



March 4, 2016

The Honorable Bill Haslam
Governor of Tennessee
First Floor, State Capitol
Nashville, TN 37243

Dear Governor Haslam,

On behalf of the American Civil Liberties Union of Tennessee and its thousands of supporters across the state, I am writing to urge your vocal opposition to SB 2387/HB 2414. This legislation singles out and discriminates against transgender students by prohibiting them from using the restrooms or locker rooms that correspond to their gender identity.

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As you know, Republican South Dakota governor Dennis Daugaard recently and courageously vetoed a similar measure, noting that it “does not address any pressing issue” faced by schools in his state,ⁱ but instead diverts energy and resources away from educating children.ⁱⁱ He also noted that schools are best positioned to handle any local issues and that the statewide law leaves districts open to federal lawsuits.ⁱⁱⁱ He changed his position on this bill after meeting with transgender youth and their parents and realizing how deeply such a law would impact them.^{iv}

We urge you too to take a public stand promoting a safe and supportive environment for transgender students, before this legislation advances any farther. Your leadership can help ensure that all Tennessee students are treated with dignity and respect.

Unequal Treatment Of Students Based On Their Gender Identity Is Harmful And Counter To The Mission Of Educational Institutions

A person is *transgender* when the sex he or she was assigned at birth does not match who they really are. A transgender person’s gender identity and/or expression differs from those typically associated with the sex they were assigned at birth. For example, a transgender girl is a girl who was labeled male at birth but who identifies and expresses herself as female in her daily life. Understanding what it is like to be transgender can be hard, especially if you have never met a transgender person. But medical opinion is unequivocal that gender identity is not a choice.

Many students have—and express—a clearly-established gender identity that is different from the sex they were assigned at birth.^v Excluding transgender students from the restrooms that correspond to their gender identity sends a message to transgender students, their peers and school staff that one group of students should be treated differently from

others. Forcing transgender students to use bathrooms that do not correspond to their gender identity only serves to make them targets of harassment and discrimination.

The ripple effect of such harassment touches all aspects of a student's future—graduation, college attendance, employment and mental health. Transgender children are at heightened risk of stress and bullying by other children and adults, and those stressors can lead to problems in adulthood, including post-traumatic stress disorder, depression, anxiety and suicidality.^{vi}

SB 2387/HB 2414 would have a direct, extremely harmful impact on many students in our state. Please speak out to ensure that all Tennessee students are treated with respect and dignity.

Refusing To Allow Transgender Students To Use The Facilities That Correspond With Their Gender Identity Violates Federal Anti-Discrimination Law

Title IX of the Education Amendments of 1972 (“Title IX”) prohibits discrimination based on sex in any education program, such as a public school, that receives federal financial assistance.^{vii} Federal courts have ruled that Title IX’s prohibition on discrimination “on the basis of sex” protects students from discrimination based on their gender identity, gender nonconformity, or transgender status.^{viii}

Excluding transgender students from using the same restrooms as other students deprives them of equal access to educational opportunity in violation of Title IX. Recently, the Office for Civil Rights (“OCR”) of the U.S. Department of Education, which enforces Title IX, published guidance making explicit that “Title IX’s sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity and femininity” and indicating that it would accept such complaints for investigation and resolution.^{ix} Moreover, the U.S. Department of Education has said that Title IX requires schools to treat transgender students consistent with their gender identity when separating students in different facilities, such as restrooms.^x The U.S. Department of Education and the U.S. Department of Justice have entered into binding settlement agreements requiring school districts to allow transgender students to use restrooms and other sex-segregated facilities that correspond to their gender identity.^{xi}

Discriminating Against Transgender Students Violates the Fourteenth Amendment’s Equal Protection Clause

In addition to violating Title IX, excluding transgender students from the same restrooms used by other students also violates the Fourteenth Amendment’s Equal Protection Clause. There is no important government interest—or *any* interest—that justifies this differential treatment of transgender students based on their gender identity.^{xii} Requiring transgender boys, who are known to all their peers as boys, to use the girls’ rooms, and requiring transgender girls, who are

known to all their peers as girls, to use the boys' rooms, is not a viable policy from the perspective of either transgender students or their peers.

SB 2387/HB 2414, and any school or university policies stemming from it, may lead to expensive and time-consuming administrative complaints and litigation under the Fourteenth Amendment as well as Title IX.

This Legislation Puts Billions Of Dollars In Federal Funding At Risk

Tennessee will receive an estimated \$682,495,286 in funding from the U.S. Department of Education in 2016.^{xiii}

The U.S. Department of Justice and the U.S. Department of Education and its Office of Civil Rights have made it clear that transgender people should be able to use the restrooms that correspond to their gender identity and that they cannot be segregated into separate restrooms away from everyone else.

SB 2387/HB 2414 put our state at risk of losing hundreds of millions of dollars in federal funds.

Allowing Students to Use Bathrooms Does Not Threaten Safety or Privacy

All of us, including transgender students, care about privacy and safety in bathrooms and locker rooms. Trans people are in the bathroom for the same reason as everyone else – to use the facilities and be on their way. Allowing transgender students to use restrooms and other facilities that correspond to their gender identity does not jeopardize that safety and privacy. It is already against the law to enter a bathroom or locker room for the purpose of harming someone or invading someone's privacy.

To the extent that any student feels uncomfortable using a facility—because of modesty, embarrassment, discomfort with the presence of other students, or for any reason—schools can make private facilities available for them to use if they choose. What schools cannot do is force transgender students to use separate facilities simply because some people might feel uncomfortable with them. Such treatment amounts to unlawful discrimination.

Numerous Schools Have Implemented Inclusive Policies For Transgender Students Without Problem

Schools in California, Colorado, Connecticut, Maine, Massachusetts and Washington—as well as countless individual schools nationwide—provide transgender students with access to the restrooms and locker rooms that correspond with their gender identity. These schools have illustrated that not only is it possible to respect and affirm transgender students in this way, but it does not create the problems some fear.^{xiv}

One study surveyed school officials at the largest school districts in twelve states that protect transgender students by law. The educators did not report a single instance of “harassment or inappropriate behavior” resulting from transgender students being allowed “to access facilities they’re comfortable with.”^{xv}

In the words of Louisville, Kentucky principal Dr. Thomas Aberli, “[T]here has not been any issue at all with respect to the implementation. It’s not a big deal when you look at it from a standpoint of, we’re dealing with real people, we’re dealing with children. Even at a high school level we’re dealing with people who have had a hard enough time as it is, and they’re just looking for reasonable support from the school in a very challenging social context...In short, [t]here’s been no pandemonium. There are no transgender students who are sexual predators, or who are ‘switching gender’ to peek at others. None of those irrational fears have been realized at all.”

For all of these reasons, we urge you to take a public position opposing SB 2387/HB 2414.

If you are interested in meeting with families directly impacted by this issue, please let us know. We would be happy to facilitate those visits.

With many thanks for ensuring the dignity, respect and equal treatment of all Tennessee students.

Sincerely,



Hedy Weinberg
Executive Director

ⁱ <http://www.latimes.com/opinion/la-ol-south-dakota-trans-bill-boycotts-work-lgbt-community-20160303-story.html>

ⁱⁱ http://www.nytimes.com/2016/03/02/us/governor-vetoes-transgender-bathroom-restrictions-south-dakota.html?_r=0

ⁱⁱⁱ <http://listen.sdpb.org/post/governor-vetoes-transgender-bathroom-bill#stream/0>

^{iv} <http://listen.sdpb.org/post/governor-making-decision-soon-transgender-bathroom-bill#stream/0>

^v See World Prof'l Ass'n for Transgender Health (“WPATH”), *WPATH Clarification on Medical Necessity of Treatment, Sex Reassignment, and Insurance Coverage in the U.S.A.* at 1-2 (June 17, 2008), http://www.wpath.org/uploaded_files/140/files/Med%20Nec%20on%202008%20Letterhead.pdf (citing American Academy of Pediatrics).

^{vi} See, e.g., Sari L. Reisner et al., *Mental Health of Transgender Youth in Care at an Adolescent Urban Community Health Center*, 56 J. Adolescent Health 274 (Mar. 2015), <http://www.jahonline.org/pb/assets/raw/Health%20Advance/journals/jah/feature.pdf>.

^{vii} 20 U.S.C. § 1681(a).

^{viii} See, e.g., *Pratt v. Indian River Cent. Sch. Dist.*, 803 F. Supp. 2d 135, 152 (N.D.N.Y. 2011); *Doe v. Brimfield Grade Sch.*, 552 F. Supp. 2d 816, 823 (C.D. Ill. 2008); *Montgomery v. Indep. Sch. Dist. No. 709*, 109 F. Supp. 2d 1081, 1090 (D. Minn. 2000).

^{ix} U.S. Dep't of Educ., Office for Civil Rights, *Questions and Answers on Title IX and Sexual Violence* at 5 (Apr. 29, 2014), available at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

^x Statement of Interest of the United States, *G.G. ex rel. Grimm*, Exhibit B; Letter from Adele Rapport, Reg'l Dir., Office for Civil Rights, U.S. Dep't of Educ., to Dr. Daniel E. Cates, Superintendent, Twp. High Sch. Dist. 211 (Nov. 2, 2015) [hereinafter "Rapport Letter"], <http://www.nytimes.com/interactive/2015/11/02/us/document-letter-from-the-us-dept-of-education-to-daniel-cates.html>.

^{xi} Resolution Agreement, Downey Unified School District, OCR Case No. 09-12-1095, at 1 (Oct. 8, 2014), available at <http://www2.ed.gov/documents/press-releases/downey-school-district-agreement.pdf>; Resolution Agreement, Arcadia Unified School District, OCR Case No. 09-12-1020, DOJ Case No. 169-12C-70, at 3 (July 24, 2013), available at <http://www.justice.gov/crt/about/edu/documents/arcadiaagree.pdf>.

^{xii} See, e.g., *Glenn*, 663 F.3d at 1320 (holding that discrimination against transgender person constitutes sex discrimination in violation of Equal Protection Clause).

^{xiii} <http://www2.ed.gov/about/overview/budget/statetables/16stbystate.pdf>

^{xiv} Orr, Asaf, Joel Baum et al. *Schools in Transition: A Guide for Supporting Transgender Students in K-12 Schools*. Available at <https://www.aclu.org/report/schools-transition>.

^{xv} Rachel Percelay, "17 School Districts Debunk Right-Wing Lies About Protections For Transgender Students," 3 June 2015. Media Matters for America.