Delegate Vanessa Atterbeary, Chair
And Members of the Ways and Means Committee
Maryland House of Delegates
Annapolis, Maryland

RE: HB 47 – Education-Interscholastic and Intramural Junior Varsity and Varsity Teams – Designation Based on Sex (Fairness in Girls' Sports Act) - FAVORABLE

Dear Chair Atterbeary and Committee Members,

I most strongly support HB 47 – Fairness in Girls' Sports Act. It provides protections for:

(1) Girls to be able to participate in team sports on a level playing field by only competing against other girls.
(2) Girls' changing and shower facilities to be limited to biological girls, thus preserving their right to human dignity, modesty and being secure in their person as provided in the 4th Amendment to the U.S. Constitution.
(3) Schools that maintain separate interscholastic or intramural junior varsity or varsity athletic teams or sports for students of the female sex; the male sex and coeducational or mixed teams or sports.
(4) Female students from retaliation, intimidation, or other adverse actions by a school or athletic association/organization for objecting to, or speaking out against being required to compete in organized sports against biological males identifying as female or objecting to having to share locker/dressing/showering facilities.

It is well-documented that males have significant physical advantages over females in cardiovascular endurance, muscular strength, speed/agility, and power. It has been reported from studies in the United Kingdom, Europe, Australia and in the United States that these physiological strength and power differences exist even among children in teams of 8 years old and younger. (*Gregory A. Brown, Ph.D. White Paper Concerning Male Physiological and Performance Advantages in Athletic Competition and the Effect of Testosterone Suppression on Male Athletic Advantage* (12/14/21, pages 20-23).)

This overwhelming advantage of male performance over females is documented in the International Association of Athletics Federations (IAAF) website of worldwide results for individuals and events on an annual basis. It shows in track events whether at the 100 meters or 1500 meters men beat the "best woman's performance' result by 8,251 times in the 1500-meter races or to 13,898 times in the 400 meter or 10,009 times in the 100-meter competitions. These are both elite and non-elite men and boys.

In addition, there is the concern over serious physical injuries to female athletes required to compete against biological males (regardless of their sexual identity) in high school. Two recent examples:

(1) A North Carolina female volleyball player suffered a serious concussion and injuries to her neck and face when an opposing team male-to-female player spiked the ball. She has not returned to participating in sports as she entered college.

(2) A Massachusetts high school girl received significant facial and dental injuries after being hit in the face on a shot from a male opponent.

The Maryland General Assembly Report of the Task Force to Study Sports Injuries in High School Female Athletes (December 2015) on page 63, acknowledged that "Gender differences contributing to the higher risk of injury to females include, anatomical, neuromuscular, hormonal, and developmental differences in comparison to their male counterparts."

Physical injuries can lead to increased mental health problems for athletes, particularly female athletes. They receive an injury and can face isolation, anxiety, and depression. The attitude/expectation of the sports community is for athletes to keep a "stiff-upper-lip" and "don't complain". Keeping silent can be overwhelming for a teen, and without proper support and guidance, can increase the likelihood of suicide.

All students deserve to play on a safe, level playing field. Separate sports/teams for girls; boys; and mixed teams/sports provided for in HB 47 will allow schools the flexibility to accomplish that goal.

In reviewing the Fiscal and Policy Note for HB 47 I found the paragraph "Under Federal Law" to be incomplete and mis-leading. It is true that in June 2021, the U.S. Department of Education's Office of Civil Rights released a Notice of Interpretation stating that it will enforce Title IX's prohibition on discrimination on the basis of sex to include (1) discrimination based on sexual orientation and (2) discrimination based on gender identity." However, on June 22, 2022 next to the Federal Register notice (printed in red) states:

"Pursuant to a Federal court order, the Department has been preliminarily "enjoined and restrained from implementing" this document against the states of Alabama, Alaska, Arizona, Arkansas, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Ohio, Oklahoma, Tennessee, South Carolina, South Dakota, and West Virginia. See State of Tenn., et al. v. U.S. Dep't of Educ., No. 3:21- cv-308 (E.D. Tenn.) (July 15, 2022)"

The Court decision introduction states:

INTRODUCTION 1. President Biden directed federal agencies to rewrite federal law to implement the Administration's policy of "prevent[ing] and combat[ing] discrimination on the basis of gender identity or sexual orientation." Exec. Order No. 13,988, 86 Fed. Reg. 7023-25 (Jan. 20, 2021). In response, the Department of Education ("Department") and Equal Employment Opportunity Commission ("EEOC"), each flouting procedural requirements in their rush to overreach, issued "interpretations" of federal antidiscrimination law far beyond what the statutory text, regulatory requirements, judicial precedent, and the Constitution permit. 2. The Department and EEOC claim that their interpretations are required by the Supreme Court's decision in Bostock v. Clayton County, 140 S. Ct. 1731 (2020). But Bostock was a narrow decision. The Court held only that terminating an employee "simply for being homosexual or transgender" constitutes discrimination "because of . . . sex" under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2. Bostock, 140 S. Ct. at 1737-38 (quoting 42 U.S.C. § 2000e-2(a)(1)). 3. The Department interpreted a prohibition on discrimination "on the basis of sex" in Title IX of the Education

Amendments Act of 1972, 20 U.S.C. § 1681(a), to encompass discrimination based on sexual orientation or gender identity, notwithstanding that Title IX expressly permits sex separation on the basis of biological sex, see id. § 1686, and that Bostock expressly disclaimed any intent to interpret other federal or state laws that prohibit sex discrimination, 140 S. Ct. at 1753. 4. The Department compounded that erroneous interpretation by issuing further guidance in a "Fact Sheet" that similarly disregards Title IX's plain text. Among other things, the guidance warns that the Department can launch an investigation if a school prevents a student from joining an athletic team or using the restroom that corresponds to the student's gender identity, or if a student's peers decline to use the student's preferred pronouns. 5. The EEOC Chair unilaterally issued a "technical assistance document" declaring, among other things, that requiring transgender employees to use the shower, locker room, or restroom that corresponds to their biological sex, or to adhere to the dress code that corresponds to their biological sex, constitutes discrimination under Title VII (which the EEOC administers and enforces in part), notwithstanding that the Supreme Court expressly declined to "prejudge" those issues. Id. 6. This recent guidance from the Department and the EEOC concerns issues of enormous importance to the States, employers, educational institutions, employees, students, and other individual citizens. The guidance purports to resolve highly controversial and localized issues such as whether employers and schools may maintain sex-separated showers and locker rooms, whether schools must allow biological males to compete on female athletic teams, and whether individuals may be compelled to use another person's preferred pronouns. But the agencies have no authority to resolve those sensitive questions, let alone to do so by executive fiat without providing any opportunity for public participation.

In closing, HB 47 – Fairness in Girls' Sports in high school interscholastic and Intramural Junior Varsity Teams – Designation Based on Sex provides schools flexibility to provide opportunities for all students to participate in sports – separately – and protects female students from unfair competition.

Please give HB 47 – Fairness in Girls' Sports a FAVORABLE Report.

Sincerely,

Ella E. Ennis
Port Republic, MD 20676
E-mail: eee437@comcast.net