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The Honorable Charlie Crist
State of Florida
The Capitol
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Dear Governor Crist:

We are writing on behalf of the ACLU of Florida and the national American Civil Liberties Union Women's Rights Project to urge you to veto S.B. 242, which would amend Florida law to permit public schools to segregate students by sex. The ACLU of Florida, with approximately 30,000 Florida members and supporters, acts to protect civil rights and liberties throughout our state. The ACLU Women's Rights Project, founded in 1972 by Ruth Bader Ginsburg, has long been a leader in the legal battles to ensure women's full equality, including the fight for equal educational opportunities for women.

Ensuring equal educational opportunity should be a core principle for every community, and schools must be given the tools necessary to allow all students to succeed, regardless of their gender, race, or background. The ACLU is committed to promoting such equal opportunity. But sex segregation is not the way to achieve these shared goals. Instead, sex segregation represents a wasteful diversion of energy and resources that would be better invested in proven methods such as improved teacher training, smaller class sizes, and greater parental involvement. Research has failed to demonstrate that simply separating boys and girls produces any academic benefit. Instead, such segregation raises the strong possibility of unequal education based on inaccurate gender stereotypes. This is why organizations such as the National Education Association and the American Association of University Women opposed the adoption of regulations permitting sex-segregated education at the federal level, regulations very similar in substance to S.B. 242. We hope that you will veto this legislation, thus encouraging Florida schools to focus their energies on those strategies that have demonstrated benefits for student achievement.

Segregation Can Never Be Truly Voluntary

While S.B. 242 provides that a school district cannot require any student to participate in a sex-segregated program, this provision is insufficient to ensure that sex segregation does not compromise equal educational opportunity.

First, even "voluntary" single-sex education restricts educational choice on the basis of students' sex. Imagine that the most experienced, most capable science teacher in a local high school is assigned to teach boys' chemistry and boys' physics. No girls will have the option to participate in this teacher's classes. They will be excluded for no other reason than their gender. Further imagine that the boys' classes are taught substantially differently from the coeducational and girls' classes. The boys' classes emphasize hands-on experiments and include lots of games and competitive exercises as teaching strategies, while the classes available to girls feature more traditional textbook-based learning. Simply by virtue of their sex, girls have no option to benefit from the innovative, competitive, hands-on class.

Such examples are not merely hypothetical. Already Florida school districts are creating programs in which boys and girls are offered vastly different educational experiences. For example, a news article last August described a sex segregation experiment in Manatee County: While girls sat and read quietly, boys across the hall geared up for a math test by tossing an inflatable ball covered with math problems. The girls' teacher explained that she set aside fifteen minutes a day for "girl talk" about subjects like boys and parties; the boys' teacher explained that she relied on learning toys, puzzles, and competitive drills to engage her students. *See Closing the Gender Gap in Manatee County Schools*, Bradenton Herald (August 26, 2007). Boys, of course, could not choose to benefit from the strategies that administrators had decided were appropriate for girls, and girls could not choose to participate in the activities administrators had decided were appropriate for boys.

Second, even "voluntary" sex segregation can have a significant impact on students who choose to remain in the coeducational setting. School districts that have initiated sex segregation programs often do so with great enthusiasm, promoting them to parents and students as the key to academic achievement, despite the absence of research supporting such a claim. As a result, in some districts, the most involved parents and motivated students have moved toward the heavily promoted single-sex class, leaving the coeducational program to languish without these talented students and resulting in significant inequality between the coeducational and single-sex learning environments. *See Amanda Datnow, et al., Is Single Gender Schooling Viable in the Public Sector?: Lessons from California's Pilot Program 66-67 (2001).* Such an imbalance has the effect of further pushing more motivated students into single-sex programs, even if they would prefer a coeducational environment. In addition, if students of one gender in a particular school or district are more likely to select a single-sex program than students of the other gender, the coeducational classes may be left with a steep gender imbalance, thus robbing students of a truly coeducational experience. The real world impact of sex-segregation programs falls upon all students in the school, whether or not they choose to participate in such a program.

For these reasons, even the "voluntary" segregation permitted by the bill restricts educational choice and will tend to result in unequal opportunity.

Segregation Is Expensive

Those schools that undertake sex segregation experiments are likely to shoulder significant, and perhaps unforeseen, costs.

First, the bill requires that when any single-sex program is created, a school also offer a substantially equal coeducational option and a substantially equal single-sex program for the other sex. Ensuring that this requirement is meant will necessarily result in duplication of resources. Where previously a high school might have offered a single history class, for instance, it will now have to offer three. Moreover, in order to comply with the law, the school district will have to ensure that all three options are substantially equal, which will require some level of ongoing monitoring and record-keeping throughout the year, to ensure that curricula, resources, pedagogy, and the like are nearly identical in approach across the relevant programs.

Second, the bill appropriately requires regular evaluations of any sex-segregated program to ensure that it complies with Florida law against sex discrimination, performed at least every two years. Similarly, federal Title IX regulations require schools instituting sex-segregated programs to undertake such evaluations to ensure that any such programs “are based upon genuine justifications and do not rely on overly broad generalizations about the different talents, capacities, or preferences of either sex and that any single-sex classes or extracurricular activities are substantially related to the achievement of the important objective for the classes or extracurricular activities.” 34 C.F.R. § 106.34(b)(4)(i). Any such evaluation should be undertaken by a well-qualified external evaluator and should include extensive on-site observations to ensure that sex segregation has not resulted in increased sex stereotyping in the treatment of students or the content of educational programs. Moreover, any such evaluation should examine whether the program is more effective in promoting student achievement or other previously articulated goals than the equivalent coeducational program. In order to be reliable, the evaluation should meet the rigorous U.S. Department of Education standards as set out in the What Works Clearinghouse. *See* What Works Clearinghouse, <http://ies.ed.gov/ncee/wwc/>; What Works Clearinghouse, *Reporting the Results of Your Study: A User Friendly Guide for Evaluators of Educational Programs and Practices* (2005). Such regular evaluation will create a costly diversion of school district resources.

Third, as set out briefly below, sex-segregated programs in public schools run a strong risk of violating the federal and state constitutions. School districts instituting such programs thus may face costly litigation, particularly if they provide markedly different methods of instruction in girls’ programs and boys’ programs.

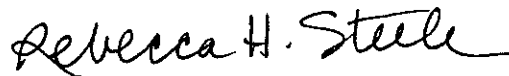
Segregation Is Unlawful

School districts initiating sex-segregated programs risk violating the Equal Protection Clause of the United States Constitution and the Equal Rights Amendment of the Florida Constitution.

Today, many sex-segregation advocates argue that brain differences between boys and girls justify segregation in schools. For instance, according to the Gainesville Sun, Senator Wise, the sponsor of this legislation, stated, “Boys learn differently. . . . They like to move around. When the girls want to please the teacher, boys never want to please the teacher.” *One-Sex Classes Bill Wins Approval*, Gainesville Sun (April 2, 2008). But in *United States v. Virginia*, a case challenging the all-male admission policy at the Virginia Military Institute (VMI), the United States Supreme Court expressly held that under the Constitution, single-sex education cannot be justified by reliance on “gender-based developmental differences” or evidence of male and female “tendencies.” *Virginia*, 518 U.S. 515, 541-42 (1996). As the Court explained in response to VMI’s argument that single-sex education was necessary because of “important differences between men and women in learning and developmental needs[,] . . . generalizations about the ‘way women are,’ estimates of what is appropriate for *most women*, no longer justify denying opportunity to women whose talent and capacity place them outside the average description.” *Id.* at 550. In other words, when schools tell students that they cannot participate in a particular class or activity because on average girls won’t benefit from that educational approach or boys won’t succeed in that program, they violate the Equal Protection Clause. The Florida Constitution holds public actors to at least as high a standard. S.B. 242 thus invites school district to institute programs that violate fundamental constitutional guarantees.

For all these reasons, we urge you to veto S.B. 242. Please do not hesitate to contact us if you would like to discuss this matter further.

Sincerely,



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