

**DATE:** April 11, 2017

**TO:** Rep. Helen Head, Chair, House Committee on General, Housing, and Military Affairs

**FROM:** Rep. Selene Colburn

**RE:** H.333 & single-occupancy, gender-free restrooms

Thank you so much for the opportunity to testify last month on H.333. I wanted to provide the key points of my testimony in writing for the committee, as you continue to consider the bill.

*Intent & purpose*

H.333 makes public, single-occupancy restrooms gender-free (meaning simply, that they cannot be assigned by gender and signed as “Men” or “Women”). The bill would have broad benefits for a number of Vermonters.

It would:

- reduce waiting in lines for restrooms on the basis of gender for everyone
- create spaces where caretakers of a different gender can accompany young children, elderly relatives, or individuals with a disability who may need assistance
- increase access to gender-free restrooms

It would only apply to single-use restrooms and only requires a signage change on the part of a business owner, or other public building that has not already adopted this practice.

*Model legislation*

The bill is modeled after California’s Assembly Bill 1732, passed in 2016, which went into effect on March 1, 2017. In addition to sponsorship by Assemblymember Phil Ting, the bill was supported by California NOW, Equality California and the National Transgender Law Center.

Additionally, a number of municipalities share similar legislation. These include Philadelphia, Austin, Portland, Seattle, San Francisco, and Washington, D.C.

Here's a good summary of the California law:

<https://heatst.com/culture-wars/california-governor-signs-law-mandating-gender-neutral-bathroom-signs-throughout-state/>

*Signage*

This bill does not intend to mandate a certain type of language or pictogram to indicate a gender-free restroom. The goal is to prohibit restrooms from segregating single-user restrooms on the

basis of sex/gender. Establishments are currently using a wide variety of signage to indicate gender-free restroom access, and this bill is not meant to require revisions to existing signage to that effect. If that is not clear from the language in the bill, friendly amendments would be most welcome.

That said, advocates on this issue are increasingly defining best practice for signage as simply indicating the function of the room (“restroom”) and the types of accommodations that can be found within (e.g. toilets, urinals, access for disabled users, changing tables, etc.), without trying to depict the genders or combinations of genders that are allowed access to the facilities.

One of the better implementations of this type of legislation has occurred in Washington DC, where they've taken a proactive approach to promoting the change and bringing businesses along, via the Office of Human Rights.

You can see more about their program here:

<https://ohr.dc.gov/page/safe-bathrooms-dc>

The Vermont Human Rights Commission has expressed interest in serving as a resource on this issue, and could help businesses and others to implement best practices regarding signage.

### *Transgender rights and restroom access*

For trans or gender non-conforming individuals, this is not just a matter of convenience, but a significant health and safety issue. Many will go through long periods of their day without access to a restroom they can use without fear of harassment, policing, or even physical assault in education, employment or public settings.

This can lead to urinary tract infections, constipation and complications in the form of more serious health issues. Individuals may refrain from drinking fluids throughout the day. These health concerns are discussed in a 2016 New England Journal of Medicine article by a number of co-authors.<sup>1</sup> The article goes on to discuss injuries that may be sustained by trans individuals as a result of harassment or even physical assault in response to their use of restrooms.

In a 2008/2009 survey conducted by Jody Herman, a researcher at the UCLA School of Law's Williams Institute, 70% of respondents “reported experiencing being denied access to restrooms, being harassed while using restrooms and even experiencing some forms of physical assault.” Almost 10% of respondents reported experiencing the latter.<sup>2</sup> In a final paper published in the

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<sup>1</sup> Mark A. Schuster, M.D., Ph.D., Sari L. Reisner, Sc.D., and Sarah E. Onorato, B.A., “Beyond Bathrooms – Meeting the Health Needs of Transgender People,” New England Journal of Medicine 2016; 375:101-103, Available: <http://www.nejm.org/doi/full/10.1056/NEJMp1605912#t=article>

<sup>2</sup> Jeff Brady, “When a Transgender Person Uses a Public Restroom, Who is at Risk?,” National Public Radio, May 15, 2016, Available: <http://www.npr.org/2016/05/15/477954537/when-a-transgender-person-uses-a-public-bathroom-who-is-at-risk>

*Journal of Public Management and Social Policy*, Herman further reported that 58% of respondents have avoided going out in public due to a lack of safe restroom facility access.<sup>3</sup>

### Restroom policy and trans people

Existing approaches to providing (or prohibiting) restroom access for trans users through legislation and policy setting have varied widely. Some approaches have focused on requiring or prohibiting the use of restroom facilities by gender identity and/or biological sex at birth. Some policies require access to gender-free restrooms in employment, school or public settings. I frequently describe H.333 as “the low hanging fruit of bathroom bills,” in that it seeks to *enhance* access through basic, common sense changes to signage.

#### *National and state context*

In May of 2016, a joint letter from the United States Department of Education and the Department of Justice affirmed that any school receiving federal funding, “may provide separate facilities on the basis of sex, but must allow transgender students access to such facilities consistent with their gender identity. A school may not require transgender students to use facilities inconsistent with their gender identity or to use individual-user facilities when other students are not required to do so. A school may, however, make individual-user options available to all students who voluntarily seek additional privacy.” This essentially said that students who identify as male or female are welcome to use the corresponding restroom and should not be asked to re-locate to a single-use or non gender-segregated restroom. On February 22<sup>nd</sup> of 2017, the Trump administration withdrew these guidelines. This reversal also left the status of 2015 Occupational Safety and Health Administration (OSHA) employer guidance on transgender restroom access uncertain.

In 2017, fifteen pieces of legislation were introduced in states to limit restroom use by biological sex at birth, which seek to prevent trans users from accessing bathrooms that are consistent with their gender identities. These bills are modeled after North Carolina’s HB2, which is estimated to have cost the state over \$400 million dollars due to boycotts.

Meanwhile, in Vermont, a 2007 law prohibited gender identity discrimination in workplaces, housing and places of public accommodation, which include schools. Following the Trump administration’s reversal of the “Dear Colleague” guidance letter for educational settings, Vermont Attorney General T.J. Donovan reaffirmed this law and said it means that Vermont trans kids can use restrooms of their choice. Vermont Education Secretary Rebecca Holcombe also emailed educators across the state in response with clear guidance on transgender protections that apply at both public and private schools. Passage of H.333 would provide an important and timely complement to these affirmations.

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<sup>3</sup> Jody Herman, “Gendered Restrooms and Minority Stress: The Public Regulation of Gender and its Impact on Transgender People’s Lives,” The Williams Institute, UCLA School of Law, June 2013, Available: <https://williamsinstitute.law.ucla.edu/research/transgender-issues/herman-jpmss-june-2013/>.

### *Supporters*

Current supporters of the bill include the Vermont Attorney General's Office, the Vermont Human Rights Commission, Vermont Businesses for Social Responsibility, the Lake Champlain Chamber of Commerce, Outright VT, the Pride Center of Vermont, ACLU-VT, and numerous LGBTQ advocates.