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Hon. Senator Schuyler VanValkenburg, Chair  
Subcommittee on Public Education  
Virginia Senate Committee on Education and Health  
General Assembly Building,  
201 North 9th Street  
Richmond, VA 23219

**RE: National Women’s Law Center’s Opposition to Proposed Anti-Transgender Senate Bill 37, Senate Bill 723, and Senate Bill 68**

Dear Chairperson VanValkenburg and members of the Senate Sub-Committee on Public Education:

The National Women’s Law Center (NWLC)<sup>1</sup> writes to oppose Senate Bill 37 (“SB 37”), which mandates the forced outing and endangerment of LGBTQI+ students. We also write to oppose Senate Bills 723 and 68 (“SB 723” and “SB 68,” respectively). Both SB 723 and SB 68 contain express language that illegally bars transgender (“trans”) women and girls from accessing athletic programs consistent with their affirmed gender in primary, secondary, and higher educational sports.

NWLC rejects any attempt to persecute LGBTQI+ youth. We oppose the forced outing requirements proposed in SB 37 because they would illegally erode the education civil rights of trans and nonbinary youth, harm youth wellbeing, limit educators from best-practices to

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<sup>1</sup> NWLC fights for gender justice—in the courts, in public policy, and in our society—working across the issues that are central to the lives of women and girls. We use the law in all its forms to change culture and drive solutions to the gender inequity that shapes our society and to break down the barriers that harm all of us—especially those who face multiple forms of discrimination, including women of color, LGBTQI+ people, and low-income women and families. NWLC has participated in every major Title IX case before the Supreme Court as either counsel or *amicus*, and routinely submits *amicus* briefs in support of transgender students who experience sex discrimination. We believe that ending all forms of sex-based discrimination and harassment is crucial to protecting the opportunities of all students in education and for the rest of their lives.

create safe and inclusive classrooms, and increase risks for child abuse and homelessness for some of Virginia’s most vulnerable youth.

Additionally, we oppose all efforts to restrict student athletes’ access and ability to play sports because they are trans. We emphasize trans-inclusive athletic policies create *zero* barriers to cisgender girls’ participation in school sports.<sup>2</sup> As advocates for gender justice, survivors of sexual assault, and civil rights, we advocate for inclusive and respectful schools for all LGBTQI+ students because it is the right thing to do, and because *all* girls and women are safer in schools when they can learn free from gender policing policies.

**Forced outing proposals like SB 37 single out trans, nonbinary, and other LGBTQI+ students for surveillance, censorship, and inferior privacy rights.**

Education exists to help young people grow and thrive—but forced outing policies such as SB 37 harm the wellbeing of vulnerable youth, imposing a one-size-fits-all mandate that will increase risks of child abuse and homelessness. SB 37 will force many educators to violate professional ethical codes and best practices. There is no legal basis to make schools police students’ genders and bodies, and enacting SB 37 may force Virginia schools to incur huge liability for violating federal civil rights laws.

**Gender expansive youth need safety and respect at school—not targeted surveillance.**

Like many censorship and surveillance measures put forward by anti-LGBTQI+ politicians, SB 37 refers to trans, nonbinary, and other LGB children, including children who are merely questioning their gender or sexuality or may be perceived by others as LGBTQI+ identifying, by using somewhat euphemistic language. Proposed Va. Code Section 22.1-273.5 requires K-12 schools to “inform at least one parent” whenever a student expresses “experiencing gender incongruence” or requests that school employees’ “social affirmation of such minor’s gender incongruence.” Section 22.1-273.5 defines “Gender incongruence” as “a difference between an individual’s biological sex and such individual’s perceived or desired gender.” (SB 37 contains no definition of “biological sex” or “gender.”) *In simple language, schools must forcibly out students who are perceived to be transgender, nonbinary, questioning, or simply gender nonconforming.*

Every student deserves to learn in a safe, respectful school environment. This includes freedom from harassment and bullying and providing young people with opportunities to connect with trusted adults, including teachers and school counselors. It is unconscionable to enact a law that alienates transgender and nonbinary youth from supportive educators given that recent, peer reviewed research indicates that when these youth are accepted and affirmed by just one supportive adult, such as a teacher, it reduces

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<sup>2</sup> “Cisgender” refers to people whose gender fully aligns with their assigned birth sex. See APA Dictionary of Psychology, <https://dictionary.apa.org/cisgender> (last updated Nov. 15, 2023).

the risk these children may attempt suicide by 40%.<sup>3</sup> It is not only deeply inappropriate, but it is potentially dangerous for the Commonwealth to create inferior privacy rights that target gender-expansive and nonconforming students.

Moreover, intersex students also face the threat of mistreatment under SB 374—intersex students already suffer discrimination due to anti-trans policies forcing schools to rely on “biological sex” to dictate treatment of students. Although more research is needed, data shows many intersex students experience harassment and bias at school limiting their opportunities to learn.<sup>5</sup>

Requiring school staff to surveil students and report when students deviate from expressing themselves as their “biological sex” necessarily involves recreating sex stereotypes. It forces staff to make snap judgments about whether a student is expressing the “right gender” in the “right way.” Gender conformity cannot be a condition for full privacy rights and equal dignity in Virginia schools.

When gender expansive youth get to simply be their true selves, they can access the same joy, curiosity, imagination, and potential for growth all students need and deserve. A growing body of research shows trans students thrive when they are supported and accepted by adults in their lives; social support and affirmation is the evidence-supported intervention to mitigate alarming rates of victimization, psychological distress, and suicidality among transgender youth.<sup>6</sup> It is for this reason that educators’ professional ethical standards require prioritizing support of each individual student based on their needs. Research shows when trans youth are affirmed with the correct names and pronouns, there is a large and positive difference in their mental health—whereas intentional and

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<sup>3</sup> See The Trevor Project, “Acceptance of Transgender and Nonbinary Youth from Adults and Peers Associated with Significantly Lower Rates of Attempting Suicide,” Nov. 3, 2021, available at <https://www.thetrevorproject.org/blog/acceptance-of-transgender-and-nonbinary-youth-from-adults-and-peers-associated-with-significantly-lower-rates-of-attempting-suicide/> (peer reviewed study of 8,000 transgender and nonbinary youth finding that higher levels of support and acceptance can protect against negative mental health outcomes, including suicide attempts) (hereinafter “Trevor Project 2021”).

<sup>4</sup> “Intersex” refers to people who have natural variations in sex-linked characteristics. See “FAQ: What is Intersex?,” interACT, last updated Jan. 26, 2021, available at <https://interactadvocates.org/faq#definition>. People who are not intersex are sometimes referred to as “endosex.”

<sup>5</sup> See Anne Branigin, *Intersex youths are also hurt by anti-trans laws, advocates say*, WASHINGTON POST (July 16, 2022), <https://www.washingtonpost.com/nation/2022/07/16/intersex-anti-trans-bills/> (intersex students often avoid or are discouraged from participating in sports for fear of scrutiny); Trevor Project, *The Mental Health and Well-being of LGBTQ Youth who are Intersex 14* (2021), <https://www.thetrevorproject.org/wp-content/uploads/2021/12/Intersex-Youth-Mental-Health-Report.pdf> (in a study of the experiences of intersex LGBTQ youth, 45% of respondents reported experiencing gender-based discrimination from teachers or administrators at schools).

<sup>6</sup> National Center for Transgender Equality, *The Report of the 2015 U.S. Transgender Survey 4*, 11 (2017) [hereinafter USTS Report], available at <http://www.ustranssurvey.org>.

repeated misgendering and deadnaming is intensely harmful.<sup>7</sup> If Virginia law mandates forcible outing (and for some, endangerment) of trans and nonbinary students seeking to use the correct names or pronouns at school, or to access peer and educator support while learning and growing, it will cause deep harm to many students' wellbeing.

School policies singling out trans and other gender diverse students for mistreatment create greater risks of discriminatory harassment and violence and may create a climate so hostile students are unable to succeed in school. Instead of allowing teachers to focus on teaching and creating a welcoming classroom community, SB 37 requires teachers to police students for perceived deviation from gender norms—reducing teachers' ability to do their job of educating and supporting students.<sup>8</sup>

### **SB 37's requirement of surveillance and forced outing will create new risks of youth abuse and homelessness, and has nothing to do with positive collaboration between schools and families.**

Parents everywhere in the U.S. already have strong and important rights concerning their children's education, and the small minority of extremists who have chosen to stoke bias, fear, and baseless conflict between schools and the communities they serve do not represent voters.<sup>9</sup> The 2021 GLSEN National School Climate Survey found that 54% of Virginia LGBTQ high schoolers are not safe from harassment at school.<sup>10</sup> But GLSEN research also found that where students do experience supportive school environments, they have higher rates of attendance and academic achievement, and are less likely to experience victimization.<sup>11</sup>

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<sup>7</sup> See Trevor Project 2021.

<sup>8</sup> In this regard, SB 37 will magnify the strain on schools from mass teacher burnout, leading to high turnover in schools across the U.S. Teachers have already been vocal about how virulent political attacks on LGBTQI+ students are a reason they are leaving the profession. See Matt Barnum, "I just found myself struggling to keep up," USA Today, Mar. 6, 2023, available at <https://www.usatoday.com/story/news/education/2023/03/06/more-teachers-quitting-than-usual-driven-stress-politics-data-shows/11390639002/>; Danielle Prieur, "In Florida, teachers are quitting over anti-LGBTQ laws," WUSF, June 30, 2023, available at <https://www.wusf.org/education/2023-06-30/florida-teachers-quitting-anti-lgbtq-laws>.

<sup>9</sup> Polling indicates that Americans agree there is far too much anti-LGBTQ+ legislation, calling it "political theater." See Data for Progress, March 24-26, 2023, available at [https://www.filesforprogress.org/datasets/2023/3/dfp\\_transgender\\_day\\_of\\_visibility\\_tabs.pdf](https://www.filesforprogress.org/datasets/2023/3/dfp_transgender_day_of_visibility_tabs.pdf) (finding that 64% of all likely voters, including 65% of independents, think there is "too much legislation" seeking to limit "rights of transgender and gay people in America.").

<sup>10</sup> GLSEN, State Snapshot: School Climate for LGBTQ Students in Virginia (2021), [https://maps.glsen.org/wp-content/uploads/2023/02/GLSEN\\_2021\\_NSCS\\_State\\_Snapshots\\_VA.pdf](https://maps.glsen.org/wp-content/uploads/2023/02/GLSEN_2021_NSCS_State_Snapshots_VA.pdf) (in a national 2021 survey of LGBTQ student's experiences, Virginia schools were found to be unsafe for the majority of LGBTQ students).

<sup>11</sup> GLSEN 2019 School Climate Survey at 70 et seq, available at [https://www.glsen.org/sites/default/files/2021-04/NSCS19-FullReport-032421-Web\\_0.pdf](https://www.glsen.org/sites/default/files/2021-04/NSCS19-FullReport-032421-Web_0.pdf). ("School-based

SB 37 prioritizes forced outing of trans and nonbinary youth over individual considerations of safety and educational needs by educators and school counselors. This reflects either intentional cruelty or shocking ignorance of the risks that transgender youth must navigate in a society that is brutally, sometimes homicidally, transphobic.<sup>12</sup>

Some trans and nonbinary students are intensely aware their families are not ready to unconditionally support them; for some, coming out at home will likely or certainly result in domestic abuse, homelessness, or even entering the foster system.<sup>13</sup> In one 2022 survey, only 38% of LGBTQ+ youth in Virginia felt their home was a safe space.<sup>14</sup> Other students simply need support and guidance from other adults in their lives before they are ready to come out to their family. A law that mandates parental notification when school staff learn that a student is questioning their gender, socially transitioning through practices such as using a chosen name, or simply not conforming to assigned gender norms, will harm entire communities by deprioritizing support at the exact moment it may be most needed. All LGBTQI+ youth need and deserve the same privacy rights enjoyed by their peers.

### **Enacting SB 37 would expose Virginia school districts to substantial legal liability.**

Enacting SB 37 will likely lead to costly litigation over violations of federal law<sup>15</sup>, and it would additionally endanger the federal funding of Virginia school districts. Congress enacted Title IX of the Education Amendments of 1972 (“Title IX”) over 50 years ago to prohibit all forms

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resources, such as supportive student clubs, LGBTQ-inclusive curricula, supportive school personnel, and inclusive, supportive policies, may contribute directly to a more positive school environment for LGBTQ students. These institutional supports may also indirectly foster better school outcomes and well-being for students by decreasing the incidence of negative school climate factors...”). *See also Resilience and Mental Health Among LGBTQ Youth*, The Trevor Project, 1 (June 2022), <https://www.thetrevorproject.org/wp-content/uploads/2022/06/June-Brief-Resilience-Among-LGBTQ-Youth.pdf> (LGBTQ youth with access to supportive adults like family members are more able to navigate the significant stress and anxiety that come with living in an unaccepting society); *Suicide Risk and Access to Care Among LGBTQ College Students*, The Trevor Project, 1 (Sept. 2022), <https://www.thetrevorproject.org/wp-content/uploads/2022/09/September-Research-Brief-September-Research-Brief.pdf> (acknowledging “protective factors,” including access to supportive faculty members, can decrease high rates of depression, suicidality, and victimization LGBTQ college students face); *The Mental Health and Well-Being of Multiracial LGBTQ Youth*, *The Trevor Project*, 19 (Aug. 2022), [https://www.thetrevorproject.org/wp-content/uploads/2022/08/Multiracial\\_LGBTQ\\_Youth\\_Mental\\_Health\\_Report.pdf](https://www.thetrevorproject.org/wp-content/uploads/2022/08/Multiracial_LGBTQ_Youth_Mental_Health_Report.pdf) (having access to supportive people was associated with significant less odds of attempting suicide, with survey respondents having 55 percent lower odds of attempting suicide in the past year).

<sup>12</sup> Jamie Wareham, *375 Transgender People Murdered in 2021—‘Deadliest Year’ Since Records Began*, *Forbes* (Nov. 11, 2021), available at <https://www.forbes.com/sites/jamiewareham/2021/11/11/375-transgender-people-murdered-in-2021-deadliest-year-since-records-began/>.

<sup>13</sup> *See, e.g.*, The Trevor Project, *Homelessness and Housing Instability Among LGBTQ Youth* 5 (2022), <https://www.thetrevorproject.org/wp-content/uploads/2022/02/Trevor-Project-Homelessness-Report.pdf> (noting that “family conflict around youths’ LGBTQ+ identities is a driving factor in LGBTQ+ youth homelessness”).

<sup>14</sup> Trevor Project, *2022 National Survey on LGBTQ Youth Mental Health: Virginia*, Dec. 2022, available at <https://www.thetrevorproject.org/wp-content/uploads/2022/12/The-Trevor-Project-2022-National-Survey-on-LGBTQ-Youth-Mental-Health-by-State-Virginia.pdf>.

<sup>15</sup> 20 U.S.C. § 1681(a).

of sex-based discrimination in federally funded educational programs and activities.<sup>16</sup> For decades after, courts have affirmed that discrimination because of one’s gender identity and trans status is a form of sex discrimination.<sup>17</sup> The U.S. Department of Education interprets and enforces Title IX consistent with these court rulings, and is finalizing changes to its Title IX regulations reflecting these rulings.<sup>18</sup>

Title IX prohibits school policies that harm trans students through reliance on so-called biological characteristics, or perceived conformity/nonconformity with sex stereotypes. SB 37 directly relegates trans youth to a lesser status in school by stripping them of equal privacy rights and curtailing support by teachers and counselors that may be a literal lifeline. It is likely that SB 37 will cause Virginia school districts to face litigation from private parties and the federal government. Violating Title IX creates substantial litigation costs for local education agencies, and the Commonwealth, and it also endangers federal education funding.

As is always true under federal civil rights law such as Title IX, the right to freedom from discrimination belongs to *students*. Students have civil rights without need for parental consultation or permission.

**Anti-trans sports bans like SB 723 and SB 68 violate Title IX, the U.S. Constitution, and federal law that is binding on Virginia.**

SB 723 and SB 68 would put all school districts and institutions of higher education in Virginia in the untenable position of having to choose between complying with discriminatory state law or violating federal law. This would create significant costs for Virginia schools. Not only would all Virginia school districts and institutions of higher education risk enormous costs to defend these illegal policies in court, but they would be in danger of the U.S. Department of Education terminating their federal funding for violating Title IX.

SB 723 and SB 68 both violate Title IX because the bills specifically discriminates against trans, nonbinary, and intersex students. Federal courts have held unlawful sex discrimination includes prohibiting trans students’ access to sex-separated facilities and

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<sup>16</sup> 20 U.S.C. § 1681(a).

<sup>17</sup> See, e.g., *Grimm v. Gloucester School Board*, 972 F.3d 586, 617–19 (4th Cir. 2020); *Hecox v. Little*, 20-35813 WL 12775784, \*35 (9th Cir. 2023). See also *Whitaker by Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1047 (7th Cir. 2017); *M.A.B. v. Bd. of Educ. of Talbot Cnty.*, 286 F. Supp. 3d 704, 719 (D. Md. 2018).

<sup>18</sup> Dep’t of Educ., Notice of Interpretation, 86 FR 32637 (June 22, 2021); Dep’t of Justice, Memorandum (Mar. 26, 2021), <https://www.justice.gov/crt/page/file/1383026/download>; Exec. Order No. 13988, 86 Fed. Reg. 7023 (Jan. 20, 2021). See Proposed Rules, 87 Fed. Reg. 41390, 41571 (proposed 34 C.F.R. § 106.10) (sex discrimination under Title IX includes discrimination based on sex stereotypes, sex characteristics—including intersex traits—sexual orientation, and gender identity).

programs that are consistent with their affirmed gender.<sup>19</sup> Federal courts have also indicated that states lack any valid interest in excluding trans women and girls from education opportunities, including from school sports, just because they are trans.<sup>20</sup> The U.S. Department of Education interprets and enforces Title IX and will soon finalize changes to its Title IX regulations that reflect these rulings and federal constitutional principles to affirm the rights of trans, nonbinary, and intersex students to access sex-separated spaces in schools consistent with their affirmed sex, including school sports.<sup>21</sup>

SB 723 and SB 68 both also violate The Equal Protection Clause of the U.S. Constitution, which provides that sex-based classifications cannot survive when they are not substantially related to an important government interest,<sup>22</sup> nor when they are based on a “bare...desire to harm a politically unpopular group.”<sup>23</sup> In recognition of this, federal courts have blocked similar anti-trans sports bans from enforcement, finding the bans likely violate the Equal Protection Clause because the bans aim to single out trans girls for “disparate treatment . . . *because they are transgender.*”<sup>24</sup>

Further, SB 723 and SB 68 directly contradict federal law that is binding on Virginia. The U.S. Court of Appeals for the Fourth Circuit, which is the federal appellate court with authority over Virginia schools, has already held both the Equal Protection Clause and Title IX prohibit schools from enacting discriminatory policies banning trans students from using sex-separated spaces that match their affirmed sex.<sup>25</sup> In holding that a Virginia school board policy preventing a trans boy from using the boys’ restroom violated the Equal Protection Clause and Title IX, the Fourth Circuit concluded the policy was “marked by misconception

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<sup>19</sup> See, e.g., *Grimm v. Gloucester School Board*, 972 F.3d 586, 617–19 (4th Cir. 2020); *Hecox v. Little*, 20-35813 WL 12775784, \*35 (9th Cir. 2023). See also *Whitaker by Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1047 (7th Cir. 2017); *M.A.B. v. Bd. of Educ. of Talbot Cnty.*, 286 F. Supp. 3d 704, 719 (D. Md. 2018). See also *Parents for Privacy v. Barr*, 949 F.3d 1210, 1239-40 (9th Cir. 2020); *Doe by & through Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 535 (3d Cir. 2018).

<sup>20</sup> See, e.g., *Hecox v. Little*, 2023 WL 1097255 (9th Cir. 2023); *Doe v. Horne et al*, No-00185 (D. Az. July 20, 2023).

<sup>21</sup> Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 87 Fed. Reg. 41390 (proposed July 12, 2022), <https://federalregister.gov/d/2022-13734>; Nondiscrimination on the Basis of Sex in Athletics Education Programs or Activities Receiving Federal Financial Assistance, 88 Fed. Reg. 22860 (proposed Apr. 13, 2023), <https://www.govinfo.gov/content/pkg/FR-2023-04-13/pdf/2023-07601.pdf>. See also Office of Information and Regulatory Affairs, Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202310&RIN=1870-AA16> (noting proposed Title IX rule is in “final rule stage”); Office of Information and Regulatory Affairs, Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Sex-Related Eligibility Criteria For Male and Female Athletic Teams, <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202310&RIN=1870-AA19> (same).

<sup>22</sup> *United States v. Virginia*, 518 U.S. 515, 533 (1996).

<sup>23</sup> *United States Dep’t of Agric. v. Moreno*, 413 U.S. 528, 534 (1973).

<sup>24</sup> See, e.g., *Doe v. Horne et al*, No-00185, at \*27 (D. Az. July 20, 2023) (emphasis added); *Hecox v. Little*, 2023 WL 1097255, at \*35 (9th Cir. 2023).

<sup>25</sup> *Grimm v. Gloucester Cnty School Bd.*, 972 F.3d 586 (4th Cir. 2020).

and prejudice” against trans students.<sup>26</sup> Because the school board implemented the illegal policy to exclude the student from the boys’ bathroom because he was trans, it had “no difficulty holding that [the trans student] was harmed” because of his sex.<sup>27</sup>

SB 723 and SB 68 are marked by the very same animus against trans youth the Fourth Circuit has already held is unlawful: by targeting students for exclusion from school sports *because* they are trans, the Virginia legislature is aiming to, in the words of the Fourth Circuit, “very publicly brand[] all transgender students with a scarlet ‘T’.”<sup>28</sup>

**Anti-trans sports bans like SB 723 and SB 68 harm all women and girls that do not fit sex stereotypes—especially Black and brown women and girls and intersex women and girls.**

Anti-trans sports bans threaten the athletic opportunities and safety of all women and girls. While bans like SB 723 and SB 68 have been introduced under the guise of “protecting women and girls’ opportunities in sports,” attacking the rights of trans students to access the same educational opportunities as their peers does nothing to address real barriers to opportunity for cisgender women in school sports.<sup>29</sup> In fact, data from the Centers for Disease Control and Prevention (CDC) shows a correlation between strong school sports participation by girls and women and policies that include trans and nonbinary student athletes.<sup>30</sup> However, the same CDC data shows that in states that enacted anti-trans policies, fewer women and girls played school sports overall.<sup>31</sup>

This correlation between anti-trans sports bans and decreased rates of sports participation by women and girls is likely owed to the way sports bans promote body policing and scrutiny of students who do not conform to sexist stereotypes about how women and girls should look or play. For example, sports bans often precipitate reliance on sex verification practices to enforce their discriminatory mandate. Sex verification refers to a variety of unscientific and humiliating practices—including demands for medical documentation, hormonal and chromosomal testing, the collection of reproductive health information, or genital exams—which are for the purported purpose of “proving” whether one is truly a woman or girl. But in reality, sex verification only serves to reinforce sex stereotypes, traumatize students, and violate their bodily autonomy and privacy. Sex

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<sup>26</sup> *Id.* at 615.

<sup>27</sup> *Id.* at 616–17.

<sup>28</sup> *Id.* at 618.

<sup>29</sup> David Crary & Lindsay Whitehurst, *Lawmakers Can’t Cite Local Examples of Trans Girls in Sports*, AP (Mar. 3, 2021), <https://apnews.com/article/lawmakers-unable-to-cite-local-trans-girls-sports-914a982545e943ecc1e265e8c41042e7> (sponsors of anti-trans sports bans “cannot cite a single instance in their own state or region where such participation has caused problems”).

<sup>30</sup> Ctr. for American Progress, *Fair Play: The Importance of Sports Participation for Transgender Youth 14-17* (2021), <https://www.americanprogress.org/wp-content/uploads/2021/02/Fair-Play-correction2.pdf>.

<sup>31</sup> *Id.*



verification does not just encourage body policing of trans women and girls, but of any student who is especially tall, muscular, good at sports, or otherwise deviates from sexist expectations of femininity. This concern is not speculative, but in fact has already materialized in other jurisdictions.

For example, a Utah state commission formed to enforce the state’s sports ban launched a secret investigation in 2022 to determine if a cisgender high school girl was “really a girl” based on complaints that she did not look “feminine enough” and was outperforming other students in her sport.<sup>32</sup> In January 2024, a junior varsity basketball player in Utah was accosted at a game by a parent accusing her of being trans.<sup>33</sup> Sex verification practices also promote racist and sexist stigma against Black and brown students. We have seen examples time and time again of Black and brown girls and women’s bodies being subjected to excessive scrutiny because of their nonconformity with white-centric ideals of femininity<sup>34</sup>—to which anti-trans sports bans no doubt will contribute. And any student who may not be able to fulfill the rigid, binary categories of sex that sex verification demands—like intersex women and girls—will be denied opportunities to play.

Both SB 723 and SB 68 diminish the safety and athletic opportunities of all students in Virginia by reinforcing rigid sex stereotypes. SB 723’s provision permitting “dispute[s]”

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<sup>32</sup> Marjorie Cortez, *After a girl beat their daughters in sports, Utah parents triggered investigation into whether she was transgender*, Desert News (Aug. 17, 2022), <https://www.deseret.com/utah/2022/8/17/23310668/school-investigates-female-athlete-transgender-complaint>.

<sup>33</sup> Ryan Adamczeski, *Utah parent accuses girl’s basketball player of being trans, gets banned from games*, The Advocate (Jan. 31, 2024), [https://news.yahoo.com/utah-parent-accuses-girls-basketball-080003747.html?guccounter=1&guce\\_referrer=aHR0cHM6Ly93d3cuYmluZy5jb20v&guce\\_referrer\\_sig=AQAACX74StnuuW8fmp-gK9u7-qndMyZpdwx1wLj7eVZ9q6zo78WCkYnVCqzFePvRFA4mvZaTP48CifWfoBTSIfyT4kyj6uRCw9WbhM-G48Wx3RtkH-Jf1dOj7XQyLHjNMF6DHjARotdezCYPeGW1MoZmlPzxZT9UFE6Usdp2PfwZp](https://news.yahoo.com/utah-parent-accuses-girls-basketball-080003747.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuYmluZy5jb20v&guce_referrer_sig=AQAACX74StnuuW8fmp-gK9u7-qndMyZpdwx1wLj7eVZ9q6zo78WCkYnVCqzFePvRFA4mvZaTP48CifWfoBTSIfyT4kyj6uRCw9WbhM-G48Wx3RtkH-Jf1dOj7XQyLHjNMF6DHjARotdezCYPeGW1MoZmlPzxZT9UFE6Usdp2PfwZp).

<sup>34</sup> For example, Caster Semenya, a Black woman, was forced to submit to a battery of invasive medical tests because of her speed and success as an Olympic track athlete, for the purpose of determining whether she was “feminine enough” to continue competing with women. Anna North, *“I Am a Woman and I Am Fast”: What Caster Semenya’s Story Says about Gender and Race in Sports*, Vox (May 3, 2019), <https://www.vox.com/identities/2019/5/3/18526723/caster-semenya-800-gender-race-intersex-athletes>; Dawn Ennis, *IAAF Called Caster Semenya Biologically Male*, Outsports (June 19, 2019), <https://www.outsports.com/2019/6/19/18691210/iaaf-caster-semenya-biologically-male-testosterone-olympics-southafrica-athlete>. Dutee Chand, an Indian woman sprinter, faced scrutiny from fellow athletes for her “stride and musculature” being too “masculine,” and was ordered by an international sporting body to undergo invasive medical exams. Human Rights Watch, *“They’re Chasing Us Away from Sport:” Human Rights Violations in Sex Testing of Elite Women Athletes* (Dec. 4, 2020), <https://www.hrw.org/report/2020/12/04/theyre-chasing-us-away-sport/human-rights-violations-sex-testing-elite-women>. And throughout her career, Serena Williams has endured racist and sexist scrutiny of her body, including comments alleging that “[s]he is built like a man” or that “[she] was born a guy” because of “[her] arms, or because [she’s] strong.” Gina Vivinetto, *Serena Williams on How She Struggles with Cruel Remarks About Her Body*, Today (Sept. 7, 2017), <https://www.today.com/style/serena-williams-body-shamers-i-don-t-let-anything-break-t116063>; Jason Pham, *Serena Williams Shut Down Body Critics: ‘I Am Strong and Muscular — and Beautiful,’* Business Insider (May 31, 2018), <https://www.businessinsider.com/serena-williams-shut-down-body-critics-who-said-she-was-born-a-guy-2018-5>.

about a student’s sex to be resolved by “a signed physician’s statement . . . attest[ing] to” the student’s “internal and external reproductive anatomy,” “normal endogenously produced levels of testosterone,” and “genetic makeup”<sup>35</sup> permits schools to insist that young students’ submit to invasive and unnecessary bodily exams as a condition to play the sports they love alongside their peers. Even if Virginia were to enact SB 68, which contains no sex verification provision, invasive scrutiny seeking to question or determine the sex of a student athlete would still result. This is because sports bans normalize demanding that young students “prove” their sex to anyone who interrogates them about it.

### **Conclusion**

The National Women’s Law Center supports the full inclusion of queer girls, trans girls, and all trans, nonbinary, and intersex students, in the full range of education programs and activities. As courts and scientists overwhelmingly have recognized, trans women and girls *are* women and girls. They need and deserve the same thing as their classmates: a safe school environment where they can learn, grow, and be part of a community. When schools single out transgender, nonbinary, and intersex students for mistreatment, segregation, and inferior status, they are harming these students gravely—they are also failing in their duty to educate cisgender students, who will one day need to navigate a multifaceted adult world where gender diversity is a fact of reality.

LGBTQI+ students deserve the chance to succeed and thrive like all students. Please reach out to Anya Marino, Director for LGBTQI+ Equality, and Auden Perino Senior Counsel at the National Women’s Law Center ([amarino@nwlc.org](mailto:amarino@nwlc.org); [aperino@nwlc.org](mailto:aperino@nwlc.org)), if you have questions.

Thank you,

National Women’s Law Center

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<sup>35</sup> S.B. 723, Reg. Sess. (Va. 2024).