

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,¹ 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 falsely² 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.³

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.⁴ 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.⁵ 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.⁶

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.⁷ 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.⁸ 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.⁹

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:¹⁰

- 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.¹¹
- 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.¹² 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.¹³

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

¹ See German Lopez, *Women are getting harassed in bathrooms because of anti-transgender hysteria*, VOX (May 19, 2016), <https://www.vox.com/2016/5/18/11690234/women-bathrooms-harassment>.

² Human Rights Watch, *Shut Out: Restrictions on Bathroom and Locker Room Access for Transgender Youth in US Schools* (Sept. 2016), <https://www.hrw.org/report/2016/09/14/shut-out/restrictions-bathroom-and-locker-room-access-transgender-youth-us>.

³ 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.

⁴ 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.”).

⁵ 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, 1-2 (2019).

⁶ 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).

⁷ *Doe v. Boyertown Area School District*, 897 F.3d 518, 530 (3d Cir. 2018).

⁸ 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”).

⁹ Jeff Elkins, *Oklahoma ranked worst state for women in 2022*, THE NORMAN TRANSCRIPT (Mar. 2, 2022), https://www.normantranscript.com/news/oklahoma-ranked-worst-state-for-women-in-2022/article_ae61e792-99bb-11ec-ac4a-dff13bcca7f3.html.

¹⁰ See National Women’s Law Center, *100 School Districts: A Call to Action* (April 2021), <https://nwlc.org/wp-content/uploads/2021/11/100SD-report-5.3.21-vF-1.pdf>.

¹¹ See National Women’s Law Center, *Racist, Sexist School Dress Code Examined in New NWLC Report* (Sept. 4, 2019), <https://nwlc.org/press-release/nwlc-reacts-to-mcdonalds-announcement-of-training-program-to-address-sexual-harassment-2/>.

¹² Federal courts have recognized that both Title IX and the U.S. Constitution protect transgender students’ rights to access sex-separate school spaces in accordance with their gender identity, including restrooms. See, e.g., *Grimm v. Gloucester Cty. School Bd.*, 972 F.3d 586 (4th Cir. 2020) (the Fourth Circuit applied *Bostock* to hold that a policy barring transgender students from using bathrooms matching their gender identity constituted impermissible sex discrimination under Title IX); *Adams v. School Board of St. Johns Cty.*, 968 F.3d 1286, 1296 (11th Cir. 2020) (in which the Eleventh Circuit applied *Bostock* to hold that a policy preventing transgender students from using bathrooms matching their gender identity was sex-based discrimination because it “single[d] out transgender students for differential treatment *because they are transgender.*”). See also *Glenn v. Brumby*, 663 F.3d 1312, 1316-17 (11th Cir. 2011) (holding that discriminating against someone on the basis of their transgender status constitutes discrimination on the basis of sex under the Equal Protection Clause of the Constitution). Based on these legal precedents, the U.S. Departments of Justice and Education have also interpreted Title IX to bar discrimination against transgender and intersex students. U.S. DEP’T OF EDUC., *Supporting Intersex Students* (Oct. 2021), <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-intersex-202110.pdf>; U.S. DEP’T OF JUSTICE, *Title IX Legal Manual* (updated Aug. 2021), <https://www.justice.gov/crt/title-ix#Bostock>; Enforcement of Title IX of the Education Amendments of 1972 With Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of *Bostock v. Clayton County*, 86 Fed. Reg. 32637 (June 22, 2021), available at <https://www.federalregister.gov/documents/2021/06/22/2021-13058/enforcement-of-title-ix-of-the-education-amendments-of-1972-with-respect-to-discrimination-based-on>. See also U.S. DEP’T OF EDUC. & U.S. DEP’T OF JUSTICE, *Confronting Anti-LGBTQI+ Harassment in Schools* (June 2021),

<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.