



HUMAN
RIGHTS
CAMPAIGN®

Committee on Education
Kansas State Capitol
300 W. 10th
Topeka, Kansas 66612

February 22, 2021

Re: Human Rights Campaign Opposition to SB 208

Dear Chair Baumgardner and Members of the Committee,

The Human Rights Campaign (HRC), on behalf of three million members and supporters nationwide, thanks you for the opportunity to submit testimony to help inform your deliberation on SB 208. We strongly oppose this legislation and it is our strong recommendation that the committee not advance it.

The Human Rights Campaign is America's largest civil rights organization working to achieve lesbian, gay, bisexual, transgender and queer (LGBTQ) equality. By inspiring and engaging all Americans, HRC strives to end discrimination against LGBTQ citizens and realize a nation that achieves fundamental fairness and equality for all. Transgender students, like all students, can benefit from participating in sports, and allowing them to participate in athletic activities consistent with their gender identity in no way disadvantages their fellow students. Further, attempting to separate transgender youth from their peers is impractical, unfair, and unnecessary. Finally, similar legislation passed by Idaho last year has been enjoined by a federal court on the grounds that it is discriminatory and unconstitutional.

Many are rightly protective of the legacy of women's sports in this country. Importantly, advocates for women and girls in sports – such as the National Women's Law Center, the Women's Sports Foundation, Women Leaders in College Sports, and others – support trans-inclusive policies and oppose efforts to exclude transgender students from participating in sports. That's because while there are real issues facing women's sports, including a lack of resources devoted to supporting them, transgender participation in athletics is not one of them.

Rather, bills like these are a reincarnation of the narrative underpinning anti-transgender bathroom bills like North Carolina's infamous HB2 – they use fear-based arguments that suggest transgender girls identify as such only to take advantage of female students, despite

overwhelming evidence to the contrary. A widely-cited and misrepresented situation in Connecticut involves two transgender athletes out of an estimated 150,000 transgender youth across the country.¹ No other state has been able to put forward evidence of transgender girls' participation in athletics having any harmful impact at all upon cisgender girls who also participate, despite many states having policies that allow transgender girls to play consistent with their gender. There simply is no problem here that requires the legislature's attention.

Neither is there a problem at the collegiate or professional level, where collegiate and professional athletics associations have adopted policies, informed by experts, to ensure fair competition by adults. This bill will create problems, not resolve them: note that the NCAA came out against the Idaho anti-transgender athletics bill, calling it "harmful to transgender student-athletes, and [in conflict with] with the NCAA's core values of inclusivity, respect and the equitable treatment of all individuals". The statement went on to reiterate that such legislation will be considered in the selection of host sites for tournaments and other NCAA events.²

Finally, while bills like these have proliferated in state legislatures across the country last year and this, pushed by an organization that has been designated an anti-LGBTQ hate group by the Southern Poverty Law Center, every legislature but one has declined to pass it. That's because this flagrantly discriminatory bill will suffer the same fate as Idaho's H.B. 500: immediate challenge in court. The District Court issued a preliminary injunction stopping enforcement of the Idaho bill (that injunction is currently on appeal to 9th Circuit), decisively rejecting the arguments by the state, which are the same arguments put forward justifying this bill. The Court concluded that "the incredibly small percentage of transgender women athletes in general, coupled with the significant dispute regarding whether such athletes actually have physiological advantages over cisgender women when they have undergone hormone suppression in particular, suggest the Act's categorical exclusion of transgender women athletes has no relationship to ensuring equality and opportunities for female athletes in Idaho." The Court further invoked as evidence that Idaho had considered other pieces of anti-transgender

¹ Herman, Jody L. et al. "Age of Individuals Who Identify As Transgender in the United States". Williams Institute, January 2017. <https://williamsinstitute.law.ucla.edu/publications/age-trans-individuals-us/>

² Full statement made on June 11, 2020, available at <http://www.ncaa.org/about/resources/media-center/news/ncaa-statement-regarding-idaho-transgender-law>:

"As we have previously stated, Idaho's House Bill 500 and resulting law is harmful to transgender student-athletes and conflicts with the NCAA's core values of inclusivity, respect and the equitable treatment of all individuals. Further, Board of Governors policy requires host sites to demonstrate how they will provide an environment that is safe, healthy, and free of discrimination, plus safeguards the dignity of everyone involved in the event. As such, the NCAA Board of Governors was scheduled to discuss the legislation and its implications to student-athletes at its August meeting. NCAA championships are open to everyone, and the Association is committed to assuring that its events are safe and healthy for all who attend. It is our clear expectation that all NCAA student-athletes will be welcomed, treated with respect, and have nondiscriminatory participation wherever they compete."

legislation in the same session and concluded that it was disapproval of transgender people, and not an actual government interest, that provoked the passage of the legislation.

There is no reason for Kansas to embark on a similarly discriminatory and futile path. It is simply not true that transgender girls and women pose any risk to women's sports. In fact, transgender women and girls have participated in sport in many states at many levels for many years, and the fact is that cisgender girls and women have not been harmed by everyone having the ability to play. The narrative that transgender girls and women will dominate sports if allowed to play is disproved by data: for example, no female transgender athlete has qualified for the Olympics despite rules permitting participation that have been in place for more than a decade. At the high school level, 20 states already allow transgender kids to compete in sports consistent with their gender identity, and at the college level the NCAA has its own policy allowing athletes to participate in sports consistent with their gender identity. A small percentage of people identify as being transgender, many transgender youth are not interested in playing sports, and those who do play want to play for the same reasons other youth like sports: because sports are fun. Transgender youth, depending on their age and personal circumstances, may or may not have embarked on any amount of medical transition. For those who have, it is critical to reiterate that transgender people do not gain an inherent competitive advantage in sports by virtue of transition

Participation in sports is essential for young athletes to be able to stay fit, develop healthy habits, and learn the virtues of practice and teamwork. The history of sports in this country has been about opening up true, meaningful opportunities to participate in sports – and allowing transgender people to participate in sports furthers that goal, not threatens it.

For these reasons, we request you reject this harmful and discriminatory bill.

Sincerely,



Cathryn Oakley
State Legislative Director and Senior Counsel
Human Rights Campaign