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House Committee on Education
Rep. Adam Thomas, Chair

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HB2238 – Creating the "fairness in women's sports" act to require that female student athletic teams only include members who are biologically female.

Opponent, Written Only

Chair Thomas and Members of the Committee,

Thank you for the opportunity to provide Opponent testimony on HB2238.

I am writing to express my emphatic opposition to HB2238. As a clinically licensed marriage and family therapist who specializes in providing care to transgender youth and adults, I am profoundly concerned by the bill's adverse impacts on the mental health and safety of the students throughout Kansas. While these effects would, of course, only be compounded by the bill's passage into law, it is worth noting that SB12 is already affecting transgender youth and young adults in gravely harmful ways. Both the young people I support in clinical practice and their families, and those among my family friends who include transgender youth, express responses ranging from anxiety to panic—and from distress to despair—at this bill's advent. They feel hurt by its exclusionary nature; embarrassed by its implication that their basic sense of self is rooted in a desire to cheat or deceive others; and afraid to face more stigma and isolation than they already do. In my view, HB2238 is grounded in inaccurate and harmful premises—and is profoundly dangerous and, indeed, already injurious, to the students it purports to protect.

In my view, the above-listed outcomes are reason enough to reject this bill. But the harmful impact of HB2238 reaches far beyond the transgender students who are its intended targets. The bill proposes that student sex should be assessed on the basis of "chromosomes... gonads, and nonambiguous internal and external genitalia present at birth". It appears to presume that such evidence will be obvious at a glance—that casual observers and classmates will "know trans girls when they see them". This is obviously inaccurate, first, given that HB2238 includes children as young as kindergarten, who display no legible sex characteristics when appropriately attired for school or athletic participation. It ignores the reality that many trans young people have not passed through the puberty associated with the sex assigned to them at birth, and never will.

The bill's creation of liability for schools who fail to "protect" non-transgender students from the presence of transgender girls or women would force schools to treat any suggestion of transgender status seriously. Athletic participation could require medical evidence of any girl's

or woman's sex—even a non-transgender student who was unusually tall, spent more time in the weight room, or just won more often than her peers. And while proponents of this and similar bills often point toward chromosome typing as a less-intrusive way to gather such information, the reality is that elective genetic testing is extraordinarily expensive, not widely available, and can entail a delay of weeks. For most students, medical proof of their sex unavoidably implies genital examination as the price of admission for athletic participation.

HB2238 appears unbothered by the prospect of subjecting transgender girls to such intrusive harassment, but it is difficult for me to believe that any adult would seriously endorse the idea of forced genital exams for kindergarten girls who want to play sports. The idea that trivial features of appearance, or simply competing successfully would trigger such responses is not hyperbole or conjecture on my part. It is an established outcome in states that have implemented similar legislation. After the state of Utah did so, last year, reports received by the state's High School Activities Association included several reflecting a "female athlete [that] doesn't look feminine enough," and complaints from the parents of girls who had placed second and third in a state-level competition, that their daughters had been "outclassed" by the first-place winner. If student athletes are subject to suspicion, harassment, and intrusive violations of their privacy, up to and including forced genital examinations for kindergarteners—just for winning a competition—why would any girl or woman choose to compete?

It is also important to note that HB2238 is founded on a total lack of evidence. Proponents of this and similar bills point often to indirect measures—they suggest that transgender women who transition in adulthood will have higher bone density or greater reach, and therefore excel naturally in sports, far beyond any cisgender woman's ability to compete. But athletic skill and success is dependent on a far more complex range of variables than whether one woman grew taller or more broad-shouldered than another, as a teenager. If transgender women were overwhelmingly successful as athletes—if they could, indeed, out-compete all cisgender contenders—it shouldn't be necessary to resort to guess-work about physiological stereotypes. It would be easy to spot the winning records of transgender women athletes, everywhere—but such records do not exist at any level of athletic competition. Cisgender girls and women routinely compete and win against transgender athletes. Compounding this problem, HB2238 includes girls as young as kindergarten. As such, it very clearly impacts children too young to have even a theoretical and evidence-unsubstantiated sex-based athletic advantage. There is simply no research-grounded basis for the supposedly self-evident conclusion that transgender girls and young women out-compete their cisgender peers—and therefore no reason for a law that will harm and egregiously intrude on the privacy of both transgender and cisgender girls and women.

At no point in the history of Kansas' consideration of trans-excluding bills governing student athletics have there been more transgender student athletes competing in the state than a person could count on one hand. In my experience as a clinician, the reasons for that are simple—most transgender students feel unsafe in athletic settings. Those who would like to participate fear being targeted, bullied, or kicked off the team they've invested in, when a policy

or law changes. Transgender girls and women are not out-competing anyone, in the state of Kansas, because overwhelmingly—they are not competing, at all.

A bill that was serious in its bid to protect girls and women, and to ensure their access to athletic participation, would do so most effectively by safeguarding the participation of transgender students. It would ground itself in available research, which universally indicates that the participation of transgender athletes harms no one, while increasing safety and well-being for those whose full inclusion in their school communities is thus facilitated. It would also protect the privacy and bodily integrity of all student-athletes, by clarifying the reality, which one hopes would be self-evident, that the shape and appearance of a child's genitals are not properly the business of the state, nor an appropriate focus for the speculation or surveillance of strangers.

HB2238 is a bill which targets a highly stigmatized, acutely vulnerable group of students for legislative bullying. It serves no legitimate purpose, certainly not the one it asserts--indeed, the structure and apparent plan for enforcing the bill would act as a general deterrent to participation in girls' and women's sports, not one exclusive to transgender students. Ultimately, HB2238 is a dangerous and damaging solution in search of a nonexistent problem; as such, in both my professional capacity, and at a personal level, as a concerned Kansas resident, I emphatically oppose its passage into law--or, indeed, its further consideration by our legislature. It is beneath the dignity of of the Kansas House--our state and, indeed, our state's Representatives, deserve better.