



# NORTH DAKOTA

## *Family Alliance* LEGISLATIVE ACTION

### Testimony in Support of House Bill 1249

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Madam Chair Larson and honorable members of the Senate Judiciary Committee. My name is Mark Jorritsma and I am the Executive Director of North Dakota Family Alliance Legislative Action. We are submitting testimony in support of House Bill 1249 and respectfully request that you issue 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 almost always stronger than females. That difference shows up in size, strength, bone density, and even hearts and lungs. These areas of biological advantage for boys are often directly associated with athletic performance. Over and over again, the courts and federal law have ruled that boys have a biological advantage over girls in most sports (Appendix A).

In contrast to this, some are lobbying to allow boys born biologically male but who identify as female to compete in girls’ sports. What is the supposed basis for this position? Title IX of the 1964 Civil Rights Act is often used to justify it. However, Title IX was designed to *eliminate* discrimination against women in education and athletics, but the current trend exploits Title IX to do just the opposite – let biological males steal opportunities reserved for girls. This is undoubtedly why 19 states now have some form of law protecting girls’ sports (Appendix B).

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

- Biological young men presenting as females were using their physical advantages to win girls’ wrestling championships in Texas.
- Transgender males have easily won track championships and shut out girls in Alaska.



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- 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.
- And then we come to perhaps the most infamous transgender competitor to date, swimmer Lia Thomas. Her advantages are undeniable. As Swimming World Magazine pointed out, “ The fact that the University of Pennsylvania swimmer soared from a mid-500s ranking (554th in the 200 freestyle; all divisions) in men’s competition to one of the top-ranked swimmers in women’s competition tells the story of the unfairness which unfolded at the NCAA level.”
- 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 currently no law in the Century Code that directly addresses boys competing in girls’ sports. The closest we have is a policy from the North Dakota High School Activities Association (Appendix C). When a very similar girls’ fairness in sports bill was introduced last session, the policy at that time was cited as a key reason for veto of the bill.

While we applaud the Association for seeking to set out guidelines, there are two very significant problems. *First, their regulations do not have the weight of law embodied in our Century Code and can be changed for innumerable reasons, as can the regulations of any other association.* In fact, in August of 2022, the NDHSAA added language that sought to clarify their



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policy. However, changing their policy actually provided undeniable evidence of the problem: this regulation can be changed to whatever the organization chooses at any time. By contrast, changing requirements on a whim are not characteristics of the North Dakota legislative process or laws found in the Century Code.

The second problem lies with the text change itself. It states, “If a trans male or trans female student can show, from a medical perspective, that the student does not have a competitive advantage based on their testosterone treatment or prior physical development as a male, the student’s member school may submit a letter and medical evidence to the NDHSAA Executive Director”. It will then be reviewed and an opinion rendered, which can be appealed to its Board.

While we appreciate the NDHSAA’s attempt to tighten this up, it has actually just made matters worse. The new text uses completely undefined language and wholly subjective terms such as “medical perspective” and “competitive advantage”. As a result, it effectively does nothing to further protect girls’ sports in North Dakota.

Is this really an issue that North Dakotans need to address? Yes it is, particularly with the Biden Administration’s aggressive transgender policies. North Dakota is getting increasing pressure from the federal government and special interest groups on a daily basis to discriminate against our female athletes.

### **The Bill Itself**

The proposed bill, HB 1249, limits participation in girls’ sports to biological girls, making clear that women’s sports are for women only. It is a straightforward, fair, consistent, and documentable way of handling the issue.

However, 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 tell DC that we will not yield to their social agenda being imposed on us, because it directly conflicts with our values.

For these reasons, I ask you to please vote a “DO PASS” out of committee on HB 1249. 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**

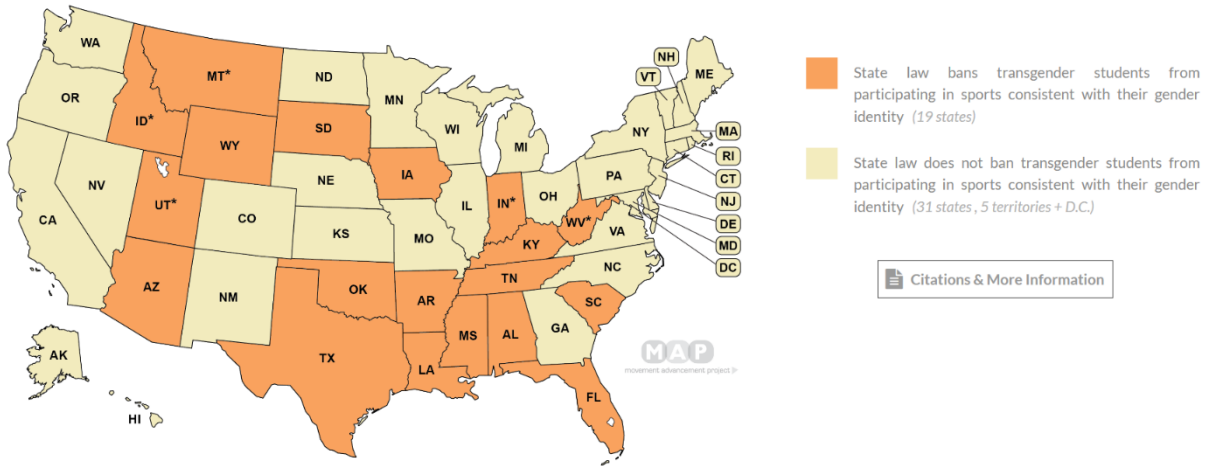
This federal regulation explicitly prohibits discrimination on the basis of sex. But if the sport is a competitive or contact sport, this law permits sex -segregated teams in sports.

**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.”

# Appendix B

## States with Protections for Girls' Sports



Source: Movement Advancement Project. [link](#)

# Appendix C

## 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.
- Updated medical treatment and/or hormone therapy verification is required annually.

If a trans male or trans female student can show, from a medical perspective, that the student does not have a competitive advantage based on their testosterone treatment or prior physical development as a male, the student's member school may submit a letter and medical evidence to the NDHSAA Executive Director. The Executive Director will then review, investigate, and render a decision. If the student disagrees with the Executive Director's decision, the student's member school may appeal to the NDHSAA Board of Directors for a final decision.

NDHSAA Board Approved: November 2015

Revised: August 2022

Note: Highlighted text was added in August 2022 revision.