May 25, 2022

Women’s Rights & Gender Justice Organizations: Attempts to Push Transgender Students Out of School with Restroom Bans Protect No One & Are More Illegal State Enforcement of Sexist Stereotypes

The undersigned women’s rights and gender justice organizations reject the cruel and disgraceful attempts by Oklahoma officials to push transgender, nonbinary, and intersex youth out of school by banning them from school restrooms. We recognize that attempts to punish these youth for simply existing are deeply tied to efforts by schools to enforce sexist stereotypes and police the bodies of all girls and young women, especially queer women and Black and Brown girls. As advocates for gender equity and survivors of sexual violence, we are disturbed by and condemn politicians falsely claiming their shameful discrimination against transgender girls and other LGBTQI+ youth “protects” girls and women. *We strongly urge Governor Kevin Stitt to veto SB 615.*

Our organizations have worked tirelessly for decades to create a world where girls and women can live free from sexual and domestic violence. Ending gender-based violence involves a mosaic of legal, political, cultural, and systemic changes, and a movement led by the most-affected communities. But no part of protecting students involves banning transgender girls or other LGBTQI+ students from using school restrooms in peace and safety. We vehemently reject this pointless, punitive legislation, which undermines fundamental constitutional freedoms for girls and young women throughout Oklahoma who are transgender or intersex, as well as for nonbinary students and any girls who do not conform to sex stereotypes.

There is no basis for this attempt to bar transgender, nonbinary, intersex, and gender nonconforming students from using the same school facilities as their peers. This ban is calculated to promote dangerous myths and fearmongering about these already-marginalized young people. In reality, transgender, nonbinary, and intersex students face heinous rates of victimization from hate-fueled violence and stereotypes. Studies show that when transgender or nonbinary K-12 students are denied access to the correct bathroom or locker room, they suffer higher rates of verbal and physical harassment, including sexual assault. Evidence also shows that many transgender and nonbinary people already go to great lengths to avoid using restrooms at school and in other public places due to fear of transphobic violence or punishment—some even to the point of suffering pain, infection, or other medical harms.

As federal courts have recognized, banning transgender girls and other gender-minority students from school restrooms accomplishes nothing except to “publicly brand all transgender students with a scarlet ‘T’” that put them at even greater risk for harassment, to threaten them with discipline or expulsion, or to create a climate so hostile that they unable to succeed or are pushed out of school. That is why federal courts in recent years have overwhelmingly recognized that such discrimination is unlawful, and why education and child health experts agree it is wrong and harmful. This ban will further inflict long-term harm on some of the most vulnerable people in our society: children who are transgender, nonbinary, and intersex and are hearing from politicians that their very existence is so reviled as to ban and segregate them from their peers.
State officials apparently wish to do all of this to prevent the most ordinary reality that is occurring and has occurred in Oklahoma and in schools across the country for years—girls who are transgender and other gender-minority youth attending school alongside their peers, without being singled out because of who they are.

We are especially outraged by Oklahoma officials’ disgusting claims that placing a target on the backs of some girls and young women somehow protects others. It does nothing of the sort. These same officials have shown little interest in concrete policies that would actually promote safety and security for women in Oklahoma, rather than having the state show up in research as the worst state for women to live in the U.S. based on metrics like poverty, life expectancy, and lack of health insurance and preventative care.

If Oklahoma officials really care about protecting all young people from sex-based discrimination, harassment, and abuse, they should take real steps to do something about it, such as:

- Require all K-12 schools to have clearly defined, well-publicized sexual harassment policies, with examples of prohibited behaviors and lists of possible consequences.
- Require schools to treat every complaint of sexual harassment and abuse seriously and fairly, to offer supportive services rather than punishment to students who report.
- Develop sexual harassment prevention training programs for school administrators, employees, and students that recognize and discourage relying on stereotypes that label girls of color and other marginalized students as less credible or deserving of protection.
- Provide comprehensive education on sexual and relationship health for all students, that is evidence-based, medically accurate, LGBTQI+ affirming, and developmentally appropriate. This decreases the chance that students will suffer or perpetrate sexual or dating violence, or other forms of sex-based harassment.
- Invest in school social workers and counselors, instead of law enforcement in schools.
- Abolish school dress codes. Dress codes frequently reflect sex and race stereotypes and are enforced in discriminatory ways, sending students a dangerous message that what a girl looks like is more important than what she thinks, or that girls invite or provoke sexual harassment.
- Adopt school policies that recognize the right of all students, including LGBTQI+ students, to be who they are, attend school, and participate in school activities consistent with their gender, consistent with Title IX and Constitutional requirements of equality. Clear nondiscrimination policies are needed to help protect all students, including transgender girls and women who are more likely than their peers to be sexually harassed or assaulted at school.

We call on Governor Kevin Stitt to veto this fanciful and dangerous bill. We urge Oklahoma educators, families, and students to reach out for support, and if necessary legal help.

To transgender girls and all LGBTQI+ students in Oklahoma and elsewhere we say: We see you. There is nothing wrong with you. You deserve an education. We are in the same struggle for equal education and dignity, and we will not stop loving and fighting for you.
Signed,
National Women’s Law Center, joined by
American Atheists
The Army of Survivors
Chicago Alliance Against Sexual Exploitation (CAASE)
Clearinghouse on Women’s Issues
Colorado Coalition Against Sexual Assault
End Rape On Campus
Equal Rights Advocates
Esperanza United (formerly Casa de Esperanza National Latin@ Network)
The Every Voice Coalition
Family Equality
Feminist Majority Foundation
Jewish Women International
Know Your IX, Advocates for Youth
National Alliance for Partnerships in Equity
National Center for Transgender Equality
National Council of Jewish Women
PFLAG National
Public Justice
Transathlete.com
The Trevor Project
Union for Reform Judaism
Women’s Law Project

Federal courts have repeatedly found that barring transgender students from using the restroom that corresponds to their gender identity violates Title IX. See *Grimm* v. Gloucester Cty. Sch. Bd., 972 F.3d 586, 619 (4th Cir. 2020), as amended (Aug. 28, 2020), cert. denied, 141 S. Ct. 2878 (2021); *Whitaker* v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ., 858 F.3d 1034, 1049-50 (7th Cir. 2017) The Fourth Circuit also confirmed that these policies violate the Equal Protection Clause of the 14th Amendment. *Grimm*, 972 F.3d at 608-10.

Andrew R. Flores et al., *Gender Identity Disparities in Criminal Victimization: National Crime Victimization Survey*, 2017-2018, 111 AM. J. PUB. HEALTH 726, 729 (Apr. 2021). See also id. at 727 (“Transgender people experience violence at a rate of 86.2 victimizations per 1000 persons compared with 21.7 per 1000 persons among cisgender people.”). See Gabriel R. Murchison et al., *School Restroom and Locker Room Restrictions and Sexual Assault Risk Among Transgender Youth*, 143 PEDIATRICS 1, 5 (2019). Transgender and nonbinary students are at an increased risk of sexual assault compared to their cisgender peers—more than 25% of transgender and non-binary students reported being sexually assaulted in the prior year, compared to 15% of cisgender girls and 4% of cisgender boys. *Id.* See also Diane Ehrensaft & Stephen M. Rosenthal, *Sexual Assault Risk and School Facility Restrictions in Gender Minority Youth*, 143 PEDIATRICS 1, 2 (2019).

German Lopez, *The largest survey of transgender people yet shows the dangers of bathroom hysteria*, Vox (July 12, 2016), https://www.vox.com/2016/7/12/12161210/transgender-bathroom-survey (reporting on research finding that in one year, 8% of transgender people have had a kidney or urinary tract infection caused by avoiding restrooms, and over 30% of transgender people avoided eating or drinking so they did not need to use the bathroom).


Amira Hasenbush et al., *Gender Identity Nondiscrimination Laws in Public Accommodations: A Review of Evidence Regarding Safety and Privacy in Public Restrooms, Locker Rooms, and Changing Rooms*, 16 SEX. RES. & SOC. POL’Y, 70, 80 (2019) (the passage of inclusive transgender public accommodations laws were “not related to the number or frequency of criminal incidents in such public spaces”).


https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-tix-202106.pdf (joint guidance issued by the Departments of Education and Justice, explaining that among the kinds of discrimination against transgender students these agencies can investigate includes a situation in which “a transgender high school girl is stopped by the principal who bars her entry [to the girls’ restroom].”).

13 Diane Ehrensaft & Stephen M. Rosenthal, supra note 5.