

January 13, 2025

Dear Member of Congress,

The National Women’s Law Center and Women’s Sports Foundation, joined by the undersigned women’s and girls’ rights organizations, write to voice our vehement opposition to H.R. 28 and S. 9, “The Protection of Women and Girls in Sports Act of 2025.”¹ As organizations deeply committed to fulfilling the promise of Title IX of the Education Amendments of 1972 of equal educational opportunity for all women and girls, including in school sports, we have advocated for gender equity in schools for decades. Far from promoting sex equality in sports, H.R. 28 and S. 9 are discriminatory attempts to cause harm to and exclude transgender, intersex, and nonbinary students from school sports and would not promote fairness or safety in school sports for women and girls. We thus urge you to reject this effort to enshrine sex discrimination and oppose H.R. 28 and S. 9.

H.R. 28 and S. 9 unmistakably constitute discrimination on the basis of sex. As recognized by the U.S. Supreme Court,² numerous Federal courts,³ and the U.S. Department of Education,⁴ sex discrimination *includes* discrimination based on gender identity and sex characteristics. **Title IX’s mandate that all students must be able to access the benefits and opportunities of an education free from sex discrimination includes the right to play sports.**

Rather than promote these goals, the deceptively titled, “The Protection of Women and Girls in Sports Act,” promotes discrimination and makes no effort to address the actual, pervasive discriminatory barriers that women and girls continue to face in school athletics. H.R. 28 and S. 9 do nothing to address the fact that college women have almost 60,000 fewer athletic opportunities to play than men, or that high school girls have over 1 million fewer opportunities than boys to play sports.⁵ It fails to take any steps to open opportunities for women and girls of color, who are disproportionately impacted by these disparities in participation opportunities.⁶ H.R. 28 and S. 9 do not advance policies to address the second-class treatment women’s and girls’ teams continue to receive from their schools as compared to men’s and boys’ teams when it comes to facilities, equipment, and travel.⁷ These bills do not address how colleges and

¹ H.R. 28 & S.9, 119th Cong. (2025).

² *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020).

³ *Doe v. Horne*, 115 F.4th 1083 (9th Cir. 2024); *B.P.J. v. W. Va. State Bd. of Educ.*, 98 F.4th 542 (4th Cir. 2024); *A.C. v. Metropolitan Sch. District of Martinsville*, 75 F.4th 760 (7th Cir. 2023), *cert. denied*, 144 S. Ct. 683 (2024); *Grimm v. Gloucester County Sch. Bd.*, 972 F.3d 586 (4th Cir. 2020).

⁴ 34 C.F.R. § 106.10. *See also id.* 34 C.F.R. § 106.31(a)(2) (explaining that “adopting a policy or engaging in a practice that prevents a person from participating in an education program or activity consistent with the person’s gender identity subjects a person to more than de minimis harm on the basis of sex”).

⁵ 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.

⁶ National Women’s Law Center, *Finishing Last: Girls of Color and School Sports Opportunities 1* (2015), <https://nwlc.org/resources/finishing-last>.

⁷ United Nations Women, *COVID-19, Women, Girls and Sport: Build Back Better*, (2020), <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/briefcovid-19-women-girls-and-sport-en.pdf>.

universities have shortchanged women athletes millions of dollars in academic assistance.⁸ Nor do H.R. 28 and S. 9 seek to strengthen protections against the rampant sexual abuse student-athletes of all ages and genders still face.⁹ **To put it plainly, one would be hard pressed to explain how banning transgender women and girls from playing alongside their peers does anything to address actual problems of sex discrimination in sports.**

H.R. 28 and S. 9's real purpose is not to expand opportunities for women and girls, but to deny transgender, intersex, and nonbinary students of their right under Title IX to equal athletic opportunities. **This harms all women and girls.** Recent data from the CDC shows that state policies that prevent transgender high school students from playing are correlated with lower participation by *all* high school girls between 2011 and 2019; meanwhile, participation by all girls remained unchanged in states with policies allowing transgender students to play.¹⁰ Sports participation is linked to increased academic achievement¹¹ and fosters in students increased emotional, mental, and physical well-being and a sense of community.¹² Amending Title IX to exclude transgender, intersex, and nonbinary students from these benefits will undeniably harm these students, who because of stigma and discrimination are already especially vulnerable to isolation and decreased academic performance,¹³ and ultimately harm all women and girls.

Our organizations are deeply concerned about how H.R. 28 and S. 9 dangerously invite gender policing that threatens all women and girls. H.R. 28 and S. 9 are vague and unworkable and could only be implemented by a combination of invasive and harmful practices. There is no principled way to apply the bill's unclear language to the many girls and young women born with intersex variations, which by definition, are variations in "reproductive biology and genetics at birth."¹⁴ Similar bans have been widely used to push girls and women born with

⁸ Kenny Jacoby, Rachel Axon, Lindsay Schnell, and Steve Berkowitz, *Female athletes stiffed on scholarships at some of the biggest colleges in the country*, USA Today (Aug. 17, 2022), <https://www.usatoday.com/in-depth/news/investigations/2022/08/17/female-athletes-stiffed-scholarship-money-colleges-title-ix/7640647001/>.

⁹ See, e.g., Aaron Slone Jeckell et al., *The Spectrum of Hazing and Peer Sexual Abuse in Sports: A Current Perspective*, 10 Sports Health 558, 560 (2018), <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.

¹⁰ Ctr. for American Progress, *Fair Play: The Importance of Sports Participation for Transgender Youth 14-17* (2021), <https://www.americanprogress.org/wp-content/uploads/2021/02/Fair-Play-correction2.pdf>.

¹¹ National Coalition for Women and Girls in Education, *Title IX at 45: Advancing Opportunity through Equity in Education* 41 (2017), <https://www.ncwge.org/TitleIX45/Title%20IX%20at%2045-Advancing%20Opportunity%20through%20Equity%20in%20Education.pdf>.

¹² *Id.* at 42. See also Stacy M. Warner et al., *Examining Sense of Community in Sport: Developing the Multidimensional 'SCS' Scale*, 27 J. of Sport Management 349, 349-50 (2013) (explaining that sports participation can create social connections and a sense of community in participants, especially for youth populations, whose interest in playing sports is often born out of a desire to connect with their peers).

¹³ GLSEN, *The 2021 National Climate Survey, The Experiences of LGBTQ+ Youth in Our Nation's Schools* 34, 99 (2022), <https://www.glsen.org/sites/default/files/2022-10/NSCS-2021-Full-Report.pdf> (in-school victimization on the basis of students' LGBTQ status is linked to lower grades, increased absences, withdrawal from school altogether, in addition to decreased feelings of connectedness to the school community).

¹⁴ See interACT: Advocates for Intersex Youth, *Intersex Variations Glossary* (2022), <https://interactadvocates.org/wp-content/uploads/2022/10/Intersex-Variations-Glossary.pdf>.

these variations out of sports opportunities and have chilled their participation in school sports.¹⁵ Additionally, H.R. 28 and S. 9 would inevitably lead to schools and athletic associations adopting “sex verification” practices which may include forcing women and girls to submit to a variety of invasive, humiliating, and unscientific practices for the purported purpose of determining whether they are “really” girls or women.¹⁶ These procedures make all women and girls vulnerable to sexual abuse, but are especially likely to be used to target Black and brown women and girls who do not conform to white ideals of femininity,¹⁷ other women and girls who do not conform to sexist stereotypes, and nonbinary and gender nonconforming students. If H.R. 28 and S. 9 become law, it would permit school districts, colleges and universities, and athletics associations to become the arbiters of who is “sufficiently” feminine to play, thereby perpetuating harmful racist and sexist stereotypes that punish students for who they are or how they look, and placing students at further risk for sexual abuse, including harassment. And this isn’t speculation. Just last year, a Utah school board member publicly questioned the gender of a 16-year-old cisgender girl playing on a high school basketball team who wore short hair and baggy clothes.¹⁸ As a result, the student was subjected to harassment, bullying, and threats of violence, necessitating police protection for her and her family.¹⁹

Every student deserves the opportunity to participate in sports in a safe environment. The blanket, discriminatory exclusion that H.R. 28 and S. 9 would mandate for every age, every sport, and every level of competition flies in the face of Title IX’s mandate of equal access to educational opportunities. Transgender women and girls have been playing school sports for years, adhering to various rules and regulations set by their state or sport governance organization which govern their participation. Claims that they have been unfairly “dominating” competition are utterly false. H.R. 28 and S. 9 promote fear, dangerous stereotypes, and sex discrimination based on misinformation, and they should not become law.²⁰

¹⁵ Anne Branigin, *Intersex youths are also hurt by anti-trans laws, advocates say*, Washington Post (Jul. 16, 2022), <https://www.washingtonpost.com/nation/2022/07/16/intersex-anti-trans-bills/>.

¹⁶ For example, Idaho passed a sports ban in 2020 which prevented transgender, intersex, and nonbinary students from competing according to their gender identity, along with an alarming provision allowing anyone to challenge the sex of girls or women seeking to play for their school’s girls’ or women’s teams. A student whose sex was challenged would then have to shoulder the humiliating burden of “verifying” their sex in order to play. H.B. 500, 2020 Leg., 65th Sess. (Id. 2020). There is currently a temporary injunction blocking enforcement of this sports ban, pending further review. *Hecox v. Little*, 479 F. Supp. 3d 930 (D. Idaho 2020), on appeal, No. 20-35815 WL 2189094 (9th Cir. 2022).

¹⁷ See, e.g., Patricia Vertinsky et al., *More Myth than History: American Culture and Representations of the Black Female’s Athletic Ability*, 25 J. of Sport Hist. 532, 541 (1998) (Black women athletes are often described as “masculine,” which is rooted in the myth that African Americans were suited for physical labor during slavery because of their “‘natural’ brute strength”); Elizabeth Adetiba, *Caster Semenya and the cruel history of contested Black femininity*, SB Nation (Apr. 20, 2020), <https://www.sbnation.com/2020/4/20/21227661/caster-semenya-world-athletics-regulation-body-racism> (governing sports bodies enforce the belief that the white, cisgender woman’s body is the paradigm of “womanhood,” and anything outside of that is “manly” and “unacceptable”).

¹⁸ Kim Bellware, *School board member who questioned teen’s gender faces calls to resign*, Washington Post (Feb. 11, 2024), <https://www.washingtonpost.com/nation/2024/02/11/utah-transgender-error-natalie-cline/>.

¹⁹ *Id.*

²⁰ Myths about transgender athletes having categorical dominance over their cisgender peers are untrue and unsupported by evidence; in fact, most sports policies are not evidence-based and implement participation requirements that are arbitrary and have no clear link to the factors that actually influence performance. Canadian Centre for Ethics in Sports, *Transgender Women*

We welcome and support efforts that protect women and girls in sports, including those that would fix the problems we identified above. But this is not what H.R. 28 and S. 9 do.

As women's rights and gender justice organizations, we vehemently reject this dangerous legislation and rhetoric which only serves to marginalize transgender, nonbinary, and intersex people and encourage scrutiny and policing of the bodies of all women and girls in sports. Supporting the civil rights of women and girls cannot be separated from championing policies that protect the rights of transgender, intersex, and nonbinary individuals' rights to be free from sex discrimination, including in school sports. This, at a minimum, includes voicing strong opposition to H.R. 28 and S. 9.

If you have questions about this letter, please contact Shiwali Patel (spatel@nwlc.org) and Sarah Axelson (saxelson@womenssportsfoundation.org).

Sincerely,

National Women's Law Center and Women's Sports Foundation, *joined by*:

National Organizations:

A Better Balance

American Association of University Women (AAUW)

American Civil Liberties Union

Athletes Unlimited

Bend the Arc: Jewish Action

Callisto

Center for Policing Equity

Clearinghouse on Women's Issues

Empowering Pacific Islander Communities

End Rape on Campus

Esperanza United

Family Values @ Work

Athletes and Elite Sport: A Scientific Review 7 (2022),

<https://cces.ca/sites/default/files/content/docs/pdf/transgenderwomenathletesandelitesport-ascientificreview-e-final.pdf>. Research shows that factors like testosterone, lung capacity, bone density, and hip-to-knee joint angle are not correlated with competitive advantage or athletic performance. *Id.* at 25, 29. Factors that are often overlooked (and more influential when it comes to conferring athletic advantage than testosterone is) are social factors such as the ability to access and afford quality equipment, time spent training, and nutrition. *Id.* at 6.

Feminist Majority Foundation
Girls for Gender Equity
Guttmacher Institute
Institute for Women's Policy Research
interACT: Advocates for Intersex Youth
Know Your IX, a project of Advocates for Youth
Ms. Foundation for Women
National Organization for Women
National Council of Jewish Women (NCJW)
National Latina Institute for Reproductive Justice
National Partnership for Women & Families
Power to Decide
Red Wine & Blue
Reproductive Freedom for All (formerly NARAL Pro-Choice America)
Sexual Violence Prevention Association (SVPA)
Shattering Glass
Stop Sexual Assault in Schools
Transgender Law Center
VOICEINSPORT Foundation
Women's March
YWCA USA

State and Local Organizations:

ASTOP, Inc. Sexual Abuse Center
Bozeman City for CEDAW Women's Human Rights Task Force, MT
Chicago Alliance Against Sexual Exploitation (CAASE)
Deaf Unity

Diverse & Resilient

Domestic Violence Escape (DOVE), Inc.

Freedom, Inc.

Gender Justice

Harvard Law School Gender Violence Program

Illinois Accountability Initiative

Illinois Coalition Against Sexual Assault

KWH Law Center for Social Justice and Change

Maryland Network Against Domestic Violence

Menagerie Rugby Club

Minnesota Suns

Montanans for Choice Take Action

National Council of Jewish Women, Pennsylvania

National Organization for Women, Central New York

National Organization for Women, Columbia Area (MO)

National Organization for Women, Florida

National Organization for Women, Massachusetts

National Organization for Women, Missouri

National Organization for Women, Montana

National Organization for Women, Santa Fe

National Organization for Women, Seattle

Network NOVA

Northwoods Women Inc.

People Of Progression

Public Counsel

Reach Counseling

Stepping Stones, Inc.

The Tucker Center

Wisconsin Coalition Against Sexual Assault

Women's Law Project