



NEW YORK STATE
BAR ASSOCIATION

Report and Recommendations of the New York State Bar Association **Task Force on the Treatment of Transgender Youth in Sports**

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Acknowledgments

Highest thanks go to prior NYSBA President T. Andrew Brown, as well as Executive Director Pam McDevitt, without whom the Task Force would not exist.

This report – like the work of the Task Force as a whole – was a collaboration. Due to the unprecedented flux in legal and political focus on the issues presented over the past three years, the report could not have been brought to completion without lively debate, numerous interim publications, public explanation, membership educational forums, and CLE events, in addition to early, interim, and late-stage research and drafting.

There are too many deserving people to acknowledge individually, but special thanks go to Sasha Buchert of Lambda Law, Professor Erin Buzuvis of Western New England School of Law, Jill Pilgrim, Esq., and my Co-Chair M. Lettie Dickerson, Esq., who was so instrumental in getting us out of the penalty box and “into the net.”

It has been a privilege working with all of you!

Jackie Drohan, Co-Chair

Introduction

The NYSBA Transgender Youth in Sports Task Force was formed by NYSBA President T. Andrew Brown in 2020 and furthered by the unerring support of Executive Director Pam McDevitt and Past Presidents Sherry Levin and Richard Lewis. Members of the Task Force include prominent legal scholars, public officials, and advocates, as well as NYSBA member participants with direct experience in coaching, athletics and sports medicine, drawn from across the state.

In addition to advocating directly with the House of Delegates on adjacent issues, the Task Force has sponsored and organized several educational and thought leadership panels, including one of two keynote panels presented at the 2022 Presidential Summit.

The Association has and continues to support its LGBTQ+ members with educational programming, active visibility at the section level and, most importantly, legislative, and judicial advocacy. In addition to its support of trans kids in empaneling and highlighting this Task Force, the Association has taken public positions in support of H.R. 5 – the Equality Act – which would explicitly extend the ban contained in Title IX of the Civil Rights Act of 1964 to discrimination based on sexual orientation or gender identity and clarify the alignment of federal law with the position of the U.S. Supreme Court in *Bostock v. Clayton County, GA*. NYSBA has also filed amicus briefs in critical LGBTQ+ rights cases such as *Fulton v. City of Philadelphia*¹ and *303 Creative*.² The Task Force believes that adoption of the recommendations put forward in this report would be wholly consistent with NYSBA’s historical posture and the spirit of the majority of its membership.

Legislation seeking to prohibit transgender youth from participating in athletics must be placed into the proper context. This context is one in which transgender youth have increasingly been placed in the crosshairs of policymakers across the country who are using transgender youth as a political wedge issue.³

This report focuses on the risks to kids. Sports have been found to be formative in protecting mental, emotional, and physical health, and children in the K-12 setting are at a critical age when a denial of access can have grave consequences. The issue of scope of participation by transgender adult athletes at the competitive level in national and international sports is not

¹ Jacqueline J. Drohan et al., *Fulton v. City of Philadelphia: What It Really Means*, NYS Bar Assoc., July 9, 2021, <https://nysba.org/fulton-v-city-of-philadelphia-what-it-really-means/>.

² Susan DeSantis, *New York State Bar Association Argues in U.S. Supreme Court Amicus Brief That No One Should be Discriminated Against in Public Accommodations*, NYS Bar Assoc., Aug. 22, 2022, <https://nysba.org/new-york-state-bar-association-argues-in-u-s-supreme-court-amicus-brief-that-no-one-should-be-discriminated-against-in-public-accommodations/>.

³ See Jeremy W. Peters, *A Conservative Push to Make Trans Kids and School Sports the Next Battleground in the Culture War*, New York Times, Nov. 3, 2019, <https://www.nytimes.com/2019/11/03/us/politics/kentucky-transgender-school-sports.html>; see also *Obsessed: House Republicans’ Relentless Attacks Against the LGBTQI+ Community in 2023*, Congressional Equality Caucus, Feb. 2024, at 5, <https://equality.house.gov/sites/evo-subsites/equality.house.gov/files/evo-media-document/CEC-Report---Obsessed-compressed.pdf>.

addressed in this report or its recommendations. While this committee broadly supports a nondiscriminatory “room for inclusion” approach subject to a level playing field, as assessed with statistical rigor, for all competitive adult athletes, our instant recommendations are centered on the scholastic sports setting, with its attendant goals of education, socialization, and childhood well-being.

That said, the Task Force does note that under a strict population percentage analysis, transgender people are significantly *underrepresented* in sports, professional or amateur.⁴ Nonetheless, longstanding rules have existed under the International Olympic Committee framework, for example, allowing room for inclusion of transgender, non-binary and intersex athletes under rigid medical and performance standards and, under recent revisions, with a closer look on an event-by-event and case-by-case basis.⁵ While transgender athletes have been allowed to participate in Olympic events since 2004, not a single transgender person assigned male at birth has ever obtained a medal at the Olympics in a female category, despite transgender people comprising approximately 1.4% of the U.S. population.⁶ Indeed, no transperson even reached the Olympic trial level until 2020 – Chris Mosier (a *transman* competing in the *men’s division*).⁷ Only two transgender women, Lia Thomas and CeCe Telfer, have ever obtained NCAA titles, despite the multitude of events that are held each year. NCAA has allowed open participation of transgender athletes since 2011; however, subsequent to Thomas’s win, NCAA now will defer to each sport’s governing body, and the swimming governing body, FINA, has effectively banned transgender women from future participation.⁸

Turning to the report’s central issue of scholastic sports, it is notable that not a single state law was passed restricting the rights of transgender youth before 2020.⁹ However, the legislative focus has exploded in the last five years, going from a relatively small number of such bills in 2017 to well over two hundred bills in 2023–2024.¹⁰ In addition to bills seeking to exclude trans youth from participating in sports, there are bills seeking to ban them from best practices medical

⁴ 2020 *LGBTQ+ Youth Outness & Sports Participation Statistics*, The Trevor Report, June 23, 2020, <https://www.thetrevorproject.org/research-briefs/lgbtq-youth-sports-participation>.

⁵ *Fairness, Inclusion and Non-Discrimination in Olympic Sport*, Int’l Olympic Committee, <https://olympics.com/ioc/human-rights/fairness-inclusion-nondiscrimination> (last visited Feb. 23, 2024).

⁶ Jody L. Herman et al., *How Many Adults and Youth Identify as Transgender in the United States?*, UCLA School of Law Williams Inst., June 2022, <https://williamsinstitute.law.ucla.edu/publications/trans-adults-united-states>.

⁷ Ken Stone, *Making Transgender History in Santee: Chris Mosier at Olympic Trials 50K Walk*, Times of San Diego, Jan. 31, 2020, <https://timesofsandiego.com/sports/2020/01/31/making-transgender-history-in-santee-chris-mosier-at-olympic-trials-50k-walk/>.

⁸ Jeré Longman, *Sport Is Again Divided Over Inclusiveness and a Level Playing Field*, New York Times, Jun.23, 2022, <https://www.nytimes.com/2022/06/22/sports/olympics/transgender-athletes-fina.html>; Erin Buzuvis, *What’s Wrong with the NCAA’s New Transgender Athlete Policy?*, 29 Wm. & Mary J. Race, Gender, & Soc. Just. 155 (2022), <https://scholarship.law.wm.edu/wmjowl/vol29/iss1/5/>.

⁹ *LGBTQ Youth: Bans on Transgender Youth Participation in Sports*, Movement Advancement Project, at 3, Jan. 23, 2024, <https://www.lgbtmap.org/img/maps/citations-sports-participation-bans.pdf>.

¹⁰ *Tracking the Rise of Anti-Trans Bills in the U.S.*, Trans Legislation Tracker, <https://translegislation.com/learn> (last visited Feb. 23, 2024); *2023 Anti-Trans Legislation*, Trans Legislation Tracker, <https://translegislation.com/bills/2023> (last visited Feb. 23, 2024). No state had passed a law addressing athletics before 2020.

care,¹¹ bills seeking to deny their use of single-sex restrooms,¹² and bills seeking to prohibit them from changing their identity documents.¹³ In addition to bills targeting transgender youth on the state level, there have also been attempts to roll back protections for transgender athletes on the federal level.¹⁴ As President Biden underscored in his 2022 State of the Union address, “[t]he onslaught of State laws targeting transgender Americans and their families is WRONG.”¹⁵

Among the numerous federal legislative initiatives introduced in the past three years seeking to restrict the rights of LGBTQ+ persons generally, bills most squarely targeting youth sports participation include (with links to full text)¹⁶: [US HR298](#), [US HR518](#), [US SB200](#), [US SB613](#).

While none of these have thus far passed and would likely be vetoed by the current president, efforts have been much more successful at the state level. ***There are now 25 states that have enacted laws or regulations excluding transgender students from participation in athletics.***¹⁷

¹¹ *E.g.*, S.B. 1045, Leg., Reg. Sess. (Al. 2022); *see, e.g.*, *AMA Strengthens Its Policy on Protecting Access to Gender-Affirming Care*, Endocrine Society, Jun. 12, 2023, <https://www.endocrine.org/news-and-advocacy/newsroom/2023/ama-gender-affirming-care>.

¹² *E.g.*, H.B. 322, Leg. Reg. Sess. (Al. 2022).

¹³ *E.g.*, S.B. 1100, Leg. Reg. Sess. (Ok. 2022).

¹⁴ Alabama Senator Tommy Tuberville recently introduced an amendment to COVID-19 relief legislation seeking to deny funding to schools that allow transgender students to participate in athletics in accordance with their gender identity. The amendment failed by two votes. *See* S.Amdt.1386 to H.R. 1319 (American Rescue Plan Act), Mar. 6, 2021, https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=117&session=1&vote=00097 (the vote summary was 49 YEAs, 50 NAYs and 1 Not Voting).

¹⁵ 168 Cong. Rec. S895 (2022) (Statement of Pres. Joseph Biden), <https://www.congress.gov/117/crec/2022/03/01/168/37/CREC-2022-03-01.pdf>.

¹⁶ *Bans on Transgender Youth Participation in Sports*, Movement Advancement Project, https://www.mapresearch.org/equality-maps/youth/sports_participation_bans (last visited Feb. 23, 2024).

¹⁷ *See, e.g.*, H.B. 391, 2021 Leg., Reg. Sess. (AL 2021); S.B. 450, 2021 93rd Gen. Assemb., Reg. Sess. (AR 2021); S.B. 2536, 2021 Reg. Sess. (MS 2021); S.B. 1028, 2021 Reg. Sess. (FL 2021); H.B. 500 (ID 2020); H.F. 2416 (IA 2022); H.B. 112 Leg., Reg. Sess. (MT 2021); S.B. 46 Leg., Reg. Sess. (SD 2022); H.B. 25, 2021., Special Sess. 2021 (TX 2021); S.B.228, 2021 Gen. Assemb. (TN 2021); H.B. 3293, 2021 Leg., Reg. Sess. (WV 2021). *See also* *LGBTQ Youth: Bans on Transgender Youth Participation in Sports*, Movement Advancement Project, at 3, Jan. 23, 2024, <https://www.lgbtmap.org/img/maps/citations-sports-participation-bans.pdf>.

Summary Tables

Table 1: Summary and Legislation/Regulations

Category	Count	List	Bill Link	Year
States with laws that ban transgender students from playing sports according to their gender identity	24 states	Alabama	HB391 (K-12) HB261 (college)	2021 2023
		Arizona	SB1165	2022
		Arkansas	HB1570/SB354	2021
		Florida	S1028	2021
		Idaho	HB500	2020
		Indiana	HB1041	2022
		Iowa	HF2416	2022
		Kansas	HB2238	2023
		Kentucky	SB83	2022
		Louisiana	SB44	2022
		Mississippi	SB2536	2021
		Montana	HB112	2021
		Missouri	SB39	2023
		North Carolina	H574	2023
		North Dakota	HB1249 (K-12) HB1489 (college)	2023
		Ohio	HB68	2024
		Oklahoma	SB2	2022
		South Carolina	H4608	2022
		South Dakota	SB46	2022
		Tennessee	HB3 (5-12) HB2316 (college)	2021 2022
Texas	HB25 (K-12) SB15 (college)	2021 2023		
Utah	HB11	2022		
West Virginia	HB3293	2021		
Wyoming	SF133	2023		
States with regulations that ban transgender students from playing sports according to their gender identity	1 state	Alaska	4 AAC 06.115(b)(5)(D)	2023
States with no ban	25 states, D.C., + 5 territories	All others		

While several of these laws codifying discrimination have been challenged in federal and state court, leading to at least four injunctions,¹⁸ many of the laws have not been challenged and will continue to exclude transgender youth until challenged or repealed. A soon-to-be-published study of a wide population of transgender and non-binary persons determined, to a very high level of statistical significance ($p < .0001$), that as early as 2015 “[t]he more trans-conservative the state where someone lived is, the greater the likelihood that [they] had thought about dying by

¹⁸ *Hecox v. Little*, 479 F. Supp. 3d 930 (D. Idaho 2020); *B. P. J. v. W. Va. State Bd. of Educ.*, No. 2:21-CV-00316, 2021 WL 3081883 (S.D.W. Va. Jul. 21, 2021); *Barrett v. State*, No. DV-21-581B (Mont. 18th Jud. Dist. Sept. 14, 2022); *Roe v. Utah High School Activities Ass’n*, Case No. 220903262, 2022 WL 3907182 (Utah Dist. Ct. Third Dist. Aug. 19, 2022).

suicide.”¹⁹ The risk of this impact is manifestly greater upon children, and gender non-conforming children in particular, already at high risk of suicidal ideation and attempts across all states.²⁰ In 2023, 41% of LGBTQ young people seriously considered attempting suicide in the past year – including half of transgender and nonbinary young people.²¹ In addition to suicidal ideation, significantly high levels of psychological distress, directly linked to trans-conservative policy measures, were also found.²² Excluding transgender youth from participation in athletics are examples of such trans-conservative policy measures leading to these severe, adverse impacts on young people’s health.

¹⁹ Hugh Klein & Thomas A. Washington, *Living in a Trans-Conservative Versus a Trans-Liberal State and its Relationship to Anti-Transgender Experiences, Psychological Distress, and Suicidal Ideation in a Large National Sample of Transgender Adults*, *Political Psychology* (2024).

²⁰ *2023 U.S. National Survey on the Mental Health of LGBTQ Young People*, The Trevor Project (2023), https://www.thetrevorproject.org/survey-2023/assets/static/05_TREVOR05_2023survey.pdf.

²¹ *Id.* at 5.

²² *Id.* at 13.

Executive Summary

The Task Force has found overwhelming evidence that sports participation plays a unique and universally positive role in protecting mental, emotional, and physical health, and children in the K-12 setting are at a critical age when a denial of access to that resource can have grave consequences. Nonetheless, Transgender, nonbinary, intersex, and other gender non-conforming youth, within the startlingly short period of only five years, have become a political wedge issue for state and national policymakers across the country and the target of over two hundred recent state and federal bills seeking to exclude them from participating in school sports programs. These kids are historically more likely to experience bullying, social isolation, and self-harm than to participate in athletics, yet ironically most benefit from the social and developmental resources that school sports represent.

As several courts have pointed out, these legislative efforts are a solution in search of a problem. Transgender kids make up a tiny fraction of the national student body, and those seeking to play sports are of small fraction of that fraction. Many of the legislative sponsors of the discriminatory bills and orders are themselves unable to name a single trans athlete in their jurisdiction or a single example of the “harm” they are seeking to rectify. The Task Force has found no credible evidence that participation of trans kids has caused either unfairness or harm, and the report cites significant evidence to the contrary.

The report urges the HOD to adopt resolutions:

1. principally opposing legislation and policy—including initiatives in our own state—designed to target transgender youth by prohibiting or impeding their full participation in school sports programs aligned with their gender and gender expression; and
2. specifically opposing enumerated pending federal legislation that would have such discriminatory effect.

The Task Force believes that adoption of the recommendations and resolutions urged in this report would be:

- consistent with NYSBA’s historical posture;
- an important way for the legal community in New York to signal opposition to harmful attempts by state and federal policy makers to enshrine discrimination;
- an opportunity to help protect a vulnerable population.

Background

New York State

New York has strong protections for transgender kids participating in K-12 athletics, which have been in place since at least 2015. The New York State Public High School Athletic Association (NYSPHSAA) allows transgender students to participate in accordance with their gender identity.²³ New York Attorney General Letitia James has led a coalition of states in advocating for transgender youth participation in sports on several occasions, from participating in amicus briefs to commenting on rulemaking at the federal level.²⁴

Even in New York, however, the rights of transgender kids to participate in sports are not immune from being leveraged for political purposes. In February 2024, Nassau County Executive Bruce Blakeman announced a county executive order banning transgender athletes from competing in women's and girls' sports at their facilities.²⁵ The move has been roundly criticized by Governor Kathy Hochul, is the subject of court challenges by the NYAG as both unfair and contrary to state law, and is widely expected to be overturned.²⁶ The ACLU has also brought suit in Federal court,²⁷ arguing that the policy violates New York's Human Rights Law and Civil Rights Law, which explicitly prohibit discrimination based on gender identity following passage of New York's Gender Expression Non-Discrimination Act (GENDA). The Community Education Council District 2, the largest school board district in Manhattan, recently also voted 8 to 3 in favor of a resolution that could potentially lead to transgender athletes being barred from participating in girls' sports.²⁸

Widespread Opposition to the Legislation

Legislation seeking to exclude transgender athletes from participating is widely opposed by the public. A recent survey shows that over 70% of Americans oppose bills restricting transgender

²³ *NYSPHSAA Rules and Regulations*, New York State Public High School Athletic Assoc., at 51, https://nysphsaa.org/documents/2023/8/21/NYSPHSAA_Handbook_082123.pdf (last visited Feb. 23, 2024).

²⁴ *Brief of Amici Curiae States of New York, Hawai'i, California, Colorado, Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, Oregon, Rhode Island, Vermont, Washington, and the District of Columbia in Support of Appellants*, B. P. J. v. W. Va. State Bd. of Educ., No. 2:21-CV-00316, 2021 WL 3081883 (S.D.W. Va. Jul. 21, 2021), <https://ag.ny.gov/sites/default/files/amicus-curiae/B.P.J.%20v.%20West%20Virginia%20State%20Bd.%20of%20Educ.%20%284th%20Cir.%29%20Br.%20of%20r%20Amici%20States%20in%20support%20of%20appellant.pdf>; Letter from New York Attorney General Leticia James et al. to U.S. Department of Education Secretary Miguel Cardona, May 15, 2023, <https://ag.ny.gov/sites/default/files/letters/Title%20IX%20-%20%20Athletics%20NPRM%20Comments.pdf>.

²⁵ Executive Order 2-2024, <https://www.nassaucountyny.gov/DocumentCenter/View/43897/EXEC-ORDER-2-24?bidId=>.

²⁶ Tim Balk, *In Court Papers, NY AG's Office Says Nassau County's Trans Sports Ban Is Illegal*, MSN, March 25, 2024, <https://www.msn.com/en-us/news/us/in-court-papers-ny-ags-office-says-nassau-county-s-trans-sports-ban-is-illegal/ar-BB1kwfwk>.

²⁷ *NYCLU Sues Nassau County for Discriminatory Anti-Trans Sports Ban*, NYCLU, <https://www.nyclu.org/press-release/nyclu-sues-nassau-county-discriminatory-anti-trans-sports-ban>.

²⁸ Daniel Walker, *NY School Board Approves Potential Ban on Transgender Athletes*, MSN, April 18, 2024, <https://www.msn.com/en-us/news/us/ny-school-board-approves-potential-ban-on-transgender-athletes/ss-AAIneCwB>.

participation in athletics in accordance with their gender identity.²⁹ Prominent women athletes, including Billie Jean King, Megan Rapinoe, Candace Parker and many others, have also opposed such exclusionary legislation.³⁰ In addition, a large number of businesses, including Apple, Amazon, Dell Technologies, Google, Verizon and many others, have joined a statement opposing legislation that targets transgender youth.³¹

Leading health care organizations, including the American Academy of Pediatrics, the American Medical Association, the American Psychiatric Association, the Endocrine Society and others, have also opposed efforts to ban transgender high school students' participation in sports in accordance with their gender identity.³² In an amicus brief opposing a similar law passed in Idaho, the organizations clarified for the court that excluding transgender people from participating in athletics “frustrates the treatment of gender dysphoria” and “exacerbates the severe consequences of living with the stigma of being transgender.”³³ The brief acknowledges the wide ranging and long lasting physical and mental-health consequences of depriving students of the ability to participate in sports, including key academic and physical skill sets needed to respond to the demands of adolescent and adult challenges, development of social identity and skills needed to survive and thrive in society, and improvements in overall physical and mental health.³⁴

Transgender students already face alarmingly high rates of bullying, discrimination and associated disparate educational outcomes. According to one report, over 75% of transgender students reported being verbally harassed or physically or sexually assaulted.³⁵ Almost 25% of transgender students report being physically attacked because they are transgender.³⁶ And almost 20% of transgender students have left school because of the mistreatment they experienced.³⁷ As reported by the 2023 NYS Department of Labor TGNCNB Employment Report, based on

²⁹ See Danielle Kurtzleben, *Republicans and Democrats Largely Oppose Transgender Sports Legislation, Poll Shows*, NPR, April 16, 2021, <https://www.npr.org/2021/04/16/987765777/republicans-and-democrats-largely-oppose-transgender-sports-legislation-poll-sho>.

³⁰ *Brief of Amici Curiae 176 Athletes in Women's Sports, The Women's Sports Foundation, and Athlete Ally in Support of Plaintiffs-Appellees and Affirmance, Hecox v. Little*, Nos. 20-35813, 20-35815 (9th Cir. Dec. 21, 2020), https://legacy.lambdalegal.org/sites/default/files/legal-docs/downloads/athletes_in_womens_sports_amicus_brief_hecox_v._little.pdf.

³¹ *Business Statement on Anti-LGBTQ State Legislation*, Freedom For All Americans, <https://freedomforallamericans.org/business-statement-on-anti-lgbtq-state-legislation> (last updated Apr. 27, 2021).

³² *Brief of Amici Curiae American Academy of Pediatrics, American Medical Association, American Medical Women's Association, and Seven Additional Health Care Organizations in support of Defendants-appellees and Affirmance, Soule v. Conn. Ass'n of Schl.*, No.3:20-cv-00201 (2d Cir.), <https://www.jenner.com/a/web/md1DSSR182Yw8aJbiBLTge/4k1XkW/Soule%20v%20Conn%20amicus%20brief.pdf>.

³³ *Brief of Amici Curiae American Academy of Pediatrics, American Medical Association, American Psychiatric Association, and 10 additional health care organizations in support of Appellees, Hecox v. Little*, Nos. 20-35813, 20-35815 (9th Cir.), <https://www.wiley.law/assets/htmldocuments/Hecox-Medical-Amicus-Filed.pdf>.

³⁴ *Id.* at 26–29.

³⁵ Sandy E. James et al., *The Report of the 2015 U.S. Transgender Survey*, National Center for Transgender Equality (2016), <https://transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf>.

³⁶ *Id.*

³⁷ *Id.*

BRFSS data, 33.1% of transgender respondents in New York had not completed high school, versus 12.3% of cisgender respondents.³⁸ The Centers for Disease Control recently issued a report showing that transgender students experience higher rates of violence and substance use and are at great risk of suicide.³⁹ According to the 2019 Youth Risk Behavior State and Local Survey, almost 50% of transgender youth reported suicidal ideation.⁴⁰ These disparities are much higher for transgender youth of color who are at the highest risk of attempting suicide.⁴¹ On the other hand, where there are inclusive policies in place, transgender students are less likely to experience bullying and harassment and are more likely to stay in school.⁴²

Legislation that excludes transgender students from participation in sports painfully singles them out from their peers, making them a target for further bullying and discrimination. This isolation will exacerbate the mistreatment and bullying that transgender youth already experience in school environments. Transgender youth often feel a sense of betrayal by the very administrative and governmental actors that, in many cases, formerly represented their last refuge for the social abuses of which they are often victim.⁴³ Such mistreatment leads to transgender students experiencing significant psychological distress and missing school leading to long term negative consequences. Mistreatment in schools is associated with higher suicide rates, homelessness, and serious psychological distress.⁴⁴ In short, transgender students need more, not fewer, protections. Legislation that aims to and/or actually does exclude transgender youth from participating in athletics is unequivocally harmful to these already vulnerable young people and almost ensures further marginalization of this population.

Hypothetical Fears About Transgender Participation Versus Reality

Concerns regarding transgender students' participation in sports in accordance with their gender identity tend to assume that transgender girls, assigned male at birth, are categorically bigger and stronger than cisgender girls, and that under this assumption transgender girls either have an unfair competition advantage and/or that they will harm cisgender girls in competition. There is no evidence to support these assumptions.⁴⁵

³⁸ 2023 TGNCNB Employment Report, New York State Department of Labor, at 28, <https://dol.ny.gov/system/files/documents/2024/01/tgncnb-report-pdf-version-1.pdf> (last visited Feb. 23, 2024).

³⁹ Michelle Johns et al., *Transgender Identity and Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High School Students – 19 States and Large Urban School Districts*, 68 *Morbidity and Mortality Weekly Report* 67–71, Jan. 25, 2019, <https://www.cdc.gov/mmwr/volumes/68/wr/mm6803a3.htm>.

⁴⁰ *Adolescent and School Health, Youth Risk Behavior Survey Datasets and Documentation*, Center for Disease Control and Prevention, <https://www.cdc.gov/healthyyouth/data/yrbs/data.htm> (last visited Feb. 23, 2024).

⁴¹ *Research Brief: Suicide Attempts Among LGBTQ Youth of Color* The Trevor Project, Nov. 26, 2019, <https://www.thetrevorproject.org/2019/11/26/research-brief-suicide-attempts-among-lgbtq-youth-of-color/>; see also 2023 *U.S. National Survey on the Mental Health of LGBTQ Young People*, The Trevor Project (2023), at 7, https://www.thetrevorproject.org/survey-2023/assets/static/05_TREVOR05_2023survey.pdf.

⁴² Joseph G. Kosciw et al., *The 2019 National School Climate Survey*, GLSEN (2020), https://www.glsen.org/sites/default/files/2020-10/NSCS19-Full-Report_2.pdf; Telmo Fernandes, Beatriz Alves & Jorge Gato, *Between Resilience and Agency: A Systematic Review of Protective Factors and Positive Experiences of LGBTQ+ Students*, 11 *Healthcare* 2098, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10379181/>.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

Focusing on the “differences” between cisgender boys and cisgender girls and using it to justify hypothetical fears about including trans athletes fails to address or account for the actual experience of tens of thousands of transgender athletes who have been eligible to participate in accordance with their gender identity in middle school and high school athletics (for decades, in some cases) without displacing or dominating women’s athletics.⁴⁶ There has been no deluge of transgender athletes winning competitions. There is no evidence to suggest bias or unfairness towards cisgender athletes. In fact, participation among non-transgender girls has risen in those places where there are inclusive policies.⁴⁷ Simply put, the reality of inclusive policies belies the fearmongering speculation about the hypothetical dangers of inclusivity.

More important, such categorical conclusions are premised on cumulative research that compares cisgender girls and cisgender boys. It does not compare transgender athletes and non-transgender athletes. Such research studies fail to account for or address the fact that research is not based on “transgender girls,” who are not simply “biological boys.”⁴⁸ It remains an open question to what degree there are biological underpinnings to gender identity and to what degree socialization factors to the differences in performance among genders. The justification for such “proactive” legislation is almost always based on hypothetical and speculative conclusions.

Proponents of exclusionary legislation typically refer to transgender girls as “biological males” and sidestep the transgender experience entirely, omitting the word “transgender” from proposed laws and amicus briefs.⁴⁹ Transgender people exist; gender identity oftentimes arises either early in childhood or in adolescence,⁵⁰ and a failure to allow transgender people opportunities to live in accordance with their gender identity has widespread negative consequences for their lives, which has been documented in hundreds of studies.⁵¹ Conversion efforts, or efforts to make transgender people not transgender, have never been effective and have caused great harm to the

⁴⁶*Brief of Amici Curiae American Academy of Pediatrics, American Medical Association, American Medical Women’s Association, and Seven Additional Health Care Organizations in support of Defendants-appellees and Affirmance*, Soule v. Conn. Ass’n of Schl., No.3:20-cv-00201 (2d Cir.), at 5, <https://www.jenner.com/a/web/md1DSSR182Yw8aJbiBLTge/4k1XkW/Soule%20v%20Conn%20amicus%20brief.pdf> (indicating that approximately 300,000 high school students are transgender, using a 1.8 percentage point from the CDC).

⁴⁷ Shoshana K. Goldberg, *Fair Play; The Importance of Sports Participation for Transgender Youth*, Center for American Progress, Feb. 8, 2021, at Fig. 6, <https://www.americanprogress.org/issues/lgbtq-rights/reports/2021/02/08/495502/fair-play/>.

⁴⁸ Joanna Harper, *Transgender Athletes and International Sports Policy*, 85 *Law and Contemporary Problems* 151, at 159–160 (2022), <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=5035&context=lcp>.

⁴⁹ Orion Rummeler & Kate Sosin, *The Word Missing From the Vast Majority of Anti-Trans Legislation? Transgender*, *The 19th*, Nov. 12, 2021, <https://19thnews.org/2021/11/state-legislation-transgender>.

⁵⁰ *Brief of Amici Curiae American Academy of Pediatrics, American Medical Association, American Medical Women’s Association, and Seven Additional Health Care Organizations in support of Defendants-appellees and Affirmance*, Soule v. Conn. Ass’n of Schl., No.3:20-cv-00201 (2d Cir.), at 14, <https://www.jenner.com/a/web/md1DSSR182Yw8aJbiBLTge/4k1XkW/Soule%20v%20Conn%20amicus%20brief.pdf>.

⁵¹ *AMA Strengthens Its Policy on Protecting Access to Gender-Affirming Care*, Endocrine Society, June 12, 2023, <https://www.endocrine.org/news-and-advocacy/news-room/2023/ama-gender-affirming-care>.

transgender people who were subjected to such treatment.⁵² Conversation therapy – a widely discredited practice – is largely acknowledged not only to undermine individual health, but also to have a degrading and adverse effect on public health generally.

Sponsors of legislation seeking to ban transgender students from participating in accordance with their gender identity are often unable to identify a single example of a transgender athlete in their own state, much less a trans athlete who is winning championships or taking opportunities from cisgender athletes. For example, when pressed to name a single transgender athlete before signing a bill excluding all transgender athletes, West Virginia Governor could not provide a single example.⁵³ Likewise, Nassau County Executive Bruce Blakeman was unable, when questioned at the press conference announcing the recent anti-trans executive action, to cite a single instance in Nassau County of the type of “bullying” the order was allegedly designed to prevent.⁵⁴

Inevitably, bill sponsors waive off the need to demonstrate a problem before advancing legislation that will restrict the rights of thousands of transgender youth by conceding that while they might not be aware of any current transgender athletes, the legislation is needed to be “proactive.” Pointing to the one or two examples where transgender athletes have successfully competed and ignoring the thousands where they have not successfully competed is unfair and sends the terrible message to transgender athletes that if allowed to participate, they must not be successful.

The Benefits of Participation and the Harms of Exclusion

There are innumerable benefits that flow from participation in athletics that transgender youth would be denied under this legislation. For example, athletics provides a unique context for student athletes to develop meaningful relationships with other athletes. In the process of driving toward a shared objection, athletes often create life-long connections.⁵⁵ Athletes spend countless hours practicing and performing and share intense experiences that lead to meaningful and

⁵² *Brief of Amici Curiae American Academy of Pediatrics, American Medical Association, American Medical Women’s Association, and Seven Additional Health Care Organizations in support of Defendants-appellees and Affirmance*, Soule v. Conn. Ass’n of Schl., No.3:20-cv-00201(2d Cir.), at 9, <https://www.jenner.com/a/web/md1DSSR182Yw8aJbiBLTge/4k1XkW/Soule%20v%20Conn%20amicus%20brief.pdf>.

⁵³ When pressed by MSNBC anchor Stephanie Ruhle to provide an example of a trans child “trying to gain an unfair competitive advantage” at a school in the state, Justice, a Republican, said he couldn’t.

“I don’t have that experience exactly to myself right now,” Justice said. When she pressed him harder, he said, “I can’t really tell you one, but I can tell you this, Stephanie: I’m a coach. I coach a girls’ basketball team, and I can tell you that we all know what an absolute advantage boys would have playing against girls.”

<https://www.nbcnews.com/feature/nbc-out/w-va-governor-unable-cite-one-example-justify-trans-athlete-n1266014>

⁵⁴ Greg Cergol, *Long Island County Bans Transgender Athletes From Competing With Girls*, NBC News, Feb. 22, 2024, <https://www.nbcnewyork.com/news/local/long-island-county-bans-transgender-athletes-from-competing-with-girls-at-sports-facilities/5161307/>.

⁵⁵ See, e.g., Kelly Troutman & Mikaela Dufur, *From High School Jocks to College Grads: Assessing the Long-Term Effects of High School Sport Participation on Females’ Educational Attainment*, 38 *Youth & Society* 443 (2007), <https://doi.org/10.1177/0044118X06290651>; Angela Lumpkin & Judy Favor, *Comparing the Academic Performance of High School Athletes and Non-Athletes in Kansas in 2008-2009*, 4 *J. of Sport Admin & Supervision* 41 (2012), <http://hdl.handle.net/2027/spo.6776111.0004.108>.

lasting bonds.⁵⁶ This is especially true for diverse athletes, who quickly learn they are often accepted and celebrated and valued for their contributions and for their diversity, which leads to increased confidence and self-acceptance.⁵⁷

There are many long-term *positive* consequences stemming from participation in athletics. For example, students who participate in athletics experience higher academic achievement than students who do not participate. Athletic programs often require a minimum grade point average to participate, and many teams stipulate that academic achievement is as important as athletic achievement.⁵⁸ Furthermore, participation in sports provides a healthy coping mechanism for academic and other school-related stress, anxiety, and depression.⁵⁹ In addition, there are extensive psychological benefits that flow from participation generally. Through athletics, students learn how to regulate their emotional responses to stress and anxiety, and participation often leads to significant growth and personal development that accrues to them throughout their lives.⁶⁰

Students who participate in sports report fewer physical and mental health issues than students who do not participate.⁶¹ Participation is linked directly to lowered feelings of hopelessness and suicidality, which is especially critical for transgender youth, who already experience a high risk for suicide and other life-threatening behaviors.⁶² Transgender athletes report a much higher

⁵⁶ Leanne Findlay & Robert Coplan, *Come Out and Play: Shyness in Childhood and the Benefits of Organized Sports Participation*, 40 *Canadian Journal of Behavioural Science/Revue Canadienne des Sciences du Comportement* 153 (2008), <https://doi.org/10.1037/0008-400X.40.3.153>.

⁵⁷ See Andrew Soundy, et al., *Psychosocial Consequences of Sports Participation for Individuals with Severe Mental Illness: A Metasynthesis Review*, 8 *Adv. Psychiatry* 1 (2015), <https://downloads.hindawi.com/archive/2015/261642.pdf>; Sara Pedersen & Edward Seidman, *Team Sports Achievement and Self-Esteem Development Among Urban Adolescent Girls*, 28 *Psychology of Women Quarterly* 419 (2004), [HTTPS://DOI.ORG/10.1111/j.1471-6402.2004.00158.x](https://doi.org/10.1111/j.1471-6402.2004.00158.x).

⁵⁸ Susan Rankin, *The Influence of Climate on the Academic and Athletic Success of Student-Athletes: Results from a Multi-Institutional National Study*, 87 *Journal of Higher Education* 5 (2016).

⁵⁹ See Erin Boone & Bonnie Leadbeater, *Game On: Diminishing Risks for Depressive Symptoms in Early Adolescence Through Positive Involvement in Team Sports*, 16 *J. Res Adolesc.* 79, 79 (2006), <https://doi.org/10.1111/j.1532-7795.2006.00122.x>; Susan Gore, et al., *Sports Involvement as Protection Against Depressed Mood*, 11 *J. Res Adolesc.* 119, 128 (2001), <https://doi.org/10.1111/1532-7795.00006>; Annemarie Dimech & Roland Seiler, *Extra-Curricular Sport Participation: A Potential Buffer Against Social Anxiety Symptoms in Primary School Children*, 12 *Psychol Sport Exercise* 347 (2011), <https://doi.org/10.1016/j.psychsport.2011.03.007>.

⁶⁰ David Hansen, et al., *What Adolescents Learn in Organized Youth Activities: A Survey of Self-Reported Developmental Experiences*, 13 *J. Res Adolesc.* 25, 47 (2003), <https://doi.org/10.1111/1532-7795.1301006>; see also Findlay & Coplan, *supra* note 54; see also Sarah Donaldson & Kevin Ronan, *The Effects of Sports Participation on Young Adolescents' Emotional Well-Being*, 41 *Adolescence* 369, 369–389 (2006), <http://www-personal.umich.edu/~cyiu/psych%20458/out.pdf>.

⁶¹ Hans Steiner, et al., *Adolescents and Sports: Risk Or Benefit?*, 39 *Clinical Pediatrics* 161, 161–166 (2000), <https://doi.org/10.1177/000992280003900304>.

⁶² Lindsay Taliaferro, et al., *High School Youth and Suicide Risk: Exploring Protection Afforded Through Physical Activity and Sport Participation*, 78 *J. of Sch. Health* 545, 545–553, (2008), <https://doi.org/10.1111/j.1746-1561.2008.00342.x>; see, e.g., Erin Buzuvis, *Transgender Student-Athletes and Sex Segregated Sport: Developing Policies of Inclusion for Intercollegiate and Interscholastic Athletics*, 21 *Seton Hall J. Sports & Ent. L.* 1, 48 (2011), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1646059.

level of mental health and are much less likely to experience anxiety and stress than transgender people who do not participate.⁶³

Yet another benefit of participation is the access to mentorship from coaches and support staff. Students learn respect for mentorship in sports and academics skills and internalize the lessons learned, such as hard work, discipline, stick-to-itiveness and teamwork, that benefit participants their entire lives.⁶⁴ Participation in athletics leads to a wide range of physiological benefits, including beneficial improvements in blood pressure, oxygen consumption and increased muscle strength. Student participation in sports often leads to continued participation in athleticism as an adult, which leads to a reduction in the morbidity and mortality of many diseases.⁶⁵

Lastly, students who are excluded from participation in sports will likely turn to dysfunctional coping mechanisms to deal with stress, anxiety and depression and to manage feelings of shame and stigma.⁶⁶ Such exclusion during such a critical phase of life where life-long habits are developed leads to long term negative outcomes, and these social, physical and emotional harms lead to significant and lasting impact on the lives of transgender youth.

In February 2021, the National Coalition for Women and Girls in Education issued an updated statement supporting transgender and nonbinary students' full and equal participation in all education programs and activities, including sports.⁶⁷ The American Psychological Association (APA) last year also weighed in with unprecedented support for the inclusion of transgender students in athletics. Extending on its 2020 resolution,⁶⁸ the APA's extensive report updates and extends on a large body of prior research, finding "no evidence to support claims that allowing transgender student athletes to play on the team that fits their gender identity would affect the fairness of the sport or competition."⁶⁹

⁶³ Goldberg, *supra* note 45.

⁶⁴ Nicholas Holt, et al., *Benefits and Challenges Associated with Sport Participation by Children and Parents from Low-Income Families*, 12 *Psychol. Sport Exercise* 490, 490–99 (2011), <https://doi.org/10.1016/j.psychsport.2011.05.007>.

⁶⁵ Christer Malm, et al., *Physical Activity and Sports—Real Health Benefits: A Review with Insight into the Public Health of Sweden*, 7 *Sports* 1, 13-14 (2019), <https://doi.org/10.3390/sports7050127>.

⁶⁶ See Francisco J. Lopez Villalba, et al., *Relationship Between Sport and Physical Activity and Alcohol Consumption Among Adolescent Students in Murcia (Spain)*, 114 *Arch. Argent. Pediatr.* 101, 101–06 (2016), <https://www.sap.org.ar/docs/publicaciones/archivosarg/2016/v114n2a03e.pdf>.

⁶⁷ *NCWGE Supports Transgender and Nonbinary Students' Full and Equal Participation in All Education Programs and Activities*, NCWGE, Feb. 12, 2021, <https://www.ncwge.org/activities.html>.

⁶⁸ *APA Resolution on Supporting Sexual/Gender Diverse Children and Adolescents in Schools*, American Psych. Assoc., Feb. 2020, <https://www.apa.org/about/policy/resolution-supporting-gender-diverse-children.pdf>.

⁶⁹ *Transgender Exclusion in Sports: Suggested Discussion Points With Resources to Oppose Transgender Exclusion Bills*, American Psych. Assoc., <https://www.apa.org/topics/lgbtq/transgender-exclusion-sports> (last updated Dec. 2023).

Conclusion and Recommendation

The NYSBA Task Force recommends adoption of the resolutions appended hereto, opposing legislation and policy designed to target transgender youth by prohibiting or impeding their full participation in school sports programs aligned with their gender and gender expression. This resolution is an important way for the legal community in New York to signal opposition to the harmful attempts by state and federal policy makers to enshrine discrimination. It is further an opportunity to help protect a vulnerable population that is a target of legislative assaults that continue to grow each legislative session.

Proposed Resolution

Be it

RESOLVED, that the New York State Bar Association opposes and urges the repeal and/or judicial invalidation of all discriminatory legislation and regulations targeting transgender, non-binary and intersex youth and infringing their equal right to unrestricted participation in school sports programs appropriate to the gender in which they live, in full equality and on the same terms with students assigned such gender at birth.

Without limitation of the foregoing, NYSBA views the following state laws and regulations that ban students from playing sports according to their gender identity as representative of such discriminatory measures:

Alabama	HB391 (K-12) HB261 (college)	2021 2023
Arizona	SB1165	2022
Arkansas	HB1570/SB354	2021
Florida	S1028	2021
Idaho	HB500	2020
Indiana	HB1041	2022
Iowa	HF2416	2022
Kansas	HB2238	2023
Kentucky	SB83	2022
Louisiana	SB44	2022
Mississippi	SB2536	2021
Montana	HB112	2021
Missouri	SB39	2023
North Carolina	H574	2023
North Dakota	HB1249 (K-12) HB1489 (college)	2023
Ohio	HB68	2024
Oklahoma	SB2	2022
South Carolina	H4608	2022
South Dakota	SB46	2022
Tennessee	HB3 (5-12) HB2316 (college)	2021 2022
Texas	HB25 (K-12) SB15 (college)	2021 2023
Utah	HB11	2022
West Virginia	HB3293	2021
Wyoming	SF133	2023
Alaska	4 AAC 06.115(b)(5)(D)	2023

RESOLVED, and also without limitation of the foregoing, that the New York State Bar Association opposes the following federal legislative initiatives: **US HR298, US HR518, US SB200, and US SB613.**