



## How Anti-Trans Bathroom Bills Hurt Girls and Women

C. Ray Borck

*Do recent “bathroom bills” protect girls and women from sexual predators? Sociologist C. Ray Borck shows how—contrary to popular belief—gender-segregated public restrooms do not keep girls and women safe from violence. Public restrooms play an important role in public health, especially in urban contexts, and should be available and safe for all people regardless of gender identity or expression.*

The national conversation in the US about whether or not transgender and gender-nonconforming (henceforth “trans\*”) people should be legally and *de facto* permitted to use public restrooms began on May 28, 2014, when Houston City Council voted to enact the Houston Equal-Rights Ordinance (HERO), banning discrimination on the basis of sexual orientation, gender identity, sex, race, color, ethnicity, national origin, age, religion, disability, pregnancy, genetic information, and family, marital, and military status. The ordinance applied to businesses that serve the public, private employers, housing, city employment, and city contracting. Quickly, opponents of the ordinance—mainly constituents on the religious right—recast the broad anti-discrimination ordinance as “perverts and the mentally ill working together with the gay-rights lobby”—namely “aggressive gay-rights activist” (Erickson 2015) lesbian Mayor Annise Parker—to “force our wives and daughters to share their restrooms, dressing rooms, and locker-room showers with men” (Campaign for Houston 2015a). Opponents of HERO, also known as Proposition 1, submitted 50,000 signatures to force the ordinance to a vote, and began a vigorous campaign, using the slogan “NO MEN IN WOMEN’S BATHROOMS!”

Campaign for Houston<sup>1</sup>—“made up of parents and family members who do not want their daughters, sisters or mothers forced to share restrooms in public facilities with gender-confused men”—ran an ominous thirty-second, black-and-white television spot (Campaign for Houston 2015b) depicting a uniformed schoolgirl in a public restroom. A woman’s voice urgently narrated:

Houston’s Proposition 1 bathroom ordinance. What does it mean to you? Any man at any time could enter a woman’s bathroom simply by claiming to be a woman that day. No one is exempt. Even registered sex offenders could follow women or young girls into the bathroom. And if a business tried to stop them, they’d be fined. Protect women’s privacy. Prevent danger. Vote no on the Proposition 1 bathroom ordinance. It goes too far.

The spot ends with a boy entering a bathroom stall where a surprised girl sits on a toilet:

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<sup>1</sup> See: [www.campaignforhouston.com/about](http://www.campaignforhouston.com/about).



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Sexual violence perpetrated by cis<sup>2</sup> men against girls and women occurs at epidemic rates. The most severe of this violence is directed at trans girls and women, the very population being denied bathroom access, purportedly in order to protect cis girls and women from sexual predators. But public restrooms are not particularly dangerous places. Copious research reveals the frequency and circumstances under which gender-based violence typically occurs. One in five cis women will be raped at some point in their lives (compared to one in 71 cis men). Of transgender people, one in two will be sexually assaulted during their lifetime (which is also likely to be shorter than the average cis person's, as the average life expectancy of transgender people is 31 years) (Murphy 2012). Of rape and sexual assault victims, 91% are women. In eight out of 10 cases of rape, the victim knows the person who sexually assaulted them. Of people who sexually abuse children, 34% are family members, 96% of whom are cis men (Black *et al.* 2011).

Facts about the sexual assault of transgender people—especially transgender women—are particularly harrowing. Assaults are disproportionately perpetrated by those whose office it is to protect or aid, e.g. police or healthcare providers. Some 15% of transgender people report being sexually assaulted while in police custody or jail, which more than doubles (32%) if the person is black. Another 10% were assaulted by healthcare professionals. Of LGBTQ people who died in violent hate crimes, 50% were transgender women; the other half were male, many of whom were gender-nonconforming. Of all reported violent hate crimes against LGBTQ people, 17% were directed against transgender people, with most (11%) against transgender women (Kenagy 2005).

### **State responses to violence against women?**

The newest culture war is being fought over whether or not trans\* people should be allowed to use public restrooms. Even while much of public space has been gender-integrated, most public restrooms remain gender-segregated. It appears, moreover, as though most US Americans accept this arrangement of public space. This form of segregation is considered desirable, ostensibly for maintaining the privacy and protection of girls and women. Indeed, those seeking to bar trans\* people from using public restrooms appear unable to imagine safe gender-integrated or gender-inclusive restrooms. There is widespread belief that these restrooms would enable cis men to sexually assault cis girls and women. A particularly insidious feature of this discourse is that, in addition to unquestioningly reinforcing the normalcy and desirability of gender segregated public restrooms, it produces misplaced worry and anxiety about sexual violence against girls and women, replete with attendant fear-mongering. Simultaneously, the amplification of this fear eclipses the

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<sup>2</sup> The terms “cis,” “cisgender” and “cissexual” refer to people whose gender identities correspond with the sex they were assigned at birth, i.e. a person who is not transgender.

real, present, and ongoing epidemic of sexual violence against girls and women, especially trans girls and women.

On March 23, 2016, in an unprecedentedly proactive move on the part of the religious right, North Carolina passed House Bill 2 (HB2), requiring people to use the gendered restroom facility that corresponds to the “male” or “female” sex designation printed on their birth certificate. HB2 has inspired other states to take similar action. As I write, lawmakers in 15 states (Alabama, Arkansas, Illinois, Kansas, Kentucky, Minnesota, Missouri, New York, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, and Wyoming) have introduced similar legislation (Kralik 2017). Two months after HB2 passed, the Obama administration publicized guidance stating that Title IX—a 1972 federal law prohibiting sex discrimination in any educational program or activity receiving federal financial assistance—protects the rights of trans\* students to use the restroom that corresponds to their gender identity rather than the sex designated on their birth certificates or any other government-issued documents. One month after Donald Trump took office, his administration ordered the nation’s schools to disregard the Obama administrations’ guidance to extend Title IX protections to trans\* students (Somashekhar *et al.* 2017). Across the US, schools, cities, and states have been left to decide whether or not to legislate trans\* people into or out of the protected class of people who are permitted to use public restrooms.

### **Paternalism, hegemonic masculinity, and gender segregation**

Even as gender inequality continues to organize much of public life, public restrooms are one of the last vestiges of formal gender segregation. But public restrooms have not always been gender-segregated. The first law requiring separate restrooms for women and men was passed in Massachusetts in 1887 (Commonwealth of Massachusetts 1887) and applied specifically to factories that employed both female and male workers (Rhodan 2016). Around the turn of the century, similar laws were passed in nearly every state. Legal scholar Terry Stuart Kogan has shown that such laws reflected men’s anxieties about women entering the workforce. Furthermore, the laws indicated an ideology of “separate spheres”—the notion that men’s natural place in society is the public sphere of governance, economics, and politics, whereas the natural place of women is in the private sphere of domesticity, child-rearing, and housekeeping (Kogan 2007). Women were (and often are) viewed as the weaker sex, in need of protection from men, by men. Throughout the late 1800s and early 1900s, architectural expressions of the separate-spheres ideology resulted in separate “ladies” reading rooms in public libraries, “ladies’ cars” on commuter trains, and women-only parlor spaces.

The notion that women are in need of protection endures despite a degree of integration of women into the persistently male-supremacist public sphere. Widespread cultural belief in women’s inherent fragility is the dominant ideological position of present-day advocates of restroom segregation, and the rallying cry for barring trans\* people from using public restrooms altogether.

A fearmongering tone similar to that taken by Houston’s anti-HERO activists was deployed at a March 2016 rally organized by Keep NC Safe (a pro-HB2 organization), where one speaker stood behind a podium that read, “KEEP Women SAFE” and argued:

As any good father knows, it’s never okay for a man to be able to strip down and shower beside my daughters in a waterpark bathroom. Nor alongside my wife. Nor alongside my sister or mother or grandmother, or yours (Keep NC Safe 2016).

Consistently, opponents of legal protections for trans\* people in public space produce and repeat imaginary narratives in which gender-integrated restrooms allow sexually predatory men to enter women’s private spaces in order to harm them. Underlying these narratives is the notion that *all men* are potentially predatory. At a February 2015 Religious Broadcasters Convention, Arkansas governor Mike Huckabee quipped:

Now I wish that someone told me when I was in high school that I could have felt like a woman when it came time to take showers in PE. I'm pretty sure that I would have found my feminine side and said, "Coach, I think I'd rather shower with the girls today" (Oh 2015).

Hegemonic masculinity frames all men as naturally lecherous, as though salaciousness is a fundamental component of being a man. From the advent of the first gender-segregated public restrooms in the US in 1887 to the present—even as we have managed to desegregate the library and the commuter trains—the separate-spheres ideology and calls for the paternalistic protection of fragile girls and women persists to legitimate restroom segregation. An effect of segregation is that trans\* people are excluded from public restrooms altogether.

Trans\* advocates have been quite prolific in justly deconstructing the narrative that trans\* protections threaten girls and women. These advocates and allies have explained that transgender women are not men, that it is already illegal to enter a restroom with the intent to harass or harm someone, and that it is transgender people (not cis women) who experience the highest rates of harassment and violence in public restrooms.

Trans\* people exist. Like cis people, they need to use public restrooms. US federal anti-discrimination law protects people on the basis of race, color, religion, national origin, age, sex, pregnancy, citizenship, familial status, disability status, veteran status, and genetic information. It only makes sense that these laws should interpret "sex" as including trans\* people, and/or should include "gender identity" as a protected class status. At the same time, there is rampant sexual violence against an alarming number of girls and women. When attempting to create legislation aimed at protecting girls and women (which must include trans girls and women), jurisdictions seeking to address that violence would be aided by turning to the vast research and data that show how, when, where, and under what circumstances such violence occurs. Cis men have been harming girls and women in all manner of places, for as long as history is able to document. As of yet, there are no documented instances of a trans\* person harming a cis woman in a public restroom.

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**C. Ray Borck** is an assistant professor of sociology at Borough of Manhattan Community College (BMCC), City University of New York (CUNY). He lives in Flatbush, Brooklyn, with his dog Rudy Huxtable, and cat Tuxedo Mustache. He has published work on qualitative epistemologies, horizontal pedagogy, educational inequality, transgender transition, and identity politics. His most recent research explores cultural productions of masculinity via discourses about testosterone. He serves on the board of *Radical Teacher*, a socialist, feminist, and anti-racist journal on the theory and practice of teaching. He earned his PhD at the CUNY Graduate Center and his BS at Portland State University (PSU) in Oregon.

**To cite this article:**

C. Ray Borck, “How Anti-Trans Bathroom Bills Hurt Girls and Women”, *Metropolitiques*, 16 May 2017. URL: <http://www.metropolitiques.eu/How-Anti-Trans-Bathroom-Bills-Hurt.html>.