

House Bill 1298
Senate Judiciary Committee
Peace Garden Room

Andrew Alexis Varvel
March 16, 2021

*Madame Chairman Larson and
Members of the Senate Judiciary Committee:*

Good afternoon. My name is Andrew Alexis Varvel. I live in Bismarck, District 47.

As it is customary at the North Dakota Legislature to rise in opposition to a bill if one seeks to propose an amendment, that is what I am now prepared to do.

The amendment is included as a supplement to my written testimony, and each member of this committee should already have a copy of it.

The North Dakota Legislative Drafting Manual for 2021 has some good advice for us. On page 92, paragraph 2, it states, "In English, gender is related to sex or lack of sex. The genders are masculine, feminine, and neuter, e.g. he, she, and it."

Just as the English language has three genders, the State of North Dakota should also recognize three genders. We should recognize not only male and female, but also a third gender, variously called other, neuter, intersex, or nonbinary.

North Dakota was one of the earliest states to decriminalize homosexuality during the forty-third legislative assembly in 1973, effective July 1, 1975. Our state has not gotten enough credit for doing the right thing back then. North Dakota now has an opportunity to lead the nation in recognizing not two but three genders.

Both sides have valid points to make. It is inappropriate for people on either side to presume evil intent from those who disagree with them, or act as a crybully who seeks a coveted place in the great feasting hall of eternal victimhood.

Female athletes have every right to object to getting outcompeted by imposters in their midst. That said, transgender athletes must be treated with dignity and respect, including being accepted for who they are. We need to balance the downstream effects of gender identity on women's shelters and women's prisons with the downstream effects of openly defying the Biden administration.

Fertility is an important aspect of being a man or being a woman, but it is not an essential feature for being part of a third gender. Unless and until a transgender man can impregnate a transgender woman to conceive a baby that is brought to full term, gender reassignment surgery should be considered to facilitate an outward expression of gender rather than changing that person's DNA.

Rather than get mummified in the red tape of birth certificate verification, biological sex should get determined by a person's DNA profile. If a person's professed gender identity does not correspond to biological sex, then that is where state recognition of a third gender becomes so important. We should recognize that involuntary hermaphroditism exists due to natural developmental variation during pregnancy. We should recognize that intersex people exist who are neither male nor female, but people with their own nonbinary gender identity. We should also recognize that voluntary hermaphroditism also exists, consisting both of males who effectively sterilize themselves so they can outwardly express themselves as females, and females who effectively sterilize themselves so they can outwardly express themselves as males.

The question is not whether intersex people exist in their various manifestations, but rather how our society should recognize their identity in a way that recognizes the dignity of all of us. Just as girls have sports that are separate from boys, intersex athletes should have an opportunity for a league of their own separate from boys and girls so they too can have a chance to shine.

If the number of transgender students is truly as large as transgender activists claim, then there should be no problem in finding a critical mass of interest in intersex athletics in this state. North Dakota could probably field at least five intersex teams at a high school level, and that number could go up once our state becomes a place of refuge for intersex youth from throughout the United States.

Let's be clear – this proposal will probably please nobody. I don't expect some traditional Christians to be happy with recognizing more than two genders. I don't expect some transgender activists to be happy with getting a league of their own rather than gaining an opportunity to outcompete girls in girls' sports. Still, a “my way or the highway” approach to this issue is definitely not what our state needs.

For what it's worth, I do think it's very likely that some version of this bill will pass. Senator Myrdal is a sponsor of this legislation and a member of this committee. She has excellent leadership skills, drive, and energy, and all of the huffing and puffing in the world will not deter her from doing what she believes is right.

If this bill does pass, we need to strengthen this bill so that North Dakota will be in the best possible position to defend itself in court from President Biden's executive order that bans discrimination based on “gender identity”. If North Dakota is challenged on the subject, it needs to situate itself legally so that it will receive court costs rather than paying them out. By recognizing three genders rather than two, North Dakota will be able to argue that people with alternative gender identities that are independent of their DNA profile will have more athletic opportunities in this state than would exist under present circumstances.

If you must choose between protecting biological girls from transgender competition and defending recognition of two genders at all costs, let's hope that you would regard the actual needs of biological girls as coming first. I think that recognizing three genders rather than two genders provides the best framework to advance this cause, so you should adopt the provided amending language.

If this bill cannot be satisfactorily changed to recognize three genders rather than two, then please provide this bill a **DO NOT PASS** recommendation. Our state should not be throwing around money right and left to defend lost causes.

Thank you.

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