, with the most notorious manifestation in this country being the treatment of racial difference.

This dehumanization has corrupted our society to this day. Whatever our race, we have all been harmed, we have all paid in blood, in social pathology, and in false senses of inferiority or superiority, as Abraham Lincoln foretold in

his Second Inaugural Address. For example, in describing the consequences to white children of seeing blacks segregated out of the schools, deprived not only of civil rights, but of equal humanity, Senator Charles Sumner declared, 'Their hearts, while yet tender with childhood, are necessarily hardened by this conduct, and their subsequent lives, perhaps, bear-enduring testimony to legalized uncharitableness.' Even more succinctly, Frederick Douglass observed, 'No man can put a chain about the ankle of his fellow man, without at last finding the other end fastened about his own neck.'

Evan Wolfson, ~~Civil Rights, Human Rights; Gay Rights: Minorities and the Humanity of the Different~~, 14 Harvard J-L. & Pub. Pol'y 23, 24-25 (1991)(citations omitted).

The message sent to gay youth is that school is a dangerous place where they are not welcome. Not only are the gay youth who are the subjects of the harassment and violence victimized, but so are "hidden homosexually oriented adolescents who see what happens to the others. Fear that the 'same thing might happen to them intensifies their fear of discovery and leads them inexorably to the choice of [hiding their sexual orientation], with all the emotional problems and social difficulties that it represents."<sup>1</sup> Martin EC Hetrick, ~~Stigmatization, supra~~ at 170. That coping strategy distorts a gay adolescent's development because it impairs the ability to form honest social relationships. Hunter & Schaefer, ~~Gay and Lesbian Adolescents, supra~~ at 1057.

IV. ~~A Safe Environment Can Only Be Created By Consistent And Fair Enforcement Of School Policies Against Harassment.~~

School officials and staff are responsible for assuring that the right message is sent to their students -- a message

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ii.ii.  
that school is a safe environment for all students. "Adults set the tone of the school community. Through both explicit and implicit means, they send messages to students about what sorts of attitudes, behavior, and conduct are acceptable." Making Schools Safe for Gay and Lesbian Youth, supra at 20. See also Dennis A. Anderson, Lesbian and Gay Adolescents: Social and Developmental Considerations, 77 The High School Journal 13, 17 (1994) (by not challenging derogatory statements about homosexuals, staff within schools determine the atmosphere regarding homophobic bias).

In order to assure that the school atmosphere is not oppressive, schools should institute and enforce rules that protect lesbian and gay students from harassment. . . .<sup>1</sup> \* by Abinanti, Legal Challenges Facing Lesbian and Gay Youth, in Helping Gay and Lesbian Youth, 149, 16.0 (Teresa DeCrecenzo ed. 1994) (emphasis added). Those commissions and projects studying the problems faced by gay and lesbian youth in schools have uniformly made such recommendations. In Massachusetts, the Governor's Commission on Gay and Lesbian Youth recommended both that school systems make a public commitment to ensure that schools are safe by creating policies prohibiting discrimination, harassment and violence against gay and lesbian students and that school systems train their teachers, guidance counselors and staff to protect gay and lesbian students from harassment and violence and to intervene to prevent suicide. Making Schools Safe for Gay and Lesbian Youth, supra at 29': See also Report on

Lesbian, Gay and Bisexual Youth, supra at 13 -(recommending policies and training); Safe Schools Coalition of Washington, supra at 22 (recommending that school boards "enact and enforce" anti-harassment policies and that educators "intervene when children, youth or other adults use names such as 'fag,' 'hutch,' 'queer,' 'dyke,' 'homo,' or 'sissy' in [their] presence . . .").

But policies and directives to enforce policies fairly and equally still do not guarantee the protection gay and lesbian students need. Indeed, a school policy and a state law prohibiting discrimination and harassment on the basis of sexual orientation -were not sufficient to protect Jamie Nabozny from the repeated violent assaults he suffered throughout junior high and high school. Students facing the kind of violence and oppression Jamie Nabozny faced must have an available remedy to assure their protection.

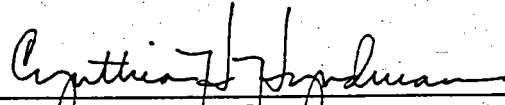
When states selectively deny an individual the protection of its laws because of discriminatory animus, equal protection issues arise. See DeShaney v. Winnebago County Dept. of Social Services, 489 U.S.:189, 196 n.3 '(1989). There is evidence in the record that discrimination was likely the reason the Ashland School District failed to act on Jamie Nabozny's behalf. Moreover, because "discrimination against homosexuals has been pervasive in both the public and private sectors," Watkins v. United States Army, 875 F.2d 699, 724 (9th Cir.'1989)! Jamie Nabozny is entitled to the opportunity to prove at trial that such pervasive discrimination was the reason the Ashland Public

School District did not provide him with the safe environment necessary to his emotional and social development.

CONCLUSION

For all of the foregoing reasons, the National Association of School Psychologists, the National Association of Social Workers, Parents, Families and Friends of Lesbians and Gays, and Horizons Community Services respectfully urge that the judgment of the District Court be reversed.

Respectfully submitted,



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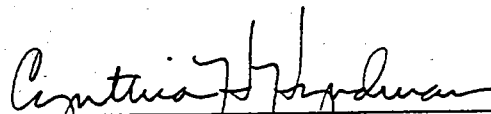
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The undersigned, an attorney, hereby certifies that on December 18, 1995, she forwarded a copy of the within document to the following parties in interest, -by regular mail, postage prepaid:

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