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Artificial Intelligence, Cybersecurity & Special Laws Subcommittee
South Carolina House of Representatives
Solomon Blatt Building, Room 110
1105 Pendleton Street
Columbia, SC 29201

Re: OPPOSE H. 4756, South Carolina Student Physical Privacy Act

Dear Members of the Subcommittee:

Thank you for the opportunity to submit this testimony on behalf of the National Women's Law Center Action Fund (NWLCAF). NWLCAF is a national non-profit legal advocacy organization dedicated to the protection and advancement of legal rights and opportunities for women, girls, and all who face sex discrimination. Since our founding in 1972, NWLCAF has worked to advance educational opportunities for all students, including by participating in numerous cases before the U.S. Supreme Court, federal courts of appeals, and state Supreme Courts, to ensure that rights and opportunities are not unlawfully restricted based on sex. NWLCAF has a particular interest in ensuring that discrimination against LGBTQI+ individuals, including transgender women and girls, is not perpetuated in the name of women's rights.

NWLCAF is submitting testimony in opposition to H. 4756, a bill that restricts access to sex-separated spaces in schools (e.g., restrooms, locker rooms, etc.) by narrowly defining sex to exclude transgender and gender-expansive people. **The Fourth Circuit Court of Appeals, whose jurisdiction includes South Carolina, has already rejected exclusionary policies similar to H. 4756 as violating the U.S. Constitution's equal protection guarantee and federal law.** Even still, H. 4756 would take away the flexibility needed by public schools and institutions of higher education to meet the basic needs of their increasingly diverse student populations, while threatening significant financial penalties and inviting substantial litigation against schools that take a different approach. Especially through its private right of action provision, **H. 4756 also encourages inappropriate scrutiny of children's bodies, which will exacerbate further harassment of all women and girls, transgender and cisgender alike.** For these reasons, NWLCAF encourages the Subcommittee to reject this bill and instead empower public schools and institutions to take steps that ensure full inclusion of all students regardless of gender identity.

1. H. 4756 contradicts binding Fourth Circuit precedent.

Though states and school districts have taken different approaches to fully meet the needs of transgender and gender-expansive students, the Fourth Circuit’s 2020 decision in *Grimm v. Gloucester County School District* provides clear guidance for South Carolina.¹ This decision, evaluating a Virginia school district’s response to a student’s request to use a restroom consistent with his gender identity, found that the school board violated the Equal Protection Clause of the U.S. Constitution and Title IX for taking steps that “acted to protect cisgender boys from [a transgender student’s] mere presence.”²

In *Grimm*, the Fourth Circuit expressly rejected the same rationales now being raised to advance H. 4756. Echoing *Grimm*’s reasoning, other federal courts across the country have likewise rejected the premise that cisgender people may exert a privacy right to be shielded from the mere presence of transgender people in a public restroom absent any concrete harm or harassment.³ School districts and educational institutions already ensure privacy in public restrooms through stalls and urinal dividers. While further steps to enhance all students’ privacy can be taken—through structural improvements such as floor-to-ceiling stall dividers—*Grimm* recognized that “the bodily privacy of cisgender boys using the boys restroom did not increase when [a transgender male student] was banned from those restrooms.”⁴ Instead of ensuring greater privacy for students, H. 4756 would result in “stigmatizing and discriminatory” exclusion that the *Grimm* decision compared to the disgraceful legacy of racially segregated restrooms.⁵

South Carolina is still bound by the *Grimm* precedent, and passing H. 4756 would only invite further litigation against the State and South Carolina’s schools. Prior restrictions on restroom access passed by the South Carolina legislature⁶ are

¹ *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 856 (4th Cir. 2020).

² *Grimm*, 972 F.3d at 620.

³ *A.C. v. Metropolitan Sch. Dist. of Martinsville*, 75 F.4th 760 (7th Cir. 2023); *Parents for Privacy v. Barr*, 949 F.3d 1210 (9th Cir. 2020); *Doe ex rel. Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518 (3d Cir. 2018); *Whitaker ex rel. Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034 (7th Cir. 2017); *Cruzan v. Special Sch. Dist., No. 1*, 294 F.3d 981 (8th Cir. 2002)

⁴ “In a country with a history of racial segregation, we know that ‘[s]egregation not only makes for physical inconveniences, but it does something spiritually to an individual.’ Martin Luther King, Jr., “Some Things We Must Do,” Address Delivered at the Second Annual Institute on Nonviolence and Social Change at Holt Street Baptist Church (Dec. 5, 1957); *see also* Br. of Amicus Curiae NAACP Legal Def. & Educ. Fund, Inc. in Supp. of Pl.-Appellee 7 (outlining the harms and erroneous rationales of racial segregation). The stigma of being forced to use a separate restroom is likewise sufficient to constitute harm under Title IX, as it “invite[s] more scrutiny and attention” from other students, “very publicly brand[ing] all transgender students with a scarlet ‘T.’” *Grimm*, 972 F.3d at 617-18 (citing *Boyertown*, 897 F.3d at 530).

⁵ *Id.* at 609.

⁶ H. 5100, Appropriation Bill 2024-2025, Part IB § 1.120 (Act No. 226, 2024 S.C. Acts); H. 4025, Appropriation Bill 2025-2026, Part IB § 1.114 (Act No. 69, 2025 S.C. Acts).

currently being challenged in federal court. Fewer than six months ago, the Fourth Circuit underscored the ongoing applicability of their *Grimm* decision, declaring that “*Grimm* remains the law of this Circuit and is thus binding on all the district courts within it.”⁷

2. H. 4756 would exacerbate gender policing and harassment for women and girls, regardless of their gender identity.

Exclusionary restroom policies—especially those like H. 4756 that create a private right of action—invite intrusive questions about whether a student may have access to specific restrooms. Increased policing of students’ gender in school bathrooms will predictably result in higher rates of harassment faced by all women and girls—transgender and cisgender alike—as the bill would encourage inappropriate scrutiny of children’s bodies.

Transgender students are already more likely to avoid using school bathrooms than any other group, in large part due to persistent harassment. In a 2021 survey of roughly 6,000 transgender students, 81% of transgender boys and 77% of transgender girls reported avoiding a school bathroom for safety reasons.⁸ Transgender people are also *more* likely to be verbally harassed in or excluded from a restroom if they are forced to use the facility that does not align with their gender identity, as H. 4756 seeks to do.⁹ An inability to use the restroom during the school day has adverse impacts on transgender youth, including physical and mental health challenges; medical problems, such as kidney, cardiovascular, and urinary tract conditions, related to fasting or dehydrating; and higher rates of suicide attempts.

Increased gender policing as a result of exclusionary policies does not just impact transgender people. Staff, peers, and others have also subjected cisgender women and girls to inappropriate questioning about their gender because they do not conform to sex stereotypes. In 2024, for example, a state official in Utah publicly critiqued a cisgender girl’s “larger build” and questioned her gender on social media after her success in school sports, resulting in threats to the student and her family.¹⁰ When this scrutiny takes place in a restroom, it often results in confrontation or forcible exclusion from the restroom. Gender policing and associated harms, including exclusion, disproportionately impact Black and brown women and girls who do not match specific expectations of femininity. In the past year, examples include:

⁷ *Doe ex rel. Doe v. South Carolina*, No. 25-1787, 2025 WL 2375386, at *8 (4th Cir. Aug. 15, 2025).

⁸ GLSEN, The 2021 National School Climate Survey 89 (2022), <https://www.glsen.org/sites/default/files/2022-10/NSCS-2021-Full-Report.pdf>.

⁹ Jody L. Herman, Andrew R. Flores & Elana Redfield, Williams Inst., Safety and Privacy in Public Restrooms and Other Gendered Facilities 4 (2025), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Bathroom-Access-Feb-2025.pdf>.

¹⁰ Courtney Tanner, Utah school board member Natalie Cline questions high school athlete’s gender, causing social media uproar, The Salt Lake Tribune (Feb. 7, 2024), <https://www.sltrib.com/sports/2024/02/07/utah-school-board-member-natalie/>.

- An 18-year-old biracial cisgender woman was reportedly forced to unzip her sweatshirt and show a restaurant server her clothed breasts to end a restroom confrontation;¹¹
- A Black cisgender woman was accosted by two male police officers at an Arizona store bathroom based on her appearance;¹²
- A 6'4" cisgender woman in Florida was reportedly trapped in a stall at her workplace as a male customer followed her into the restroom and shouted anti-transgender slurs at her;¹³ and
- A cisgender woman with short hair was confronted by a Boston hotel security guard and then escorted out of the restroom in front of other patrons, who then verbally harassed and misgendered her.¹⁴

Additionally, the binary framing of H. 4756 ignores the lived experience of intersex people who have variations in their sex characteristics. The inappropriate and often confrontational dynamic of gender policing likely results in increased harassment of intersex students.¹⁵

Conclusion

H. 4756 conflicts with binding precedent and would exacerbate hostile school environments for all women and girls regardless of gender identity. For these reasons, NWLCAF urges the Subcommittee to reject H. 4756 and instead prioritize efforts that would ensure all students have access to safe and inclusive schools. If the Subcommittee has any questions about this testimony, please contact Brian Dittmeier, NWLCAF's Director of LGBTQI+ Equality, at bdittmeier@nwlc.org.

¹¹ Ryan Adamczeski, Lesbian teen cornered by server in bathroom and forced to prove gender files charges, Advocate (Aug. 13, 2025), <https://www.advocate.com/news/minnesota-cisgender-girl-restaurant-bathroom>.

¹² Christopher Wiggins, Cis woman confronted by police officers in Arizona Walmart restroom for looking too masculine speaks out, Advocate (Feb. 28, 2025), <https://www.advocate.com/news/lesbian-mistaken-transgender-arizona-walmart>.

¹³ Daniel Wu, Walmart fires woman who reported anti-trans threats from man in bathroom, The Washington Post (Mar. 27, 2025), <https://www.washingtonpost.com/nation/2025/03/27/walmart-fires-woman-trans-hate-bathroom/>.

¹⁴ Brandon Truitt, Woman says security guard at Liberty Hotel in Boston confronted her in bathroom, asked to prove gender, CBS News (May 7, 2025), <https://www.cbsnews.com/boston/news/women-boston-liberty-hotel-bathroom-gender>.

¹⁵ See Henningham, M., & Jones, T. (2021). Intersex students, sex-based relational learning & isolation. Sex Education, 21(5), 600-613.