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TO: The Honorable Vanessa Atterbear
Chair, Ways and Means Committee

FROM: Tiffany Johnson Clark
Chief Counsel, Legislative Affairs, Office of the Attorney General

RE: House Bill 47 - Education - Interscholastic and Intramural Junior Varsity
and Varsity Teams - Designation Based on Sex (Fairness In Girls' Sports Act) - **Oppose**

The Office of the Attorney General urges the Ways and Means Committee to give House Bill 47 - Education - Interscholastic and Intramural Junior Varsity and Varsity Teams - Designation Based on Sex (Fairness In Girls' Sports Act) and unfavorable report. House Bill 47 requires public and nonpublic school's interscholastic or intramural sports teams to be expressly designated based on biological sex.

Currently, the Maryland Public Secondary Schools Athletic Association has had a transgender student policy for participation in interscholastic athletics since 2012. It has worked effectively to ensure fair competition and allowing students to participate on the athletic team of the gender they identify with. A categorical ban on transgender students from participating in athletics consistent with their gender identity across all sports, age groups, and levels of competition fail to account for differences among students across grade and education levels. They also fail to account for different levels of competition—including no-cut teams that let all students participate—and different types of sports.

There is no evidence that including the small number of transgender students, particularly transgender girls, has altered competitive fairness in competition or caused cisgender girls to be excluded from spots on teams. But evidence is abundant that the ban harms the mental health of vulnerable students who connect to their schools and community through athletic competition. Categorically preventing participation of students on sports teams of the gender they identify adversely impacts a key component of public education to include students without regard to their identity and will have lasting impacts on the students.

In addition to opposing the bill because of its impact on transgender students, it may be contrary to Title IX and Equal Protection, thus barred by the Supremacy Clause. The Department of Education has issued a notice of interpretation followed by a notice of rulemaking that would prohibit discrimination against trans students precisely as described in House Bill 47.

In addition, the Civil Rights Division of the Department of Justice has joined the Department of Education and has filed a brief in a case in West Virginia asserting that Title IX and the Equal Protection Clause requires schools to permit students to participate in sports consistent with their gender identity. The Ninth Circuit upheld a preliminary injunction barring enforcement of a similar Idaho law on Equal Protection grounds. *Hecox v. Little*, 79 F.4th 1009 (9th Cir. 2023).

For the above reasons, the Office of the Attorney General urges this committee to give **House Bill 47** an unfavorable report.

Cc: Committee Members