



## MEMORANDUM

**TO:** The Pennsylvania Senate Education Committee

**FROM:** Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

**DATE:** May 20, 2022

**RE: OPPOSITION TO HB 972 P.N. 2886 (GLEIM)**

**Bill summary:** [HB 972](#) (PN 2886) would ban transgender girls and women from participating on athletic teams or in sports designated for “females, women or girls.” This ban would apply to students participating in interscholastic, intercollegiate, intramural or club athletic teams or sports sponsored by a public primary or high school, a public institution of higher education, or any school or institution where students or teams compete against a public school or college. “Biological sex” is defined solely by a person’s reproductive organs, biology or genetics at birth, but there is no provision that explains how sex is determined for the purposes of this bill.

HB 972 would prohibit a government entity, licensing or accrediting organization, or an athletic association or organization from considering a complaint, opening an investigation, or taking any other adverse action against a school or institution of higher education for maintaining separate teams or sports for female students. The bill would also create causes of action for injunctive relief, damages, attorney fees and costs, and any other relief available under law for:

- Students harmed or deprived of an athletic opportunity because of a known violation of the ban;
- Students subjected to retaliation or other adverse action as a result of reporting a violation of the ban; and
- Schools or institutions of higher education that are harmed as a result of a violation of the ban.

**On behalf of over 100,000 members and supporters of the ACLU of Pennsylvania, I respectfully urge you to oppose House Bill 972.**

### **HB 972 attempts to fix a problem that doesn’t exist.**

HB 972 is one of many [similar bills](#) that have been introduced in state legislatures around the country targeting young transgender people. After years of focusing on nonexistent problems related to restrooms and locker rooms, opponents of LGBTQ equality have shifted strategy to focus on excluding trans youth from activities that affirm their sense of self. This strategy is based on [inaccurate and harmful beliefs](#), and medical organizations, including the [American Academy of Pediatrics](#), have decried these blanket bans as unnecessary and unscientific. At last count, over [200 anti-LGBTQ laws](#) have been proposed in 35 states in 2022, and these bills overwhelmingly targeted trans youth. While the attacks differ—some would criminalize medical care for trans youth, some would ban them from school sports, and others would make it harder for trans people to get accurate state IDs—they are not isolated. They represent a coordinated campaign to push trans people out of public life and criminalize being transgender.

As long as there have been women’s sports there have been conversations about who counts as a woman. Black women have repeatedly been pushed out of sports—and still are—at many levels when they are told they are too tall, too muscular, or not feminine enough. Bills like HB 972 attempt to pit cis girls and women against trans girls and women, and they ultimately scrutinize, divide and harm all women. That’s why [two dozen women’s rights organizations oppose them](#). These organizations are dedicated to ensuring women and girls are fully included in society, and they know all too well the real challenges facing women and girls in sports that our General Assembly could instead address, such as a lack of equal resources for girls’ sports. Instead, HB 972 opts for a “solution” in search of a problem.

## **HB 972 would violate state and federal constitutional guarantees of equal protection.**

HB 972 would violate state and federal statutory and constitutional protections by permitting sex discrimination in schools or institutions of higher education. In 2020, the U.S. Supreme Court held in [Bostock v. Clayton County](#) that Title VII protections extend to cover not just sex, but also sexual orientation and gender identity, and therefore prohibit discrimination in employment against LGBTQ&T individuals. In the school context, singling out transgender students for discrimination also violates constitutional guarantees of equal protection as well as Title IX of the Civil Rights Act of 1964, which protects all students, including transgender students, from discrimination based on sex.

Courts have already intervened in cases targeting trans student athletes. A federal judge dismissed a challenge to [Connecticut](#)'s policy permitting trans athletes to participate in school sports. Other courts have blocked enforcement of laws similar to HB 972, including those passed in [West Virginia](#) and [Idaho](#). In the Idaho decision, the judge recognized that "it is not just the constitutional rights of transgender girls and women athletes at issue but ... the constitutional rights of every girl and woman athlete in Idaho."<sup>1</sup>

And it's not just the courts—the U.S. [Department of Education](#) and [Department of Justice](#) have also argued that these bans violate federal civil rights law under Title IX and the Equal Protection Clause of the U.S. Constitution. Indeed, the DOJ states this position quite succinctly in its [Statement of Interest](#) in the suit against the [West Virginia Board of Education](#) over a policy similar to the one proposed by HB 972: "The United States respectfully submits this Statement of Interest ... to advise the Court of its view that Title IX of the Education Amendments of 1972 ... and the Equal Protection Clause of the Fourteenth Amendment do not permit West Virginia to categorically exclude transgender girls from participating in single-sex sports restricted to girls."<sup>2</sup>

## **Bans on sports participation can negatively affect students' mental health.**

Transgender people want to participate in athletics for the same reasons as their peers: to challenge themselves, improve fitness, and be part of a team. And for trans youth and young adults alike—who often consider suicide at high rates when they don't have support from friends, family and schools<sup>3</sup>—being able to be a part of a team can be lifesaving.<sup>4</sup> Excluding them from sports sends them the message that they are not worthy of the same kinds of opportunities as their classmates.

Adverse effects are not limited only to instances where bans have taken effect—in fact, 85% of transgender and non-binary youth recently reported that the persistent political attacks on trans people [have had a negative impact on their mental health](#).<sup>5</sup>

Young transgender people need support and affirmation—[16 states and Washington, D.C.](#) understand this, having adopted trans-inclusive school sports policies. Trans youth have the right to participate in sports consistent with who they are, just like anyone else. Denying them that right is blatantly unconstitutional and discriminatory.

## **For these reasons, we urge you to oppose House Bill 972.**

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<sup>1</sup> [Hecox v. Little, Decision Granting Preliminary Injunction](#)

<sup>2</sup> [BPJ v. West Virginia Board of Education](#), U.S. Department of Justice [Statement of Interest](#)

<sup>3</sup> Toomey, R., et al., [Transgender Adolescent Suicide Behavior](#). Pediatrics October 2018; 142 (4); and Herman J., et al., [Suicide Thoughts and Attempts Among Transgender Adults](#). UCLA School of Law, Williams Institute, September 2019.

<sup>4</sup> Easterlin MC, Chung PJ, Leng M, Dudovitz R. [Association of Team Sports Participation With Long-term Mental Health Outcomes Among Individuals Exposed to Adverse Childhood Experiences](#). JAMA Pediatr. 2019;173(7):681–688.

<sup>5</sup> The Trevor Project and Morning Consult, [New Poll Illustrates the Impacts of Social & Political Issues on LGBTQ Youth](#), January 10, 2022. Full poll: [Issues Impacting LGBTQ Youth](#), January 2022.