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LD 699 – Ought Not To Pass

**An Act To Allow Public Schools To Offer Classes Limited To Students Of A Single
Gender**

Submitted to the Joint Standing Committee on Education and Cultural Affairs

March 14, 2013

Senator Millett, Representative MacDonald, and members of the Committee on Education and Cultural Affairs, greetings. My name is Oami Amarasingham, and I am Public Policy Counsel for the American Civil Liberties Union of Maine, a statewide organization committed to advancing and preserving civil liberties guaranteed by the Maine and U.S. Constitutions. I am joined here today by Zachary Heiden, Legal Director of the ACLU of Maine. On behalf of our members, we ask you to vote “ought not to pass” on LD 699.

As a legal matter, it is difficult to discern the purpose of LD 699. Sex discrimination in schools is prohibited by federal regulation, federal statute, and the Fourteenth Amendment to the United States Constitution. Nothing in this bill, or in any bill passed by a state legislature, would have any effect on those laws. For a public school in Maine to legally offer single-sex education to primary and secondary students, it would have to satisfy those federal strictures in order to survive a legal challenge. The danger, then, with this bill is that it could be read as encouraging schools to institute single-sex classes and thereby provide a false sense of security to school administrators, who might not be aware of the significant federal barriers to sex-segregation in public schools and who might unwittingly run afoul of Title IX or the Equal Protection Clause or any other federal law that restricts schools from segregating students by sex.

Title IX of the Education Amendments of 1972, the federal statute that prohibits sex discrimination in educational institutions that accept federal funds, prohibits separation of students on the basis of sex with a few narrow exceptions. The United States Constitution requires public schools to articulate an exceedingly persuasive justification for sex-based classifications like separating boys from girls, and to demonstrate that the sex separation is substantially related to the achievement of important governmental interests.¹ Because single-sex education has never been proven to be any more effective than coeducation at improving educational outcomes, schools will not be able to satisfy this requirement. Moreover, educational programs may not be based on overbroad generalizations about the different talents, capacities, and preferences of boys and girls, as many of these programs explicitly are.

In effect, LD 699 does little more than restate the requirements of a 2006 federal regulation that implements Title IX.² That regulation already applies to all schools in Maine that receive federal funds. As schools across the country have learned the hard way, though, compliance with those regulations is easier said than done. School districts in Louisiana, Alabama, West Virginia, Pennsylvania, and Wisconsin all recently abandoned plans to provide sex-segregated education when confronted with the challenge of satisfying the demands of federal regulation, federal statute, and the Constitution.

That was also the decision reached by a middle school here in Maine. In September 2011, the ACLU of Maine learned of a sex-segregated program at the Willard School in Sanford, Maine, through a report in the *Portland Press Herald*.³ We filed a public records request to investigate whether Title IX or the Constitution was being violated. After reviewing 94 pages of documents, we concluded that the Willard School was violating the equal protection clause of the Fourteenth Amendment, as well as federal non-discrimination law. Indeed, the Willard School's program was built upon stereotypes that boys cannot sit still⁴ and that girls work best collaboratively and in low-stress

¹ See *United States v. Virginia, et al.*, 518 U.S. 515, 531-32 (1996).

² Compare 34 C.F.R. §106.34 (2006), with L.D. 699, 126th Leg., 1st Reg. Sess. (Me. 2013).

³ Emma Bouthillette, *Class Distinctions: Where boy doesn't meet girl*, *Portland Press Herald*, Sept. 19, 2011.

⁴ Michael Gurian, *The Boys and Girls Learn Differently Action Guide for Teachers* 75 (2003).

environments.⁵ The school provided boys with extra opportunities for physical activity through participation in the “NFL Experience,” while the girls sipped hot cocoa and had group conversations. We informed the school of the violations, and the school decided to terminate the program.

That the sponsors of this bill are themselves residents of Sanford has not escaped our attention. For the benefit of the people of Sanford, and for any school personnel who are following this debate, we wish to emphasize the following two points. First, our analysis of the legality of the Willard School program was based entirely on federal regulatory, statutory, and constitutional law. And, second, nothing in this bill would change that analysis nor alter our conclusion that the Willard School program failed to comply with the law. We fear that this bill, if passed, will provide schools with a false sense of legal security in developing programs that could violate federal law and the Constitution. Our analysis of such programs is unaltered by LD 699, and the ACLU will continue to bring legal challenges to enforce the obligations that public schools have under federal law and the Constitution to avoid discrimination.

Single-sex schooling is a bad idea for Maine. Many sex-separated school programs are based on the ideas of Dr. Leonard Sax and other proponents of single-sex education, whose discredited theories on the supposed differences between boys’ and girls’ brains are rooted in archaic stereotypes. For example, Sax says that girls do badly under stress, so they should not be given time limits on a test; and that boys who like to read, do not enjoy contact sports and do not have a lot of close male friends should be firmly disciplined, required to spend time with “normal males” and made to play sports. Of course, we all know girls and boys who do not fit these stereotypes. Nonetheless, Sax and others recommend that every detail down to the temperature and the light in classrooms be dictated by students’ sex. Do we really want to encourage these practices in Maine?

⁵ Leonard Sax, *Why Gender Matters: What Parents and Teachers Need to Know About the Emerging Science of Sex Differences* 88-92 (2005). See also Gurian Institute, Teacher Training Materials, "How Boys and Girls Learn Differently" (2006).

Sax and his colleagues' theories were recently debunked in an article authored by a multidisciplinary team of scientists in the prestigious journal *Science*, which argued that sex segregation does not improve academic performance, but does foster stereotypes.⁶ To the extent that LD 699 could be read as encouraging an increase in single-sex classes in Maine, we ask legislators to consider whether the expansion of unproven programs that could increase gender stereotyping and expose Maine schools to lawsuits is a good use of our limited school resources.

All students deserve to reach their full potential, regardless of their sex. That starts with a high quality, fair education that focuses on techniques that work and teaches all students as individuals, not as stereotypes. We urge you to vote "ought not to pass" on LD 699.

⁶ Diane F. Halpern *et al.*, *The Pseudoscience of Single-Sex Schooling*, 333 *Science* 1706, 1706 (2011).