



February 7, 2022

**Re: Human Rights Campaign Opposition to H.B. 988**

Dear Chairman Davis and Members of the Committee:

On behalf of its thousands of supporters in Virginia and three million members and supporters nationwide, the Human Rights Campaign thanks you for the opportunity to submit testimony to help inform your deliberation on H.B. 988. We strongly oppose this legislation and it is our hope that the committee will not advance it.

The Human Rights Campaign is America's largest civil rights organization working to achieve lesbian, gay, bisexual, transgender and queer (LGBTQ+) equality. HRC believes that all youth deserve an inclusive and safe educational environment. By inspiring and engaging all Americans, HRC strives to end discrimination against LGBTQ+ citizens and realize a nation that achieves fundamental fairness and equality for all.

Schools have an obligation to provide safe and affirming learning environments for all students. H.B. 988 would rescind the requirement that schools adopt trans-inclusive policies. The current Virginia Department of Education's regulations help foster a positive and inclusive environment for all students, regardless of their gender identity. To render these regulations optional for schools endangers the safety and privacy of transgender students. Proponents of this bill argue that H.B. 988 would promote student safety, but the bill would undermine the Department of Education's efforts to protect the safety and privacy of all students.

A 2019 study found that inclusive policies that focus on sexual orientation and gender identity were associated with more supportive school environments for LGBTQ+ youth and had a direct association with less truancy.<sup>1</sup> LGBTQ+ youth are especially vulnerable to discrimination at school, where many report experiencing social isolation and rejection.<sup>2</sup> This was the case for Ash Whitaker, a transgender teen from Wisconsin, who was prohibited from using the boys' bathroom at his high school. Ash experienced anxiety and depression after school staff members began aggressively monitoring his bathroom usage and threatening him with disciplinary action for refusing to use the girl's restroom.<sup>3</sup> He also ended up dehydrated because he could not use the bathroom, which exacerbated an underlying medical condition.

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<sup>1</sup> Day, J. K., Ioverno, S., & Russell, S. T., *Safe and Supportive Schools for LGBTQ Youth: Addressing Educational Inequities Through Inclusive Policies and Practices*. Journal of School Psychology (June 2019). <https://doi.org/10.1016/j.jsp.2019.05.007>.

<sup>2</sup> Human Rights Campaign, *2018 LGBTQ Youth Report* (2018), <https://assets2.hrc.org/files/assets/resources/2018-YouthReport-NoVid.pdf>.

<sup>3</sup> Mark Joseph Stern, *A Trans Teen Explains Why He Took His School to Court (and Won)*, Slate (June 13, 2017),



Sadly, Ash's experience is not an anomaly. LGBTQ+ youth regularly encounter hostile learning environments as the result of targeted harassment and discrimination, leaving devastating impacts on their mental and physical well-being. Compared to their non-LGBTQ+ peers, LGBTQ+ youth report much higher rates of depression, anxiety, alcohol and drug use, and lower self-esteem.<sup>4</sup> Passing H.B. 988 would only exacerbate these issues.

In addition, H.B. 988 likely violates the federal Title IX precedent set by the court case, *G.G. v. Gloucester County School Board*. The case involved a transgender student from a Virginia high school, Gavin Grimm, who sued the local school board for being forced to use the women's restrooms based on his assigned gender rather than being allowed to use the restroom consistent with his gender identity. The U.S. Court of Appeals affirmed the Virginia district court's ruling that Gloucester County School Board's restroom policy violated Title IX and the Equal Protection Clause by discriminating against Grimm when the school prohibited him from using the restroom consistent with his gender identity.

In 2021, the Supreme Court refused to grant certiorari for the case, letting the Court of Appeal's ruling stand.<sup>5</sup> Later that year, it was announced that Gloucester County School Board would pay Grimm's \$1.3 million in legal fees.<sup>6</sup> A bill like H.B. 988 could leave schools open to lawsuits and financial liabilities.

It is clear that H.B. 988 will contribute to the discrimination that transgender students already face, while potentially leaving schools vulnerable to massive legal and financial consequences. All students, regardless of their gender identity, deserve access to an education that protects their health and well-being. Thank you for the opportunity to submit testimony, and we request that you swiftly reject this harmful legislation.

Sincerely,

Cathryn Oakley  
State Legislative Director and Senior Counsel

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<https://slate.com/human-interest/2017/06/ash-whitaker-discusses-transgender-lawsuit-and-7th-circuit-victory.html>.

<sup>4</sup> See Human Rights Campaign, *supra* note 2.

<sup>5</sup> *Id.*

<sup>6</sup> Vimal Patel, *Virginia School Board to Pay \$1.3 Million in Transgender Student's Suit*, The New York Times (Aug. 30, 2021), <https://www.nytimes.com/2021/08/30/us/gavin-grimm-transgender-lawsuit.html>.