



Kansas

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## Opponent Testimony for SB 255

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**American Civil Liberties Union of Kansas**

**Senate Committee on Education**  
**Wednesday, March 22, 2023 – 144-S**

Committee Chair and Members of the Committee,

I appreciate the opportunity to provide this testimony on behalf of the American Civil Liberties Union of Kansas. I'm D.C. Hiegert, a lawyer, and the LGBTQ+ legal fellow with the ACLU of Kansas. We are a nonpartisan, non-profit organization that works to preserve and strengthen the civil rights and liberties of every person in our state.

The ACLU of Kansas stands strongly opposed to SB 255 and urges you to not vote this bill out of committee. This bill is yet another in a line of wholly unnecessary bills that are rooted in prejudice, fixate on Kansas children's genitalia, and further marginalize an already vulnerable population of youth.

SB 255 is also another example of government overreach and excessive government regulation—instead of allowing Kansas school districts to identify and implement the policies that are best for their students and communities, this bill would force districts to adopt an outdated, inaccurate, and underinclusive definition of sex that would make them vulnerable to costly litigation and put their federal education funding at risk.<sup>1</sup>

It is important to note that our opposition to this bill is not rooted in opposition to the creation or existence of policies that allow for single-sex spaces—courts have made clear that single-sex spaces can and should exist in certain contexts. But courts have also made clear that trans people have a right to access those spaces, just as their cisgender peers do.<sup>2</sup> SB 255 would infringe on

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<sup>1</sup> For FY 2023, the estimated federal funding for primary and secondary education in Kansas was over \$504 million and total funding for education was over \$1.6 billion. See United States Dep't of Education, Fiscal Years 2021-2023 State Tables for the U.S. Department of Education,

<https://www2.ed.gov/about/overview/budget/statetables/index.html>.

<sup>2</sup> See *United States v. Virginia*, 518 U.S. 515 (1996); see e.g., *Grimm v. Gloucester Cty. Sch. Bd.*, 972 F.3d 586, 616 (4th Cir. 2020); *Whitaker By Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1051 (7th Cir. 2017); *A.M. by E.M. v. Indianapolis Public Schools*, No. 1:22-cv-01075-JMS-DLP, --- F.Supp.3d ----, 2022 WL 2951430 (July 26, 2022); *B.E. v. Bigo Cty. Sch. Corp.*, No. 2:21-cv-00415-JRS-MG, --- F.Supp.3d ----, 2022 WL 2291763 (S.D. Ind. June 24, 2022); *A.C. by M.C. v. Metropolitan Sch. Dist. of Martinsville*, 601 F. Supp. 3d 345 (S.D. Ind. 2022); *Evancho v. Pine-Richland Sch. Dist.*, 237 F. Supp. 3d 267, 288 (W.D. Pa. 2017); *M.A.B. v. Bd. of Educ. of Talbot Cty.*, 286 F. Supp. 3d 704, 719-722 (D. Md. 2018).

that right and discriminate against trans students in Kansas in violation of the U.S. Constitution and Title IX of the Civil Rights Act of 1964.<sup>3</sup>

In addition to the legal concerns raised by this bill, SB 255 also codifies stigma against trans people into law and opens an already vulnerable population of Kansas kids up to further discrimination and harm. The 2022 National Survey on LGBTQ Youth Mental Health found that 71% of trans and gender diverse youth report experiencing discrimination because of their gender identity; 37% report that they have been physically threatened or harmed due to their gender identity.<sup>4</sup> This increased exposure to discrimination and violence is what leads to LGBTQ+ youth disproportionately experiencing negative mental health outcomes. Half of LGBTQ+ youth aged 13-17—that is, *one in two*—report considering suicide in the past year.<sup>5</sup>

But the research also shows that when schools have affirming LGBTQ+ policies, these students report improved mental health outcomes and lower rates of suicide attempts.<sup>6</sup> In Kansas, 25% of LGBTQ+ students in K-12 schools or at colleges/universities already report feeling unsafe and unsupported at their school.<sup>7</sup>

Instead of allowing Kansas schools to adopt policies that protect all of their students, SB 255 is forcing a discriminatory and harmful policy on all Kansas school districts that will violate students' rights, worsen the mental health outcomes for Kansas kids, and further expose trans students to discrimination and violence. For these reasons, the ACLU of Kansas urges you to oppose SB 255.

Thank you.

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<sup>3</sup> *See id.*

<sup>4</sup> *See* 2022 National Survey on LGBTQ Youth Mental Health, The Trevor Project, [https://www.thetrevorproject.org/survey-2022/assets/static/trevor01\\_2022survey\\_final.pdf](https://www.thetrevorproject.org/survey-2022/assets/static/trevor01_2022survey_final.pdf).

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

<sup>6</sup> *Id.*

<sup>7</sup> *See* LGBTQ+ Community & Advocate Survey Overview, ACLU of Kansas, <https://www.aclukansas.org/en/lgbtq-community-advocate-survey-overview>.