

## **WRITTEN TESTIMONY IN OPPOSITION TO HB 1249**

Date of Hearing: January 24, 2023

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My name is Denise Ann Dykeman. I am a parent, a lawyer, and a Lutheran. I have had the great privilege to befriend trans adults and kids – some of the most wonderful and brave people I could ever be blessed to encounter. This written testimony is presented in opposition to HB 1249, which appears to be part of a concerted, nationwide effort to target transgender youth for unequal treatment. Further it appears that this bill is targeted at, and intended only to affect, girls who are transgender. How very sad for North Dakota.

I am close to several transgender adults, parents of transgender children, and trans kids. A transgender child is already experiencing exclusion and feeling “different” than their peers. All parents want the best for their kids- to have a childhood full of fun, love, laughter, supportive friends, and all of the experiences and opportunities that any other kid can have. This includes participating in sports. I think that the people of North Dakota and this legislature really have to ask: are youth sports about learning teamwork, confidence, leadership, valuing different skills and abilities, and staying healthy, or it is all about winning? Because it seems to me like the reason for this rule is to eliminate any possible advantage a transgender girl might have or be perceived to have.

While it might seem unfair for a transgender girl to compete against a biological girl, I can only imagine how unfair it must feel for that same transgender girl to be forced to play on a boys’ team and be subjected to teasing and cruelty that they might well endure here in North Dakota. Likely they would choose not to participate at all- and isn’t that the real goal of this bill?

There are other ways to ensure that young people have equal opportunities to compete in sports that aren’t discriminatory. For example, we could create teams based on skill level – this would level the playing field for everyone, as there are certainly variations in athletic ability between biological girls and between biological boys, yet the legislature doesn’t seem particularly concerned about that. This bill seems to be a solution looking for a problem.

The Supreme Court of the United States has long “viewed with suspicion laws that rely on ‘overbroad generalizations about the different talents, capacities, or preferences of males and females.’” *Sessions v. Morales-Santana*, 137 S. Ct. 1678, 1692 (2017) (quoting *Virginia*, 518 U.S. at 533). Therefore, laws that discriminate based on sex must be backed by an “exceedingly persuasive justification.” *Virginia*, 518 U.S. at 513. That is to say, the law’s proponents must show that it “serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives.” *Miss. Univ. for Women v. Hogan*, 458 U.S. 718, 724 (1982). Even if the law’s objective is to protect the members of one sex, that “objective itself is illegitimate” if it relies on “fixed notions concerning [that sex’s] roles and abilities.” *Morales-Santana*, 137 S. Ct. at 1692.

Both North Dakota law and federal law prohibit discrimination based upon sex. The North Dakota Human Rights Act prohibits discrimination based upon sex.<sup>1</sup> Title VII of the Civil Rights Act prohibits discrimination based upon sex, and this includes gender identity.<sup>2</sup> President Biden issued an executive order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation which states "all persons should receive equal treatment under the law, no matter their gender identity or sexual orientation."<sup>3</sup>

In addition, the North Dakota High School Activities Association (NDHSAA), the National Collegiate Athletic Association (NCAA), and the International Olympic Committee (IOC) have rules in place on this very issue. The purpose of these organizations is to promote athletes, with an eye toward preserving the well-being of the athlete and to promote fair play. HB 1249 seeks to ignore the work done by these organizations and instead enact a law that is plainly discriminatory.

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<sup>1</sup> NDCC 14-02.4-01.

<sup>2</sup> *Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731, 207 L. Ed. 2d 218 (2020)

<sup>3</sup> Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation | The White House- <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-preventing-and-combating-discrimination-on-basis-of-gender-identity-or-sexual-orientation/>

This very same legislature is now considering passing a bill to recognize “Right-to-Life-Day” which would “celebrate the right-to-life, reaffirm the dignity and value of every human being, and to give thanks for the gift of life.” How wonderful. I would ask the legislature to remember that “every human being” includes transgender people. Please reaffirm their dignity and value as beloved members of our communities here in North Dakota. They need to know that they are loved, not feared or hated.

All young people, and especially transgender youth, need compassion and inclusion, not hatred and exclusion. All people within the State of North Dakota deserve dignity and respect and to be valued as part of the community.

Let them play.

Please oppose HB 1249.

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