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**LESBIAN, GAY, BISEXUAL, AND
TRANSGENDER RIGHTS PROGRAM**

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State Capitol Building
500 East Capitol Avenue
Pierre, SD 57501

HUMAN
RIGHTS
WATCH

Re: Senate Bill 49 and Athletic Participation for Transgender Youth

HRW.org

Dear Senator,

I write on behalf of Human Rights Watch to share our concerns about Senate Bill 49, which would require transgender students to participate in extracurricular activities according to the sex on their birth certificate.

Human Rights Watch has interviewed hundreds of students, teachers, administrators, and parents about lesbian, gay, bisexual and transgender (LGBT) issues in US schools, including in South Dakota. We have documented the impact of laws and policies that discriminate against transgender students in two reports: [*Shut Out: Restrictions on Bathroom and Locker Room Access for Transgender Youth in US Schools*](#) and [*"Like Walking Through a Hailstorm": Discrimination Against LGBT Youth in US Schools*](#). We believe Senate Bill 49 is unnecessary and would have negative consequences for students, school districts, and the State of South Dakota – especially the transgender youth you represent.

Senate Bill 49 would override [*the detailed procedures developed by the South Dakota High School Activities Association*](#) – including notice to the school, relevant documentation, notice to the South Dakota High School Activities Association, and review by an independent hearing officer – and would rigidly define a student’s “sexual identity” as the sex on their birth certificate.¹ The bill would effectively exclude many transgender students from the physical, intellectual, and social benefits that students who are not transgender are allowed to derive from extracurricular participation. It would also pose significant safety risks for transgender students, who are highly vulnerable to bullying, harassment, and assault when they are required to participate in activities and use facilities that are inconsistent with their gender identity. And it would raise serious privacy concerns for students whose peers may not know they are transgender, exposing their personal and medical history by requiring them to participate according to their sex assigned at birth.

South Dakota should not take this step. Legislation like Senate Bill 49 is not necessary to preserve fairness; transgender athletes do not necessarily have a competitive advantage over their peers, and South Dakota’s current

¹ South Dakota High School Activities Association, “Transgender Policy,” *General Sports Information* (2018), <https://www.sdhsaa.com/Portals/0/PDFs/Handbook/Athletics/6-GeneralSportsInformation.pdf>.

policy already ensures that “[g]ender identity of the student must not be for the purpose of ‘gaining an unfair competitive advantage.’”² A number of other states have addressed the inclusion of transgender students in extracurricular activities. Adopting Senate Bill 49 would not only put South Dakota at odds with most states in the US,³ but would impose a more rigid standard than the National Collegiate Athletics Association (NCAA),⁴ the International Olympic Committee (IOC),⁵ and other sports organizations that do not look only to an athlete’s birth certificate as decisive proof of their gender. We urge South Dakota’s lawmakers to ensure that every student’s gender identity is respected.

Please do not hesitate to contact us if we can provide further information. We appreciate your attention to this important matter.

Sincerely,



Ryan Thoreson
Researcher, LGBT Rights Program
Human Rights Watch

² Ibid.

³ TransAthlete, “High School Policies,” <https://www.transathlete.com/k-12> (illustrating that only seven US states require transgender students to participate according to the sex on their birth certificates while thirty-six states allow them to participate according to their gender identity or undertake a case-by-case review).

⁴ Office of Inclusion, National Collegiate Athletic Association, NCAA Inclusion of Transgender Student-Athletes, August 2011,

https://www.ncaa.org/sites/default/files/Transgender_Handbook_2011_Final.pdf.

⁵ International Olympic Commission, IOC Consensus Meeting on Sex Reassignment and Hyperandrogenism, November 2015,

https://stillmed.olympic.org/Documents/Commissions_PDFfiles/Medical_commission/2015-11_ioc_consensus_meeting_on_sex_reassignment_and_hyperandrogenism-en.pdf.