

Name:

Period:

TRANSGENDER BATHROOM LAWS

Honors Research Packet



Research Question

- What are these laws?
- What facts are important for understanding the laws?
- What are the opinions of people who support them?
- What are the opinions of people who criticize them?
- What is your opinion on the issue?

ARTICLE 1

THREE MYTHS THAT SHAPE THE TRANSGENDER BATHROOM DEBATE

By Emanuella Ginsburg | March 7, 2017

The debate over transgender rights in America often gets reduced to bathroom talk. Supporters of so-called bathroom bills say they will protect public safety by ensuring that all people, including transgender men and women, use public restrooms that correspond to their sex at birth. Opponents say their impact is much wider. Critics call them thinly veiled attempts to discriminate against and stigmatize transgender people to score political points. Supporters make their case with a variety of arguments -- some relate to public safety, others question the entire concept of gender identity. But is there evidence to back some of their claims? What can we glean from places with protections for transgender people? Here's a rundown of how those claims stand up to scrutiny.

Predators in bathrooms

The claim: Sexual predators will take advantage of public accommodations laws and policies covering transgender people to attack women and children in bathrooms.

The facts: Anti-discrimination protections covering gender identity have been around for years, and there is no evidence they lead to attacks in public facilities.

Explained: As of March 2017, 19 states, the District of Columbia and more than 200 municipalities have anti-discrimination laws and ordinances allowing transgender people to use public facilities that correspond to their gender identity. CNN found one case of a Seattle man who allegedly [undressed in a women's locker room](#) in 2016, citing Washington's anti-discrimination law as motivation. Otherwise, whenever the topic comes up in the news, prosecutors, law enforcement agencies and state human rights commissions have consistently denied that there is any correlation between such policies and a spike in assaults. CNN reached out to 20 law enforcement agencies in states with anti-discrimination policies covering gender identity. None who answered reported any bathroom assaults after the policies took effect. Michael Dunton, chief records clerk of Rhode Island's Cranston Police Department, told CNN his department was "hard-pressed" to find such a case: "We track our sex offenders very carefully and we haven't seen any instance of sexual predators assaulting in bathrooms."

In Maine, which has had gender identity protections in its [state civil rights law](#) for more than 11 years, the state Human Rights Commission was unaware of a single incident. "I know there is a lot of anxiety associated with this issue, but it seems to be based on fear rather than facts. Given this, it is really disheartening to see so many states (and now our federal government) choose to treat people who are transgender with what looks like hatred," Maine Human Rights Commission Executive Director Amy Sneirson said.

More common, civil rights groups say, are reports of transgender people being assaulted in bathrooms that don't match their gender identity. In one of the [largest surveys](#) of transgender and gender non-conforming Americans ever conducted, 70% of respondents reported being denied access, verbally harassed, or physically assaulted in public restrooms. The survey,

conducted by UCLA's Williams Institute in 2013 before the nation's capital passed anti-discrimination protections, built on [previous research](#) with similar outcomes.

Transgender people don't deserve protections

The claim: Being transgender is not a valid condition. Transgender people are mentally ill and should not be afforded the same legal protections or healthcare guarantees as gay and lesbian Americans.

The facts: The clear majority of mainstream medical, psychiatric and psychological communities agree that being transgender is not a concocted fantasy or mental illness. It's simply a valid state in which one's gender does not match what was assigned at birth.

Explained: The medical community defines gender identity as the way in which people perceive themselves, which could be different from their gender at birth. A transgender person's gender identity is different from cultural expectations based on the gender they were born with.

Characterizing transgender identity as a mental disorder contributes to precarious legal status, human rights violations, and barriers to appropriate health care, according to a [study published in The Lancet in 2016](#). A condition is designated a mental illness when it causes significant distress. For many, simply being transgender does not cause dysfunction -- it's the social stigma and barriers to expressing one's identity that cause problems, according to the [American Psychological Association](#), the American Medical Association and other healthcare organizations. The World Health Organization is [set to adopt the same position](#) in its next edition of the International Classification of Diseases, due out in 2018. The Diagnostic and Statistical Manual of Mental Disorders (DSM) includes the term "gender dysphoria" to describe the distress some feel. The term was [adopted in 2013](#) to replace "gender identity disorder," which designated transgender identity a mental illness. The change bore echoes of a 1973 decision to remove homosexuality from the DSM.

Letting children identify as transgender is harmful

Claim: Children are too young to know if they are transgender, and supporting a child who identifies as transgender is child abuse.

The facts: Research shows that not allowing transgender children to live their gender identity is harmful, and can be deadly.

Explained: [Decades of research](#) suggest that when it comes to psychological traits and abilities, boys and girls are more alike than they are different. A child's parents and environment are more likely to influence their gender expression than the body parts they were born with, and the concept of gender becomes more fixed as we grow.

Just as it advises for adults, the medical community endorses letting children live their gender identity to avoid gender dysphoria or other conditions that may hinder mental or social developmental.

Groups including Family Research Council, considered a [hate group](#) by the Southern Poverty Law Center, cite the American College of Pediatrics in arguments against supporting transgender children. The American College of Pediatrics is estimated to have only a few hundred members compared to the 64,000 members belonging to the well-established American Academy of Pediatrics, which supports allowing transgender children to socially transition at an early age.

Social transition does not involve the use of cross sex hormones or hormone blockers until the age of puberty, and only then if a patient and healthcare professional deem such treatment necessary.

ARTICLE 2

PRESIDENT TRUMP JUST ROLLED BACK GUIDELINES THAT PROTECTED TRANSGENDER STUDENTS

By Katy Steinmetz, Time.com | 2017

By the time he left office, [Barack Obama](#) had taken several steps to support [transgender](#) people, moves that “[thrilled](#)” advocates and outraged social conservatives still stinging from a same-sex-marriage loss before the Supreme Court. But the tide is now heading in a new direction, and [the Trump Administration](#) on Wednesday took what LGBT-rights groups view as a big step back, one they are describing as “bullying” transgender kids.

In a joint action, the Departments of Justice and Education rescinded instructions that schools nationwide must respect the gender identities of transgender students, allowing them access to bathrooms and other facilities or single-sex programs that align with their sense of self. “The prior guidance documents did not contain sufficient legal analysis or explain how the interpretation was consistent with the language of Title IX,” Attorney General Jeff Sessions said in a statement Wednesday. “The Department of Education and the Department of Justice therefore have withdrawn the guidance.”

Under Obama, those same departments issued the guidance in several pieces as an interpretation of Title IX, which prohibits sex discrimination in education. The instructions answered a question that school administrators had been asking as more transgender students were making themselves known: How should that word sex be understood when it comes to their treatment, to make sure schools were not running afoul of the civil rights law?

“Under Title IX,” a school that receives federal funds must generally “treat transgender students consistent with their gender identity,” as one [memo](#) from the Department of Education put it. Such instructions are consistent with a body of case law that has been building for the past several years, but they have also been controversial — leading

about a dozen states to sue the federal government for allegedly overstepping its bounds and “rewriting” the law.

Speaking with reporters on Wednesday, White House press secretary Sean Spicer echoed the argument that such an interpretation of Title IX is flawed. “It’s incumbent upon us to actually follow the law and to recognize that Title IX never talked about this,” he said. “It was enacted in 1972. There was no discussion of this back then, and to assume certain elements of the law were thought of back then with respect to this would be completely preposterous.”

Opponents of the guidelines have also argued that allowing transgender-students bathroom access jeopardizes the privacy of other students, and some have even questioned the authenticity of transgender students’ gender identities. The Obama-era interpretation of Title IX “does violence to the notion of physical privacy,” the states’ lawyers wrote in a **complaint**, “by advancing an understanding that requires the mixing of the sexes in intimate areas.”

Transgender students and their parents have in turn called the privacy argument a red herring and said that bathroom access — as well as generally being treated in a way that is consistent with their gender identity — is necessary for transgender students to participate equally in getting their education.

“All they want is to just fit in,” said Katharine Prescott, the mother of a transgender boy who committed suicide in 2015, after struggles that included being called “she” and isolated from peers at school. When transgender kids are told to use a bathroom that does not match their gender identity or a nurse’s restroom, she told TIME on Wednesday, they feel stigmatized and often avoid using the restroom at all.

“It’s saying you are this monster,” she said, “that you don’t belong.”

Trump’s Department of Justice previously **backed away** from a challenge the Obama Administration had made in the case filed by the states, signaling that newly installed Attorney General Sessions was going to be less supportive of transgender rights than his predecessors. As a member of Congress, Sessions previously expressed doubt about expansions of LGBT rights, including opposition to same-sex marriage and **saying** the now-defunct “don’t ask, don’t tell” policy that banned the service of military members who are openly gay had been “pretty effective.”

On Wednesday, Spicer also confirmed reports that there had been disagreements about how to approach the guidance. The instructions were jointly issued by the two departments and so need to be rolled back in concert, but Education Secretary Betsy DeVos **reportedly** resisted the move — despite insistence from Sessions — and said that there should be language that instructs schools to generally protect transgender students. (In a release announcing the change, the Justice Department said it was committed to protecting “all students, including LGBTQ students, from discrimination, bullying, and harassment.”)

“There is no daylight between the President or any of the Secretaries,” Spicer said, acknowledging that there was some back-and-forth over timing and specific language, but also saying that there was agreement on the conclusions.

Such a step by the Trump Administration could render the states’ lawsuit moot and affect a historic case that will be argued at the Supreme Court next month. Gavin Grimm, a transgender boy from Virginia, sued his school board after being banned from the boys’ room at school and won a ruling from the Fourth Circuit Court of Appeals that relied on the guidance issued by Obama’s Department of Education. Along with many others, Grimm was headed to the White House on Wednesday evening to protest, even as advocates on both sides eagerly awaited to see the precise language that would be issued.

When asked during a press briefing on Tuesday to address the rumors that the instructions would be rolled back, Spicer said that President Trump believes the treatment of transgender students in public schools to be “a states’ rights issue.” Advocates called that notion “outrageous,” saying that Title IX should continue to protect transgender students — even if they are no longer aided by the feds in pursuing enforcement actions.

“It is of course outrageous that the federal government would decline to carry out its obligation to enforce the civil rights laws, to protect the most vulnerable students from discrimination,” said the Transgender Law Center’s Ilona Turner. “It’s hard to think of something more hostile or cruel, frankly, that they could do to the transgender community.”

— With reporting by Zeke J. Miller / Washington

ARTICLE 3

WHITE HOUSE LIFTS TRANSGENDER STUDENT BATHROOM GUIDANCE

By Newsela | 2017

WASHINGTON, D.C. — The Trump administration on Wednesday ended federal protection for transgender students that allowed them to use public school bathrooms and locker rooms matching their gender identities.

A transgender person is someone who was born with male or female body parts but identifies as the opposite gender. Their gender identity does not match the gender that society identifies them as. Now, this person would not have the support of the federal government to be allowed to use the bathroom of their choice. Depending on their school's rules, a person who was born with male body parts but identifies as female would have to use the male bathroom.

The Justice and Education departments sent a letter to school districts nationwide saying that the Obama-era guidance caused a spike in lawsuits over how that guidance should be applied.

It will now be up to states and school districts to interpret federal anti-discrimination law. Then they will determine whether students should have access to restrooms in accordance with their expressed gender identity and not just their biological sex. "This is an issue best solved at the state and local level," Education Secretary Betsy DeVos said. "Schools, communities and families can find — and in many cases have found — solutions that protect all students."

The earlier directive by President Barack Obama was not actually a law. But, transgender rights advocates say it was necessary to protect students from discrimination. Opponents argue it was an example of the federal government going too far. Here's a look at the issue and what could happen next:

What Is The Federal Guidance For Schools?

About 150,000 young people between the ages of 13 and 17 in the United States identify as transgender, according to a study by The Williams Institute at the UCLA School of Law. This is less than 1 percent of this age group.

The Obama administration last May announced its position. The administration said public schools should grant bathroom access based on students' chosen gender even if it did not match their school records. The administration's guidance was based on a federal law that prohibits sex discrimination in education and activities. The administration said this also applies to gender identity. This was not new law, but rather the Obama administration's interpretation of a law. It sent a warning that schools could lose funding if they did not comply with this interpretation of the law.

Republicans immediately pushed back. They argued it was an example of the Obama administration meddling in local matters. Thirteen states sued to challenge the directive. Attorney General Jeff Sessions said Wednesday the Obama administration did not adequately explain its interpretation of the law. "Congress, state legislatures and local governments are in a position to adopt appropriate policies or laws addressing this issue," he said.

What Could Happen Now That The Guidance Is Withdrawn?

The change in position will have no immediate impact on schools, as a federal judge in Texas temporarily blocked the Obama guidance in August. But it could have consequences for unresolved court cases dealing with discrimination law. They include a case set to be heard by the Supreme Court in March. The case involves a transgender teen who was denied a choice of bathroom access in Virginia. The high court could decide not to hear the case and direct lower courts to decide that question instead. Similar lawsuits are still playing out across the country.

What Might The Change Mean For Schools And Students?

Advocates say federal law will still prohibit discrimination against students based on their gender or sexual orientation. The ACLU, a nonprofit organization that defends Americans' rights, said schools remain free to provide the same treatment to students even without the Obama guidance.

However, "To cloak this in federalism ignores the vital and historic role that federal law plays in ensuring that all children (including LGBT students) are able to attend school free from discrimination," said Vanita Gupta, who was head of the Justice Department's Civil Rights Division when the Obama guidance was issued.

How Do State Laws Fit In?

States will continue implementing laws to address the bathroom issue.

Fifteen states have protections for transgender students in their state laws. Many individual school districts in other states have adopted policies that cover such students on the basis of their gender identity, said Sarah Warbelow, legal director of the Human Rights Campaign. In the states that protect transgender rights, the general approach is to let individuals decide for themselves their gender identity. That's also how the Obama guidance viewed gender identity for students who are too young for reassignment surgery.

Just one state, North Carolina, has enacted a law restricting access to bathrooms in government-owned buildings to the sex that appears on a person's birth certificate. But so far this year, lawmakers in more than 10 states are considering similar legislation, according to the National Conference of State Legislatures.

ARTICLE 4

VIRGINIA LAWMAKER PROPOSES A "BATHROOM BILL" TO RESTRICT PUBLIC BATHROOM USE BY TRANSGENDER PEOPLE

By Laura Vozzella and Moriah Balingit | January 5 2017

North Carolina and the Justice Department announced dueling lawsuits Monday over the state's "bathroom bill." The controversial law has become the epicenter of a larger fight over transgender rights.

The two complaints, filed several hours apart, took opposing sides in the debate. At issue is a law that bans transgender people from using bathrooms that don't match the gender on their birth certificates. The state said its law does not discriminate against transgender people or treat transgender employees differently from non-transgender employees. The Justice Department's civil rights office said the measure is discriminatory and violates civil rights.

“This action is about a great deal more than just bathrooms,” said Attorney General Loretta E. Lynch. She spoke during a news conference after the Justice Department’s lawsuit was filed. “This is about the dignity and respect we accord our fellow citizens and the laws that we, as a people and as a country, have enacted to protect them.”

The lawsuits further escalate tensions over the law, which has already resulted in boycotts of North Carolina by corporations. The federal government has threatened that billions of dollars in annual funding could be withheld.

Lawsuits Left And Right

The fight over the “bathroom bill” also marks the latest front in a growing war between North Carolina and the federal government. The federal government had sued the state over a law adding several restrictions on voters.

In his lawsuit Monday against the Justice Department, North Carolina Gov. Pat McCrory (R) accused the federal government of “baseless and blatant overreach.”

The governor has repeatedly defended the state law, which he signed in March. He called it a necessary response to a Charlotte city law that expanded civil rights protections for people based on sexual orientation and gender identity.

But in her unusually impassioned remarks Monday, Lynch linked the bill with a dark history of racial injustice. This includes Jim Crow laws, which were state and local laws in the South that enforced racial segregation. The South also showed resistance to the 1954 Brown v. Board of Education decision.

“It was not so very long ago that states, including North Carolina, had signs above restrooms, water fountains and on public accommodations keeping people out based upon a distinction without a difference,” said Lynch, a North Carolina native.

Vanita Gupta, head of the Justice Department’s civil rights division, said Monday that calling the law a “bathroom bill” trivializes the measure. She said the law could impact state employees, students and sports fans alike.

“It speaks to all of us who have ever been made to feel inferior, like somehow we just don’t belong in our community, like somehow we just don’t fit in,” Gupta said. “Let me reassure every transgender individual, right here in America, that you belong just as you are.”

Businesses Put Pressure On State

The North Carolina law has drawn intense opposition from business groups. In at least two high-profile cases, it has cost the state jobs and money. PayPal and Deutsche Bank both said they were abandoning expansion plans in the state because of the measure. The companies had planned to employ hundreds of people in North Carolina, and state officials said these expansions would have brought millions of dollars to local economies.

The National Basketball Association has said it will move the All-Star Game from Charlotte next season if the law is not changed. Tourism agencies have said the legislation has cost the state millions in lost business. It could possibly cost much more if other groups cancel events. The White House was critical of North Carolina's decision Monday. Josh Earnest, the White House press secretary, said the state was "asserting that this mean-spirited law is somehow consistent with the Civil Rights Act and with our values." He said that the lawsuit does not change the reviews that several federal agencies are conducting to consider withholding funding to North Carolina.

Five days ago, the Justice Department sent a letter to McCrory and other public officials calling on them to abandon the law. They gave the governor until the close of business Monday to respond. McCrory said that deadline was "unrealistic" and asked the Justice Department for an extension. He was turned down unless he made a statement agreeing that the measure was discriminatory.

"I'm not going to publicly announce that something discriminates, which is agreeing with their letter, because we're really talking about a letter in which they're trying to define gender identity," McCrory said in an interview Sunday with Fox News. "There is no clear identification or definition of gender identity. It's the federal government being a bully."

North Carolina Attorney General Roy Cooper, has said he will not defend the measure. Cooper is facing McCrory in what is expected to be a close gubernatorial election in November. Cooper said that McCrory was "pouring gas on the fire that he lit" by filing a lawsuit against the federal government. "Instead of doing what's right for our state, he's doubling down on what he knows he did wrong," Cooper said. "Enough is enough."

Republicans Say Feds Violate 10th Amendment

Also Monday, the two top Republicans in the North Carolina legislature filed their own lawsuit against the Justice Department. They argued that the federal agency was violating the 10th Amendment. They said the Justice Department was trying to "impose novel and unforeseen interpretations" of civil rights laws.

McCrory said Monday that the Justice Department had asked North Carolina officials to "set aside their constitutional duty and refuse to follow or enforce our state law." He said that this has broad implications. "This is not just a North Carolina issue," he stated. "This is now a national issue."

Three groups are challenging the bathroom measure in federal court. They released a statement saying that McCrory "doubled down on discrimination" against transgender people with his suit Monday. "Transgender people work for the state of North Carolina, attend school in North Carolina, and are a part of every community across the state," the groups said in a statement. "It is unconscionable that the government is placing a target on their backs to advance this discriminatory political agenda. Lawsuits are normally filed to stop discrimination, not to continue it."

Sources:

Associated Press. "White House Lifts Transgender Student Bathroom Guidance." *Newsela*, 26 February 2017. <https://newsela.com/read/federal-transgender-bathroom-guidelines-lifted/id/27338>. Accessed 19 November 2017

Grinburg, Emanuella, and Dani Stewart. "3 Myths that Shape the Transgender Bathroom Debate." *cnn.com*, 7 March 2017, www.cnn.com/2017/03/07/health/transgender-bathroom-law-facts-myths/index.html. Accessed 19 November 2017.

Steinmetz, Katy. "President Trump Just Rolled Back Guidelines that Protect Transgender Students." *Time Magazine*, 23 February 2017, <http://time.com/4679063/donald-trump-transgender-bathroom/>. Accessed 19 November 2017.

Vozzella, Lara and Moriah Balingit "Bathroom Bill Pits North Carolina Against US Government." *Washington Post*, 5 January 2017.