



North Dakota House of Representatives

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Testimony in support of HB 1473

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Thank you, Madam Chairwoman and Members of the Human Services Committee. My name is Rep. SuAnn Olson and I'm here today to speak in favor of HB 1473.

Late last year I attended a meeting of concerned women and learned of a "Bill of Rights" that was moving across our nation. Don't we already have one of those? Well yes, but the Bill of Rights that has been circulating is a Women's Bill of Rights. Last week, this committee heard HCR 3010 which is North Dakota's version of a commonsense declaration on the biology of sex. Who would have thought that we need this? But we do. Women struggled and sacrificed for decades to gain equal rights. It took our country 140 years before women won the right to vote! And here we are, in 2023, more than a hundred years later, needing to fight for our basic rights. Women and girls are needing to stand up for their right to safety and privacy.

Here are some excerpts, some truths, contained in HCR 3010 that you heard last week:

Biological differences between the sexes mean that males are, on average, bigger, stronger, and faster than females;

Biological differences between the sexes leave females more physically vulnerable than males to specific forms of violence, including sexual violence;

Biological differences between the sexes are enduring and may, in some circumstances, warrant the creation of separate social, educational, athletic, or other spaces in order to ensure safety and/or to allow members of each sex to succeed and thrive;

HB 1473 embodies the practical application of this Bill of Rights. It requires that separate restrooms, shower rooms, and locker rooms be used only by the designated sex or where facilities are available to multiple people at the same time. This applies to correctional facilities, the youth correctional center, the penitentiary, domestic violence sexual assault facilities, and college dormitories. The bill does not prohibit reasonable accommodations from being made for others.

All of the Sections of the bill are quite similar and are described separately because the various facilities are located in different parts of Century Code. Section 1 addresses correctional facilities. Section 2 addresses the youth correctional center, Section 3 addresses the penitentiary, Section 4 addresses domestic violence sexual assault facilities, and Section 5 addresses facilities under the control of the state board of higher education. The goal for colleges is to meet the reasonable expectations of residents. If a person signs up for a female or male dormitory, their expectation is that only that single sex is using the facilities. Certainly, if a dorm or floor of a dorm is designated as co-ed, the expectation is different.

This bill was amended in the House committee to take out references to women's athletics and public school restrooms. It was acted on in the rush before crossover and unfortunately one of the amendments got attached to Section 5 when the clarification would have been more appropriate in the K-12 section that was removed. I am including a suggested amendment to remove the reference to "under the age of 18" phrase on page 3, lines 3 and 4 and request that you include this amendment in the bill. Without it, Section 5 doesn't make much sense and is inapplicable since very few college students are under age 18. I asked the Chairman and 4 committee members what the intent of adding this phrase was and they all pointed to some confusion as they were trying to move bills through committee. Being a new legislator, I wasn't sure what to do about it when the amendments were included on the 6^h Order and missed my opportunity to separately address the amendments on the House floor.

Note that HB 1474, which is still not assigned to a committee hearing yet, is the "sister" bill to HB 1473. It includes definitions of sex, male and female, and father and mother so that there is no confusion under state law when these terms are used. Certainly, if the committee recommends that they be included in this bill, I am open to that. If HB 1474 passes, it may make sense to reference the NDCC definitions in this bill.

We don't have to look very hard to find news stories about the danger women and girls face when separate spaces are not assigned based on biological sex. About a year ago, a women's prison in New Jersey was reported by news organizations to have several inmates who had given birth as a result of being housed with males who claimed to be transgender. This is outrageous and beyond common sense.

Separating people based on sex has been addressed by the courts a number of times over the years. A recent 11th Circuit court case 18-13592 was issued in December 2022 and explained the application of the Equal Protection Clause of the 14th Amendment to sex-based classifications by stating that "a policy will pass constitutional muster only if it satisfies intermediate scrutiny." Intermediate scrutiny means "the government must show that the classification serves important governmental objectives and that discriminatory means employed are substantially related to the achievement of those objectives." In that particular case, protecting personal privacy was found to be an important government objective.

Here is quote from Ruth Bader Ginsburg: "[s]eparate places to disrobe, sleep, [and] perform personal bodily functions are permitted, in some situations required, by regard for individual privacy." Ruth Bader Ginsburg, *The Fear of the Equal Rights Amendment*, *Wash. Post*, Apr. 7, 1975

We need to acknowledge that females as a sex are inherently more vulnerable than males and government policies must recognize and protect their privacy and safety.

Please. Vote Yes on HB 1473.