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LD 1704

My name is Ailish Kress (pronouns she/her), and I work as a mental health counselor and part-time as a high school coach (track and field).

Title XI prevents discrimination on the basis of sex, which means “Title IX should not be used to promote gender segregation and reinforce gender stereotypes by invalidating an interpretation of a state [equal rights act]. Instead, potentially injurious consequences of allowing boys to play in girls’ sports should be controlled” in a “gender-neutral manner that does not rely on paternalistic protections or outdated stereotypes of women as the “weaker sex”” (Marquis, 2014). So any bill that uses language like “Prohibit Biological Males from Participating in School Athletic Programs and Activities Designated for Females” seems to contradict Title IX from the outset (LD 233, LD 868, LD 1134). One of my good (female) friends in high school played on the football team for a few years, and I know that boys have been allowed to play on field hockey teams unless there are enough kids to form a whole additional team of that gender.

The language in these bills may also encourage a resurgence of humiliating and discriminatory sex testing of athletes (Human Rights Watch, 2020). Must all girls prove they are female enough to play girls’ sports? At age 14, I was 5’7” and weighed about 180 lbs. Would I have been too tall, too large, or too strong to be considered “truly female”? I know I can say if I had to submit to a sex verification test I would simply have refused to play sports: I was intensely shy and self-conscious about my body. In which case, I would have lost the mental health benefits of competing in track and field all four years of high school, and the school record my teammates and I set would never have happened.

The intersection of sex, gender, athleticism, and risk is complex and deserves more consideration than these bills provide. All the so-called “biological” bills blithely ignore the biological reality of intersex people, who make up about 1% of the population, and in doing so, they expose the fact that these bills are based in bigoted ideology, not science. Biological sex is not binary. Intersex people have an array of biological variations in internal and external anatomy at birth and as they grow (Montañez, 2017, Scientific American). Their variations are not anomalies and they do not deserve to be pathologized. Therefore the “definitions” of sex in the text of LD 686 are both factually incorrect and discriminatory. Human Rights Watch goes further into this issue regarding elite athletes (Human Rights Watch, 2020).

In my nine and a half years of coaching high school track and field, I have never heard of any trans or queer kids causing problems to others in bathrooms or locker rooms; in fact, unfortunately, trans and queer kids tend to be the focus of bullying, in my experience. Anecdotally, I’d say about 90% of the bullying or harassing behavior we have had to deal with on the team while I’ve been coaching was committed by straight boys.

And even then, that has been pretty minor, as the athletes overall do a very good job of supporting their teammates and helping us coaches monitor and respond to bullying or similar behavior promptly. We have had trans and nonbinary athletes on the team over the years, and some have been amazing athletes; some haven’t. Some have been really invested in team culture and team spirit, and some haven’t. Just like the cisgendered kids. And just like the cis kids, all trans kids deserve to participate in sports; no kid should be denied participation in sports because of their identity.

If the sponsors of these bills do actually care to maintain students’ dignity and improve their welfare, they should research and take action on how to meaningfully reduce bullying, hazing and harassment on boys’ sports teams, by boys against boys. LD 1704 and LD 1134 target bathrooms, and LD 868, for example, has a lot to say about locker rooms and sleeping quarters, but nothing in those bills, so far as I can tell, would actually have prevented any of the most recent sports team hazing

incidents that have made the news in our state. If we, in the US, raise our children to have puritanical or shame-filled attitudes about nudity and body shape and size (it is very different in other parts of the world!), then why on Earth don't we provide them with individual changing stalls and individual shower stalls?

These bills seem to be "solutions" in search of a problem, meanwhile they do nothing to address existing problems occurring in locker rooms and bathrooms. Thank you for the opportunity to share my perspective with the Committee. I urge you to vote "Ought not to Pass" on these bills.

Human Rights Watch, 2020:

<https://www.hrw.org/report/2020/12/04/theyre-chasing-us-away-sport/human-rights-violations-sex-testing-elite-women>

Marquis, 2014:

<chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://lira.bc.edu/files/pdf?fileid=a1f158e7-fdc9-4ca4-beca-2659e2f42e10>

Montañez, A. (2017). Beyond XX and XY. *Scientific American*, 317(3), 50-51.