

March 20, 2024

**RE: Oppose the Protection of Women in Olympic and Amateur Sports Act (H.R. 7187)**

Dear Representative:

The American Civil Liberties Union strongly urges you to oppose H.R. 7187, the so-called “Protection of Women in Olympic and Amateur Sports Act.” This is yet another discriminatory and unconstitutional attempt by extreme anti-LGBTQ members of Congress to exclude and isolate transgender people from every aspect of public life. While the specific aim of this bill is to exclude transgender and intersex women and girls from amateur athletic participation, it is part of a much broader assault on the rights and dignity of transgender people. In this year alone, the ACLU is tracking nearly 500 bills at the state level targeting the LGBTQ community for discrimination.<sup>1</sup> The goal of these seemingly unending attacks is clear: to undermine and even erase the very existence of transgender people.



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When looking at the many significant barriers that face female athletes, from funding inequities to pay disparities among coaches and staff to harassment and abuse, promoting baseless fears about transgender athletes does nothing to address those very real problems. No doubt it is for this reason that all of the leading organizational advocates for women and girls in sports such as the National Women’s Law Center, the Women’s Sports Foundation, Women Leaders in College Sports, and others support trans-inclusive policies and oppose efforts like this bill to exclude those who are transgender from participating in sports.

Under the very same section of federal code that this bill would amend, amateur sports organizations are obligated to provide equal opportunity to amateur athletes, without discrimination.<sup>2</sup> They have governing boards and voting members, made up of individuals actively or previously engaged in the sport, who set fair and consistent selection criteria appropriate to that sport and level of competition. For some sports, governing boards are involved in competitions and activities that range in age and competitiveness including youth club teams, adult club teams, and the national team. Sports programs, from basketball to bobsledding to horseshoe pitching, do not need Congress inserting baseless and discriminatory rules about who may participate in their programs.

Those who are transgender and intersex - like all people - participate in sports for the same reasons others do: to challenge themselves, improve fitness, and be part of a team. Excluding those who are transgender and intersex deprives them of opportunities available to others and sends the message that they are not worthy

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<sup>1</sup> <https://www.aclu.org/legislative-attacks-on-lgbtq-rights-2024>

<sup>2</sup> 36 USC 220522 (8).

of being able to live a full life. It is simply not true that allowing transgender athletes to participate will allow boys and men to pretend to be transgender just to compete in the girls' or women's category nor does it threaten sex separation in sports. In the decades that transgender and intersex women and girls have been participating in women's sports around the world, there has been no effort to collapse sex separation in sports and no examples of men and boys pretending to be women and girls.

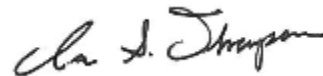
Categorically requiring all transgender and intersex women and girls to participate in amateur athletic competitions for men and boys - as this legislation would - will exclude them from participating at all. This legislation's categorical exclusion of women and girls who are transgender and intersex from playing amateur sports is unconstitutional because it discriminates based on both transgender status and sex. The bill's restrictive definitions of male and female are designed to exclude transgender women and girls by ensuring they are categorically ineligible to play on women's teams. This is discrimination based on transgender status. See, e.g., *Christian Legal Soc. Chapter of the Univ. of Cal. v. Martinez*, 561 U.S. 661, 689 (2010) ("A tax on wearing yarmulkes is a tax on Jews.") (citation omitted). Because H.R. 7187 discriminates based on transgender status, it also necessarily discriminates based on sex and independently triggers heightened scrutiny on that basis. As the Supreme Court held in *Bostock*, "it is impossible to discriminate against a person for being ... transgender without discriminating against that individual based on sex." *Bostock v. Clayton County, Ga*, 590 U.S. 644, 660 (2020). The government cannot meet its burden to show that this categorical exclusion satisfies heightened scrutiny. See, e.g., *Hecox v. Little*, 79 F.4th 1009 (9th Cir. 2023) (holding that Idaho's categorical exclusion of transgender girls and women from scholastic sports was not justified under heightened scrutiny) (pet. for rehearing en banc filed). Such an unconstitutional categorical exclusion using reproductive anatomy to determine an individual's eligibility to participate also raises serious privacy and administrability concerns.

For all of these reasons, the ACLU urges you to strongly oppose H.R. 7187.

Sincerely,



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Chief Political & Advocacy Officer



Ian Thompson  
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