



September 18, 2017

The Honorable Edmund G. Brown, Jr.
Governor of the State of California
State Capitol, First Floor
Sacramento, California 95814

Re: AB 23 (Ridley-Thomas) Request for Veto

Dear Governor Brown:

The Hollywood Chapter of the National Organization for Women (NOW) respectfully requests that you veto AB 23 (Ridley-Thomas), which seeks to permit unlawful gender discrimination by authorizing single-gender schools and classes in the Los Angeles Unified School District (LAUSD). Although the amendments taken in the Senate help to limit the harm to only LAUSD, the bill remains at odds with good policy and the California Constitution.

AB 23 proposes to carve-out LAUSD from the state laws prohibiting sex discrimination in education. It would authorize LAUSD to exclude students on the basis of gender in specified schools and classes, purportedly to “assist the state in evaluating whether or not single-gender education ... is beneficial for pupils.” With respect, it is long past time to acknowledge that no further study is needed to determine whether single-gender education is beneficial to students. Many decades of study across the country, including a study evaluating California’s own previous single-gender education pilot project in the 1990s, have produced no evidence that gender separation improves student outcomes. California should not use its students as guinea pigs and waste scarce resources on an experiment when we already know the outcome.

But even if sex-segregated education could be proved to be beneficial, it would still expose the state and LAUSD to liability for violating the equal protection doctrine, as well as the anti-preferential treatment provision of the state Constitution.

AB 23 Would Authorize Schools that Violate the State and Federal Constitutions.

Under the California Constitution, which prohibits sex discrimination in public education, laws that segregate and classify students based on gender are subject to the most demanding legal test applied to any governmental program. Like racial classifications, this type of sex discrimination can survive only if it is necessary and the least restrictive means for achieving a compelling governmental interest.¹ The existing single-gender schools in LA cannot meet this

¹ Cal. Const. Art. 1 Sec. 7, 31; *In re Marriage Cases*, 43 Cal. 4th 757, 843 (2008) (under the California Constitution, courts review gender-based classifications “under strict scrutiny rather than intermediate scrutiny”); *Woods v. Horton*, 167 Cal. App. 4th 658, 674 (Cal. App. 3d Dist. 2008) (laws that classify based on gender are “considered ‘suspect’”); *Koire v. Metro Car*
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difficult standard, and have not even claimed they can.

Schools authorized under AB 23 could also be found unconstitutional under the U.S. Constitution. The federal constitution subjects laws that segregate and classify students on the basis of gender to heightened scrutiny.² The U.S. Supreme Court has rejected single-sex education based on generalizations about “typical” male or female students or “differences between men and women” – whether “psychological,” “sociological,” or “in learning and developmental needs.”³ While providing students with a quality education is no doubt a compelling state interest, there is no evidence that separating them based on gender or devising programming based on generalizations about girls and boys is necessary or effective – let alone the only effective way – to achieve that interest.

But even assuming that sex-segregated schools could survive equal protection scrutiny, however, the bill still violates the California Constitution, which flatly prohibits gender-based classifications for the purpose of benefitting girls. Proposition 209 outlaws all discrimination and preferential treatment by the government on the basis of gender and other classes. Regardless of one’s views on Prop. 209 as a policy matter, it created a virtually categorical constitutional prohibition on gender based classification—even as an attempt to help girls or boys. Thus, even if the purpose behind AB 23 is benevolent or meant to address historical disparities in opportunities for girls or boys, any single-sex school authorized under the statute would likely violate the state Constitution.

Single-sex Education is Ineffective. No solid research supports the contention that boys’ and girls’ brains are so different that they need to be separated and taught differently. This purported magic bullet for educational achievement has been found to be ineffective, and possibly quite harmful to students, and rooted in faulty science.⁴ Indeed, the largest study to date, a meta-analysis published in *Psychology*, the premier journal of the American Psychological Association, shows no superiority for single-sex education.⁵ And prominent psychologists and educators have effectively debunked the notion that boys and girls have distinctly different needs or modes of learning.⁶

Wash, 40 Cal. 3d 24, 34 (1985) (California Supreme Court finding “differential pricing based on sex” constituted sex discrimination because it “reinforce[d] harmful stereotypes.”).

² *United States v. Virginia*, 518 U.S. 515 (1996).

³ *United States v. Virginia*, 518 U.S. at 540-42.

⁴ *Doe v. Wood County Bd. of Ed.*, 888 F. Supp. 2d 771, 779 (S.D.W.Va. 2012) (“the science behind single-sex education appears to be, at best, inconclusive, and certain gender-based teaching techniques based on stereotypes and lacking any scientific basis may very well be harmful to students.”).

⁵ Pahlke, Hyde & Allison, The Effects of Single-Sex Compared with Coeducational Schooling on Students’ Performance and Attitudes: A Meta-Analysis, 140 *Psychological Bulletin* 1042-1072 (2014) (analyzing existing studies and concluding that once study design is accounted for, single-sex education is not shown to lead to improvements in educational outcomes).

⁶ Diane Halpern, et al., The Pseudoscience of Single-Sex Schooling, 333 *Science* 1706 (2011) (discussing existing research and concluding that single-sex education is “deeply misguided, and often justified by weak, cherry-picked, or misconstrued scientific claims rather than by valid scientific evidence”).



The bill's proponents cite California's 1990s experiment with single-gender academies as support for this new authorization for gender separation. But those academies, studied under a Ford Foundation grant, only reinforced gender stereotypes,⁷ and every school was voluntarily closed by its school district. California has already tried this unconstitutional experiment and it failed. There is no legitimate reason for replicating an educational theory with no solid evidence behind it and which perpetuates sex stereotypes exemplified by the recent controversy regarding a Google engineer who asserted that women are biologically less suited to technology jobs.

AB 23 Will Be Harmful to LGBTQ, Gender Non-Conforming and Non-Binary Youth. Gender-segregated schools are potentially detrimental to anyone who does not conform to gender stereotypes.⁸ This system, based on a rigid gender binary, will also potentially harm transgender students who transition in school and would potentially be forced to change schools. It would entirely exclude and alienate the rapidly growing number of young people who do not identify as male or female but rather as neither, both, or something in between. The World Professional Association for Transgender Health has recognized that a growing number of people self-identify as neither male nor female, defining themselves outside binary gender roles.⁹ The erasure of non-binary students' gender identity is a serious concern particularly given that courts, including those in California, are increasingly recognizing genders other than male or female.¹⁰ Single-sex public schools would also be harmful to intersex children. Experts estimate that up to 2% of the population is intersex.¹¹ Although AB 23 requires an evaluation of the impact of the single-gender programs on LGBTQ or gender-nonconforming students, periodic evaluation of a school's impact on LGBTQ students does nothing to prevent the harm a single-gender school or program may cause to such students.

⁷ Datnow, Hubbard, and Woody, *Is Single Gender Schooling Viable in the Public Sector? Lessons from California's Pilot Program*. Final Report, Ontario Institute for Studies in Education, University of Toronto (2001).

⁸ See Michael Kimmel, *Don't Segregate Boys and Girls in Classrooms*, CNN.com, Feb. 3, 2014 (available at <http://www.cnn.com/2013/08/09/opinion/kimmel-single-sex-classes/>); Edward Fergus, Pedro Noguera & Margary Martin, *Schooling for Resilience: Improving the Life Trajectory of Black and Latino Boys 159-160* (2014) ("The overall culture at all seven schools [studied] could be characterized as 'hetero-normative,' meaning that any student who was gay, bisexual, transgendered, or in the least bit uncertain about his sexual identity was likely to feel out of place.").

⁹ World Professional Association for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People 171* (7th ed. 2011) ("Other individuals affirm their unique gender identity and no longer consider themselves to be either male or female. Instead, they may describe their gender identity in specific terms such as transgender, bigender, or genderqueer, affirming their unique experiences that may transcend a male/female binary understanding of gender.") (internal citations omitted)

¹⁰ Decree Changing Name and Gender, *Petition of Ahata Tiffany Furuya For Change of Name and Gender*, No. 37-2016-00044778-CU-PT-CTL (Cal. Sup. Ct. Feb. 10, 2017) (available at <http://transgenderlawcenter.org/wp-content/uploads/2017/02/at-order.pdf>); Mary Emily O'Hara, *Court Rulings Raise Number of Legally Non-Binary Californians to Seven*, NBC News (Feb. 16, 2017, 10:26 AM) (available at <http://www.nbcnews.com/feature/nbc-out/court-ruling-raises-number-legally-nonbinary-californians-seven-n721676>); Corinne Segal, *Oregon court rules that 'nonbinary' is a legal gender*, PBS Newshour (June 11, 2016, 3:27 PM)(available at <http://www.pbs.org/newshour/rundown/oregon-court-rules-that-nonbinary-is-a-legal-gender/>).

¹¹ M. Blackless et al., *How sexually dimorphic are we?*, *American Journal of Human Biology*, 12 (2) 151-166 (2000).



For these reasons, we believe AB 23 is not worthy of your signature.

Sincerely,

John Erickson
President
Hollywood NOW

