



The Honorable Senator Mike Wilson
Chair, Senate Committee on Education
701 Capitol Ave
Annex Room 204
Frankfort, KY 40601

February 19, 2015

**Re: OPPOSE SB 76 - Testimony from the Human Rights Campaign regarding SB 76,
concerning transgender students and gender-segregated facilities**

Dear Chairperson Wilson and Members of the Senate Committee on Education:

The Human Rights Campaign (HRC), on behalf of our thousands of members in Kentucky, strongly opposes SB 76, which would conflict with federal protections for transgender and gender non-conforming students and expose such students to additional bullying and harassment. We urge you to vote against this harmful and unnecessary bill.

The Human Rights Campaign is America's largest civil rights organization working to achieve lesbian, gay, bisexual and transgender (LGBT) equality. By inspiring and engaging all Americans, HRC strives to end discrimination against LGBT citizens and realize a nation that achieves fundamental fairness and equality for all. As an advocate for LGBT young people, HRC believes that no young person should be singled out or harassed due to their gender identity or expression.

We ask you to oppose SB 76 because it is an unnecessary and overly intrusive interference into local government. This bill was not crafted to deal with substantiated reports of students' privacy being violated in gender-segregated areas in Kentucky public schools. Absent a compelling interest, the Kentucky state government should not undermine the ability of local school districts to best accommodate both transgender students and the community. School administrators need flexibility in order to ensure that all students are protected and have a safe learning environment, while this bill mandates a one-size fits all approach which undermines school safety.

Moreover, SB 76 conflicts with federal law and potentially puts school districts at risk for liability. The US Department of Education has made clear that Title IX of the US Education Amendments of 1972,¹ which provides non-discrimination protection in education on the basis of sex, also "extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity and OCR accepts such

¹ 20 U.S.C. §§ 1681-1688.

complaints for investigation. Similarly, the actual or perceived sexual orientation or gender identity of the parties does not change a school's obligations."² In contrast, SB 76 would restrict usage of gender-segregated facilities based on "biological sex," defined to mean the "physical condition of being male or female, which is determined by a person's chromosomes, and is identified at birth by a person's anatomy."^{3,4}

If schools were to comply with this new requirement and restrict usage of sex-segregated facilities, transgender and gender non-conforming students would necessarily, on the basis of sex, "be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance," within the meaning of Title IX.⁵ School districts have already been found liable for discrimination on the basis of gender identity and expression under both federal and state law, including failure to allow transgender students to use gender-segregated facilities in accordance with their gender identity.⁶ If SB 76 is allowed to move forward, this conflict between federal and state laws would place school districts, educators, and students in an untenable position, creating unnecessary liability and confusion.

Finally, we urge you to oppose SB 76 because it will bring harm and stigmatization to transgender and gender non-conforming students. These vulnerable students already suffer heightened rates of bullying and harassment⁷ as well as school pushout.⁸ This bill will actually give students and educators an incentive to harass and discriminate against transgender students by rewarding individuals with a potential \$2,500 reward for identifying transgender students using an appropriate bathroom for their gender. Schools, seeking to limit this potential source of liability, will be incentivized to encourage transgender students to leave the school environment, resulting in disparate discipline against transgender students and school pushout. Public schools in Kentucky have a responsibility to provide a safe and welcoming environment in which all students can learn.

² U.S. Dept. of Education, Office for Civil Rights. *Questions and Answers on Title IX and Sexual Violence*. (April 29, 2014). Available at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>

³ Kentucky SB 76 (2015). Available at <http://www.lrc.state.ky.us/record/15rs/SB76.htm>

⁴ Note that this definition assumes that being male or female, a person's chromosomes, and a person's anatomy at birth are all in alignment, which is simply not the case for many transgender and intersex students.

⁵ 20 U.S.C. §§ 1681(a).

⁶ See, e.g., Resolution Agreement between the Arcadia Unified School District, the U.S. Department of Education, Office for Civil Rights, and the U.S. Department of Justice, Civil Rights Division. (July 24, 2013). Available at http://www.nclrights.org/wp-content/uploads/2013/09/Arcadia_Resolution_agreement_07.24.2013.pdf; *Doe v. Reg'l Sch. Unit 26*, 2014 ME 11, 86 A.3d 600. Available at <https://www.glad.org/uploads/docs/cases/doe-v-clenchy/doe-v-clenchy-decision-1-30-14.pdf>

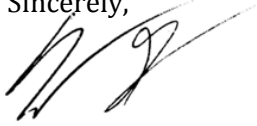
⁷ Nearly nine in ten transgender students are verbally harassed at school due to their gender expression (87%) and more than half have also been physically assaulted (53%). Greytak, E. A., Kosciw, J. G., and Diaz, E. M. (2009). *Harsh Realities: The Experiences of Transgender Youth in Our Nation's Schools*. New York: GLSEN. Available at <http://www.glsen.org/sites/default/files/Harsh%20Realities.pdf>

⁸ Grant, Jaime M., Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling. *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011. Available at http://transequality.org/PDFs/Executive_Summary.pdf

This bill undermines that goal by harassing an already stigmatized population of vulnerable students.

We urge you to oppose this harmful and unnecessary bill. Rather than ensuring privacy, this bill will undermine the ability of school administrators to find workable solutions to meet the safety and privacy needs of all students while meeting their duty under the law. If you should have any questions regarding HRC's testimony, please contact me at 202-572-8960 or by email at Alison.Gill@hrc.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'AG', with a long, sweeping horizontal line extending to the right.

Alison Gill, Esq.
Senior Legislative Counsel
Human Rights Campaign