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The Lesson of Single-Sex Public Education: Both Successful and Constitutional

FOREWORD

THE LESSON OF SINGLE-SEX PUBLIC EDUCATION: BOTH SUCCESSFUL AND CONSTITUTIONAL

THE HONORABLE KAY BAILEY HUTCHISON
UNITED STATES SENATOR

“Educate and inform the whole mass of the people . . . They are the only sure reliance for the preservation of our liberty.”

Letter from Thomas Jefferson to James Madison, 1787

The authors of the Declaration of Independence knew that the strength of our democracy depends on quality public education. Unfortunately, many of our public schools probably would not meet the requirements of our founding father. America’s reading, math and science scores have been basically stagnant for decades, according to the National Assessment of Educational Progress.¹ Seventy one percent of high school students graduate in four years, down from seventy-seven percent three decades ago.² Countless children are trapped in schools with inadequate supplies, obsolete computers, and uncertified teachers.

Presently in our nation, we are engaged in a monumental effort to improve our public education and empower all Americans with the

1. See U.S. Dep’t of Educ., *What is NEAP?*, available at <http://nces.ed.gov/nationsreportcard/about/> (last visited Sept. 9, 2001) (noting that the project is carried out by the Commissioner of Education Statistics and “is known as ‘the Nation’s Report Card,’ [] the only nationally [conducted] and continuing assessment of what America’s students know and can do in various subject areas”).

2. See U.S. DEP’T OF EDUC., *MINI-DIGEST OF EDUCATION STATISTICS*, at tbl. 101 (2000).

knowledge and tools they need to succeed. To save our public schools, we must be more creative and expand the options for such schools—to give parents more choices to fit the needs of each child. One such option I have supported in the Senate is single-sex public schools and classrooms.

Hundreds of private, single-sex schools have already successfully educated tens of millions of Americans. According to the National Coalition of Girls' Schools, enrollment in its member schools rose twenty-nine percent in the last decade.³ Meanwhile, the number of single-sex private schools in America rose from 1012 in the fall of 1990 to 1151 in 1997.⁴

Talk to students and graduates of single-sex schools (mostly private or parochial), and almost all will say with gusto that they were enriched and strengthened by their experience. Evidence shows that, at certain ages, both boys and girls in single-sex programs can build more confidence, increase focus on their studies, and ultimately be more successful in school, as well as later in their careers. Both boys and girls reported a sense of camaraderie and teacher support not encountered in co-educational classrooms. These positive attitudes translated into positive academic results.

Study after study has demonstrated that girls and boys in single-sex schools are academically more successful and ambitious than their co-educational counterparts.⁵ Minority students in single-sex schools often show dramatic improvements in attitudes toward school, greater interest among girls in math and science, and dramatically fewer behavior problems.⁶

Consider the popularity and success of single-sex classrooms at the "Campus School," a public grade school run by the University of Memphis. When given the choice, the large majority of parents chose to put their children in single-sex rather than co-ed classes. As

3. See Nat'l Coalition of Girls, *Membership Update*, Winter 2001, at 1.

4. Compare U.S. Dep't of Educ., Nat'l Ctr. for Educ. Statistics Schools and Staffing Survey (1990), with U.S. Dep. of Educ., Nat'l Ctr. for Educ. Statistics Schools and Staffing Survey (1997).

5. See, e.g., R. Hawley, *The Case for Boys Schools*, in SINGLE-SEX SCHOOLING: PROPONENTS SPEAK 11-14 (D.K. Hollinger & R. Adamson eds., U.S. Dep't of Educ., 1993); see also Anne Zanders, *A Presentation of the Arguments For and Against Single-Sex Schooling*, in SINGLE-SEX SCHOOLING: PROPONENTS SPEAK 17, 18 (D.K. Hollinger & R. Adamson eds., U.S. Dep't of Educ., 1993); Kenneth Rowe, *Single Sex and Mixed Sex Classes: The Effects of Class Type on Student Achievement, Confidence and Participation in Mathematics*, 32 AUSTL. J. EDUC. 183, 195 (1988); GOOD RESEARCH GROUP, Nat'l Coalition of Girls' Schools in the U.S., *Achievement, Leadership and Success: A Report on Educational, Professional and Life Outcomes at Girls' Schools in the United States* (2000).

6. Cornelius Riordan, *Single Gender Schools: Outcomes for African and Hispanic Americans*, 10 RES. IN SOCIOLOGY OF EDUCATION & SOCIALIZATION 177-205 (1994).

the Scripps-Howard New Service reported this year, “school officials say they have fewer discipline problems and classroom distractions and promising academic results. In a society in which girls’ math and science grades traditionally drop beginning in the fifth grade, the Campus School girls are holding their own.”⁷

Support for single-sex schools comes from across the political spectrum. There is a bipartisan desire for more discipline in the classroom, school uniforms, higher standards and tougher tests—as well as more options in schools. Susan Estrich, a professor of law at the University of California, and manager of the Michael Dukakis presidential campaign in 1988, wrote a column praising single-sex education. Without boys in the classroom, researchers have found, girls speak up more, take more science and math, end up getting more Ph.D.’s, and serve on more corporate boards. While the benefits of single-sex education for boys have been less well-documented, there is at least anecdotal evidence that boys’ schools in the inner cities, where discipline is stressed and positive male role models emphasized, may result in lower dropout rates and higher test scores.⁸

One recent inner city success story is the Young Women’s Leadership Academy in East Harlem, New York. Teaching sixth through eighth grades, the school has offered a welcome refuge to its student body, most of whom are African-American or Hispanic and come from low-income households. Many of the students experienced problems at their previous co-ed schools.

Despite these difficulties, the new school broke all the stereotypes and records. Attendance hit ninety-five percent, well above that of neighboring schools. Over ninety percent of the students score above grade level on state-wide math and English tests. The city-wide average was under fifty percent. At the same time, almost no one dropped out—the girls simply loved this school—as a waiting list of applicants appeared.

A student named Cyndee Couch, when interviewed by correspondent Morley Safer on *Sixty Minutes*, cited harassment by boys as one of her reasons for attending the Leadership Academy. She told Mr. Safer: “As long as I’m in this school and I’m learning, and no boys are allowed in the school, I think everything’s going to be okay.”⁹

7. Lela Garlington, *Single-sex Classes Get High Marks in School Experiment*, WASH. TIMES, Feb. 26, 2001, at A2.

8. See Susan Estrich, *Ideologues Decry Single-Sex Education, But Girls Benefit*, DENV. POST, May 22, 1998, at B11.

9. *Sixty Minutes: School or Scandal?* (CBS television broadcast, June 8, 1997).

The New York schools inspired a similar effort in Chicago. Last August, a charter school for girls focusing on math and science opened, drawing heavily from the surrounding inner city student population. As reported in the *Chicago Sun Times*, “Nancy Romero, 14, says she can’t wait for school to start. ‘When you’re in high school with boys, it’s a distraction. Girls try to look good instead of trying to do well in school.’”¹⁰

DESPITE CHALLENGES, SINGLE-SEX SCHOOLS ARE CONSTITUTIONAL
AND NON-DISCRIMINATORY

As the saying goes, no good deed goes unpunished. The legality of the New York girls’ school has been challenged by several groups, including the National Organization for Women and the American Civil Liberties Union, which filed a sex discrimination complaint against the school, claiming its existence violated Title IX of the Education Amendments of 1972. Title IX prohibits sex-based discrimination in schools that receive federal funds but, notably, does not bar sex-based admissions to single-sex private *or* public schools. Despite this, the federal Department of Education has yet to resolve this and similar complaints, leaving the status of such schools in question with respect to Title IX.

Opponents of single-sex schools also say such schools deny women the equal protection of the laws as guaranteed in the Fourteenth Amendment. These critics claim that the philosophy of “separate but equal” is wrong for classifications based on race and just as wrong for those based on gender. The American Association of University Women (AAUW) argues that “historically, separate has never proven to be equal [for women].”¹¹ However, a 1998 report by the AAUW had many favorable references to single sex education, such as the following: “For middle-school girls [who were] studied, the experience of a ‘safe environment’ has been critical to their identity development.”¹² A 1992 AAUW report also found that “girls often learn better in same-sex work groups than they do in mixed-sex groupings.”¹³

10. Liz Vivanco, *New Charter School is for Girls Only*, CHI. SUN-TIMES, Aug. 22, 2000, at 6.

11. Eleanor J. Bader, *Young Women’s Leadership School Opens Amid Controversy*, SOJOURNER: THE WOMEN’S FORUM, Dec. 31, 1996, at 12 [hereinafter Bader].

12. AM. ASS’N OF UNIV. WOMEN EDUC. FOUND., SEPARATED BY SEX: A CRITICAL LOOK AT SINGLE-SEX EDUCATION FOR GIRLS, at 4-8, 53-61 (1998).

13. See Bader, *supra* note 11, at 12.

TITLE IX AND THE “COMPARABILITY” STANDARD

Federal courts have repeatedly ruled that single-sex public schools are constitutional and do not violate Title IX. In *Williams v. McNair*,¹⁴ a three judge federal panel upheld that single-sex women’s program at Winthrop College in South Carolina, noting the benefits of single-sex education and the fact that the men had their own single-sex public college, the Citadel.¹⁵ In *Vorchheimer v. School District of Philadelphia*,¹⁶ the Third Circuit approved parallel single-sex high schools in the Philadelphia public school system because both schools had high admission standards and offered college preparatory courses. In *Kirstein v. Rector & Visitors*,¹⁷ a federal district court ruled that the all-male University of Virginia must accept women, not because single-sex education was *per se* inferior or unconstitutional, but found rather that women did not have similar alternatives in the state.

In its seminal Virginia Military Institute (VMI)¹⁸ decision in 1996, the U.S. Supreme Court made clear that public single-sex schools can be constitutional if “comparable” educational opportunities are provided for both men and women. The Court found that women seeking a military education in Virginia did not have a good alternative to VMI, a prestigious, well-endowed school for men.¹⁹ The Court, with Justice Ginsburg writing for the majority, held that: “Virginia, in sum, while maintaining VMI for men only, has failed to provide any ‘comparable single-gender women’s institution.’”²⁰

Justice Ginsburg further noted that distinctions between the sexes can be recognized in some situations (“heightened scrutiny”),²¹ whereas distinctions between races are almost never permissible (“strict scrutiny”).²² She wrote that “supposed ‘inherent differences’ are no longer accepted as a ground for race or national origin

14. *Williams v. McNair*, 316 F. Supp. 134, 135-36 (D.S.D. 1970), *aff’d*, 401 U.S. 951 (1971).

15. The Citadel recently “voluntarily” changed its admissions policy to allow the admission of women to the Corps of Cadets. *See United States v. Jones*, 136 F.3d 342, 347 (4th Cir. 1998) (affirming a District Court order requiring the Citadel to “develop a plan for the assimilation of women”) (internal quotations omitted).

16. *Vorchheimer v. Sch. Dist. of Philadelphia*, 532 F.2d 880, 887-88 (3d Cir. 1976), *aff’d*, 430 U.S. 703 (1977).

17. *Kirstein v. Rector & Visitors*, 309 F. Supp. 184, 187 (E.D. Va. 1970) (three-judge panel).

18. *See United States v. Virginia*, 518 U.S. 515 (1996).

19. *Id.* at 552 (noting that VMI’s endowment of \$131 million was the largest in the nation on a per-student basis).

20. *Id.* at 553.

21. *Id.* at 555.

22. *Id.* at 567.

classifications . . . *Physical differences between men and women, however, are enduring . . . sex classifications may be used . . . to advance full development of the talent and capacities of our Nation's people.*"²³

Writing in concurrence with the seven-Justice Supreme Court majority, Chief Justice William Rehnquist said that "comparable" single-gender school did not have to be equal in all the particulars. The government

does not need to create two institutions with the same number of faculty PhD's, similar SAT scores, or comparable athletic fields. Nor would it necessarily require that the women's institution offer the same curriculum as the men's. One could be strong in computer science, the other could be strong in liberal arts. It would be a sufficient remedy, I think, if the two institutions offered the same quality of education and were of the same overall caliber.²⁴

I recently received a thoughtful letter echoing this common sense distinction from Meg Moulton, Director of the National Coalition of Girls' Schools. Regarding my effort to allow federal funds to be used for "comparable" single-sex programs for both boys and girls, Moulton wrote:

While the distinction [between "comparable" and "equal"] may be subtle, we feel the implications are profound, to the degree that the intent of this section of the bill would be virtually nullified if [equal] is adopted . . . at the very heart of the impetus to create single-sex schooling opportunities is the well-established fact that boys and girls often exhibit unique learning styles To state that these settings must be equal in all respects is, simply put, illogical.²⁵

It is also important to recognize that, to the extent the Supreme Court in the VMI decision did narrow the test for establishing that a single-sex school passes constitutional muster, it did so in a higher education context. Gender differences between *adult* students that affect responses to educational environment may be more difficult to establish. There can be little doubt, however, that boys and girls, particularly in younger grades, are indeed different in how they learn, develop, and interact with their peers. This distinction between boys and girls continues to be a focus of legislation affecting educational choices for parents and their children.

23. *Id.* at 533 (emphasis added).

24. *Virginia*, 518 U.S. at 565 (Rehnquist, C.J., concurring).

25. Letter from Meg Moulton, Director of the National Coalition of Girls' Schools, to Senator Kay Bailey Hutchison (Apr. 10, 2000) (on file with author).

HUTCHISON AMENDMENT TO TITLE VI

The Title VI Innovative Education Reform grant program provides grants to states and local school districts for a range of reform efforts.²⁶ In 1998, I proposed an amendment to clarify any uncertainty in this area with regard to the use of Title VI funds for single sex education programs. The amendment would have allowed public schools to spend Title VI funds on single-sex schools and classrooms, as long as “comparable educational opportunities were made available for students of both sexes.” In June 1998, the Senate overwhelmingly (by a vote of 69-29) passed my amendment in support of the single-sex option.²⁷

Arguably, the Title VI program is already flexible enough to be used for such programs, but because of the legal uncertainty generated by the federal Department of Education, it would have clarified to the education community that it is, indeed, legal and acceptable to offer single-sex programs as an option for students. School officials had been unwilling to risk being subjected to a discrimination complaint or enforcement action, which could include the complete loss of all federal funds. However, the bill to which my amendment was added, the A+ Education Savings Account Bill, was vetoed by President Bill Clinton.²⁸

Last year, joined by Senator Susan Collins of Maine, I proposed a similar amendment that would allow Title VI funding for single-sex schools “consistent with applicable law” during fiscal year 2001. This specific language was adopted as a compromise to the “comparability” standard that is opposed by some groups, despite the fact that this is the same standard found in the Education Department’s own regulations implementing Title IX.²⁹

This modified amendment passed the Senate 99-0 on June 28, 2000, and was enacted into law, to remain in effect until the end of this fiscal year, September 30, 2001.³⁰ This amendment has sent the unmistakable signal that single-sex public school program are legal and acceptable.

This year I will be pursuing a permanent extension of legislation to allow the use of federal funds for such programs in the context of reauthorization of the Elementary and Secondary Education Act.³¹

26. See 20 U.S.C. § 7301 (1994 & Supp. 1995).

27. See H.R. 2646, 104th Cong. (1st Sess. 1998).

28. See Darlene Nelson, *A+ Education Savings Accounts*, CONCERNED WOMEN FOR AM. (Sept. 1, 1998), at <http://www.cwfa.org/library/education>.

29. See 34 C.F.R. § 106.35(b) (1999).

30. See H.R. 4577, 106th Cong. (2d Sess. 2000).

31. Elementary and Secondary Education Act of 1965, Pub. L. No. 89-10, 79 Stat.

We must give schools and teachers the flexibility to innovate and experiment. We must give parents and students the chance to escape bad schools that cannot guarantee a decent education, personal safety, or the individualized environment and attention each student needs.

My amendment is not a mandate, but an option. I believe decisions are best made at the local level. Public schools should have every option to give every child a good education and the best possible start in life.