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Chair Murphy, Vice-Chair Nedweski, and Honorable Members of the Assembly Committee on Colleges and Universities:

The American Civil Liberties Union of Wisconsin appreciates the opportunity to provide testimony in opposition to Assembly Bill 378.

Plain and simple, excluding trans students from participating in sports teams consistent with their authentic gender identity is harmful and discriminatory.¹ Bills like AB 377 are part of a nationwide coordinated effort to deny transgender people their freedom, safety, and dignity. In 2023 alone, over 500 anti-LGBTQ bills have been introduced in statehouses across the country.²

Transgender students participate in sports for the same reasons other young people do: to challenge themselves, express themselves, and be part of a team. Excluding transgender students from participation just deprives them of opportunities available to their peers and sends the message they are not worthy of a full life.

Transgender athletes' participation is nothing new. Trans people of all ages have been participating in sports consistent with their gender at all levels for years, including at the Olympics since at least since 2004 and in the NCAA since at least 2011. With close to 20 years of clear policies for inclusion of women and girls who are transgender in women's events at the highest level of sport around the world, there has been absolutely no categorical dominance by women and girls who are transgender anywhere.

¹ A bill with similar provisions to AB 377 was signed into law in Idaho in March 2020. The ACLU, ACLU of Idaho, Legal Voice, and Cooley LLP filed a lawsuit, and a federal judge issued a temporary injunction blocking implementation of the Idaho law in August 2020, reaching the "inescapable conclusion that the Act discriminates on the basis of transgender status." The court further held that given the small percentage of people who are transgender and the extensive discrimination that transgender people face, "it appears untenable that allowing transgender women to compete on women's teams would substantially displace female athletes." *Hecox v. Little*, No. 1:20-CV-00184-DCN, 2020 WL 4760138, at *27 (D. Idaho Aug. 17, 2020). On August 17, 2023, the Ninth Circuit Court of Appeals upheld the injunction, finding the Idaho law barring transgender athletes from participating in student athletics likely violates the rights of transgender students under the Equal Protection Clause of the U.S. Constitution by discriminating on the basis of sex and trans status. https://wp.api.aclu.org/wp-content/uploads/2023/08/20-35813_Documents.pdf.

² "Mapping Attacks on LGBTQ Rights in U.S. State Legislatures," ACLU (Sept. 29, 2023), <https://www.aclu.org/legislative-attacks-on-lgbtq-rights>.

As the University of Wisconsin Madison and the Wisconsin Intercollegiate Athletic Conference noted in testimony on identical legislation introduced during the 2021-22 legislative session, passage of a bill targeting trans students at the collegiate level would put Wisconsin colleges and universities out of compliance with current NCAA policy and could also subject Wisconsin colleges to an investigation by the U.S. Department of Education's Office of Civil Rights.

Sports governing bodies created existing transgender sports policies for a population that is exceedingly small, and one that already lacks representation in sports due to exorbitant social and socioeconomic disadvantage. Testosterone is one factor of many influencing athletic ability. Trans athletes, like other athletes, do not have a single body type; there is absolutely no merit to the claim that women and girls who are transgender automatically have advantages in sport.³ In fact, particularly when referring to young people, many trans athletes have physiological characteristics that are typical of peers with their gender identity and not their assigned sex. This means that a girl who is transgender may have more physiological characteristics typical of non-transgender girls than non-transgender boys.⁴ Thus, any data purporting to compare the relative athletic abilities typical of non-transgender girls and non-transgender boys simply do not apply to most transgender youth.

For youth, advantage comes largely from proximity to privilege.⁵ The average parent of a child in youth sports spends \$883 per single season of participation.⁶ Meanwhile, disparities faced by the transgender community begin at a young age and impact all facets of life including sports access. Transgender youth are 9 times more likely to experience homelessness and associated poverty.⁷ Sixty-eight percent experience bullying in middle school and high school.⁸ In 2015, 22% of transgender women surveyed stated they were bullied so badly in school that they dropped out.⁹

³ Declaration of Helen Carroll from *Hecox v. Little*,

https://www.aclu.org/sites/default/files/field_document/hecox_v_little_-_carroll_declaration.pdf.

⁴ See, e.g., *Hecox v. Little*, No. 1:20-CV-00184-DCN, 2020 WL 4760138, at *31 (D. Idaho Aug. 17, 2020)(finding that “there is a population of transgender girls who, as a result of puberty blockers at the start of puberty and gender affirming hormone therapy afterward, never go through a typical male puberty at all”).

⁵ “The Making of a College Athlete: High School Experiences, Socioeconomic Advantages, and the Likelihood of Playing College Sports,” *Sociology of Sport Journal* (Aug. 2021), <https://journals.humankinetics.com/view/journals/ssj/39/2/article-p129.xml>.

⁶ “Youth Sports Facts: Challenges,” Project Play, <https://projectplay.org/youth-sports/facts/challenges>.

⁷ “Student Homelessness: Lessons from the Youth Risk Behavior Survey,” School House Connection (June 2021), <https://schoolhouseconnection.org/wp-content/uploads/2021/06/YRBS-Part-III-Sexual-Orientation-and-Gender-Identity-Equity.pdf>.

⁸ “Bullying and Suicide Risk among LGBTQ Youth,” The Trevor Project (Oct. 14, 2021), <https://www.thetrevorproject.org/research-briefs/bullying-and-suicide-risk-among-lgbtq-youth/>.

⁹ “The Report of the 2015 U.S. Transgender Survey,” National Center for Transgender Equality (Dec. 2016), <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

Without supportive services to help transgender students navigate these additional challenges, it's tougher for them than their peers to make it through class, let alone onto a soccer field. Efforts to ban transgender girls from participating in girls' sports jeopardize their mental health, physical well-being and ability to access education opportunities comparable to their peers. Having the opportunity to participate in sports results in positive outcomes for students — better grades, greater homework completion, higher educational and occupational aspirations, and improved self-esteem.¹⁰ We should want that for all Wisconsin students.

Effective solutions to promote sporting fairness and equity do exist, like ensuring equal pay and opportunity for women's leagues and providing equal funding for athletic programs at less wealthy public schools. Targeting transgender women is not one of them.

¹⁰Expert Declaration of Dr. Mary Fry from *Hecox v. Little*, https://www.aclu.org/sites/default/files/field_document/hecox_v_little_-_fry_declaration.pdf.