



new hampshire

## **WOMEN'S FOUNDATION**

**To: Chairman Jay Kahn, Senate Education and Workforce Development Committee**

**Re: Opposition to Senate Bill 480**

**Date: March 3, 2020**

**Position: INEXPEDIENT TO LEGISLATE**

### Background

The New Hampshire Women's Foundation invests in equality and opportunity for women and girls through research, advocacy and philanthropy. Along with our predecessor organizations the NH Commission of the Status of Women, The NH Women's Lobby and the NH Women's Policy Institute we have been a consistent and leading voice in New Hampshire for the advancement and the protection of the rights of women and girls for more than 50 years.

With regard to issues of sex and gender discrimination we have a long-history as a voice for Title IX, advocating for equity in school sports, and opportunities for all women and girls to benefit from athletic participation, teamwork and competition. We reject the fundamental premise of SB 480 – that cisgender women and girls are better served by the exclusion of women and girls who happen to be transgender - and we encourage this Committee to do the same.

### SB 480 promotes exclusion and unequal access to education opportunity

Providing equal opportunities in all aspects of school programming is a core value in education. It follows that all young people should have the opportunity to play recreational sports and have their personal dignity respected. Transgender young people are no different. In fact, because transgender young people often must overcome significant stigma and challenges, it would be particularly harmful to exclude them from the significant physical, mental and social benefits that young people gain by playing recreational sports. The impact of such discrimination can be severe and can cause lifelong harm. In contrast, permitting transgender children and youth to participate in recreational sports in their affirmed gender can provide an enormous boost to their self-confidence and self-esteem and provide them with positive experiences that will help them succeed in all other areas of their lives.<sup>1</sup>

### SB 480 instructs schools and districts to violate NH's recently enacted non-discrimination laws

Over the past two legislative sessions, a bipartisan majority in both the House and the Senate enacted laws to prohibit discrimination based on gender identity and expression (HB 1319, 2018) and to ensure these anti-discrimination provisions were applicable to the behavior and environment in New Hampshire's public schools (SB 263, 2019). The New Hampshire Women's Foundation strongly supported both of these measures and would encourage this Committee to build on these inclusive policies by helping to move us forward, not backward with regard to

gender equality. There are indeed real inequities when it comes to funding, resources, and pay equity in women's sports and proposals like SB 480 distract from that worthy focus.

SB 480 contradicts policies established by the NHIAA (New Hampshire Interscholastic Athletic Association) and NCAA (National Collegiate Athletic Association) and supported by major medical associations and youth advocacy organizations

Across the nation, athletic organizations and governing bodies have recognized that the rights of transgender students to participate in sports call for the same considerations of fairness and equal access as their classmates. These well-developed policies require that students who identify as transgender demonstrate a consistent gender identity in everyday life, as verified by people in the student's life and/or health professionals. These policies also recognize that transgender athletes are entitled to a non-negotiable right to privacy and confidentiality throughout this process. SB 480 would run afoul of the best practices established by these professional organizations and circumvent the thoughtful and interdisciplinary recommendations established to ensure the dignity, privacy and legal rights of transgender athletes and their teammates.

The policies advanced in SB 480 are at odds with Title IX<sup>ii</sup>

Advocates for women and girls in sports such as the National Women's Law Center, the Women's Sports Foundation and Women Leaders in College Sports support trans-inclusive policies and oppose efforts to exclude transgender females from participating in sports. Excluding transgender students from participation in sports violates their rights under Title IX, which has been interpreted under case law to include the prohibition of discrimination based on gender identity. For school districts in New Hampshire, SB 480 would invite divisive litigation.

### Conclusion

Equal participation in athletics for transgender people does not mean an end to women's sports nor does it offend the intent or the actual meaning of the Title IX law and policy. The New Hampshire Women's Foundation encourages your opposition to this bill and is committed to work further with legislators, community leaders and transgender advocates toward its defeat. We urge you to reject this proposal.

Respectfully Submitted,

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<sup>i</sup> Excerpted from Guidelines for *Creating Policies for Transgender Children in Recreational Sports*, Transgender Law and Policy Institute, 2009

<sup>ii</sup> See *Whitaker v. Kenosha Unified School District*, NO 16-3522 (7<sup>th</sup> Circuit, 2017) and *Highland v. U.S. Department of Education*, No. 16-4117 (6<sup>th</sup> Circuit, 2016)