

A resolution of the Graduate and Professional Student Government calling for President Price to make a statement supporting and affirming the identities of trans, nonbinary, intersex, genderqueer, and gender nonconforming students

Author:

GPSG Diversity, Equity, and Inclusion Committee

Co-Sponsors: Duke OutLaw, DukeOUT, Divinity Pride, FuquaPride, Duke DPT Pride, Nicholas Queer Network, Nicholas School Student Council (NSSC), oSTEM @ Duke, DUSON Spectrum, Sanford Pride, DukeMed Pride, Dylan Jarrett, Mary Chandler Beam, Bailey Frank, Julia Douglas, Evelyn Pro, Charlotte S. Hogan, Anneliese Hermann, Emmy Wydman, Jeremy Mauritzen, Khanh Vien (President, oSTEM @ Duke), Elizabeth Brown, Kamillah Kassam, Dillon King

Whereas, the faculty board of the Duke Law journal *Law & Contemporary Problems* decided to publish, despite resistance from the student executive board, Kathleen Stock's article "The Importance of Referring to Human Sex in Language,"¹ which has brought harm to gender nonconforming students in the Law School and the greater University.² Such harm includes, but is not limited to, emotional distress, academic disruption, and providing a platform for harmful rhetoric under the guise of academic theory that can be cited in proposed and passed anti-LGBTQ+ bills around the country as evidenced by the many bills that cite previous Duke scholarship in support of discrimination against transgender people.³

Whereas, prior to their resignation, the student board attempted a number of measures to mitigate the harm this publication would bring to transgender students including removing the Kathleen Stock article, implementing a style guide with LGBTQ+ inclusive language, and including at least one openly gender nonconforming author in the proposal for the "Sex and Law" issue.⁴

Whereas, multiple members of the student editorial and executive board, including Editor-in-Chief Dylan Jarrett, of Duke's *Law & Contemporary Problems* resigned in protest of the inclusion

¹ See Kathleen Stock, *The Importance of Referring to Human Sex in Language*, 85 L. & CONTEMP. PROBS. 25 (2022).

² See Tom Bartlett, *The Essay That Prompted an Editorial Revolt*, CHRON. OF HIGHER EDUC. (Mar. 8, 2022), <https://bit.ly/3jt7LJo> (citing Duke Law students Dylan Jarrett and Lee Garza, among others, and describing the controversy over and harm caused by the publication and content of Stock's article and linking it to the larger national attack on trans rights).

³ See, e.g., Idaho House Bill No. 500, <https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2020/legislation/H0500.pdf> (citing Professor Doriane Coleman's work in L&CP in support of anti-transgender legislation); Kan. Senate Bill No. 55, http://www.kslegislature.org/li/b2021_22/measures/documents/sb55_enrolled.pdf (same); Mont. House Bill No. 112, https://leg.mt.gov/bills/2021/HB0199/HB0112_1.pdf (same); R.I. Senate Bill No. 638, <http://webserver.rilin.state.ri.us/BillText/BillText21/SenateText21/S0638.pdf> (same). This information is cited from Dylan Jarrett's letter of resignation dated June 27, 2021 (*infra*, note 5).

⁴ Attached addendum 1 letter to the *Law & Contemporary Problems* Faculty Board dated May 8, 2021.

of this article in the issue.⁵ In response to the inclusion of Stock's article, the remainder of the student board voted to abstain from contributing to the issue in their official capacities.⁶

Whereas, an open letter published in January 2021 by over 600 academics has condemned the work of Kathleen Stock as exclusionary and harmful to transgender and nonbinary people.⁷

Whereas, gender nonconforming students have been consistently marginalized in academic institutions.⁸

Whereas, as of March 15, 2022, in the year of 2022 alone, state lawmakers have proposed more than 150 bills that would restrict the rights of transgender youth in sports and limit access to gender-affirming medical care. This legislative approach continues a years-long sustained attack on nondiscrimination protections for LGBTQ+ people nationwide through legal measures.⁹

Recognizing, that academic freedom does not place an affirmative duty on Duke University to promote rhetoric that harms members of its own community.¹⁰

Now, therefore it be resolved by the GPSG that the graduate and professional student body of Duke University

Calls, for President Price to release a statement supporting trans, nonbinary, intersex, genderqueer, and gender nonconforming individuals, affirming their identities and their rights to live authentically without bias.

⁵ Attached addendum 2 Dylan Jarrett letter of resignation dated June 27, 2021.

⁶ See *Masthead*, 85 L. & CONTEMP. PROBS. (2022), <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=5039&context=lcp> (explaining the student resignations and vote to withhold work from "Sex and Law").

⁷ See *Open Letter Concerning Transphobia in Philosophy* (Jan. 2021), <https://sites.google.com/view/trans-phil-letter/> (noting that "Stock is best-known in recent years for her trans-exclusionary public and academic discourse on sex and gender ... and for advocating that trans women should be excluded from places like women's locker rooms or shelters," and voicing a concern "that some ... have a tendency to mistake transphobic fearmongering for valuable scholarship, and attacks on already marginalized people for courageous exercises of free speech").

⁸ See *Transgender Students*, NAT. ASS'N OF SECONDARY SCH. PRINCIPALS, <https://www.nassp.org/top-issues-in-education/position-statements/transgender-students/> (citing a Gay, Lesbian & Straight Education Network survey of students ages 13-21 that found that "transgender students were more likely than any other students to have negative experiences at school and were more likely to have felt unsafe and to experience victimization based on their gender identity or expression").

⁹ See *Legislative Tracker: Anti-Transgender Legislation*, FREEDOM FOR ALL AMERICANS, <https://freedomforallamericans.org/legislative-tracker/anti-transgender-legislation/> (collecting anti-transgender legislative proposals); Matt Lavietes and Elliott Ramos, *Nearly 240 anti-LGBTQ bills filed in 2022 so far, most of them targeting trans people*, NBC NEWS (Mar. 20, 2022), <https://www.nbcnews.com/nbc-out/out-politics-and-policy/nearly-240-anti-lgbtq-bills-filed-2022-far-targeting-trans-people-rcna20418> ("State lawmakers have proposed a record 238 bills that would limit the rights of LGBTQ Americans this year—or more than three per day—with about half of them targeting transgender people specifically.").

¹⁰ See @duke_outlaw, Instagram (Feb. 22, 2022), https://www.instagram.com/p/CaSrbXlId51/?utm_medium=copy_link.

Calls, for President Price to commit Duke University to promote and protect transgender participation in all athletics, similar to the gender identity inclusion policy that Duke Recreation and Physical Education has instituted for its intramural program.¹¹

Calls, for President Price to issue a statement condemning any proposed or passed measures or laws that discriminate against trans and other LGBTQ+ individuals nationwide in schools, sports, and other areas, thereby treating these individuals as second-class citizens.

Calls, for President Price to issue a statement in support of the bipartisan Equality Act that will update federal law to include express and enduring nondiscrimination protections for LGBTQ+ Americans in key areas of life including employment, housing, education, and public spaces.¹²

Calls, for Duke Law leadership to issue a series of statements reiterating President Price's statements as outlined above.

¹¹ See *Gender Identity Inclusion*, DUKE RECREATION & PHYSICAL EDUC., <https://recreation.duke.edu/gender-identity-inclusion> ("When an activity requires a gender designation such as Women's or Coed, an individual may participate in accordance with their personal gender identity and expression, regardless of medical treatment or hormone replacement therapy.").

¹² See *It's Time to Pass the Equality Act*, FREEDOM FOR ALL AMERICANS <https://freedomforallamericans.org/equality-act/> (describing the content of the Equality Act).

ADDENDUM 1

May 8, 2021

Dear Members of the *Law & Contemporary Problems* Faculty Board,

We write to you to express our concerns with the upcoming *L&CP* issue “Sex in Law.” We understand that the outgoing student board, after raising concerns similar to ours, ultimately approved this proposal. However, since the outgoing board will not be working on this issue, we felt it appropriate to reach out to you ourselves.

As you are likely aware, Duke Law and scholarship previously published in *L&CP* are closely linked to the myriad anti-transgender legislation being that has been proposed in states across the country, including here in North Carolina.¹ In light of these recent events, we do not think the current “Sex in Law” proposal is the appropriate way to facilitate a discussion about transgender rights and sex in the law.

While the Faculty Board may intend to create a balanced issue that shares multiple perspectives on transgender rights, publishing this proposal in its current state will harm the transgender community, as evidenced by the many bills that cite previous Duke scholarship in support of discrimination against transgender people.² Including voices in support of transgender rights does not undo the harm that will be caused by other articles in this issue.

We request that the Faculty Board not ask *L&CP* staff to contribute our labor, time, and skill to a publication that will harm transgender people. We also are concerned for our incoming *L&CP* members, who do not have the information necessary to avoid ranking *L&CP* during the casenote competition if they do not want to contribute to this scholarship. As such, we respectfully demand the following:

1. Remove Kathleen Stock’s article from the “Sex in Law” proposal.

While the Faculty Board has expressed reservations about vetoing specific authors, we ask you to reconsider your decision in this extraordinary circumstance.

Professor Stock advocates the idea that as we recognize more rights for trans women, we take away rights from cisgender women.³ This is a transphobic opinion that stokes opposition to the transgender community by framing civil rights as a zero-sum game. This is not how social justice

¹ Jessica Emig, *Duke LGBTQ+ Network Statement Regarding Recent Legislation*, DUKE LGBTQ+ NETWORK (Apr. 13, 2021), <https://alumni.duke.edu/announcements/duke-lgbtq-network-statement-regarding-recent-legislation>.

² See, e.g., Idaho House Bill No. 500, <https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2020/legislation/H0500.pdf> (citing Professor Coleman’s work in *L&CP* in support of anti-transgender legislation); Kan. Senate Bill No. 55, http://www.kslegislature.org/li/b2021_22/measures/documents/sb55_enrolled.pdf (same); Mont. House Bill No. 112, https://leg.mt.gov/bills/2021/HB0199/HB0112_1.pdf (same); R.I. Senate Bill No. 638, <http://webserver.rilin.state.ri.us/BillText/BillText21/SenateText21/S0638.pdf> (same).

³ *A Woman’s Place is Turning the Tide* (Kathleen Stock, Brighton, 16th July 2018), A WOMAN’S PLACE UK (July 28, 2018), https://www.youtube.com/watch?v=bg4_E6Y4POc.

works and, while the challenges and discrimination faced by different marginalized groups are not equivalent, we believe that the Faculty Board would not have approved a proposal that included an author who advanced a similar argument about any other marginalized group.

Professor Stock also believes that the inclusion of transgender women in “same-sex spaces for females . . . potentially reduces the safety of females from sexual violence” and that trans women “are biologically male, and there are patterns of male violence that we know exist.”⁴ This argument, a core tenet of Professor Stock’s scholarship, contributes to discrimination against and stigmatization of transgender women, who already face an unmatched level of violence in our country.⁵ Professor Stock’s article in “Sex in Law,” the abstract of which characterizes “recent intellectual framings of biological sex in humans” as “an unfortunate aberration,” will likely be similar to her past scholarship.

While we understand that the Faculty Board may be concerned with a potential accusation of “cancel culture,” we urge you to recognize that this is a unique situation in which we, as members of a journal publishing Professor Stock’s work, are being asked to contribute our own labor, time, and skill to her article. We wish to assert our own academic freedom to refuse to contribute to work that we disagree with. Additionally, as stated in a letter signed by almost 800 academics published earlier this year, “Conflating concern about the harms of Stock’s work with threats to academic freedom obfuscates important issues.”⁶

We acknowledge that publishing Professor Stock’s work is not an endorsement of her views. But neither is it a rejection of them. We wish to make clear that we reject Professor Stock’s views. We cannot do that if we are forced to contribute to her body of work through the editorial process.

2. Include at least one openly transgender author in the “Sex and Law” proposal.

There is a dearth of openly transgender voices in academia in general. In an issue on “Sex in Law” that largely focuses on issues relevant to the transgender community, it strikes us as especially odd that the current proposal does not include even one openly transgender author. Please take this opportunity to promote transgender voices in academia by including at least one openly transgender author in “Sex in Law.” If helpful, the Student Board would be happy to work with the Faculty Board to find an appropriate author.

⁴ *Id.*

⁵ VAWnet.org, *Violence Against Trans and Non-Binary People*, NAT’L RES. CTR. ON DOMESTIC VIOLENCE, <https://vawnet.org/sc/serving-trans-and-non-binary-survivors-domestic-and-sexual-violence/violence-against-trans-and-non-binary-survivors-domestic-and-sexual-violence/>

⁶ *Open Letter Concerning Transphobia in Philosophy* (Jan. 2021), <https://sites.google.com/view/trans-phil-letter/>.

3. Ensure that authors in “Sex in Law” will conform with *L&CP*’s guidelines for discussing LGBT+ people and give the *L&CP* Student Board the discretion to modify transphobic language if necessary.

Even well-intentioned work can have unintended consequences. Accordingly, we request that authors on this issue conform with *L&CP*’s guidelines for language used to discuss LGBT+ people. For example, the term “biological male” when used to discuss trans women implies that trans women are men. Instead, authors should use the term “assigned male at birth.” A copy of our current guidelines are attached here.

Additionally, because we will not receive full articles for several months, we wish to reserve the discretion to modify language that the *L&CP* Student Board determines to be transphobic. When writing about a topic as complicated as this, it is impossible to predict every instance of potentially transphobic language. We ask the Faculty Board to trust that the Student Board will not abuse this power and grant us full discretion to adjust language as necessary.

When the Faculty Board approved this proposal last fall, the country was in a different place than it is now. Over the last few months, we have seen a frenzied, renewed attempt to discriminate against transgender people through legislation. Now more than ever, it is essential that we take care around our language and the voices we choose to elevate in the midst of this debate.

If the Faculty Board supports our requests, we will be happy to work with you to see this important issue through to publication. As such, we are not rejecting this proposal in its entirety. We believe many of the articles will be valuable contributions to the academic landscape, both in the context of transgender rights and in general. Instead, we ask you to support our requests to ensure that *L&CP* scholarship and the work of our student editors will not be weaponized against transgender people.

Thank you,

Dylan Jarrett
Editor-in-Chief, *L&CP*

Julia Douglas
Executive Editor, *L&CP*

Mary Chandler Beam
Managing Editor, *L&CP*

[REDACTED]

Pete Berquist
Senior Research Editor, *L&CP*

Holly Gwydir
Senior Research Editor, *L&CP*

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Anneliese Hermann
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Jeremy Mauritzen
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Andrew O'Shaughnessy
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Marco Paternoster
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Evelyn Pro
Research Editor, *L&CP*

Kevin Simpson
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Adelyn Curran
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Claire Daly
Staff Editor, *L&CP*

Bailey Frank
Staff Editor, *L&CP*

Charlotte S. Hogan
Staff Editor, *L&CP*

Law & Contemporary Problems LGBTQ+ Style Guide

LGBTQ+ issues and the language used to discuss LGBTQ+ people are constantly changing. This guide attempts to provide useful examples for authors to refer to when discussing LGBTQ+ issues and people, but is not comprehensive. If an author has a question, we suggest either consulting the [GLAAD Media Reference Guide](#) or reaching out to the *L&CP* Student Board.

General rules:

- Use the pronouns and name chosen by the person you are writing about.
 - In general, do not use a transgender person’s birth name (even if the person and their birth name are well-known).
- Avoid language that states or implies that trans women are not “real” women and trans men are not “real” men.
- Do not use the term “transgender” as a noun.
- “They/them” is an acceptable singular pronoun when referring to an individual.

| Instead of: | Use: |
|---|--|
| Biological male/female, born a man/woman, male-to-female/female-to-male | Transgender man/transgender woman, assigned male/female at birth |
| Gendered terms (“male/female genitalia”) | Anatomical terms (“penis and testes/vagina and vulva”) |
| “Women and trans/transgender women” | “Cis/cisgender women and trans/transgender women” |
| “Transgendered” | “Transgender” |
| “Sex-change” | “Gender confirmation surgery” |
| “When she/he was a man/woman” | “When she/he presented as male/female” |
| | |

ADDENDUM 2

June 27, 2021

Dear *Law & Contemporary Problems* Faculty Board,

Large swaths of the U.S. legal community have spent the last six months attacking transgender people: their right to play sports, their right to receive healthcare, and their right to exist in public spaces. This attack has been aided by scholarship previously published in *L&CP*.¹ Nevertheless, the *L&CP* Faculty Board has refused to reconsider its decision to publish in an upcoming issue an article by Professor Kathleen Stock, who intends to argue that “recent intellectual framings of biological sex in humans” are “an unfortunate aberration.”²

In May, I sent the Faculty Board a letter signed by more than two-thirds of *L&CP* staff members requesting that Professor Stock’s article be removed from *L&CP*’s “Sex in Law” issue and that the Faculty Board ensure that authors contributing to this issue conform with student guidance on language used to discuss transgender and other LGBT+ people. After a discussion with a group of letter signatories, the Faculty Board rejected both of those requests, citing the importance of academic debate and arguing that the “Sex in Law” issue had already been approved—despite the fact that last year’s Student Board voted overwhelmingly to reject Professor Stock’s contribution and only capitulated to its inclusion after the Faculty Board expressed a strong desire to publish the issue and told the Student Board that the issue would not proceed without Professor Stock’s article.

The Faculty Board’s initial approval of a proposal that includes Professor Stock’s article demonstrates, at best, an unacceptable lack of awareness and care on the issues facing transgender people. The Board’s continued insistence on this article’s inclusion, even after more than two-thirds of *L&CP*’s student editors requested its removal, is inexcusable.

Despite certain Faculty Board members’ assertions to the contrary, this article will be a direct attack on transgender people and their identities. Professor Stock’s previous work, which I have discussed with the Faculty Board, makes this crystal clear. Including other articles that support transgender rights in “Sex in Law” does not lessen or negate the harm that this article will cause.

I could not disagree more with the Faculty Board’s decision regarding “Sex in Law.” I am disappointed, sad, and angry. I believe that the Faculty Board members will one day look back on this issue and regret their choice. But when you disagree with a decision made by your superiors, you have three options: accept their decision, change their minds, or resign.

I will not accept the Faculty Board’s decision to publish transphobic scholarship in *L&CP*. Proceeding with “Sex in Law” in its current form will harm transgender people and help to

¹ See, e.g., Idaho House Bill No. 500, <https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2020/legislation/H0500.pdf> (citing Professor Doriane Coleman’s work published in *L&CP* in support of anti-transgender legislation); Kan. Senate Bill No. 55, http://www.kslegislature.org/li/b2021_22/measures/documents/sb55_enrolled.pdf (same); Mont. House Bill No. 112, https://leg.mt.gov/bills/2021/HB0199/HB0112_1.pdf (same); R.I. Senate Bill No. 638, <http://webserver.rilin.state.ri.us/BillText/BillText21/SenateText21/S0638.pdf> (same).

² Doriane Coleman & Kim Krawiec, “Proposal for an Issue of *L&CP* on Sex in Law,” 3–5, Sept. 13, 2020.

mainstream anti-trans discrimination by providing a widespread, well-respected, often-cited platform for transphobic arguments.

Despite my best efforts, I have not convinced the Faculty Board to grant the student editors' requests—requests fully within the Faculty Board's power to grant. ***L&CP* is not obligated to host transphobic articles.** The truth of the matter is that the Faculty Board does not have to publish this article or allow authors to use transphobic language if it does not want to. But it is committed to doing so in this case.

Therefore, I am left with no choice but to resign, effective immediately.

I resign to send a message to the Faculty Board and the Duke Law community that transgender rights matter. I resign in the hope that remaining *L&CP* staff members, including the many staff members who plan to withhold their work on this issue in protest, will continue to speak up. And I resign because I will not volunteer my time and labor to work with and for professors who prioritize academic debate over preventing harm to members of a vulnerable community.

Sincerely,

Dylan Jarrett