



11 DUPONT CIRCLE NW  
SUITE 800  
WASHINGTON, DC 20036  
202-588-5180  
NWLC.ORG

**Testimony of Elizabeth Tang  
Senior Counsel for Education & Workplace Justice  
National Women's Law Center**

**Before the  
South Dakota Senate State Affairs Committee**

**January 13, 2022**

Thank you for the opportunity to submit testimony on behalf of the National Women's Law Center (NWLC) in opposition to S.B. 46. NWLC is one of the leading national organizations that has been working since Congress passed Title IX of the Education Amendments of 1972 to protect students' rights to learn and participate in athletics free from sex-based discrimination. NWLC has participated in all major Title IX cases before the Supreme Court as counsel or amicus and routinely files amicus briefs in Title IX cases in support of transgender students who experience sex-based discrimination. We believe that ending all forms of sex-based discrimination and harassment is crucial to protecting the opportunities of all students in education and for the rest of their lives.

We strongly urge you to oppose S.B. 46, which would ban transgender girls and women from playing on girls' and women's sports teams.<sup>1</sup> This bill would exacerbate the already high rates of sex discrimination, including sexual assault, that girls and women who are transgender face in school. Further, by imposing a wholesale ban on girls and women who are transgender from participating in athletics consistent with their gender identity, S.B. 46 would force schools to violate both the U.S. Constitution and Title IX, which would, in turn, jeopardize South Dakota's federal funding. Transgender girls and women already live and go to school in South Dakota, where the current trans-inclusive policies have benefited all girls and women, including cisgender girls and women. Yet S.B. 46 would not only exclude transgender girls and women from sports but would also harm cisgender girls and women, particularly Black and brown girls and women. There are numerous problems of sex discrimination harming girls and women in sports, but banning transgender girls and women would not solve any of them. Our testimony echoes the position of many other women's rights organizations that overwhelmingly support full inclusion of transgender students in athletics. We urge you to reject this dangerous bill.

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<sup>1</sup> S.B. 46, §§ 1, 2(2), 96th Leg., (S.D. 2022).

## 1. Transgender girls and women face alarmingly high rates of sex discrimination, including physical and sexual assault.

Transgender girls and women suffer exceedingly high rates of sex-based harassment and other forms of sex discrimination in schools. According to a 2015 study of more than 27,000 transgender adults, 77 percent of those who were out or perceived as transgender while in K-12 schools faced some form of mistreatment in school due to their gender identity—54 percent were verbally harassed, 24 percent were physically attacked, and 13 percent were sexually assaulted.<sup>2</sup> Transgender women are twice as likely to have been physically attacked or sexually assaulted while in K-12 schools because of their gender identity than transgender men and nonbinary people.<sup>3</sup> For K-12 students who are both transgender and Native,<sup>4</sup> anti-mistreatment jumped to an alarming 92 percent, including 69 percent who were verbally abused, 49 percent who were physically attacked, and 22 percent who were sexually assaulted because of their gender identity.<sup>5</sup> In higher education, 23 percent of transgender and nonbinary students are sexually assaulted during their time in college.<sup>6</sup>

Anti-transgender victimization in schools has devastating effects on transgender students' safety and wellbeing. Among transgender adults who were out or perceived as transgender in K-12 school, 17 percent of them—and 39 percent of those who are Native—left at least one school because of the anti-transgender mistreatment they faced.<sup>7</sup> Transgender women are 1.5 times more likely to have left at least one K-12 school and nearly twice as likely to have been expelled from a K-12 school because of anti-transgender mistreatment than transgender men and nonbinary people.<sup>8</sup> These experiences often had life-threatening consequences: for example, more than 52 percent of transgender adults who faced anti-transgender mistreatment in K-12 education had attempted suicide at least once by the time they took the survey, compared to 37 percent of transgender adults who had not been mistreated in K-12

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<sup>2</sup> National Center for Transgender Equality, *The Report of the 2015 U.S. Transgender Survey* 4, 11 (2017) [hereinafter USTS Report], available at <http://www.ustranssurvey.org>.

<sup>3</sup> *Id.* at 133, 134.

<sup>4</sup> Native students make up nearly 11 percent of South Dakota's population. South Dakota Department of Education, *Student Enrollment Data*, 2020 Fall Enrollment, <https://doe.sd.gov/ofm/enrollment.aspx>.

<sup>5</sup> National Center for Transgender Equality, *2015 U.S. Transgender Survey: Report on the Experiences of American Indian & Alaska Native Respondents* 12 (2017) [hereinafter USTS Native Report], available at <http://www.ustranssurvey.org>.

<sup>6</sup> Association of American Universities, *Report on the AAU Campus Climate Survey on Sexual Assault and Misconduct*, at ix (Oct. 15, 2019), <https://www.aau.edu/key-issues/campus-climate-and-safety/aaucampus-climate-survey-2019>.

<sup>7</sup> USTS Report *supra* note 2, at 12; USTS Native Report, *supra* note 5, at 12.

<sup>8</sup> USTS Report *supra* note 2, at 135.

school and 4.6 percent of their cisgender peers.<sup>9</sup> (Importantly, the survey did not capture the experiences of the many transgender students who died by suicide.)

## **2. S.B. 46 would further deprive transgender girls and women of educational access and could place them at greater risk of sexual assault.**

S.B. 46 would exclude many transgender girls and women in South Dakota from athletics altogether, depriving them of the educational benefits of sports. Students who play sports are more likely to graduate from high school, score higher on standardized tests, and have higher grades.<sup>10</sup> They are also more likely to have higher levels of confidence, more positive body image, greater psychological well-being, and lower levels of depression.<sup>11</sup> S.B. 46 would exacerbate educational inequity for transgender girls and women—who are already subjected to myriad forms of sex-based discrimination that negatively affect their educational outcomes—by barring them from school sports.

Furthermore, if S.B. 46 were interpreted to also relegate transgender girls and women who are athletes to locker rooms that do not match their gender identity, this bill could place them at greater risk of sexual assault. In a recent study of more than 3,600 transgender and nonbinary students in grades 7-12 published by the American Academy of Pediatrics, students who were banned from using locker rooms and restrooms that matched their gender identity were significantly more likely to have been sexually assaulted during the previous 12 months.<sup>12</sup> This increased risk of sexual assault was 2.5 times higher for transgender girls, 1.3 times higher for transgender boys, and 1.4 times higher for nonbinary adolescents who were designated female at birth.<sup>13</sup> If S.B. 46 is interpreted as requiring transgender girls and women who play sports to use locker rooms inconsistent with their gender identity, it could further endanger them.

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<sup>9</sup> USTS Report *supra* note 2, at 132.

<sup>10</sup> In fact, a statewide, three-year study in North Carolina found that student athletes had grade point averages that were nearly a full point higher than their non-athlete peers. National Coalition for Women and Girls in Education, *Title IX at 45: Advancing Opportunity through Equity in Education* 41-42 (2017), available at <https://www.ncwge.org/index.html>.

<sup>11</sup> *Id.* at 41.

<sup>12</sup> Diane Ehrensaft & Stephen M. Rosenthal, *Sexual Assault Risk and School Facility Restrictions in Gender Minority Youth*, 143 PEDIATRICS 1 (May 6, 2019), <https://pubmed.ncbi.nlm.nih.gov/31061221>.

<sup>13</sup> *Id.* at 5.

### 3. S.B. 46 would require schools to violate the Constitution and Title IX, thereby jeopardizing South Dakota's federal funding.

S.B. 46 would give South Dakota's school districts and institutions of higher education an unpalatable choice: comply with state law *or* federal law.

Schools would be forced to violate the U.S. Constitution in order to comply with S.B. 46. Two state bills similar to S.B. 46 in Idaho and West Virginia have already been found to likely violate the Fourteenth Amendment's Equal Protection Clause. When Idaho passed H.B. 500 in 2020,<sup>14</sup> two students immediately sued to reverse the state law—Jane Doe, a 17-year-old cisgender girl in high school, and Lindsay Hecox, a transgender woman in college.<sup>15</sup> A federal court in Idaho court reached “the inescapable conclusion that [H.B. 500] discriminates on the basis of transgender status” and thus triggered heightened equal protection scrutiny under the Constitution.<sup>16</sup> The court then issued a preliminary injunction against the anti-transgender ban, noting “the absence of any empirical evidence that sex inequality or access to athletic opportunities are threatened by transgender women athletes” and instead finding “compelling evidence that equality in sports is *not* jeopardized” by Idaho's previous standard.<sup>17</sup> The court concluded that Idaho had “not identified a legitimate interest ... other than an invalid interest of excluding transgender women and girls from women's sports entirely.”<sup>18</sup>

Similarly, when West Virginia passed H.B. 3293 in 2021,<sup>19</sup> an 11-year-old transgender girl, Becky Pepper-Jackson, filed suit.<sup>20</sup> In elementary school, Becky had already been a member of the cheer team for her local youth football league, but the new law would ban her from trying out for the girls' cross-country team in middle school.<sup>21</sup> As she explained: “I just want to run[.] I come from a family of runners. ... I know how hurtful a law like this is to all kids like me who just want to play sports with their classmates, and I'm doing this for them. Trans kids deserve better.”<sup>22</sup> A federal judge in West Virginia agreed, finding that Becky was likely to win in her constitutional claim, and issued a preliminary injunction against the ban. The judge explained that

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<sup>14</sup> H.B. 500, 65th Leg., 2nd Reg. Sess. (Id. 2020).

<sup>15</sup> *Hecox v. Little*, 479 F. Supp. 3d 930 (D. Id. Aug. 17, 2020).

<sup>16</sup> *United States v. Virginia*, 518 U.S. 515, 555 (1996); *Hecox*, 479 F. Supp. 3d at 975.

<sup>17</sup> *Id.* at 979 (emphasis in original).

<sup>18</sup> *Id.* at 984-85.

<sup>19</sup> H.B. 3293, 85th Leg., Reg. Sess. (W. Va. 2021).

<sup>20</sup> American Civil Liberties Union, *See You in Court: ACLU-WV Joins Suit Challenging Trans Student Athlete Ban* (May 26, 2021), <https://www.acluww.org/en/news/see-you-court-aclu-wv-joins-suit-challenging-trans-student-athlete-ban>.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

“permitting [Becky] to participate on the girls' teams would not take away athletic opportunities from other girls” and that “this law cannot possibly protect the physical safety of other girl athletes.”<sup>23</sup> Moreover, the judge pointed out, “I have been provided with scant evidence that this law addresses any problem at all, let alone an important problem.”<sup>24</sup> South Dakota’s S.B. 46, which would impose a similar ban on transgender girls and women, suffers from the same flaws as Iowa’s H.B. 500 and West Virginia’s H.B. 3293 and will also likely be found to violate the U.S. Constitution.

S.B. 46 would also violate Title IX. Fifty years ago, Congress enacted Title IX to prohibit all forms of sex discrimination in education programs and activities.<sup>25</sup> For decades, courts have affirmed that discrimination on the basis of gender identity and transgender status is a form of sex discrimination, including when it occurs in gender-separated education programs.<sup>26</sup> In 2020, the U.S. Supreme Court confirmed in *Bostock v. Clayton County* that discrimination based on gender identity “necessarily entails discrimination based on sex; the first cannot happen without the second.”<sup>27</sup> Within months of the Supreme Court’s decision, the Fourth Circuit applied *Bostock*’s reasoning to reject a Virginia school district’s policy that prohibited transgender students from using sex-separated restrooms matching their gender identity, finding that the policy violated Title IX.<sup>28</sup> Likewise, a federal judge in West Virginia found that the new state law banning transgender girls and women from playing on girls’ and women’s teams was also likely to violate Title IX.<sup>29</sup> As the judge explained, “I have little difficulty finding that [Becky] is harmed by this law. ... [I]t both stigmatizes and isolates her. ... [She] will be treated worse than girls with whom she is similarly situated because she alone cannot join the team corresponding to her gender identity.” South Dakota’s S.B. 46, which would impose a similar ban on transgender girls and women, is also unlikely to survive a Title IX challenge.

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<sup>23</sup> *B. P. J. v. W. Virginia State Bd. of Educ.*, No. 2:21-CV-00316, 2021 WL 3081883, at \*6 (S.D.W. Va. July 21, 2021).

<sup>24</sup> *Id.* at \*1.

<sup>25</sup> 20 U.S.C. § 1681(a). Although Title IX’s implementing regulations allow schools to maintain sex-separated athletics teams for competitive and contact sports, this does *not* mean that student athletics are exempt from Title IX. 34 C.F.R. § 106.41(b). Nor do the regulations specify that students of any gender may—or must—participate on a specific team. *Id.* at § 106.41(a).

<sup>26</sup> See, e.g., *Schwenk v. Hartford*, 204 F.3d 1187, 1200-01 (9th Cir. 2000) (interpreting Gender Motivated Violence Act); *Whitaker By Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1047 (7th Cir. 2017) (Title IX); *Evancho v. Pine-Richland Sch. Dist.*, 237 F. Supp. 3d 267, 288 (W.D. Pa. 2017); *M.A.B. v. Bd. of Educ. of Talbot Cnty.*, 286 F. Supp. 3d 704, 719 (D. Md. 2018) (Title IX). See also *Parents for Privacy v. Barr*, 949 F.3d 1210, 1239-40 (9th Cir. 2020) (Title IX); *Doe by & through Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 535 (3d Cir. 2018) (Title IX).

<sup>27</sup> *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1747 (2020).

<sup>28</sup> *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 616 (4th Cir. 2020), as amended (Aug. 28, 2020).

<sup>29</sup> *B. P. J.*, 2021 WL 3081883, at \*7.

The Biden-Harris administration has also made clear that it intends to enforce Title IX consistent with the Supreme Court's holding in *Bostock*.<sup>30</sup> This means that if S.B. 46 were to be enacted, South Dakota would likely face not only litigation by private parties but also by the federal government. Violating Title IX would not only cost the state substantially in litigation costs but would also put the state's federal education funding at risk. In FY 2022, South Dakota will receive nearly \$800 million from the U.S. Department of Education in the form of formula grants and federally supported loans and may receive additional funding in the form of competitive grants.<sup>31</sup>

#### **4. South Dakota—and many other states—already have trans-inclusive athletics policies, which have benefited both cisgender and transgender girls.**

South Dakota's current athletics policies already ensure equal opportunity for all girls and women, including transgender girls and women. Since 2015, the South Dakota High School Activities Association (SDHSAA) has allowed all students to play on sports teams consistent with their gender identity, regardless of the gender listed in their student records.<sup>32</sup> In the past seven years since this policy was adopted, there has been no dominance by transgender athletes or threat to girls' sports in South Dakota.

South Dakota's trans-inclusive policy for K-12 students is not unique. Athletics associations in sixteen states and the District of Columbia have adopted trans-inclusive policies that allow student athletes in K-12 schools to play on teams consistent with their gender identity.<sup>33</sup> Furthermore, fifteen states and the District of Columbia have passed laws protecting transgender students' rights to pursue an education free from discrimination, including in school sports.<sup>34</sup> In the past 14 years since these laws and association policies were adopted, there has been no categorical dominance by transgender athletes or threat to girls' sports in these states—despite hundreds, if not thousands, of transgender girls competing in girls' sports.<sup>35</sup>

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<sup>30</sup> Dep't of Educ., Notice of Interpretation, 86 FR 32637 (June 22, 2021); Dep't of Justice, Memorandum (Mar. 26, 2021), <https://www.justice.gov/crt/page/file/1383026/download>; Exec. Order No. 13988, 86 Fed. Reg. 7023 (Jan. 20, 2021).

<sup>31</sup> U.S. Department of Education, *Fiscal Years 2020-2022 State Tables for the U.S. Department of Education*, available at <https://www2.ed.gov/about/overview/budget/statetables/index.html>.

<sup>32</sup> South Dakota High School Activities Association, *SDHSAA Transgender Procedure* (Aug. 28, 2015), <https://www.sdhsaa.com/Portals/0/PDFs/TransgenderProcedure.pdf>.

<sup>33</sup> Transathlete, *K-12 Policies* (last updated Nov. 12, 2021), <https://www.transathlete.com/k-12>.

<sup>34</sup> National Women's Law Center, *Facts on Trans Inclusion in Athletics* 1 (Sept. 2019), <https://nwlc.org/resources/facts-on-trans-inclusion-in-athletics>.

<sup>35</sup> David Crary & Lindsay Whitehurst, *Lawmakers can't cite local examples of trans girls in sports*, ASSOCIATED PRESS (Mar. 3, 2021), <https://apnews.com/article/lawmakers-unable-to-cite-local-trans-girls-sports-914a982545e943ecc1e265e8c41042e7>; Center for American Progress, *Fair Play: The Importance*

Yet S.B. 46 would impose an extremist ban on transgender girls as young as 5—far more restrictive than even the strictest rules that govern the most elite levels of sports around the world. In many elite post-season high school competitions, transgender girls are allowed to play on girls’ teams after undergoing some testosterone suppression.<sup>36</sup> Since 2011, the National Collegiate Athletic Association (NCAA) has allowed transgender women to compete in women’s sports after taking gender-affirming hormones for one year.<sup>37</sup> Even at the Olympic level (which is outside the scope of S.B. 46), transgender athletes have been allowed to compete since 2004 with restrictions that are quite onerous, yet still less extreme than the outright ban proposed in S.B. 46.<sup>38</sup> There has been no categorical dominance by transgender girls or women at any of these levels of competition. In fact, no transgender athlete has medaled to date at the Olympics, and the only U.S. transgender athlete ever selected for the national team in a World Championship was Chris Mosier, a transgender man.<sup>39</sup>

Furthermore, a 2021 study found that in states with trans-inclusive athletics policies, girls’ overall participation in high school sports either *increased* or remained the same after those policies were enacted—even in states where boys’ participation declined during the same period.<sup>40</sup> In contrast, girls’ overall participation in high school sports has *declined* over the past decade in states with trans-exclusionary policies.<sup>41</sup>

In other words, S.B. 46 is a false solution in search of a nonexistent problem.

**5. S.B. 46 will lead to *more* discrimination against cis, trans, nonbinary, and intersex girls and women, especially Black and brown girls and women.**

S.B. 46 relies on overbroad stereotypes about transgender girls’ and women’s bodies. All athletes’ bodies are different, and these differences can be advantageous or disadvantageous depending on the sport. For example, professional gymnast Simone Biles is 4 feet, 8 inches tall, and professional basketball player Brittney Griner is 6 feet,

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*of Sports Participation for Transgender Youth* 13 (Feb. 8, 2021) [hereinafter CAP Report], available at <https://www.americanprogress.org/issues/lgbtq-rights/reports/2021/02/08/495502/fair-play>.

<sup>36</sup> *E.g.*, National Scholastic Athletics Foundation, *NSAF statement regarding Transgender Policy* (Feb. 26, 2019), [https://www.nationalscholastic.org/outdoor\\_nationals/article/2355](https://www.nationalscholastic.org/outdoor_nationals/article/2355).

<sup>37</sup> National Collegiate Athletic Association, *NCAA Inclusion of Transgender Student-Athletes* 13 (Aug. 2011), [https://www.ncaa.org/sites/default/files/Transgender\\_Handbook\\_2011\\_Final.pdf](https://www.ncaa.org/sites/default/files/Transgender_Handbook_2011_Final.pdf).

<sup>38</sup> Olympic, *IOC Approves Consensus With Regard To Athletes Who Have Changed Sex* (May 18, 2004), <https://www.olympic.org/news/ioc-approves-consensus-with-regard-to-athletes-who-have-changed-sex-1>.

<sup>39</sup> CAP Report, *supra* note 35, at 17.

<sup>40</sup> CAP Report, *supra* note 35, at 15-16.

<sup>41</sup> *Id.* at 14-15.

9 inches tall.<sup>42</sup> Both athletes, who are cisgender, have achieved great success, including Olympic gold medals, in part because of their respective heights.<sup>43</sup> Similarly, transgender athletes do not have a single body type, and their bodies do not automatically confer absolute advantages over cisgender athletes. In fact, many transgender athletes, especially transgender children, have physiological traits that are more typical of their gender identity than their assigned sex at birth. This means that many transgender girls have more physiological traits in common with cisgender girls than cisgender boys.<sup>44</sup> As a result, any data purporting to compare the athletic abilities of cisgender girls and cisgender boys simply does not apply to most transgender youth.

S.B. 46 would also categorically exclude many nonbinary students whose gender identities are neither male nor female. And the bill would exclude many intersex students, who are born with physical traits that do not conform to binary notions of “male” or “female” bodies and whose sex assigned at birth may be different from the gender identity they have known and lived their whole lives.

Black and brown girls and women—who are routinely targeted for not conforming to society’s expectations of white femininity—would be especially vulnerable to the gender scrutiny invited by S.B. 46. For example, Serena Williams, a cisgender Black woman, has faced decades of dehumanization, including invasive questions about her gender.<sup>45</sup> Gender- and race-based stereotypes, which frequently impute a greater perception of culpability onto Black women, have also caused Williams to be subjected to “randomized” drug-testing at a much higher rate than her white peers.<sup>46</sup> In 2018, Williams was even docked a full game point in 2018 for expressing frustration in an insufficiently “feminine” manner.<sup>47</sup> By relying on overbroad stereotypes about transgender girls’ and women’s bodies, S.B. 46 would perpetuate harmful racist and sexist stereotypes that routinely deprive Black and brown girls and women of equal athletic opportunities.

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<sup>42</sup> Team USA, *Simone Biles*, <https://www.teamusa.org/usa-gymnastics/athletes/Simone-Biles>; Women’s National Basketball Association (WNBA), *Brittney Griner*, <https://www.wnba.com/player/brittney-griner>.

<sup>43</sup> Team USA, *supra* note 42; WNBA, *supra* note 42.

<sup>44</sup> See, e.g., *Hecox*, 479 F. Supp. 3d at 980 (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”).

<sup>45</sup> Lydia Slater, *Queen Serena: The power and the glory*, HARPER’S BAZAAR (May 30, 2018), <https://www.harpersbazaar.com/uk/fashion/fashion-news/a20961002/serena-williams-july-issue-cover-shoot> (“People would say I was born a guy, all because of my arms, or because I’m strong”).

<sup>46</sup> *Serena Williams, drug tested more than other top players this year, cites “discrimination”*, CBS NEWS (July 25, 2018), <https://www.cbsnews.com/news/serena-williams-doping-tests-more-often-than-other-top-players-cites-discrimination>.

<sup>47</sup> Ritu Prasad, *Serena Williams and the trope of the ‘angry black woman’*, GUARDIAN (Sept. 11, 2018), <https://www.bbc.com/news/world-us-canada-45476500>.

## 6. S.B. 46 does nothing to address the many real and urgent problems of sex discrimination in athletics.

Girls and women face numerous actual gender disparities in school sports that S.B. 46 fails to address. In high school, girls receive over 1 million fewer opportunities than boys to participate in sports, and in college, women receive almost 60,000 fewer athletics opportunities than men.<sup>48</sup> Girls' and women's teams across the country are given second-class treatment by their schools when it comes to facilities, equipment, travel, and other benefits and services, and they have been hit especially hard by the COVID-19 pandemic.<sup>49</sup> Girls of color also receive far fewer chances to play on school sports teams than boys and white girls.<sup>50</sup> And as brought to light in high-profile cases like Larry Nassar's, student athletes of all ages and genders face high levels of gender-based verbal harassment and sexual abuse, at the hands of their teammates, coaches, and physicians.<sup>51</sup>

Banning transgender girls and women from school sports solves none of these urgent problems of sex discrimination. In fact, as mentioned above, anti-transgender bans have been linked to *lower* athletics participation by cisgender girls and women and *higher* rates of sexual assault of transgender girls and women.<sup>52</sup> S.B. 46 claims to protect girls and women in sports, but it does the exact opposite by using "fairness in women's sports" as a cudgel against transgender girls and women—while inadvertently harming cisgender girls and women as well. South Dakota legislators should not let this bill distract them from taking meaningful steps to close the gender and racial disparities in athletics and protect student athletes from sexual abuse.

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<sup>48</sup> Women's Sports Foundation, *Chasing Equity: The Triumphs, Challenges, and Opportunities in Sports for Girls and Women* (2020), [https://www.womenssportsfoundation.org/articles\\_and\\_report/chasing-equity-the-triumphs-challenges-and-opportunities-in-sports-for-girls-and-women](https://www.womenssportsfoundation.org/articles_and_report/chasing-equity-the-triumphs-challenges-and-opportunities-in-sports-for-girls-and-women).

<sup>49</sup> United Nations Women, *COVID-19, Women, Girls and Sport: Build Back Better*, (2020), <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/brief-covid-19-women-girls-and-sport-en.pdf>.

<sup>50</sup> National Women's Law Center, *Finishing Last: Girls of Color and School Sports Opportunities* 1 (2015), <https://nwlc.org/resources/finishing-last>.

<sup>51</sup> See, e.g., Aaron Slone Jeckell *et al.*, *The Spectrum of Hazing and Peer Sexual Abuse in Sports: A Current Perspective*, 10(6) *SPORTS HEALTH* 558, 560 (Dec. 2018), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6204631> (estimating that up to 48% of athletes experience some kind of sexual mistreatment); Julie Mack & Emily Lawler, *MSU doctor's alleged victims talked for 20 years. Was anyone listening?*, *MLIVE* (Feb. 8, 2017), [https://www.mlive.com/news/index.ssf/page/msu\\_doctor\\_alleged\\_sexual\\_assault.html](https://www.mlive.com/news/index.ssf/page/msu_doctor_alleged_sexual_assault.html).

<sup>52</sup> See *supra* notes 12-13, 40-41 and accompanying text.

## 7. Women’s rights organizations overwhelmingly support full inclusion of transgender students in school sports.

Last year, when the South Dakota legislature passed a similar athletics ban, H.B. 1217, twenty-five South Dakotan and national organizations that advocate for women’s rights and gender justice—including the National Women’s Law Center—joined together to urge Governor Kristi Noem to veto the bill.<sup>53</sup> Similarly, the National Women’s Law Center urges the Senate State Affairs Committee to vote no on S.B. 46 today.

We are not alone. Numerous women’s rights organizations and elite athletes have also repeatedly voiced their unequivocal support of transgender inclusion in athletics:

- In March 2021, 94 women’s rights and gender justice organizations expressed their support of transgender girls and women athletes.<sup>54</sup>
- In February 2021, the National Coalition for Women and Girls in Education—which includes organizations like American Association of University Women (AAUW), Girls Inc., and YWCA USA—issued a statement announcing the coalition’s support of transgender and nonbinary students’ “full and equal access to sex-separated activities and facilities consistent with their gender identity, including athletics teams.”<sup>55</sup>
- In December 2020, Billie Jean King, Megan Rapinoe, and Candace Parker joined nearly 200 athletes in an amicus brief opposing the Idaho anti-transgender sports ban.<sup>56</sup>
- In April 2019, 23 national women’s rights and gender justice organizations issued a public letter in support of “Full and Equal Access to Participation in Athletics for Transgender People,” including the National Organization for Women, Women Leaders in College Sports, and Women’s Sports Foundation.<sup>57</sup>

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<sup>53</sup> Letter from National Women’s Law Center and 24 Women’s Rights and Gender Justice Organizations to Gov. Kristi L. Noem (Mar. 10, 2021), <https://nwlc.org/resources/nwlc-and-24-womens-rights-and-gender-justice-organizations-urge-south-dakota-governor-to-veto-harmful-anti-transgender-athletics-bill>.

<sup>54</sup> Statement of Women’s Rights and Gender Justice Organizations in Support of the Equality Act (Mar. 16, 2021), <https://nwlc.org/resources/statement-of-womens-rights-and-gender-justice-organizations-in-support-of-the-equality-act-2>.

<sup>55</sup> National Coalition for Women and Girls in Education, *NCWGE Supports Transgender and Nonbinary Students’ Full and Equal Participation in All Education Programs and Activities* (Feb. 12, 2021), <https://www.ncwge.org/activities.html>.

<sup>56</sup> Lambda Legal, *Billie Jean King, Megan Rapinoe, and Candace Parker Join Nearly 200 Athletes Supporting Trans Youth Participation in Sports* (Dec. 21, 2020), [https://www.lambdalegal.org/news/id\\_20201221\\_billie-jean-king-megan-rapinoe-and-candace-parker](https://www.lambdalegal.org/news/id_20201221_billie-jean-king-megan-rapinoe-and-candace-parker).

<sup>57</sup> *Statement of Women’s Rights and Gender Justice Organizations in Support of Full and Equal Access to Participation in Athletics for Transgender People* (Apr. 9, 2019), <https://nwlc.org/wp-content/uploads/2019/04/Womens-Groups-Sign-on-Letter-Trans-Sports-4.9.19.pdf>.

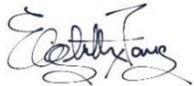
The National Women's Law Center supports the full inclusion of transgender girls and women in sports because we recognize, as courts and scientists overwhelmingly have stated, that transgender girls and women *are* girls and women. Youth who are transgender join sports for the same reasons that all young people do: to have fun, challenge themselves, and be part of a team where they feel included and accepted. And in the handful of instances where a transgender girl or woman is successful in her sport, we celebrate her victory as a victory for all girls and women.

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A few years ago, anti-transgender bills were focused on the supposed threat of transgender girls and women in restrooms. Now they are focused on the supposed threat of transgender girls and women in athletics. None of the threats fearmongered by supporters of the restroom bills came to pass<sup>58</sup> because transgender girls and women use restrooms for the same reason as everyone else: to go to the restroom and go about their day. Likewise, none of the purported threats to girls and women's athletics posed by transgender inclusion are rooted in reality.

Students who are transgender deserve the chance to succeed and thrive like any other student. We urge you to vote no on S.B. 46.

Thank you,



Elizabeth Tang  
Senior Counsel for Education and Workplace Justice  
National Women's Law Center

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<sup>58</sup> See, e.g., Stephanie Ebbert, *Study finds no link between transgender rights law and bathroom crimes*, BOSTON GLOBE (Sept. 12, 2018), <https://www.bostonglobe.com/news/politics/2018/09/12/study-refutes-link-between-restroom-crime-and-transgender-access/5am4LMI1IHecGvJTW4MBqN/story.html>.