



July 12, 2013

The Honorable Lincoln Chafee
Governor
Room 224 State House
Providence, RI 02903

RE: 2013-S 12A as amended

Dear Governor Chafee:

We write on behalf of the National Coalition for Women and Girls in Education and the undersigned organizations to urge you to veto S-12A as amended. The bill would authorize public elementary and secondary schools to “provide extracurricular activities for students of one sex . . . [if] opportunities for reasonably comparable activities [are] provided for students of the other sex.” As national organizations concerned about equal rights for women and girls in education, we are concerned that although the bill’s language may appear innocuous, it is both vague and over-broad, and would encourage Rhode Island schools to institute single-sex programming in violation of federal and state laws designed to prevent sex discrimination in educational programs and activities.

It is our understanding that the genesis for this legislation was an incident in which the PTO, against school policy, held a dance open only to female students and a field trip to a baseball game open only to male students. After the school district intervened, legislators attempted to create a loophole to permit such activities. However, this legislation not only extends beyond school dances to permit sex-separation of *any and all* extracurricular activities, but also invites the violation of federal antidiscrimination law by appearing to sanction activities that reflect sex stereotypes.

Sex discrimination in public schools (including in extracurricular activities) is prohibited by federal statute, federal regulations, and the Fourteenth Amendment to the United States Constitution. For a public school in Rhode Island to offer single-sex programming lawfully, it would have to satisfy those federal strictures, and nothing in this bill, or in any bill passed by a state legislature, would have any effect on those laws. But should this bill become law, it could lead schools to believe that single-sex programming is permitted, so long as a “reasonably comparable” activity is offered to students of the other sex. That is not the operative legal standard. The Constitution requires that public schools articulate an “exceedingly persuasive” justification for classifying students on the basis of sex, and demonstrate that the sex separation is substantially related to achieving that objective. *See United States v. Virginia*, 518 U.S. 515 (1996). Title IX of the Education Amendments of 1972 prohibits educational institutions that

receive federal funds from discriminating on the basis of sex (with a few narrow, enumerated exceptions), and federal regulations promulgated by the Education Department specify, among numerous other requirements, that each single-sex class or activity be justified by an important educational objective to improve educational outcomes and that a “substantially equal” (*not* “reasonably comparable”) coeducational alternative be available to students of the excluded sex.¹ *See* 20 U.S.C. § 1681; 34 C.F.R. § 106.34(b). This bill thus embodies a standard for sex-separate programming that is significantly weaker than that required by federal law, thereby misleading school officials into violating Title IX or the Equal Protection Clause, and exposing them and their school districts to the risk of costly litigation.

Our understanding of the controversy in Cranston only highlights these concerns. When the school PTO organized a dance for the girls and a baseball game outing for the boys, its actions embodied the very type of sex stereotypes that school-related anti-discrimination laws are designed to prevent. Under the Constitution and Title IX, school-sponsored single-sex programming cannot be based on or reinforce overly-broad notions about the purportedly different talents, capacities, or preferences of boys and girls. *See U.S. v. Virginia*, 518 U.S. at 533; 34 C.F.R. 106.34(b)(1)(4). The language in S-12A as amended is broad enough to suggest that such stereotype or presumed preference-based separation might be acceptable. But Rhode Island public schools should not be in the position of telling girls and boys which programs or activities they should be interested in based solely on their sex.

As a U.S. Senator, you were a champion of equality and women’s rights, including the principle that girls and boys should be afforded equal educational opportunities. We strongly encourage you to hold true to those values and veto S-12A, which would diminish educational opportunities for boys and girls alike.

Sincerely,

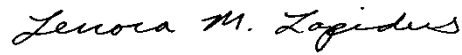


Lisa M. Maatz
Chair, NCWGE
American Association of University Women
1111 Sixteenth St. NW
Washington, DC 20036




Fatima Goss Graves
Vice-Chair, NCWGE
National Women’s Law Center
11 Dupont Circle, NW, #800
Washington, DC 20036

¹ Although Title IX includes among several narrow statutory exemptions “mother-daughter and father-son” activities so long as a “reasonably comparable” activity is offered to the other sex, this lesser standard does not extend to any other type of program or activity; this legislation’s attempt to extend it to *all* extracurricular activities thus contravenes the plain language as well as the intent of the federal statute.



Lenora M. Lapidus
Director
ACLU Women's Rights Project
125 Broad Street, 18th Floor
New York, NY 10004



Eleanor Smeal
President
Feminist Majority Foundation
1600 Wilson Blvd, Suite 801
Arlington, VA 22209



Terry L. Fromson
Managing Attorney
Women's Law Project
125 S. 9th Street, Suite 300
Philadelphia, PA 19081



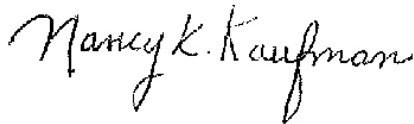
Elizabeth L. Grayer
President
Legal Momentum
397 Hudson Street
New York, NY 10014




Terry O'Neill
President
National Organization for Women
1100 H Street NW, Suite 300
Washington, DC 20005



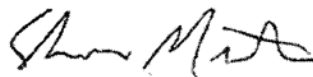
Kathryn E. Olson
Chief Executive Officer
Women's Sports Foundation
424 West 33rd St., Suite 150
New York, NY 10001



Nancy K. Kaufman
Chief Executive Officer
National Council of Jewish Women (NCJW)
1707 L Street, NW, Suite 950
Washington, DC 20036



Vilma Colom
National President
National Conference of Puerto Rican Women
1220 L Street, NW, Suite 100-177
Washington, DC 20005



Shannon Price Minter
Legal Director
National Center for Lesbian Rights
870 Market Street, Suite 370
San Francisco, CA 94102



Jody M. Huckaby
Executive Director
PFLAG National
1828 L Street, NW, Suite 660
Washington, DC 20036