



new hampshire
WOMEN'S FOUNDATION

To: Chairman Lynn and the House Judiciary Committee

Re: Testimony in Opposition to House Bill 396, relative to state recognition of biological sex

Date: January 26, 2023

Position: INEXPEDIENT TO LEGISLATE

The New Hampshire Women's Foundation invests in equality and opportunity for New Hampshire women and girls through research, education, advocacy, and grantmaking.

We respectfully encourage the Committee to ITR HB 396 because a "state interest" in differentiating between "biologically male and female human beings" ignores gender identity and the experience of transgender, nonbinary, and intersex people who deserve equitable treatment in schools, athletics, corrections, and all other facets of public life. This legislation would move us backwards from the progress New Hampshire has made in recognizing transgender people in nondiscrimination law.

Thousands of transgender people live and work in our communities. They are our neighbors, co-workers, friends, and family. Despite growing public awareness of gender identity and support for transgender people, they still face disproportionate rates of discrimination, harassment, and violence. That must change. Transgender women are women, and like all women we want them to be treated fairly in all aspects of their lives.

HB 396 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 if schools chose 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.¹

HB 396 is inconsistent with New Hampshire's recently enacted non-discrimination laws

In the last few years, bipartisan majorities in both the House and the Senate enacted laws to prohibit discrimination based on gender identity and expression and to ensure these anti-discrimination provisions were applicable to the behavior and environment in New Hampshire's public schools. 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 and injustices when it comes to funding, resources, and pay equity in women's sports and proposals like HB 396 distract from that worthy focus.

HB 396 is inconsistent with rules 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. HB 1251 would create confusion around New Hampshire law and the thoughtful and interdisciplinary policy recommendations and guidance established to ensure the dignity, privacy and legal rights of transgender student-athletes and their teammates.

HB 396 would open the door to violations of Title IXⁱⁱ

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. Not allowing transgender students to participate 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 schools and school districts in New Hampshire, HB 396 would invite costly and divisive litigation.

Protecting Trans Women in Corrections

Trans women who are incarcerated are among those at highest risk for sexual abuse and harassment. If the Department of Corrections, as the state, were to have an interest in biological sex only, without an interest in gender identity, the DOC would not be able to safely house or respond to the needs of trans women and others at risk of violence. The Department of Corrections is not hindered, based on any existing law, from identifying the appropriate facility to house and accommodate incarcerated people. HB 396 muddles, rather than clarifies, the state's interest in determining gender identity for safety measures.

Conclusion

The New Hampshire Women's Foundation encourages your opposition to this bill. We thank you for the opportunity to provide testimony.

Respectfully submitted,

Devan Quinn
Director of Policy
devan@nhwomensfoundation.org
(603) 475-3059

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

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