

Bathroom Bills on Trial

The Supreme Court has agreed to hear its first case on transgender rights.

BY JOELLEN KRALIK

The U.S. Supreme Court has agreed to hear its first transgender case. At its center is Gavin Grimm, a high school student who has been battling with his local school board in Gloucester, Virginia, for the right to use the boys' bathroom.

Although Grimm's birth certificate lists him as female, he says he never imagined he "would grow up to be a woman." Grimm told his family he was transgender in middle school, and during the fall of his sophomore year of high school, he changed his name and his school records to reflect that he was a boy.

With permission from school administrators, Grimm used the boys' bathroom for seven weeks without incident, until the local school board adopted a policy requiring students to use bathrooms corresponding to their biological sex rather than their gender identity.

Grimm filed a lawsuit alleging the policy discriminates against him and violates the Equal Protection Clause of the 14th Amendment and Title IX of the Education Amendments of 1972, which prohibit sex discrimination in public schools. Title IX guidelines specifically protect students from discrimination on the basis of gender identity.

In April 2016, a panel of U.S. Appeals Court judges sided with Grimm. The school board then appealed the decision, and now the case is on the Supreme Court docket.

Being Transgender

Almost 60 percent of transgender students say they have been denied access to restrooms consistent with their gender identity, according to the Gay, Lesbian and Straight Education Network. The advocacy group also found that students who experienced higher levels of discrimination because of their gender expres-

Joellen Kralik is a policy associate in NCSL's Education Program.





sion were more than three times as likely to have missed school in the past month as those who had not. They also had lower GPAs than their peers.

The Obama administration’s position was that barring transgender students from bathrooms is a violation of Title IX. Last year, the Department of Education penned a “Dear Colleague” letter to all public schools reminding them of their Title IX obligations regarding transgender students. In order to receive federal funding, the letter reminded them that schools must provide a safe and nondiscriminatory environment; use names and pronouns consistent with students’ gender identities; ensure access to sex-segregated activities and facilities based on students’ gender identities; and protect students’ privacy.

Officials from at least 24 states are challenging the legality of the Obama administration’s interpretation of Title IX. The lawsuits allege that the Obama administration exceeded its authority when it issued the “Dear Colleague” letter, and that the guidelines issued are incompatible with Title IX because they violate privacy rights.

How the change in administration will affect these and other suits is currently unknown. During the campaign, President-elect Donald Trump said that transgender people should “use the bathroom they feel is appropriate.” He indicated that decisions about bathroom policies should be left to the states and localities. And, in an interview right after the election, Vice President-elect Mike Pence maintained the position that bathroom policies are a local matter, and that “Washington has no business intruding on the operation of our local schools.”

Legislation and Lawsuits

Hundreds of cities, school districts and 18 states have passed laws protecting transgender people from discrimination since 1975 when Minneapolis, Minnesota, became the first city to pass a law prohibiting discrimination against transgender people.

In July 2016, Massachusetts enacted legislation with bipartisan support allowing transgender people to use bathrooms and locker rooms in accordance with their gender identity and banning discrimination in public accommodations based on

Gender Expressions

Sex is assigned at birth and refers to a person’s biological status as either male or female; it is associated with physical attributes such as chromosomes, hormone prevalence, and external and internal anatomy.

Gender refers to the socially constructed roles, behaviors, activities and attributes that a society considers appropriate for males and females.

Gender identity refers to a person’s internal sense of being male, female or something else.

Gender dysphoria is a medical term experts use to describe the distress people may feel when their gender identity does not match the sex they were assigned at birth.

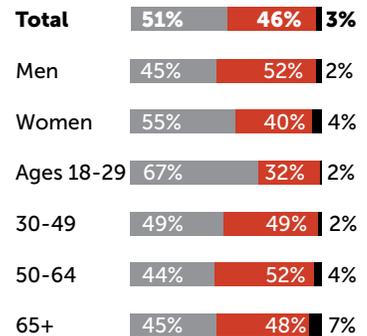
Transgender is an umbrella term for people whose gender identity, expression or behavior does not conform to that typically associated with the sex they were assigned at birth.

Source: American Psychological Association

WHAT THE PUBLIC THINKS

If you had to choose, which comes closest to your view?

- Transgender people should be ...
- ... allowed to use public restrooms of gender with which they currently identify.
- ... required to use public restrooms of gender they were born into.
- ... (no answer).



Source: A Pew Research Center survey of adults in August and September 2016.

CIVIL RIGHTS

gender identity. Senator Sonia Chang-Diaz (D), the prime Senate sponsor told MassLive.com, “When you look at the national landscape and consider the anti-LGBT events that have recently taken place across the country in the public arena, it’s really critical that Massachusetts stand on the right side of history and make a strong recognition that public accommodations are fundamental to equal rights in America.”



Senator Sonia Chang-Diaz
Massachusetts

Lawmakers opposed to these policies also have passed laws. In March 2016, members of the North Carolina General Assembly were the first to pass a bill requiring students in public schools to use bathrooms corresponding to the sex shown on their birth certificate.

Legislators in at least 20 other states have proposed similar legislation, with more than half specifically addressing school bathrooms. Three weeks before

North Carolina’s legislature passed its law, South Dakota passed a similar one, but it was vetoed by the governor.

South Dakota’s “Student Privacy Act” would have required transgender students in public schools to use bathrooms, locker rooms and other facilities based on the sex assigned them at birth. The bill’s sponsor, former Representative Fred Deutsch (R), says he introduced the bill “in response to the federal administration’s new interpretation of Title IX—that explicitly prohibits sex discrimination in federally funded educational programs—that transformed it into a prohibition against discrimination on the basis of sexual orientation.”



Former Representative Fred Deutsch
South Dakota

Where Things Stand

There are numerous lawsuits pending, besides Grimm’s. After North Carolina passed its law, the federal government threatened to withdraw funding to

the state under Title IX. Governor Pat McCrory (R) sued for a ruling clarifying the law, and the Justice Department sued the state right back. McCrory has since dropped the suit, citing its “substantial costs to the state.”

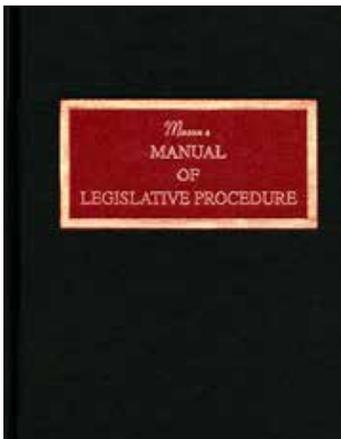
North Carolina is, however, still fighting another lawsuit challenging the law’s constitutionality filed in March on behalf of Joaquin Carcaño, a 27-year-old transgender man who works at the University of North Carolina at Chapel Hill and is banned from using the men’s restroom at work under the law.

At press time, however, the North Carolina governor’s race was still undecided. If McCrory ends up losing, it could affect the future of these lawsuits.

Debates over LGBT rights will continue, but some of the current lawsuits may not as we transition to the Trump administration. The Supreme Court ruling in the case involving Gavin Grimm will be important, as it could have long-lasting implications in several policy areas.

To play the game, you have to know the rules

Order your copy of Mason’s Manual of Legislative Procedure



Kentucky House Speaker of the House Greg Stumbo (D), center, consults with two of his members.

Used by more than 70 percent of the nation’s legislatures, Mason’s Manual is the only parliamentary manual designed specifically for state legislatures. The current edition features up-to-date citations of case law, extensive internal cross references and a user-friendly index.

Legislators and legislative staff receive Mason’s Manual for the low rate of **\$60 per copy** - a 20% discount.

Order now at ncsl.org/bookstore