

Statement of Opposition to the Proposed Amendment In The Nature Of A Substitute to H.R. 7187, “Protection of Women in Olympic and Amateur Sports Act” by Rep. Steube, R-FL, before the Committee on the Judiciary

March 20, 2024

Dear Representative,

On behalf of the intersex youth for whom we advocate, we call on you to oppose the proposed Amendment in the Nature of a Substitute (ANS) to H.R. 7187. If enacted, this legislation would subject children and young adults with innate variations in their sex characteristics to discriminatory and potentially humiliating treatment.

Rather than “protect” women and girls in sports, this legislation would subject women and girls in amateur athletics programs to intrusive inquiries, improper scrutiny, and discriminatory harassment about the nature of their sex characteristics. What’s more, it would override the U.S. Olympic & Paralympic Committee’s existing guidance on fairness in sport, and instead force National Governing Bodies of Sport (NGB) programs to police students’ sex characteristics at all age and competition levels. The Judiciary Committee must reject this overreaching attempt to invert cherished civil rights principles and turn the governing bodies of sport into ‘femininity police’.

Each year, tens of thousands of children with intersex traits are born in the U.S. “Intersex” is an umbrella term for a wide range of innate variations in physical traits – including external genitals, internal organs, chromosomes, and hormone function – that differ from typical binary notions of male and female bodies. An estimated 2% of all people are born with these variations – an incidence rate similar to the proportion of the U.S. population that resides in Tennessee or Massachusetts. Despite longstanding recognition of the existence of intersex variations, intersex people in the United States suffer mistreatment and discrimination across a multitude of settings. interACT is a nonprofit organization that employs legal and policy advocacy nationwide to protect the rights of intersex youth. We are the largest and oldest organization in the United States exclusively dedicated to this purpose.

Intersex traits originate from variations in the embryonic development process. A fertilized egg usually (but not always) has two sex chromosomes: XX or XY. For the first few weeks of gestation, XX and XY embryos look the same, but they later develop in different ways depending on genetic and hormonal factors. During typical development of an embryo with

XY chromosomes, the gonads become testes; the genital tubercle becomes a penis; and the labioscrotal folds fuse and form a scrotum. During typical development of an embryo with XX chromosomes, the gonads become ovaries; the genital tubercle becomes a clitoris; and the labioscrotal folds develop into the outer labia.

There are many ways in which this “typical” process can vary, resulting in a wide range of intersex traits. At birth, intersex children are usually assigned either male or female – based on some combination of their genital appearance, internal organs, and chromosomes, or based solely on their visible characteristics if their intersex variation is not yet apparent. Later, usually at puberty, hormones secreted by testicular and ovarian tissue cause the expression of secondary sex characteristics such as breast development, body hair, musculature, and depth of voice. These developments may or may not align with stereotypes associated with the assigned sex, and may differ from what would be expected given the person’s chromosomes and other sex traits.

Intersex traits may present at different ages. For example, variations in external genitalia may mean a child’s intersex variation is recognized at birth, but variations in internal organs or sex chromosomes may not become apparent until puberty or later. Regardless of when a person’s intersex variation is discovered, their traits develop as a result of underlying factors that are innate, or present at birth.

This ANS to H.R. 7187 would effectively prohibit many intersex children and youth from participating in amateur sports. It defines a “female” athlete as a person who “has, had, [or] will have” a reproductive system that produces eggs, and clumsily attempts to address intersex variations by including those who “would have” had such a reproductive system “but for a developmental or genetic anomaly.” It then defines “male” in the same way, but with sperm production as the crux. Finally, it requires all NGBs to exclude children and young people “whose sex is male” as defined “from participating in an amateur athletic competition that is designated for females, women, or girls” – or risk losing NGB status.

Simply put, this language willfully ignores the biological complexity of human bodies with intersex variations. For many intersex individuals, their reproductive system and their visible sex characteristics may be perceived as indicating “opposite” sex categories; others may have one or more sex traits that do not align with stereotypes associated with either binary sex category. It also raises concerning questions of a practical nature regarding its enforcement against intersex children and young people.

While the reference to intersex variations in the ANS to H.R. 7187 may at first glance appear to be inclusive, it in fact defines intersex people out of existence. This method of asserting “but-for” male or female status does not advance authentic recognition and inclusion of intersex variations, but rather imposes a convenient label that may be at odds with everything a person experiences in their own body (let alone their gender). Treating potential gamete production as a *compulsory* indicator under law of one’s sex category not only denigrates transgender and nonbinary individuals, including those who are intersex, it will result in forced, nonsensical classification of some intersex women as “males” and some intersex men as “females.”

To illustrate, consider “Jane,” a hypothetical 15-year-old with complete androgen insensitivity. Jane was assigned female at birth and has always identified as a girl. Jane’s external genitalia and secondary sex characteristics align with what is thought typical for female bodies. She has internal testes and XY chromosomes, as well as a variation in her androgen receptor gene that causes her body not to respond to the testosterone she produces, but rather to convert it into estrogen. Jane only recently became aware of her intersex variation when she did not begin menstruating and her doctor discovered she did not have the uterus and ovaries that she and her family had always assumed she possessed.

The ANS to H.R. 7187 would forcibly designate Jane’s sex as “male,” relying solely on the fact that her reproductive system produces sperm and disregarding all other aspects of her body and identity. It would force her to compete on teams with men and boys, or else forgo participation in her sport. Even for intersex athletes who do identify with the sex category into which the ANS would place them, the language and structure employed here stigmatize intersex women and girls as “*female with an asterisk*” – positioning one’s sex characteristics as an “anomaly” that should disqualify them from participation in sports, or in womanhood, for that matter - but for the kind dispensation granted them by policymakers.

The members of this body must not presume to prescribe as a matter of law who is “woman enough” or who is a “real girl.” This measure would punish any NGB for any sport that refuses to discriminate against girls and women with variations in their sex characteristics, and it represents disturbing government overreach into people’s personal lives. We urge Judiciary Committee members to reject the ANS to H.R. 7187.

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