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February 22, 2022

The Honorable Vanessa Atterbeary
House Ways and Means Committee
Room 131
House Office Building
Annapolis, Maryland 21401

Testimony of FreeState Justice

IN OPPOSITION TO

House Bill 757: Education – Interscholastic and Intramural Teams and Sports – Designation Based on Biological Sex

To the Honorable Chair Vanessa Atterbeary, Vice Chair Alonzo Washington, and esteemed members of the House Ways and Means Committee:

FreeState Justice is Maryland's lesbian, gay, bisexual, transgender, and queer (LGBTQ) civil rights advocacy organization. Each year, we provide free legal services to dozens, if not hundreds, of LGBTQ+ Marylanders who could not otherwise be able to afford an attorney, as well as advocate more broadly on behalf of the LGBTQ+ community. As part of this work, we routinely represent and advocate on behalf of transgender youth in Maryland, who continue to face intense discrimination in and out of school.

We write today in opposition to House Bill 757 because it unfairly targets transgender girls for, depriving of them to participate in one of the most popular outlets for social support available to our youth. Despite claims of its proponents to the contrary, HB 757 is not based on science, but rather on transphobia and hatred of innocent kids who are simply trying to live their lives as their true selves. Indeed, HB 757 is not designed to establish a level playing field for student athletes, but to bar transgender girls from participating at all.

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Currently, there is no single policy in Maryland governing when and where transgender athletes may compete according to their gender identity. While this may sound like a problem to be solved, that is far from the case: instead, it follows the practice of major sporting organizations such as the NCAA and the International Olympic Committee, which have adopted a sport-by-sport approach “that preserves opportunity for transgender student-athletes, while balancing fairness, inclusion and safety for all who compete.”¹

The NCAA, the International Olympic Committee, and other sports governing bodies recognize that a one-size-fits-all ban on transgender athletes is inherently unfair and discriminatory, and they have instead worked to find a solution that is fair to everyone. HB 757 would ignore all of the work they have done over the past decades and instead impose precisely the sort of discriminatory ban these organizations have worked so hard to avoid.

While the individual rules of sports governing bodies vary, many look to factors such as the length of time that an athlete has been prescribed hormone replacement therapy or the level of sex hormones such as testosterone in their bodies. Variations of these policies, which have been in place in elite sports for almost 20 years. Despite policies allowing transgender athletes to compete at the Olympics since 2004, none qualified prior to the 2020 Summer Olympics, and only a single transgender athlete—nonbinary Canadian soccer player Quinn, who was assigned female at birth—has won a medal at the Olympics.² The participation of transgender girls has simply had no impact on elite sports, but prohibiting their participation will have a significant effect on the girls themselves.

Transgender athletes are not only supported by sports regulatory bodies, but also in many cases by their teammates and fellow athletes. Recently, over 300 swimmers signed a letter to express their support for transgender swimmer Lia Thomas of the University of Pennsylvania, as well as for the inclusion of all transgender athletes

¹ NCAA, “Board of Governors Updates Transgender Participation Policy” (Jan. 19, 2022), *available at* <https://www.ncaa.org/news/2022/1/19/media-center-board-of-governors-updates-transgender-participation-policy.aspx>. *See also* International Olympic Committee, “IOC Framework on Fairness, Inclusion and Non-Discrimination on the Basis of Gender Identity and Sex Variations,” (2021), *available at* <https://stillmed.olympics.com/media/Documents/News/2021/11/IOC-Framework-Fairness-Inclusion-Non-discrimination-2021.pdf>.

² Trudy Ring, “Quinn Is World’s First Out Trans, Nonbinary Olympian,” *The Advocate* (July 26, 2021), *available at* <https://www.advocate.com/sports/2021/7/26/quinn-worlds-first-out-trans-nonbinary-olympian>.

more broadly. Following a recent swim meet in which Thomas beat a record previously set by Harvard swimmer Miki Dahlke, Dahlke noted that “records are made to be broken... I am a faster swimmer because of fast swimmers of the past, and the future of swimming will be faster because of the women at the top of the NCAA today.”³ In contrast to the three hundred athletes—including Dahlke—who came out in support of Thomas, a mere 16 “signed” an anonymous letter opposing her inclusion.

HB 757 is not only manifestly unfair and in contravention of current procedure among sports regulatory bodies; it also violates federal and state non-discrimination laws. Following the Supreme Court’s decision in *Bostock v. Clayton County*, the United States Department of Education clarified that it interprets Title IX of the Educational Amendments Act of 1972 to prohibit discrimination on the basis of gender identity.⁴ Enacting HB 757 would be an invitation for a lawsuit.

Finally, I ask this committee to consider just how crucial sports are to the lives of many youth, regardless of whether they are transgender or cisgender. School sports can be a crucial part of a student’s feeling of belonging and social support during their adolescence. Sports foster values of inclusivity, teamwork, and non-discrimination. They help youth find joy and pride in a safe environment where they know they will be supported by their teammates, coaches, and peers. By preventing transgender girls from competing in alignment with their gender identity, HB 757 directly prevents these positive benefits of sports participation. It creates divisiveness within a team and undermines inclusivity. It teaches youth that it is okay to discriminate against their peers and that safety and support is purely conditional.

For these reasons, FreeState Justice urges an unfavorable report on House Bill 757.

³ Katie Barnes, “Penn swimmer Lia Thomas leaves Ivy League Meet a four-time champion, but questions remain,” ESPN (Feb 20, 2022), *available at* https://www.espn.com/college-sports/story/_/id/33332856/penn-swimmer-lia-thomas-leaves-ivy-league-meet-four-champion-questions-remain.

⁴ U.S. Department of Education, “U.S. Department of Education Confirms Title IX Protects Students from Discrimination Based on Sexual Orientation and Gender Identity” (June 16, 2021), *available at* <https://www.ed.gov/news/press-releases/us-department-education-confirms-title-ix-protects-students-discrimination-based-sexual-orientation-and-gender-identity>.