

WOLF V U.S.: FREQUENTLY ASKED QUESTIONS

Why is WoLF suing the United States Federal Government?

Women's Liberation Front (WoLF) is suing the U.S. Department of Justice (DOJ) and U.S. Department of Education (DOE) in order to challenge their recent redefinition of "sex" in Title IX to include "gender identity." This redefinition effectively renders sex meaningless as a legally protected category in federally funded schools and universities (which is almost every school and university in the country). WoLF filed lawsuit on August 11th, 2016, Women's Liberation Front v. United States Department of Justice, et al., Case No. 16-cv-00915, US District Court for the District of New Mexico.

What is Title IX, and why is it important to women and girls?

Title IX of the Education Amendments Act of 1972 protects women and girls from discrimination on the basis of sex in education programs or activities that receive federal funding. Since its passage over 40 years ago, Title IX has formed the bedrock of equal educational opportunity in the U.S., necessitating countless reforms to raise the level of opportunity for females in an attempt to match what previously only males had.

What exactly have the DOJ and DOE done to Title IX?

In May 2016, the DOJ and DOE issued a "joint guidance" requiring schools and universities that receive Title IX funding to interpret sex to include "gender identity" or lose that funding.

The guidance mandates that schools must open up women's and girls' bathrooms, locker rooms, and dormitories to any male who "identifies" as requiring access to them. Girls' rights to personal privacy and freedom from male sexual harassment, forced exposure to male nudity, and voyeurism have thus been eliminated. The guidance characterizes any girl's objection to this as mere "discomfort" that has no justification for accommodation within school policy.

This redefinition of "sex" in Title IX to "gender identity" effectively strips women and girls of their legal protections, as it eliminates the ability to legally distinguish between males and females in federally funded schools.

In a cruel irony, Title IX, which was enacted in part to champion female sports, would now be used to dismantle them, as male athletes use "gender identity" to demand access to female teams, occupying places which would have otherwise gone to females and dominating the competition.

What is wrong with this reformulation of Title IX?

The DOJ/DOE redefinition of "sex" to mean "gender identity" violates the foundations of Title IX by overriding the ability to distinguish between males and females, thus allowing male access to female-designated spaces, athletics, programs, scholarships, and awards. Title IX was premised on the ability to make a sexed distinction, as it was

explicitly legislated with the aim of raising the level of educational opportunity for females.

Consider for a moment why Title IX is responsible for preventing sexual harassment/sexual violence in schools. Female access to education has been historically, and is still, thwarted by a toxic climate of sexual objectification and harassment from males — posing an immense, discriminatory barrier to females' educational opportunities matching those of males. Mandating male access to females' vulnerable spaces is in direct opposition to schools' fundamental responsibility under Title IX to prevent sexual harassment and *structurally ensure* an environment that is *preventative* to male sexual harassment and general male sexual violence.

What are the recent legal developments on this issue?

WoLF is not alone in seeing the harmful ramifications of this act of executive overreach. The state of Texas and 14 other states and state agencies requested a preliminary injunction in order to immediately bar the DOJ/DOE joint guidance from being enforced, and on August 21st, they were granted this injunction in a Texas federal district court.

As of now, the preliminary injunction will remain in place until either the court issues its final ruling in the case, or its order is overturned by the U.S. Court of Appeals for the 5th Circuit. WoLF's legal team anticipates that the Obama administration will move quickly to ask the 5th Circuit to overturn the preliminary injunction.

Thus, while this development contributes favorably towards WoLF's objective, it is only a temporary solution. As WoLF's own lawsuit proceeds, we are also currently exploring options for advancing our arguments in the Texas case, in order to insert the feminist perspective into the proceedings.

UPDATE: This issue has been brought to the Supreme Court of the United States. Women's Liberation Front has filed a SCOTUS Amicus Brief so that the feminist argument against the dissolution of Title IX will be heard in the highest court in the land.

What is WoLF's unique legal contribution on this issue?

The mainstream media generally presents this issue as a false dichotomy between right-wing "reactionaries" and "forward-thinking" liberals who are 100% behind the Obama administration's "gender identity" overhaul on civil rights laws. This narrative is sorely reductive, ignoring the many concerned parents and female students who span a wide spectrum in their political convictions. WoLF stands as an example of the pluralism of dissenting voices on this issue.

We seek to illuminate the matter through a feminist perspective, which has to date been virtually absent from formal legal challenges. We emphasize how Title IX is being overturned not just in areas of bathrooms and locker rooms, but in all aspects of its implementation — unfairly disadvantaging girls through the very legislation that was meant to protect their rights.

How does the DOJ and DOE define “gender identity?”

The DOJ/DOE joint guidance defines “gender identity” as “an individual’s internal sense of gender,” stating that an individual’s “gender identity” may be “different or the same” as the individual’s sex.

For example, a male person may declare that he has an “internal sense” of being feminine. According to the DOJ and DOE, he would then be said to have a “gender identity” that is the opposite of his sex. The guidance mandates that a student’s “gender identity” must be treated as the student’s sex “for purposes of Title IX and its implementing regulations.”

How does “gender identity” erase sex-based protections?

The category of “gender identity” totally supplants Title IX’s original meaning of prohibiting discrimination on the basis of sex. In many cases, the new “gender identity” rights of males to access females’ vulnerable spaces such as bathrooms, showers, and locker rooms has been shown to trump women and girls’ right to privacy and freedom from voyeurism, exposure to male nudity, and the threat of sexual harassment.

The rights of women and girls are so erased by the joint guidance that it even includes new policy placing restrictions on the speech of school staff and contractors, preventing them from fully discussing the impact had on female students. Under the guidance, if girls object to a male in their spaces or programs, school staff and contractors are prohibited from even acknowledging the girl’s complaint, as to correctly identify the male in question as a male or a “he” would constitute a violation of Title IX, as it is now being interpreted.

If “gender identity” is an “individual’s internal sense of gender,” then what is “gender”?

DOJ and DOE define “gender” as something distinct from the biological category of sex (the state of being either male or female). “Gender” (distinct from sex) predominantly refers to stereotypical qualities of character, behavior, and appearance, which are said to be either traditionally “feminine” or traditionally “masculine.”

For example, females are stereotyped by the gendered qualities of being frivolous, irrational, nurturing, and submissive, as well as conforming to certain gendered standards of appearance like wearing makeup, heeled shoes, and dresses. Males, on the other hand, are stereotyped by gendered qualities of being logical, active, and brave. Therefore, “gender identity” refers to an “individual’s internal sense” of sexist stereotypes such as these.

Ironically, one of the aims with which Title IX was originally enacted was to combat sexist stereotypes through education reform. Today, however, the DOJ/DOE redefinition appears to reinforce the legitimacy of these stereotypes as being connected to some internal essence of the self through “gender identity.”

How can “gender identity” be practically enforced in educational institutions?

Because there is no way for a school to objectively determine an individual’s internal sense of “gender identity,” schools must organize facilities and programs on the basis of whatever students declare their feelings to be.

A male student may conform to sexist feminine stereotypes of behavior and appearance, such as wearing a skirt or makeup. However, the DOJ and DOE define “gender identity” solely on the basis of the student’s own declaration. An individual’s “gender identity” has no limitations on changing over time, even as frequently as from hour to hour, depending on the individual’s “internal sense.”

How were the DOJ and DOE able to overturn the express language and intent of Title IX?

The DOJ and DOE were able to promulgate this reformulation under the premise that this is not a substantive reinterpretation of Title IX. But, as discussed above, this is a radical departure from the original, sex-based legislation and is in many ways *directly oppositional* to its specific aims of removing barriers to female educational opportunity.

This is a clear overreach of authority. WoLF argues that by autocratically imposing this massive change, the DOJ and DOE have violated the Administrative Procedure Act. Texas and the other states who jointly applied for a preliminary injunction against the guidance agree with WoLF on this point, and a Texas federal district judge ruled that the DOJ and DOE are indeed in violation of the Administrative Procedure Act. It is yet to be seen, however, if this ruling will stand.

Wait, isn’t this lawsuit just about the “transgender bathroom issue?”

While press coverage may present this lawsuit as some snazzy headline about “transgender bathroom bills,” that is a reductive characterization of this case.

Title IX cannot create equity between the sexes in education by championing the rights of women and girls when it cannot legally distinguish males from females. Women’s advocacy groups filing class action lawsuits against universities and the federal government is what originally precipitated Title IX. Now it is up to women’s advocacy groups, like Women’s Liberation Front, to stand against this attack on Title IX.

What is the crux of this lawsuit?

At its heart, this legal battle is about considering the harmful consequences in redefining the category of “sex” in federal civil rights laws. Though we are focused specifically on its ramifications in education (as the harmful effects on children present a particularly pressing situation) this legal question may lead to a wider examination of performing this redefinition from “sex” to “gender identity” in other instances, such as the DOJ’s parallel reformulation of Title VII of the Civil Rights Act of 1964. In a similar move to

the reformulation of Title IX, in 2014, the DOJ mandated (again through a casual memo) that the category of “sex” in sex-based employment discrimination now refers to “gender-identity.”

When discrimination against women and girls can no longer be attached to the category of sex, females as a class lose the ability to contest their systemic mistreatment. For example, a Texas woman claimed she was discriminated against on the basis of sex in being fired from her job because she asked for a place to pump breastmilk at work. The federal judge ruled that because men can sometimes lactate, her discrimination was not based on sex.

When sex-based legal protections do not necessarily refer to any material state of being male or female, but instead to an internal feeling of “gender identity,” the category of sex becomes meaningless. Lactation becomes something that certain individuals just happen to do more than others for some reason. And women’s and girls’ sports teams appear to have no material basis for being separated from male competitors.

What about gender nonconforming people? Aren’t the DOJ and DOE trying to protect them?

Rhetoric used in recent DOE guidance expresses a concern regarding how to protect gender nonconforming students from sex-based discrimination. This is understandable, as it presents a pervasive cultural (and legal) problem. For example, a girl or woman who does not conform to sexist stereotypes of gendered appearance may be subjected to male sexual harassment. The male violence of “corrective rape” has long been a terrifying threat to lesbians, who present an affront to the heterosexual order. Males who are gay, or otherwise simply do not conform to masculine stereotypes, similarly offend the gendered order of hierarchical dominance and so may be subject to bullying and harassment.

WoLF recognizes that an individual’s personality is complex and that we often feel trapped in the narrow confines of conforming to sexist categories. It is important to remember, however, that “gender” is not merely some all-pervasive plot to capture complex individuals into binary categories of either masculinity or femininity. Just as Title IX originally recognized that sexual harassment was pervasively performed in order to terrorize and intimidate female persons out of educational opportunity, it is critically important to maintain awareness of the fact that gender is socially enforced in order to hold back the female class of persons.

Title IX originally recognized the oppressive function of gender in holding back females as a class. It was legislated to combat sexist stereotypes in which women were only encouraged to become either mothers, secretaries, nurses, or teachers. The DOJ and DOE obliteration of the category of sex eliminates the law’s ability to combat gender with the specific agenda of advancing the female class of persons through education.

What about “intersex” people?

We are not advocating for any specific policy regarding the small population commonly referred to as “intersex” persons in the United States. We recognize that this population

is extremely diverse and so any policy addressing them as a univocal group would inevitably fail to be adequately descriptive and address their varying needs. We take issue with how the existence of intersex persons has been ideologically appropriated for the purposes of claiming that there is no such thing as sex or sexual dimorphism in humans. This flimsy assertion is patently false, disproved by basic biological facts. It is akin to claiming that because certain humans are born without two legs, humans as a species are not bipedal.

Do males entering female sports ever have any advantage in being able to gain positions which would have otherwise gone to females?

Examples of this phenomenon have occurred throughout the world in various sports. In women's cycling, two novice, mediocre male cyclists competed against women, under the names Michelle Dumaresq and Sylvia Castaneda. Dumaresq swept numerous women's cycling championships from 2001 to 2006, both in Canada and competing for Canada in international competitions. Castaneda won first place in the 2015 women's division of Vittoria Eastern States Cup. It is clearly not fair to the women who train for these competitions and compete for the same sponsorships, when women's sports remain underfunded.

In Iran, males dominate female sports teams. In 2015 it was revealed that eight of the players on Iran's national women's soccer team were actually males.

Recently, a male student in Alaska took home all-state honors in girl's track and field, a position which would have otherwise gone to a female athlete. Despite the male's declaration of "gender identity" which grants him access to female sports teams, he still has all the male physical advantages of bone strength, ligament strength, muscle mass, etc. The list could go on. Female sports were created separate from males as a way to give females a fair chance at competition, yet this basic facet of material reality is now being disregarded.

What happens on this legal issue from here?

While WoLF's lawsuit in New Mexico against the DOJ and DOE proceeds, there may be further developments on this issue in two other key cases: *The State of Texas et. al. v. United States* (summarized above in question 5). And the Gavin Grimm case ruled on earlier in April 2016.

In *G.G. ex rel Grimm v. Gloucester County School Bd.*, the plaintiff is a female high school student who "identifies as" a boy. Initially a federal district court in Virginia issued a preliminary injunction allowing "G.G." to use the boys' bathroom. On April 19 the Court of Appeals for the 4th Circuit upheld that ruling, relying on the Department of Education's interpretation of sex to include "gender identity." On August 3rd, the U.S. Supreme Court temporarily "stayed" the 4th Circuit's ruling, thus allowing the school board to prohibit "G.G." from using the boys' bathroom. The student is represented by the ACLU, and has been supported by a number of women's organizations who filed amicus curiae ("friends of the court") briefs embracing the scientifically- and legally-

defective concept of “gender identity.” On August 29th, The Gloucester County School board filed a cert petition to take the case to the Supreme Court.

Like WoLF, the states litigating in Texas and the school board in Gloucester County oppose the policy in the joint guidance and argue that it conflicts with Title IX. However, to date they have been supported primarily by conservative religious organizations who filed amicus briefs, including the Eagle Forum (a conservative anti-feminist organization), the Liberty Center for Child Protection (a Christian ministry), and the Alliance Defending Freedom (a conservative Christian organization). Currently, WoLF is exploring options for advancing our distinctively feminist arguments in one or both of these cases.