



Charlotte Persephone Hoffman, Esq.  
(they/she)  
Policy Director  
charlotte@transmaryland.org

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The Honorable Brian J. Feldman  
Senate Education, Energy, and the Environment Committee  
2 West Miller Senate Office Building  
Annapolis, MD 21401

Testimony of Trans Maryland

### IN OPPOSITION TO

**Senate Bill #588:** Education - Interscholastic and Intramural Junior Varsity and Varsity Teams - Designation Based on Sex (Fairness in Girls' Sports Act)

To the Chair, Vice Chair, and esteemed members of the Senate Education, Energy, and Environment Committee:

Trans Maryland is a multi-racial, multi-gender community power building organization for Maryland's trans community. In that capacity we work with transgender young people all across the state, as well as their families, friends, and classmates. Since 2021, we have seen unprecedented attacks on trans youth across the country, at both the state and federal level. While Maryland has thus far resisted joining the bandwagon of anti-trans legislation, legislation like Senate Bill 588 demonstrates that not even Maryland is free from this wave of anti-trans rhetoric. We are deeply saddened—and, indeed, embarrassed—to see elected Maryland legislators targeting young trans girls with this legislation.

We'd first like to address comments to any young trans or intersex girls who read this testimony. The actions of the adult legislators who have brought this bill to the legislature are born out of fear and bigotry. Trans Maryland wants you to know that transgender and cisgender adults alike find this legislation targeting you to be in bad faith, a misunderstanding of science and biology, and an openly bigoted act against young trans and intersex girls and women like yourself who just want to have fun by enjoying the many health and wellness benefits of playing youth sports.

Since the passage of the Fairness for All Marylanders Act more than a decade ago, gender identity has been a protected class under Maryland law. These protections were reinforced in educational settings in 2022 with the passage of House Bill 850/Senate Bill 666, which prohibits schools from discriminating against students on the basis of a number of protected classes, including gender identity. Senate Bill 588 would fly in the face of established Maryland law, instructing Maryland's schools not to discriminate against transgender students, *except in this particular instance*. In addition, the bill would also bring schools out of compliance with MPSSA's



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Transgender Person Guidance for Participation in Interscholastic Athletics, as well as the MSDE's Non-Discrimination Guidelines for Student Transitions.

More crucially, Senate Bill 588 also exhibits a fundamental misunderstanding of the concept of biological sex, which it frames as a simple, easily identifiable, binary. This is far from true.

Proponents of Senate Bill 588 would tell you that biological sex is determined at birth (or even, as a recent Trump Administration executive order would have it, at conception<sup>1</sup>), that sex is a binary, and that sex is static from birth until death. These beliefs are not only outdated, they also manifest a misunderstanding of scientific facts and realities that not only denies the existence of transgender people, but also erases the lived experiences of intersex people, a group that includes about 2% of the total population. Contrary to claims from the bill's proponents, sex does not fit neatly into two distinct boxes and there is no single test that could be performed to assign everyone into one of those boxes.

More crucially, Senate Bill 588 is also built on the sexist fallacy that all people assigned male at birth are inherently superior at athletics to all people assigned female at birth. This is the attitude that leads a significant percentage of men to believe that they could go toe-to-toe with Serena Williams, one of the greatest tennis players who has ever lived. But, because she is a *woman*, many men believe they are inherently better than her, regardless of whether they have ever played tennis before in their lives.<sup>2</sup> Biological sex does not on its own impart a permanent benefit to participation in sports, especially when compared to the extreme deviations in athletic prowess caused by other biological or sociological factors.

Much ink has been spilled, for instance, on Michael Phelps, a cisgender endosex (non-intersex) male athlete and 23 time gold medalist, who was born with the ability for his body to produce half the lactic acid than the body of a typical athlete. Less lactic acid provides a significantly faster recovery time, and is a key factor in his dominance of his sport. And yet no legislators have targeted him, despite him being born into a body that "unfairly" benefits his athletic prowess and permits dominance of his sport. Similarly, we do not care that the athletes who most often succeed on the world stage are those who are from socio-economic backgrounds that allow them to hire private trainers and pay for access to the best equipment and facilities.

On the other hand, South African runner Caster Semenya, who was assigned female at birth and has a vagina, has been attacked extensively over the past 15 years over elevated testosterone levels and speculation that she is intersex, and in 2018 the IAFF (now World

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<sup>1</sup> This claim is particularly ridiculous, as human embryos start out as female for the first seven weeks of gestation.

<sup>2</sup> See Emine Saner, *Why do so many men think they could win a point off Serena Williams?*, The Guardian (July 15, 2019), available at <https://www.theguardian.com/sport/shortcuts/2019/jul/15/why-do-so-many-men-think-they-could-win-a-point-off-serena-williams>.



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Athletics) adopted a rule on testosterone levels of middle distance runners that was targeted solely at Semenya and has excluded her from international competition since that time.

The disparity in treatment between Michael Phelps and Caster Semenya demonstrates that we only care about “biological fairness” when it comes to women’s sports, and that these fairness rules are often constructed through a white supremacist lens to empower middle class and upper class white women to defeat their opponents of color.

Indeed, the very idea that men and women could never compete in sports is built on racist, eugenicist ideas from the 19th and early 20th centuries. Via the scholarship of Dr. Kyla Schuller, we understand the 19th century focus on the discernable differences between a binary set of sexes was focused around the concept that there were large differences between white men and women, and that People of Color had less of a difference between the binary sexes due to a “lack of civilization”. The white colonial theories of the time supposed that high distinctions between the sexes was endemic to white people only and People of Color were less separate sexes that could become more civilized through adherence to white colonization and homemaking/hyper masculinity. The eugenicist movement in the early 20th century sought to eliminate “undesirables,” which included People of Color, Jews, neurodivergent people, and more. Trans and intersex girls have simply become the most recent front of these eugenicist attitudes.

The irony is that Senate Bill 588’s greatest impact will not be on transgender girl athletes in the state of Maryland, but rather on cisgender girl athletes who will find themselves subject to intrusive, dehumanizing, and traumatic medical examinations to prove the thing that they and everyone around them already know: that they are girls. And, as in so many other things, this burden will fall most harshly on girls of color, who are significantly more likely to be questioned on their gender presentation than their white peers. Whatever its aims, Senate Bill 588’s most lasting effect will be building up a system of racialized gender policing of Black and Brown girls and women.

Simply put, Senate Bill 588 is a solution in search of a problem, and in its search, it threatens to hamper the ability of all girls to participate fully in school life. The benefits of sports and participation in team sports is one that should not be unequally conferred to only cisgender endosex young people. The beauty of competition and participation in that competition has a long history of being limited by those requesting to ensconce their own biases, and codify their bigotry. It is particularly shameful when adults attempt to perpetrate this on our youth.

For these reasons **we urge an unfavorable report on Senate Bill 588.**