



CASE SNAPSHOT ***North Carolinians for Privacy*** ***v. United States Department of Justice***

Case summary

North Carolina students and parents sued the federal government to stop it from bullying the state and its schools by threatening to revoke federal funding if they don't let males and females into the same restrooms and locker rooms.

What's at stake

- **Privacy, safety, and dignity.** If the Department of Justice's bullying tactics succeed, students ranging from kindergarteners to medical students attending North Carolina's public educational institutions will need to use restrooms and locker rooms with members of the opposite sex. This disregards the privacy, safety, and dignity interests Americans have long held in ensuring that people of the opposite sex cannot access their restrooms and locker rooms where they disrobe and are vulnerable.
- **Educational opportunities.** If North Carolina and its university system respect the privacy, safety, and dignity of North Carolinians by ensuring that they do not have to use restrooms and locker rooms with members of the opposite sex, the Department of Justice has threatened to revoke federal funding for North Carolina's schools and universities. For example, the University of North Carolina system could lose more than \$1.4 billion dollars in federal funds, and the students attending North Carolina's public universities could lose \$800 million in federally-backed loans. Secondary schools could also lose their federal funding. This dramatic loss of funding will diminish the educational opportunities for North Carolinians.
- **Freedom and democracy.** Congress writes laws. The president and his executive agencies enforce them. That's how our democracy is supposed to work. But the Department of Justice, an executive agency under President Obama, is now taking action to essentially rewrite the laws of the people without any accountability to voters. Specifically, it is unreasonably claiming that two laws Congress passed to protect women and enhance their opportunities—Title IX and the Violence Against Women Reauthorization Act—actually require North Carolina to let men into women's and girls' restrooms and locker rooms. If unelected bureaucrats can rewrite the law without accountability, democracy will fail. And if our government is powerful enough to command innocent school children to disrobe in the presence of opposite-sex classmates, then there will be little it will not be powerful enough to do. Indeed, the federal government's actions threaten our very liberty to live our lives and raise our children in accordance with the most basic expectations of common decency, dignity, and privacy in our bodies.

Background and legal analysis

North Carolina democratically enacted House Bill 2, a commonsense law that protects people's privacy in restrooms and locker rooms in government buildings and public educational institutions in the state. It does this by ensuring that men do not access women's and girls' restrooms and locker rooms and vice-versa, a privacy and safety norm that has long been recognized and protected in America.

In response, the Department of Justice threatened to revoke federal funding from North Carolina's public education system—from elementary schools up through the state's university system—if they don't allow men to use women's and girls' restrooms and locker rooms and vice versa. And they escalated that threat by filing a federal lawsuit against North Carolina on May 9, 2016. The federal government's message to North

Carolina is clear: either deny its students the educational opportunities that come with the federal funding enjoyed by all 50 states or deny them an educational experience that protects privacy, dignity, and safety.

The federal government's primary theory is based on Title IX. Title IX bans discrimination on the basis of "sex" in federally funded educational institutions, and Congress adopted it to provide equal opportunities for women. But the federal government is now saying that the ban on "sex" discrimination is actually a ban on "gender identity" discrimination. With this baseless assertion, the federal government argues that North Carolina's public education system must let people use restrooms and locker rooms based on their self-identified gender, rather than their biological sex. This means that a biological man can use a girls' locker room if he simply claims to be a woman. In another sad twist of irony, the federal government argues that the Violence Against Women Reauthorization Act, which is designed to enhance women's safety, requires allowing men into women's locker rooms and restrooms, which increases the risk of sexual assault.

The members of North Carolinians for Privacy are unwilling to lose their educational opportunities or be forced to shower, change clothes, and use the restroom with members of the opposite sex. They are also unwilling to stand by as the federal government, through executive fiat, reinvents the meaning of the laws designed to protect females and enhance their opportunities in a way that endangers women and girls.

Our role in the case

Alliance Defending Freedom serves as the attorneys for North Carolinians for Privacy in this challenge against the federal government's efforts to deny privacy, safety, dignity, and educational opportunities to North Carolinians.

Related cases

- [*Students and Parents for Privacy v. United States Department of Education*](#) (ADF case)
- [*McCroy v. United States of America*](#) (not an ADF case)
- [*United States of America v. North Carolina*](#) (not an ADF case)