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June 1, 2021

In Support of Full Inclusion for Transgender Students: An Open Letter from the Civil and Human Rights Community

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 220 national organizations to promote and protect the civil and human rights of all persons in the United States, and the 62 undersigned organizations, we call for the full inclusion of transgender students in educational opportunities, including extracurricular activities such as athletics. We reject the bigoted, ignorant, mean-spirited, and discriminatory policies currently being considered by far too many state legislators that seek to exclude these members of our communities. Excluding transgender students from participation alongside their cisgender¹ peers is harmful to all students and undermines the learning environment for everyone.

Currently, there are a multitude of bills across the country that would harm both cisgender and transgender girls and women, particularly Black and Brown girls and women,² and are likely to violate both the U.S. Constitution and Title IX, putting states' federal educational funding in jeopardy. Transgender people of color face even deeper and broader patterns of discrimination than do their White transgender peers. Codifying discriminatory bills like

¹ Transgender people are people whose gender identity is different from the gender they were thought to be at birth. Cisgender people are people whose gender identity is the same as the gender assigned at birth. For more information see: <https://nbjc.org/wp-content/uploads/2020/11/LGBTQCulturalCompetencyTerminologyWorkbook-10-10-11.pdf>, <https://transequality.org/issues/resources/frequently-asked-questions-about-transgender-people> and <https://www.glsen.org/sites/default/files/2020-04/GLSEN%20Terms%20and%20Concepts%20Thematic.pdf>.

² List of bills active in state legislatures excluding transgender students from athletics: H.B. 391 (Alabama); S.J.R. 16, S.B. 354, S.B. 450 (Arkansas); S.B. 1637 (Arizona); S.B. 324, H.B. 6128 (Connecticut); H.B. 935, H.B. 1475, S.B. 2012 (Florida); H.B. 276, H.B. 372, S.B. 266 (Georgia); H.B. 1304 (Hawaii); H.F. 184 (Iowa); S.B. 208 (Kansas); H.B. 542, S.B. 156 (Louisiana); S.B. 106, H.B. 471 (Kentucky); H.P. 682 (Maine); S.B. 218 (Michigan); H.F. 350, H.F. 352, H.F. 1657 (Minnesota); H.B. 1077, H.J.R. 56, S.B. 503 (Missouri); S.B. 2536 (Mississippi); H.B. 112 (Montana); H.B. 198 (New Hampshire); S. 3540 (New Jersey); H.B. 304 (New Mexico); H.B. 1298 (North Dakota); H.B. 61, S.B. 132 (Ohio); S.B. 331, S.B. 2 (Oklahoma); H.B. 972 (Pennsylvania); S.B. 531 (South Carolina); H.B. 1217 (South Dakota); H.B. 3, S.B. 228 (Tennessee); S.B. 29, S.B. 373, H.B. 1458, H.B. 3455, H.B. 4042, H.B. 4043 (Texas); H.B. 302 (Utah); A.B. 195, A.B. 196 (Wisconsin); H.B. 2141, H.B. 2676, H.B. 2734, H.B. 3292, S.B. 341 (West Virginia).

Source: ACLU, *Legislation Affecting LGBT Rights Across the Country: Excluding transgender youth from athletics* (April 20, 2021), available at <https://www.aclu.org/legislation-affecting-lgbt-rights-across-country>.

Interim President & CEO

Wade Henderson

these would only exacerbate this injustice.³ We, the civil and human rights community, support the full inclusion of transgender girls and women in girls' and women's athletics. As organizations that care deeply about ending sex-based discrimination and ensuring equal access to athletics for girls and women, we support laws and policies that protect transgender people from discrimination, including participation in sports, and reject the suggestion that girls and women who are cisgender benefit from the exclusion of girls and women who are transgender. We firmly believe that an attack on transgender students is an attack on civil rights.

Transgender students face disproportionately high rates of sex discrimination, including sexual assault, in school.⁴ Bills that would exclude transgender students from athletics would further deprive transgender students of access to educational opportunities and could place them at greater risk of sexual assault.⁵ With murders against transgender women at an epidemic level,⁶ these bills only serve to create an environment where these attacks can happen at school while sending children the message that transgender people—and transgender women, in particular—are not entitled to the equal treatment, dignity, and respect they are taught other people deserve. Simply put, preventing transgender girls and women from participating in girls' and women's athletics is a recipe for more trauma, bullying, and violence.⁷

Not only do these proposals harm students and limit educational opportunity, the discrimination they endorse is illegal. For example, an Idaho bill has already been found to likely violate the rights of all women and girls, including transgender girls and women, under the U.S. Constitution's Equal Protection Clause.⁸ In addition, the U.S. Supreme Court and numerous federal courts⁹ have held that discrimination on the basis of gender identity and transgender status is a form of sex discrimination, including when it

³ National Center for Transgender Equality, *The Report of the 2015 U.S. Transgender Survey* 4, 11 (2017) [USTS Report], available at <http://www.ustranssurvey.org>.

⁴ USTS Report, available at <http://www.ustranssurvey.org>.

⁵ Diane Ehrensaft & Stephen M. Rosenthal, *Sexual Assault Risk and School Facility Restrictions in Gender Minority Youth*, 143 PEDIATRICS 1 (May 6, 2019), <https://pubmed.ncbi.nlm.nih.gov/31061221>

⁶ See: <https://www.hrc.org/resources/fatal-violence-against-the-transgender-and-gender-non-conforming-community-in-2021>.

⁷ Transgender students already face incredibly hostile school climates and high rates of bullying and harassment, which can impact not only their well-being but also educational outcomes. In a national survey of LGBTQ high school students, 84% of transgender students reported being victimized due to their gender identity and, compared to their cisgender LGB peers, they were more likely to report missing school because they felt unsafe or uncomfortable and less likely to report that were planning to complete high school. Source: Kosciw, J. G., Clark, C. M., Truong, N. L., & Zongrone, A. D. (2020). *The 2019 National School Climate Survey: The experiences of lesbian, gay, bisexual, transgender, and queer youth in our nation's schools*, p. 93-106. New York: GLSEN. https://www.glsen.org/sites/default/files/2021-04/NSCS19-FullReport-032421-Web_0.pdf.

⁸ *Hecox v. Little*, 479 F. Supp. 3d 930, 979, 984-85 (D. Id. Aug. 17, 2020).

⁹ *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1747 (2020); *Adams by & through Kasper v. Sch. Bd. of St. Johns Cnty.*, 968 F.3d 1286, 1296 (11th Cir. 2020); *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 616 (4th Cir. 2020), as amended (Aug. 28, 2020).

occurs in gender-separated education programs.¹⁰ The Biden-Harris administration has made clear that it intends to enforce Title IX consistent with the Supreme Court's holding in *Bostock*.¹¹

The current list of bills active in state legislatures excluding transgender students from athletics is a false solution in search of a nonexistent problem. For more than a decade, state athletic associations around the country have implemented eligibility policies that ensure transgender student athletes can compete consistent with their gender identity. Those inclusive policies have benefited all students, including cisgender girls and women.¹² There is no evidence that the participation of transgender girls and women has affected the level of play in states with inclusive policies.¹³ Furthermore, participation among women and girls has increased or stayed the same in those states that have inclusive sports policies, while participation has declined in states with discriminatory policies.¹⁴ The discriminatory bills further harm women's sports by targeting cisgender girls and women who fall outside stereotypical notions of femininity, simply because they are very tall or muscular, have short hair or deeper voices, wear masculine clothing, have a reproductive health disorder that produces facial hair, or otherwise choose to present in more traditionally masculine ways. If the bills passed in those states, a cisgender girl or woman could be removed from sports participation because a school official believes that she submitted "false or misleading" documentation about her sex assigned at birth, or simply because she is unable to afford the cost of obtaining a birth certificate or other legal document.¹⁵ Many of these bills resolve "disputes" over gender by requiring an athlete to undergo an invasive health care examination.¹⁶ There is also concern by parents that laws like this could increase sexual molestation of all girls by adults using this law as an

¹⁰ See, e.g., *Schwenk v. Hartford*, 204 F.3d 1187, 1200-01 (9th Cir. 2000) (interpreting Gender Motivated Violence Act); *Whitaker By Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1047 (7th Cir. 2017) (Title IX); *Evancho v. Pine-Richland Sch. Dist.*, 237 F. Supp. 3d 267, 288 (W.D. Pa. 2017); *M.A.B. v. Bd. of Educ. of Talbot Cnty.*, 286 F. Supp. 3d 704, 719 (D. Md. 2018) (Title IX). See also *Parents for Privacy v. Barr*, 949 F.3d 1210, 1239-40 (9th Cir. 2020) (Title IX); *Doe by & through Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 535 (3d Cir. 2018) (Title IX).

¹¹ Exec. Order No. 13988, 86 Fed. Reg. 7023 (Jan 20, 2021); see also Department of Justice, Civil Rights Division, *Application of Bostock v. Clayton County to Title IX of the Education Amendments of 1972* (Mar. 26, 2021), <https://www.justice.gov/crt/page/file/1383026/download>.

¹² Center for American Progress, *Fair Play: The Importance of Sports Participation for Transgender Youth 13-16* (Feb. 8, 2021) [CAP Report], available at <https://www.americanprogress.org/issues/lgbtq-rights/reports/2021/02/08/495502/fair-play>.

¹³ David Crary & Lindsay Whitehurst, *Lawmakers can't cite local examples of trans girls in sports*, ASSOCIATED PRESS (Mar. 3, 2021), <https://apnews.com/article/lawmakers-unable-to-cite-local-trans-girls-sports-914a982545e943ecc1e265e8c41042e7>.

¹⁴ CAP Report, *supra* note 10, at 14-16.

¹⁵ Teresa Wiltz, *Without ID, Homeless Trapped in Vicious Cycle* (May 15, 2017), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/05/15/without-id-homeless-trapped-in-vicious-cycle>.

¹⁶ Lawmakers have introduced bills in Ohio (S.B. 132) and Kansas (S.B. 208) for example that require the following documentation: "(D) If a participant's sex is disputed, the participant shall establish the participant's sex by presenting a signed physician's statement indicating the participant's sex based upon only the following: (1) The participant's internal and external reproductive anatomy; (2) The participant's normal endogenously produced levels of testosterone; (3) An analysis of the participant's genetic makeup."

excuse to perform physical checks on their genitalia—whether sanctioned by school districts or not. Black and Brown girls and women—who are routinely targeted for not conforming to society’s expectations of White femininity—would be especially vulnerable to the gender scrutiny invited by certain state bills.¹⁷

There are numerous examples of sex discrimination that continue to harm girls and women in sports—including fewer athletic opportunities,¹⁸ second-class facilities and equipment,¹⁹ and sexual abuse by coaches, doctors, and other students²⁰—but banning transgender girls and women from participating in sports would not solve any of these problems. These ill-informed state bills claim to protect girls and women in sports, but they do the exact opposite by using “fairness in women’s sports” as a cudgel against transgender girls and women. State leaders who care about women’s sports should reject these bills and instead focus on closing the gender and racial disparities in athletics opportunities and participation and on protecting student athletes from sexual abuse.

The civil rights community is all too familiar with those who would maliciously seek to coopt the language of fairness and equality in the service of an agenda which only advances discrimination and exclusion. Opponents of affirmative action, for example, have also cloaked their opposition to policies that ensure equal opportunity for students of color in college admissions in the rhetoric of supporting Asian American students.²¹ We are not fooled by a wolf in sheep’s clothing.

We support the full inclusion of transgender girls and women in sports because we recognize, as courts and scientists overwhelmingly have stated, that transgender girls and women *are* girls and women. Transgender youth participate in sports for the same reasons that all young people do: to have fun, challenge themselves, and be part of a team where they feel included and accepted. Students who are transgender deserve the chance to succeed and thrive like any other student.

¹⁷ Cassandra Mensah, *NWLC Leads Amicus Brief Against Idaho Law That Targets Trans Women and Girls and Harms All Female Students*, National Women’s Law Center (Dec. 21, 2020), <https://nwlc.org/blog/nwlc-leads-amicus-brief-against-idaho-law-that-targets-trans-women-and-girls-and-harms-all-female-students>.

¹⁸ Women’s Sports Foundation, *Chasing Equity: The Triumphs, Challenges, and Opportunities in Sports for Girls and Women* (2020), https://www.womenssportsfoundation.org/articles_and_report/chasing-equity-the-triumphs-challenges-and-opportunities-in-sports-for-girls-and-women; National Women’s Law Center, *Finishing Last: Girls of Color and School Sports Opportunities* 1 (2015), <https://nwlc.org/resources/finishing-last>.

¹⁹ United Nations Women, *COVID-19, Women, Girls and Sport: Build Back Better*, (2020), <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/brief-covid-19-women-girls-and-sport-en.pdf>.

²⁰ See, e.g., Aaron Slone Jeckell *et al.*, *The Spectrum of Hazing and Peer Sexual Abuse in Sports: A Current Perspective*, 10(6) *SPORTS HEALTH* 558, 560 (Dec. 2018), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6204631> (estimating that up to 48% of athletes experience some kind of sexual mistreatment); Julie Mack & Emily Lawler, *MSU doctor's alleged victims talked for 20 years. Was anyone listening?*, MLIVE (Feb. 8, 2017), https://www.mlive.com/news/index.ssf/page/msu_doctor_alleged_sexual_assault.html.

²¹ See: <https://www.advancingjustice-ajc.org/press-release/civil-rights-groups-respond-students-fair-admissions-decision-sue-yale-university>.

We call on state policymakers to reject attacks on transgender students, to commit themselves to meaningfully advancing policies that support equal educational opportunity,²² and to reassuring all students in the nation's classrooms that they will have the chance to learn, grow, and thrive. If you have any questions, please reach out to Steven Almazán, K12 Education Program Analyst at The Leadership Conference on Civil and Human Rights, at almazan@civilrights.org.

Sincerely,

The Leadership Conference on Civil and Human Rights
The Leadership Conference Education Fund
American Association of Colleges for Teacher Education
American Association of University Women (AAUW)
American Atheists
American Federation of Teachers
American Humanist Association
Americans for Democratic Action (ADA)
Americans United for Separation of Church and State
Anti-Defamation League
Athlete Ally
Autistic Self Advocacy Network
Center for American Progress
CenterLink: The Community of LGBT Centers
Children's Defense Fund
Clearinghouse on Women's Issues
Disability Rights Advocates
Disability Rights Education & Defense Fund (DREDF)
Education Law Center-PA
Equal Justice Society
Family Equality
Feminist Majority Foundation
FORGE, Inc.
Girls Inc.
GLAAD
GLMA: Health Professionals Advancing LGBTQ Equality
GLSEN
Human Rights Campaign
Impact Fund
Interfaith Alliance
Labor Council for Latin American Advancement
Lambda Legal

²² See, e.g., GLSEN, *Gender Affirming and Inclusive Athletics* (2021), https://www.glsen.org/sites/default/files/2021-05/GLSEN_Transathlete_Policies_Issue_Brief-05-03-21.pdf.

LatinoJustice PRLDEF
Lawyers' Committee for Civil Rights Under Law
LPAC
MALDEF
Matthew Shepard Foundation
MomsRising
Movement Advancement Project
NARAL Pro-Choice America
National Center for Learning Disabilities
National Center for Transgender Equality
National Center for Youth Law
National Council of Jewish Women
National Council on Independent Living
National Crittenton
National Disability Rights Network (NDRN)
National Education Association
National Employment Law Project
National Equality Action Team (NEAT)
National Indian Education Association
National Organization for Women
National Urban League
National Women's Law Center
OCA - Asian Pacific American Advocates
People For the American Way
PFLAG National
Public Justice
Sikh Coalition
The Education Trust
The Trevor Project
UFCW OUTreach
Union for Reform Judaism
UnidosUS