



**Statement by Chris Erchull,
Staff Attorney, GLBTQ Legal Advocates & Defenders (GLAD),
before the House Children and Family Law Committee,
in Opposition to House Bill 198,
An Act Relative to an Exception to the Opportunity
for Public Education Without Discrimination**

Honorable Chairperson Ladd and Members of the Committee:

Thank you for taking the time to consider my ardent opposition to House Bill 198, an Act relative to an exception to the opportunity for public education without discrimination. This bill represents a step backward in ensuring equal educational opportunities for all New Hampshire students.

As an attorney with GLBTQ Legal Advocates & Defenders (GLAD), New England's leading legal rights organization dedicated to ensuring equality for LGBTQ people and people living with HIV, I urge the Committee to vote decisively that HB 198 is inexpedient to legislate. Political forces outside of New Hampshire are pushing for legislative overreach in search of a nonexistent problem.

Benefits of Participation for All Students

School sports programs provide an important educational benefit to New Hampshire students. Participation in sports provides necessary opportunities for young people to develop critical life skills, including communication, teamwork, self-discipline, leadership, and confidence. Everyone benefits when educational opportunities are available to all students, because we need all students to be empowered to become successful contributors to society.

Today's transgender students are our future neighbors, coworkers, educators, volunteers, and parents. When gender dysphoria is properly treated in transgender youth (by living fully in their persistent and consistent gender identity), their ability to succeed is limitless, as long as we give them the tools to succeed. By providing equal access to educational opportunities for all students, we ensure that everyone is well equipped to work together in a diverse and ever-changing world.

Legislative Interference Disrupts Successful Policies

New Hampshire's own experience demonstrates that we can keep a level playing field while maintaining an inclusive policy that ensures a welcoming climate for all students. The New Hampshire Interscholastic Athletics Association (NHIAA) has long maintained a policy that allows transgender students full participation in sports programs.¹ The

¹ NHIAA By-Laws, Eligibility, Section 21, *available at* <http://www.nhiala.org/ckfinder/userfiles/files/4HB%2019-20%20II%20Eligibility.pdf>. The policy safeguards against abuse by precluding membership on female sports teams "for the purpose of gaining an unfair advantage in competitive athletics."

policy already addresses any legitimate concerns and ensures that transgender students can participate in sports in a way that meets the needs of all students. Notably, the NHIAA policy has never resulted in any harm (or even allegations of harm) to non-transgender girls.

Similarly, the National College Athletics Association (NCAA) has maintained its inclusive policy for the past decade without issue.² Over the ten years that the policy has been in place, only one transgender woman has won an individual women's championship.

The success of these policies in establishing a fair and inclusive environment for all students highlights the value of allowing our athletics associations to develop and maintain effective policies. It is not the role of the Legislature to interfere where effective policies, developed by experts, are already in place.

A National Effort to Divide New Hampshire

There is a national effort underway to politicize participation in sports programs at the expense of transgender youth. This year, about half of the state legislatures across the United States are considering similar bills. Special interest groups like the Alliance Defending Freedom (ADF) have been drafting and promoting bills everywhere.³ House Bill 198 did not originate from any identifiable needs or desires of the people of New Hampshire. Not one student has come forward to claim that she has been directly harmed by the inclusive policies in place in New Hampshire high schools and universities. If HB 198 becomes law, however, the harm to transgender students and their families will be direct and immediate. You will hear testimony from many young girls who will be denied essential educational opportunities solely because they are transgender.

Transgender Girls Belong on Girls' Teams

A core component of what it means to be a transgender girl is that her female gender identity must be fostered and supported, just as it would need to be fostered and supported for a non-transgender girl. What we know from medical and mental health professionals is that the physical and psychological wellbeing of transgender girls rests on their integration in school and other social environments as girls. Requiring a transgender girl to compete against male athletes would undermine that young person's

² See NCAA Office of Inclusion, *NCAA Inclusion of Transgender Student-Athletes* (Aug. 2011), https://www.ncaa.org/sites/default/files/Transgender_Handbook_2011_Final.pdf. Under the policy, transgender women may compete on women's teams only after "completing one year of testosterone suppression treatment." *Id.* at 13. The NCAA also identifies "best practices" for "athletics administrators, coaches, student-athletes, and athletics staff" at colleges and universities. *Id.* at 15.

³ See Dan Avery, *State Anti-Transgender Bills Represent Coordinated Attack, Advocates Say*, NBC News (Feb. 17, 2021), <https://www.nbcnews.com/feature/nbc-out/state-anti-transgender-bills-represent-coordinated-attack-advocates-say-n1258124>; Matt Viser, Marianna Sotomayor, & Samantha Schmidt, *Transgender Rights Emerge as a Growing Political Flash Point*, Washington Post (Mar. 3, 2021), https://www.washingtonpost.com/politics/transgender-rights-biden-sports/2021/03/03/24d1645e-7c38-11eb-a976-c028a4215c78_story.html.

identity and would work to defeat other supports in place to help her achieve healthy developmental outcomes.

As a thought experiment, imagine that you have a daughter who is referred to in many places in her life as male and told that there are some places where she could not socialize with other girls. Over time, the psychological injury that would cause would be acute. That is what happens for transgender girls who are told they are boys, even if it happens in limited contexts in their lives.

Discriminatory Laws Are Unconstitutional

In 2020, Governor Brad Little of Idaho signed a bill into law prohibiting transgender girls from participating in school sports programs designated for girls. The ACLU filed a lawsuit on behalf of Lindsay Hecox, a transgender student athlete. A federal district court judge, who was appointed by President Trump in 2017, enjoined the enforcement of the law, finding it a violation of the Equal Protection clause of the Fourteenth Amendment to the United State Constitution.⁴ In his decision, Judge Nye noted that no non-transgender girls had been denied any opportunity to participate in sports programs due to participation by transgender girls.

House Bill 198 would violate the state and federal constitutions by discriminating against transgender girls,⁵ denying them equal protection under the law. The inevitable litigation will be costly to New Hampshire residents and will likely result in an injunction by a court. Given that no person will benefit in any way by the passage of HB 198, there is no justification for inviting the unnecessary dedication of resources for litigation by enacting an unconstitutional law.

Violation of Privacy

The bill cannot be implemented as written. House Bill 198 presumes that schools know the sex assigned at birth of all students. In fact, New Hampshire public schools do not have the right to access the medical history of their students. Many transgender students have identification documents, including birth certificates, reflecting their gender identity without any reference to their natal sex. In some cases, a student's friends, teachers, and coaches may not even know that the student is transgender. This bill purports to classify students for differential treatment based on transgender status without any process for establishing whether the student is transgender. Requiring any student to disclose her transgender status is a violation of privacy.

Thank you for your consideration, and I hope you will reject HB 198 and preserve equality for all Granite Staters.

⁴ *Hecox v. Little*, 1:20-cv-00184-DCN, 2020 U.S. Dist. LEXIS 149442 (D. Ida. Aug. 17, 2020).

⁵ The text of the bill incorrectly claims to be "in keeping with the intent and purpose of the 1972 Title IX Law." In fact, Title IX is a law that was intended to protect girls and women from gender discrimination resulting from the denial of educational opportunities. This bill would discriminate and deny opportunities based on gender.

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Submitted by:



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