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The Honorable Chair Vanessa Atterbeary
Ways & Means Committee
Room 131
House Office Building
Annapolis, Maryland 21401
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Testimony of FreeState Justice
IN OPPOSITION TO
House Bill 359: 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, queer, intersex, and asexual (LGBTQIA+) civil rights advocacy organization. Each year, we provide free legal services to hundreds of LGBTQIA+ Marylanders who would not otherwise be able to afford an attorney, as well as advocate more broadly on behalf of the LGBTQIA+ 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 359 because it unfairly targets transgender girls, depriving them of the opportunity 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 359 is not based on legitimate research or credible scientific studies. Indeed, HB 359 is not designed to establish a level playing field for student athletes, but to bar transgender girls from participating at all.

*FreeState Justice, Inc. (formerly FreeState Legal Project, Inc., merging with Equality Maryland)
is a social justice organization that works through direct legal services, legislative and policy advocacy, and community engagement to enable Marylanders across the spectrum of lesbian, gay, bisexual, transgender, and queer identities to be free to live authentically, with safety and dignity, in all communities throughout our state.*

This bill is drafted from Idaho's Fairness in Women's Sports Act which had an injunction put against it for causing irreparable harm to both cis & trans women athletes. Kayden Hulquist, a cisgender soccer player worried she'd have to undergo invasive medical exams to verify her sex when she played for Boise High School. Lindsay Hecox, a transgender woman, withdrew from Boise State University a week after unsuccessfully trying out for the women's cross-country team, she was disqualified by this law.

These are the outcomes we can come to expect if this transphobic law is passed.

The science of this bill is unsupported, A person's sex has less to do with their performance in sports than other biological factors even by this bill's own logic! HB359 cites a paper (*Hilton and Lundberg*) to show that trans women retain muscular advantages after transition; however, the same paper goes on to demonstrate that muscle mass and oxygen is impacted by hormone replacement therapy. The paper is also flawed because the cis women's heights were not controlled for; "tall people regardless of sex require more muscle on their frame to meet the same standards of fitness."

Should Marylanders be discriminated against for these other biological factors that they cannot control, like height, wingspan & eyesight?

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, most schools follow the practice of major sporting organizations, 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."

These sport's 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 359 would ignore all 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 have been in place in elite sports for almost 20 years. 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.

HB 359 is not only manifestly unfair and in contravention of the 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. There are also Maryland specific laws preventing this form of discrimination due to the Fairness for All Marylanders act of 2014. Enacting HB 359 would be an invitation for a lawsuit.

I ask this committee to consider just how crucial sports are to the lives of many youths, 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 nondiscrimination. 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 359 directly prevents these positive benefits of sports participation.

For these reasons, FreeState Justice urges an unfavorable report on House Bill 359.

Lauren Pruitt,
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