



HUMAN  
RIGHTS  
CAMPAIGN®

House Committee on Human Services  
North Dakota State Capitol  
600 E. Boulevard Ave  
Bismarck, ND 58505

January 22, 2021

**Re: Human Rights Campaign Opposition to H.B. 1298**

Dear Chair Weisz and Members of the Committee,

The Human Rights Campaign (HRC), on behalf of its three million members and supporters nationwide, thanks you for the opportunity to submit testimony to help inform your deliberation on H.B. 1298. We strongly oppose this legislation and it is our hope that the committee will not advance it.

The Human Rights Campaign is America's largest civil rights organization working to achieve lesbian, gay, bisexual, transgender and queer (LGBTQ) equality. By inspiring and engaging all Americans, HRC strives to end discrimination against LGBTQ citizens and realize a nation that achieves fundamental fairness and equality for all. Transgender students, like all students, can benefit from participating in sports, and allowing them to participate in athletic activities consistent with their gender identity in no way disadvantages their fellow students. Transgender girls are girls, transgender women are women, and transgender boys and men are boys and men. Attempting to separate transgender youth from their peers is impractical, unfair, and unnecessary. Finally, similar legislation passed by Idaho last year has been enjoined by a federal court on the grounds that it is discriminatory and unconstitutional.

Many are rightly protective of the legacy of women's sports in this country. Importantly, advocates for women and girls in sports – such as the National Women's Law Center, the Women's Sports Foundation, Women Leaders in College Sports, and others – support trans-inclusive policies and oppose efforts to exclude transgender students from participating in sports. That's because while there are real issues facing women's sports, including a lack of resources devoted to supporting them, transgender participation in athletics is not one of them.

Rather, bills like these are a reincarnation of the narrative underpinning anti-transgender bathroom bills like North Carolina's infamous HB2 – they use fear-based arguments that suggest

transgender girls identify as such only to take advantage of female students, despite overwhelming evidence to the contrary. A widely-cited situation in Connecticut involves two transgender athletes out of an estimated 150,000 transgender youth across the country.<sup>1</sup> Further, collegiate and professional athletics associations have adopted policies, informed by experts, to ensure fair competition by adults. This bill is simply a solution in search of a problem. Public university athletic programs will be thrown into conflict with existing NCAA policy – note that the NCAA came out against the Idaho anti-transgender athletics bill, calling it “harmful to transgender student-athletes, and [in conflict with] with the NCAA’s core values of inclusivity, respect and the equitable treatment of all individuals”. The statement went on to reiterate that such legislation will be considered in the selection of host sites for tournaments and other NCAA events.<sup>2</sup>

This bill will suffer the same fate as Idaho’s H.B. 500: immediate challenge in court. The preliminary injunction granted by the District Court is currently on appeal to 9<sup>th</sup> Circuit. The District Court decisively rejected the arguments by the state - which are emulated in the justifications for this bill - concluding that “the incredibly small percentage of transgender women athletes in general, coupled with the significant dispute regarding whether such athletes actually have physiological advantages over cisgender women when they have undergone hormone suppression in particular, suggest the Act’s categorical exclusion of transgender women athletes has no relationship to ensuring equality and opportunities for female athletes in Idaho.” The District Court also notes that “Professor Dorianne Lambelet Coleman, whose work was cited in the H.B. 500 legislative findings, urged Governor Little to veto the bill, explaining her research was misused and that “there is no legitimate reason to seek to bar all trans girls and women from girls’ and women’s sport, or to require students whose sex is challenged to prove their eligibility in such intrusive detail.”<sup>3</sup>

There is no reason for North Dakota to embark on a similarly futile path. It is simply not true that transgender girls and women pose any risk to women’s sports. A small percentage of

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<sup>1</sup> Herman, Jody L. et al. “Age of Individuals Who Identify As Transgender in the United States”. Williams Institute, January 2017. <https://williamsinstitute.law.ucla.edu/publications/age-trans-individuals-us/>

<sup>2</sup> Full statement made on June 11, 2020, available at <http://www.ncaa.org/about/resources/media-center/news/ncaa-statement-regarding-idaho-transgender-law>:

“As we have previously stated, Idaho’s House Bill 500 and resulting law is harmful to transgender student-athletes and conflicts with the NCAA’s core values of inclusivity, respect and the equitable treatment of all individuals. Further, Board of Governors policy requires host sites to demonstrate how they will provide an environment that is safe, healthy, and free of discrimination, plus safeguards the dignity of everyone involved in the event. As such, the NCAA Board of Governors was scheduled to discuss the legislation and its implications to student-athletes at its August meeting. NCAA championships are open to everyone, and the Association is committed to assuring that its events are safe and healthy for all who attend. It is our clear expectation that all NCAA student-athletes will be welcomed, treated with respect, and have nondiscriminatory participation wherever they compete.”

<sup>3</sup> *Hecox, et al. v. Little, et al.*, No. 1:2020cv00184 - Document 63 (D. Idaho 2020). 10 <https://law.justia.com/cases/federal/district-courts/idaho/iddce/1:2020cv00184/45676/63/>

people identify as being transgender, many transgender youth are not interested in playing sports, and those who do play want to play for the same reasons other youth like sports: because sports are fun. Transgender youth, depending on their age and personal circumstances, may or may not have embarked on any amount of medical transition. For those who have, it is critical to reiterate that transgender people do not gain an inherent competitive advantage in sports by virtue of transition. In fact, transgender women and girls compete at levels similar to all women and no female transgender athlete has qualified for the Olympics despite rules permitting participation that have been in place for more than a decade. At the high school level, 20 states already allow transgender kids to compete in sports consistent with their gender identity, and at the college level the NCAA has its own policy allowing athletes to participate in sports consistent with their gender identity.

Participation in sports is essential for young athletes to be able to stay fit, develop healthy habits, and learn the virtues of practice and teamwork. The history of sports in this country has been about opening up true, meaningful opportunities to participate in sports – and allowing transgender people to participate in sports furthers that goal, not threatens it.

For these reasons, we request you reject this harmful and discriminatory bill.

Sincerely,

A handwritten signature in black ink that reads "Cathryn M. Oakley". The signature is written in a cursive, flowing style.

Cathryn Oakley  
State Legislative Director and Senior Counsel  
Human Rights Campaign