

## **TOOLKIT FOR FIGHTING BILLS TARGETING TRANS PARTICIPATION IN SPORTS**

### **Background:**

After years of focusing on restrooms and locker rooms as an entry point for excluding trans people from public life, over the last two years, opponents of LGBTQ equality have shifted strategy to focus on excluding trans people, particularly students, from participating in athletics consistent with their gender identity. These arguments rest on the assumption that trans girls and women are not real girls or women, and that they have an unfair advantage over cisgender girls and women when it comes to athletics. These arguments attempt to pit cisgender women against transgender women, and [to create a supposed harm of trans-inclusive policies](#). In 2020, we saw 20 of these bills filed but only HB 500 in Idaho passed and became law. It was preliminarily enjoined in [Hecox v. Little](#), which is currently on remand from the appellate court to resolve questions of mootness in the district court.

In 2021, 8 states (TN, TX, MT, FL, WV, AR, MS, AL) based legislative bans on trans athletes participating in sports, while South Dakota attempted to ban athletes by Executive Order. Lawsuits were filed in TN, WV and FL. The WV law was enjoined at least as applied to the plaintiff in the legal challenge. The state did not appeal the Preliminary Injunction. Cases in TN and FL are still pending.

This Toolkit has suggested talking points, some in-depth discussion for how to respond to common distortions and fears about trans inclusion with key resources from the *Hecox* litigation, and some other resources.

### **Suggested talking points:**

\*Note that the linked resources are longer legal documents and are not for ease of digesting talking points but rather to provide support for the points as needed.\*

- Having the opportunity to participate in sports results in positive outcomes for students—better grades, greater homework completion, higher educational and occupational aspirations, and improved self-esteem.
  - Resource: [Expert Declaration Dr. Mary Fry, Hecox v. Little](#)
  - Resource: [Athletes in Women’s Sports Amicus Brief](#)
- Trans students participate in sports for the same reasons other young people do: to challenge themselves, improve fitness, and be part of a team. Excluding trans students from participation just deprives them of opportunities available to their peers and sends the message they are not worthy of a full life.
  - Resource: [Transgender Athletes Amicus Brief](#)
- Inclusion of girls and women who are transgender in athletics supports the ongoing investment in all girls through access to sports and other athletic activities.
  - Resource: [Athletes in Women’s Sports Amicus Brief](#)

- Despite the fact that trans people of all ages have been participating in sports consistent with their gender at all levels for years, we simply have not seen any dominance by trans athletes at any level of competition. Athletic success is based on many disparate factors that vary sport to sport, and being transgender does not give girls who are trans an inherent advantage over girls who are not.
  - Resource: [Declaration of Helen Carroll, Hecox v. Little](#)
  
- When one trans athlete succeeds, her success is often highly publicized and politicized to the point of suggesting that the only reason for the athlete's success is the fact that the person is trans, and that all trans people are inherently better athletes than all cis people. Neither is true. The fact that an occasional trans person succeeds in sport should not be used to exclude all trans athletes.
  
- Allowing trans athletes to compete doesn't let boys or men pretend to be transgender just to compete in the girls' or women's category nor does it threaten sex separation in sport generally. In the decades that trans women and girls have been participating in women's sports around the world, there has been no effort to collapse sex separation in sport and no examples of men and boys pretending to be women and girls.
  
- Because allowing trans girls to compete in girls' sports doesn't hurt anyone, advocates for women and girls in sports such as [the National Women's Law Center, the Women's Sports Foundation, Women Leaders in College Sports, and others](#) support trans-inclusive policies and oppose efforts to exclude transgender students from participating in sports.
  - Resource: [Amicus Brief of NWLC et al](#) (Over 60 civil rights and women's rights groups)
  - Resource: [Athletes in Women's Sports Amicus Brief](#)
  
- The main researcher who has been cited in support of bans on trans athletes, Doriane Lambelet Coleman, [opposes these bans](#) and has explained that her research has been misused.
  - Resource, [Preliminary Injunction Decision, Hecox v. Little](#):
    - “In addition, several of the Act's legislative findings which purportedly demonstrate the “absolute advantage” of transgender women are based on a study by Doriane Lambelet Coleman. Idaho Code § 33-6202(5), (10). Professor Coleman herself urged Governor Little to veto H.B. 500 because her work was misused, and she also endorsed the NCAA's rule of allowing transgender women to participate after one year of hormone and testosterone suppression.” *Hecox v. Little*
  
- Leading women's sports athletes including Billie Jean King, Megan Rapinoe and Candace Parker have weighed-in at the Ninth Circuit in opposition to bills that ban women and girls who are transgender from women's sports.
  - Resource: [Athletes in Women's Sports Amicus Brief](#)

- Efforts to ban trans girls from participating in girls’ sports jeopardize their mental health, physical well-being and ability to access education opportunities comparable to their peers.
  - Resource: [Expert Declaration of Dr. Deanna Adkins, \*Hecox v. Little\*](#)
  - Resource: [Expert Declaration of Dr. Jack Turban, \*Hecox v. Little\*](#)
  - Resource: [Amicus Brief of American Academy of Pediatrics et al.](#)
  
- Requiring girls who are trans to compete on boys’ teams, or boys who are trans to compete on girls’ teams, effectively excludes them from participating at all.
  - Resource: [Preliminary Injunction Decision, \*Hecox v. Little\*](#)
    - “Participating in sports on teams that contradict one’s gender identity “is equivalent to gender identity conversion efforts, which every major medical association has found to be dangerous and unethical.” Dkt. 58, at 11 (citing Dkt. 58-3, ¶¶ 24–28).<sup>33</sup> As such, the Act’s categorical exclusion of transgender women and girls entirely eliminates their opportunity to participate in school sports—and also subjects all cisgender women to unequal treatment simply to play sports—while the men in Clark had generally equal athletic opportunities.”
  
- There are real issues with gender parity in sports when it comes to funding, resources, pay equity, and more. Promoting baseless fears about trans athletes does nothing to address those real problems.
  
- Bills that single out students who are transgender for discrimination violate state and federal constitutional guarantees of equal protection.
  - Resource, [Preliminary Injunction Decision, \*Hecox v Little\*](#)
  
- Sweeping bills that purport to determine a person’s sex by documenting the person’s chromosomes and reproductive anatomy raise serious privacy and administrability concerns.
  - Resource: [Expert declaration in \*Hecox v. Little\*, Dr. Sara Swoboda](#)
    - “Sports physicals do not include blood tests for hormone levels or any other purpose. Sports physicals do not include genetic tests for chromosomes or any other purpose. It is also not part of a sports physical to conduct a genital or pelvic examination.” Swoboda Dec. ¶ 18.

### **Responding to common objections and concerns**

People approach this issue with pre-existing assumptions about “biological differences” between boys and girls and about the role of hormones like testosterone in athletic achievement. When challenging people’s assumptions it is important to first reinforce that trans women and girls are women and girls so it is not appropriate to talk about “biological males” and boys in girls’ sports when we are talking about trans-inclusive policies.

It can also be helpful to name people's fears about competitive advantage and provide information that creates a more accurate picture of the role of testosterone on athleticism and other oversimplified assumptions at work here. Trans girls sometimes do win, so it isn't helpful to say that they never do, nor would we want that to be the test. But it can be helpful to point out that despite decades of participation by trans athletes at all levels of competition, there is simply *no* categorical dominance by trans athletes. Trans people, like all people, have varying athletic abilities and shutting them out of sports does nothing but send exclusionary and discriminatory messages about trans people not being "real" men and women and suggesting that cis people need to be protected from their trans peers and colleagues.

In challenging these bills and the narratives that drive them, we also believe that lifting up the stories of trans athletes – who are supported by their families, their teammates and their communities – will help counter some of the worst messaging from the other side and remind people that we are talking about kids who just want to participate in the activities they love.

**Alleged Concern: Policies allowing trans women and girls to compete in the female category in sports are new and untested – we don't know what will happen.**

**Top-line responses: Trans women and girls have been participating in women's sports for decades.**

Trans people have been participating in sports and other single-sex activities consistent with their gender for years. For most trans people, this is the only feasible way to participate in sports at all. Because trans women and girls are women and girls and trans men and boys are men and boys, nothing about trans participation undermines the single sex nature of existing sex-segregated sports activities.<sup>1</sup>

**Alleged concern: Girls and women who are transgender have a "biological advantage" over girls and women who are cisgender in athletics.**

**Top-line response: Being transgender does not give girls an inherent advantage over girls who are not transgender.**

The notion that women and girls who are transgender have a competitive advantage in school sports is based on two false premises. The first is that transgender women and girls are really males. But that is not true (see below). The second is that being assigned male at birth give someone an unmitigated competitive advantage in all sports.

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<sup>1</sup> For non-binary people, living in a binary world creates many barriers, particularly in the context of binary, single-sex spaces and activities. But the best and only legally defensible way to regulate trans people's access to single-sex spaces and activities is to allow for participation based on what most closely aligns with the person's gender.

There has not been evidence of categorical dominance by women and girls who are trans in women's sports over the decades that trans women and girls have been competing in the women's category.

What we have seen instead are a few lone examples of trans women and girl athletes having some success and then having that success weaponized in defense of policies that would altogether ban trans women and girls from women's sports.

The few examples where trans athletes have gained some minimal success are blown out of proportion and the actual field of competitive parity is obscured. Recently, the success of two Black, young women, runners who are transgender in Connecticut has been used as evidence that transgender girls have an unfair advantage. In a state meet, two trans girls came in first and second and right-wing media immediately capitalized on their hard-won success to claim a threat to cis girls. From cable news to social media, these girls were shamed and called males and their moment of success was completely ruined. When it came time for nationals, one of the two girls didn't even compete because of the shame triggered by the media coverage and the other came in 30<sup>th</sup> and 31<sup>st</sup> in her two events. There was no dominance on the national stage – not even close. Just discrimination and humiliation.

[[NOTE: you may get asked about UPenn swimmer Lia Thomas. Lia has been achieving record-breaking success on the UPenn's women's swim team, including breaking several records. Her performances have been picked up by right-wing media. Lia is an elite swimmer and her sex is attributable to her skill and hard work, not her transness. Lia has met the NCAA requirements to compete on women's teams. The rules require one year of testosterone suppression. Lia has been suppressing her testosterone and taking estrogen for over two years. There will always be some successful trans athletes and they should be celebrated for their hard work not demonized because of who they are.]]

**Alleged concern: Once girls and women who are trans are allowed access to women's sports, there is no basis to maintain single-sex sports categories.**

**Top-line response: Allowing participation by girls and women who are trans does not change the nature of women's sports and does not inevitably lead to mixed gender sports.**

Girls and women who are trans are girls and women and their participation in the girls' category does not change the nature of the category. Maintaining separate sports for girls is legally justifiable and culturally important because it remains necessary to remedy past discrimination. The purpose of girls' sports is not to 'protect' girls from boys; it is to protect people from systemic gender discrimination that results in the denial of opportunities for girls and transgender people. Across the country, allowing trans people to participate hasn't let boys pretend to be trans so that they can compete in girls' sports—it has simply allowed girls who are trans to have the same opportunity to play as their peers .

**Alleged concern: Biological differences make boys better at physical activities in the aggregate than girls.**

**Top-line response: There are many social and physiological factors that impact success in sports.**

Broad generalizations aren't helpful when trying to ensure equal opportunity for all student athletes. From birth, girls and boys are socialized in ways that impact physical opportunities for growth and development. Moreover, each sport and activity differently advantages different body types – what it takes to be great at gymnastics is different from sprinting is different from swimming – so it is impossible to generalize about any competitive advantage of different body types. In any event, girls who are transgender are not boys and deserve the opportunity to play. Trans athletes don't have a single body type and don't have a systematic advantage. To the extent states are concerned about physiological differences leading to performance gaps typical as between cisgender men and cisgender women, those typical differences derive largely from circulating testosterone. And yet, none of the categorical bans proposed or passed by states actually concerns the sole physiological sex-based characteristic that is known to have some impact on athletic performance. Instead, the bans are tied to a person's reproductive anatomy and chromosomes at birth, neither of which has any impact on athletic ability.

**Alleged concern: Scientific studies have shown transgender athletes have an unfair advantage.**

**Top-line response: Scientific studies have not shown such an advantage.**

No large studies have looked specifically at transgender athletes. Study results vary on the impact of hormone levels on performance, and this relationship may differ based on the sport, level of competition, other characteristics of the athlete, and the type of hormones measured. The research does not support the idea of a systematic advantage for trans athletes.

**Alleged Concern: Girls and women who are transgender are “biologically” male.**

**Top-line response: Girls and women who are transgender are female. “Biological sex” is more complex and does not break down in a neat male/female binary.**

It is both untrue and unhelpful to refer to trans women as “biological males” and trans men as “biological females”.

There are multiple, physiological sex characteristics and they don't always align as all typically male or all typically female. Biological sex characteristics include: chromosomes, hormones, secondary sex characteristics, internal and external reproductive organs, gender identity. Many trans and intersex individuals possess sex characteristics typical of males and females. Many non-trans, non-intersex people do as well. Each characteristic itself does not break down neatly into a binary. For example, there are more chromosomal variations than just XX and XY. Transgender people possess biological characteristics that accord with their gender, particularly those transgender people that access medical care to affirm their gender. For example, a girl who is transgender may have female-typical hormone levels and breasts.

### **Helpful Articles**

- [Transphobia's new target is the world of sports.](#)

- [Stop talking about testosterone – there’s no such thing as a ‘true sex’](#)
- [Caster Semenya and the Myth of the Uneven Playing Field](#)

### **Other Resources**

- [GLSEN Policy Brief: Transgender Inclusion in High School Athletics](#) [has a very good discussion about common claims about competitive advantage]
- [Sign on letter](#) from major women’s sports advocacy groups supporting trans inclusion

### **Affirmative Stories**

- Changing the Game documentary (profiles 4 trans athletes):  
<https://www.advocate.com/transgender/2019/7/30/changing-game-depicts-joy-and-agony-young-trans-athletes?>
- Andraya Yearwood (CT runner) profile:  
<https://bleacherreport.com/articles/2810857-andraya-yearwood-knows-she-has-the-right-to-compete>
- Rachel McKinnon (Canadian cyclist) op ed (she is an adult but this op ed raises some important points and responds directly to the myth of “dominance”):  
<https://www.nytimes.com/2019/12/05/opinion/i-won-a-world-championship-some-people-arent-happy.html>