



Written Testimony before the

Senate Education Committee

in opposition to

House Bill 2238 – Creating the fairness in women's sports act to require that female student athletic teams only include members who are biologically female

by

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Madam Chair, Members of the Committee:

[Game On for Kansas Schools](#) is a nonpartisan grassroots effort among Kansans who share a belief in high-quality public education as a right of all Kansas students. We advocate for Kansas public schools to ensure our teachers, principals, superintendents, and school board members have the resources necessary to deliver quality education to all Kansas students. We inform communities across the state about issues and legislation affecting their students, and our membership extends statewide.

We oppose HB 2238 as it is over-broad, applying to kindergarten through collegiate athletics, and usurps the roles of KSHSAA, the NCAA and sports' national governing bodies. It has a higher likelihood of making transgender children feel attacked than protecting women's and girls' athletics.

In discussion about this and similar bills, we have heard a lot about the case of a single swimmer who competed at the 2022 NCAA Championships. However, FINA, NCAA and USA Swimming have changed their policies, and that athlete would no longer be allowed to compete as a female. See <https://www.usnews.com/news/sports/articles/2022-06-19/world-swimming-adopts-new-policy-for-transgender-athletes>. FINA bans transgender participation by those who do not transition before age 12, USA Swimming complies with FINA rules for high level competition and has its own rules, and the NCAA adopts the policy of the national governing body for particular sports. Sports governing bodies are the appropriate bodies to handle these issues as they have greater expertise and knowledge about the impacts of biological sex in their sports.

The current bill also raises unanswered questions. It defines "biological sex," but doesn't say who is responsible for determining the factors outlined in the bill or how that determination takes place. The fact remains that sex is not always a simple matter, and the Kansas legislature should leave determinations for how to deal with these issues to sports bodies. (See for example <https://www.scientificamerican.com/article/sex-redefined-the-idea-of-2-sexes-is-overly-simplistic1/>.) The bill also inappropriately applies from kindergarten even though there aren't significant gender differences before puberty.

As of last year, Kansas had only a handful of transgender children who have registered with KSHSAA, only one of whom was a transgender female. There has not been a single transgender athlete competing at the state level. This bill isn't needed to protect Kansas girls. Instead it is more likely to make our vulnerable citizens feel more vulnerable. There are other issues we should be focusing our attention on rather than culture wedge issues.

In addition to not protecting Kansas girls and harming vulnerable Kansas children, this bill is likely to cause economic damage to our state. The supplemental note outlines a substantial likelihood of litigation costs for the state. It adds, "Further, the Board indicates that if the National Collegiate Athletic Association's (NCAA) policies are in conflict with HB 2238, enactment of the bill could affect the state's ability to host NCAA events. If this were the case, the Board indicates it could have a fiscal effect on the institutions, communities, and region of the state where those events would have been held; however, the fiscal effect cannot be estimated. The Office of Judicial Administration indicates HB 2238 could result in additional civil cases being filed, which could increase revenues and expenditures from additional time spent by judges and court staff in hearing and processing these cases. However, a fiscal effect cannot be estimated."

We urge you to vote no on moving HB 2238 out of committee.