

## Testimony in Favor of House Bill 1298

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Family Policy Alliance of North Dakota  
January 25, 2021

Good morning Chairman Weisz and distinguished members of the House Human Services Committee. My name is Mark Jorritsma and I am the Executive Director of Family Policy Alliance of North Dakota. I am testifying in favor of House Bill 1298 and respectfully request that you render a “DO PASS” on this bill.

### Context

It may seem like an obvious statement, but boys and girls are biologically different from birth. Whether one agrees or disagrees that this is how it should be, science and common sense tell us that males are generally stronger than females. That difference shows up in size, strength, bone density, and even hearts and lungs. While females possess many biological advantages of their own, the areas of biological advantage for boys are those that are most often associated with athletic sports. Over and again, the courts have ruled that boys have a biological advantage over girls in most sports (Appendix A)

In contrast to this, some are lobbying to allow transgender boys (boys born biologically male but identifying as female) to compete in girls’ sports. What is the supposed basis for this requirement? Title IX of the 1964 Civil Rights Act is typically used to justify it.

Title IX, the federal law guaranteeing that girls must be given equal access to athletics programs at schools receiving federal funding, was designed to eliminate discrimination against women in education and athletics, while creating equal opportunities for women. Historically, Title IX has been used to advance women’s opportunities, but now some want to let biological men steal those very opportunities. Despite Title IX’s history of advancing opportunities for females, this current trend exploits Title IX to do just the opposite – letting biological males steal opportunities reserved for girls. Allowing boys to compete in girls’ sports reverses nearly 50 years of advances for women under Title IX.

So what is the result when biological boys compete in girls’ sports? Not surprisingly, they nearly always win.

- In Connecticut, three female track stars are embroiled in a federal lawsuit over a policy that allowed biological boys to compete in girls’ sports. While the girls were formerly top high school runners, two biological males entered as girls and took their athletic titles and opportunities to compete at a higher level.

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- Biological young men presenting as females are using their physical advantages to win girls' wrestling championships in Texas.
- Transgender males are easily winning track championships and shutting out girls in Alaska.
- The world record for the men's 100-meter dash, set by Usain Bolt, is 9.58 seconds. The world record for women, set by Florence Griffith-Joyner, is 10.49 seconds. Females have never broken what is referred to as the 10-second barrier, while Olympic male finalists consistently break the barrier.
- Transgender competitor Mary Gregory from the UK participated in a women's weightlifting event, winning the masters world squat record, open world bench record, masters world deadlift record, and masters world total record in one day, beating every other competing woman.
- Just in the single year 2017, Olympic, World, and U.S. Champion Tori Bowie's 100 meters lifetime best of 10.78 was beaten 15,000 times by men and boys.
- Olympic, World, and U.S. Champion Allyson Felix's 400 meters lifetime best of 49.26 was beaten more than 12,000 times by men and boys around the world in just one year.
- One of the world's top marathon runners, Paula Radcliffe, shared that when the Boston marathon changed its rules to open qualifying times to biological men who identified as women, allowing biological men to take women's slots would make it even harder for women to enter.

These girls are not losing just the opportunity to win, but to also earn college scholarships and launch their own careers in athletics, coaching, and more. In a sense, it is the girls who are truly being excluded. They have been excluded from the sports that were designed to provide them with the space they need to reach their highest potential.

## North Dakota Status

There is no law currently in the Century Code that directly addresses boys competing in girls' sports. The closest we have is from the North Dakota High School Activities Association (Appendix B). The policy of the NDHSAA regarding transgender-identified athletes looks like that of many other states and, unfortunately, the guidelines allow biological boys who have undergone testosterone suppression therapy for at least one year to be allowed to compete in girls' sports.

While we applaud the NDHSAA for seeking to set out guidelines, there are two problems. First, their regulations do not have the weight of law embodied in our Century Code and could be changed for innumerable reasons, as can the regulations of any other association. Second, boys taking testosterone suppressing drugs still have a clear biological advantage over girls when it comes to sports. (Appendix C).

Is this really an issue that North Dakotans have to address? Yes it is, particularly with the Biden Administration’s recent and vocal support for transgender policy, via an Executive Order. Roughly 20 states already have antidiscrimination laws that give special privileges to transgender-identifying students, and this will undoubtedly only increase under the Biden Administration (Appendix D). The rest, like North Dakota, will get increasing pressure from the federal government and special interest groups to do the same.

## **Purpose of Bill**

The initial Fairness in Women’s Sports bill was sponsored by former NCAA basketball player and Division I coach Barbara Ehardt. As a coach and athlete, she brought a bill forward because she knew from experience that female athletes deserve fair competition—and that female athletes compete in their own divisions for a reason.

The proposed bill, HB1298, limits participation in girls’ sports to biological girls, making clear that women’s sports are for women only. It requires boys and girls to solely play on teams consistent with the biological sex initially indicated on their birth certificate. It is a fair, consistent, and documentable way of handling the issue.

This bill really comes down to two things. First, let’s keep the playing field level for girls’ sports. Let’s not set back the clock 50 years and use federal antidiscrimination law against girls to actually discriminate against them in the name of social expediency.

Second, let’s keep North Dakota a state where common sense rules. As North Dakotans, we need to say to DC, “We will not yield to your social agenda, because it directly conflicts with our personal values!” In the spirit of all we hold dear as North Dakotans, I ask you to please vote a “DO PASS” out of committee on HB 1298.

Thank you for your time and I would be happy to stand for any questions.

## Appendix A

# FEDERAL PROTECTIONS

For reasons of fundamental fairness and safety, girls have the right to play on a sex -segregated team that does not include biological boys. Courts have recognized there are fundamental physical differences between boys and girls that give boys a biological advantage in most sports. This is why we have sex -segregated teams in public schools and professional sports.



**45 CFR § 86.41 –  
THE DEPARTMENT OF HEALTH & HUMAN SERVICES**

This is a federal regulation supporting Title IX. It prohibits discrimination on the basis of sex but specifies that educational institutions may have separate teams for members of each sex if selection is based upon competitive skill or if teams are competing in a contact sport

**34 CFR § 106.41(A)  
THE DEPARTMENT OF EDUCATION**

This federal regulation explicitly prohibits discrimination on the basis of sex. But if the sport is a competitive or contact sport, this law permits sex -segregated teams in sports.

**O'CONNOR V. BD. OF ED., 449 U.S. 1301,  
1307 (1980):**

If certain sports teams do not have “gender -based classification in competitive contact sports, there would be a substantial risk that boys would dominate the girls’ program and deny them an equal opportunity to compete in interscholastic events.”

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## Appendix B

NDHSAA Board of Directors

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### **NDHSAA Transgender Student Board Regulation**

A transgender student will be defined as a student whose gender identity does not match the sex assigned to him or her at birth.

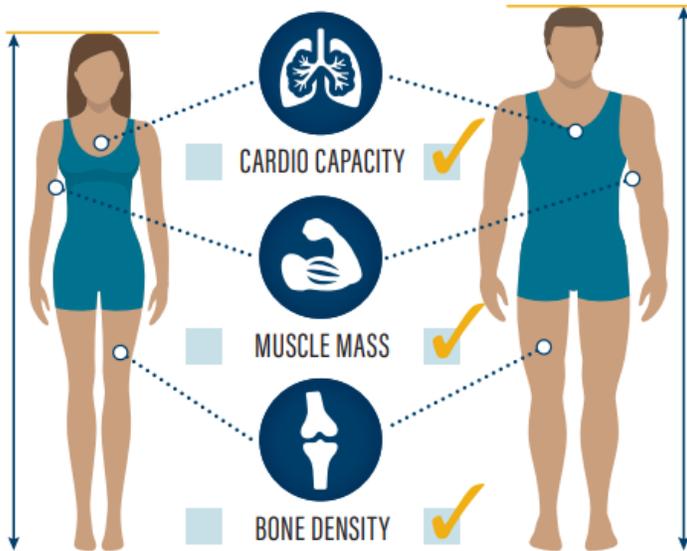
Any transgender student who is not taking hormone treatment related to gender transition may participate in a sex-separated interscholastic contest in accordance with the sex assigned to him or her at birth.

The following clarifies participation in sex-separated interscholastic contests of transgender students undergoing hormonal treatment for gender transition:

- A trans male (female to male) student who has undergone treatment with testosterone for gender transition may compete in a contest for boys but is no longer eligible to compete in a contest for girls.
- A trans female (male to female) student being treated with testosterone suppression medication for gender transition may continue to compete in a contest for boys but may not compete in a contest for girls until completing one calendar year of documented testosterone-suppression treatment.

## Appendix C

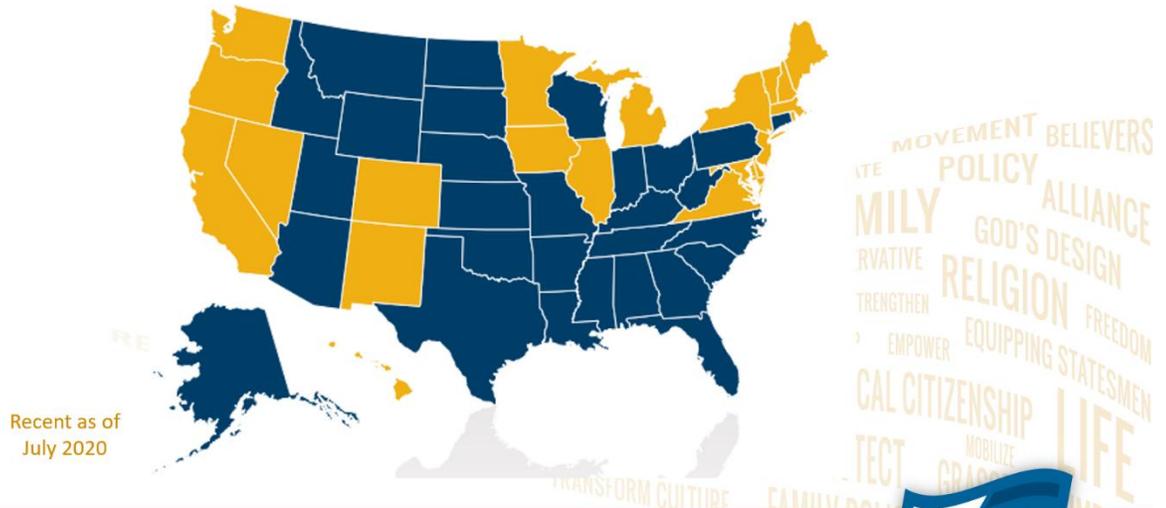
### Physiology of Men vs. Women



- Testosterone: increases bone size, bone density, muscle strength and size, ligament strength, connective tissue strength, increases red blood cells etc.
- Testosterone is not the only thing that gives boys an advantage. Even if a boy is taking drugs to lower his testosterone levels (e.g., cross-sex hormones), he still has a performance advantage over girls because he naturally has longer and stronger bones (giving him a height advantage), greater bone density (making him less likely than girls to get injured in many respects) increased muscle mass, and greater cardiovascular capacity than girls.
- Testosterone level for transgender-identifying men is still **3x** higher than what's allowable for women in professional sports.

Appendix D

## WHAT'S HAPPENING?



States in gold have anti-discrimination laws that provide special privileges to transgender-identifying students.

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