

SUBJECT: Requiring students to compete in school sports based on biological sex

COMMITTEE: Constitutional Rights and Remedies, Select — favorable, without amendment

VOTE: 8 ayes — Ashby, Clardy, Jetton, Klick, Landgraf, Lozano, Shaheen, White

4 nays — S. Thompson, A. Johnson, Moody, Neave

3 absent — Bucy, Geren, Longoria

WITNESSES: For — David Pickup, Alliance and American College of Pediatricians; Kevin Stuart, Austin Institute; Mary Smith, Concerned Women for America; Ann Hettinger, Concerned Women for America of Texas; Marco Roberts, Log Cabin Republicans of Texas; Sheila Hemphill, Texas Right To Know; Jonathan Saenz, Texas Values; Mary E. Castle and Jonathan Covey, Texas Values Action; Jill Glover, Deborah Kelting, and Tom Nobis, The Republican Party of Texas; and 28 individuals; (*Registered, but did not testify*: Leah Hagan, BizPac; Rachana Chhin, Texas Catholic Conference of Bishops; and 12 individuals)

Against — Sarah Labowitz and Adri Perez, ACLU of Texas; Chase Strangio, American Civil Liberties Union; Delma Catalina Limones, AVOW; Michael Diaz, Cathedral of Hope United Church of Christ; Maggie Stern, Children's Defense Fund-Texas; Erik Day, Dell Technologies; Vivian Topping, Equality Federation; Holt Lackey and Ricardo Martinez, Equality Texas; Carrie Holley-Hurt, First Unitarian Universalist Church of Austin; Vanessa Beltran, Girls Empowerment Network; Isaac James, GLSEN Austin; Katharine Ligon, Houston LGBTQ Political Caucus; Rachel Gonzales, HRC Parents for Trans Equality Council; Sarah Warbelow, Human Rights Campaign; Chloe Latham Sikes, Intercultural Development Research Association; Shelly Skeen, Lambda Legal; Rebecca Martin and Hannah Pemberton, National Association of Social Workers-Texas Chapter; Alexis Rangel, National Center for Transgender Equality; Mandy Giles, PFLAG Houston; Robert

Salcido, Pride Center San Antonio; Cece Cox, Resource Center Dallas; Dennis Woodward, St. Peter United on Longpoint in Houston; Gordy Carmona, Stripes of Pride; Servando Esparza, TechNet; Rene Lara, Texas AFL-CIO; Jessica Shortall, Texas Competes Action; Adrienne Hunter, Texas Queer & Trans Student Alliance; Kennedy Fears, Ric Galvan, and Isabel Herrera, Texas Rising; Valerie DeBill, The League of Women Voters of Texas; Landon Richie, Transgender Education Network of Texas; Jonah DeChants, The Trevor Project; Marc Anderson, Visit San Antonio; and 51 individuals; (*Registered, but did not testify*: Bob Kafka, ADAPT of Texas; Jim Dow, Amazon; Angela Hale, Austin Chamber of Commerce, Austin LGBT Chamber of Commerce, Cedar Park Chamber of Commerce, Corpus Christi Chamber of Commerce, Dallas GLBT Chamber of Commerce, Houston LGBT Chamber of Commerce, McKinney Chamber of Commerce, San Antonio LGBT Chamber of Commerce, Texas Competes; Bis Thornton, Austin Presbyterian Theological Seminary Students for Environmental and Social Justice; Aimee Arrambide, Avow; Jason Sabo, Children at Risk; Brie Franco, City of Austin; Jeff Coyle, City of San Antonio; Daniel Womack, Dow, Inc.; Jason Guidangen, Equality Texas; Jaime Puente, Every Texan; John Aquino, Human Rights Campaign; Jackie Padgett and Deirdre Walsh, IGC; Erika Galindo, Lilith Fund for Reproductive Equity; Eric Holguin, LULAC Para Todos #22399; Matthew Lovitt, National Alliance on Mental Illness-Texas; Alison Mohr Boleware, National Association of Social Workers-Texas Chapter; Jennifer Rodriguez, North Texas Commission; Catherine Cranston, Personal Attendant Coalition of Texas; Diana Gomez and Wesley Story, Progress Texas; Eli Melendrez, Texas AFT; James Slattery, Texas Civil Rights Project; Paige Williams, Texas Classroom Teachers Association; Marti Bier, Rocio Fierro-Perez, Carisa Lopez, and Julia Mandel, Texas Freedom Network; Joshua Houston, Texas Impact; Clayton Travis, Texas Pediatric Society; Kevin Stewart, Texas Psychological Association; Aja Cole, Texas Rising; Carrie Griffith, Texas State Teachers Association; Monty Exter, The Association of Texas Professional Educators; Ana Ramón, Texas Legislative Education Equity Coalition; Emmett Schelling, Transgender Education Network of Texas; Katie Naranjo, Travis County Democratic Party; Patrick Humphrey, Vivent Health; Ana Gonzalez, Workers Defense Action Fund; and 155

individuals)

On — Jamey Harrison, UIL

BACKGROUND: The University Interscholastic League Constitution and Contest Rules sec. 360 separate certain athletic programs by gender and specify that gender is determined based on a student's birth certificate or other government document if a birth certificate is unavailable.

DIGEST: HB 25 would prohibit interscholastic athletic teams sponsored or authorized by school districts or open-enrollment charter schools from allowing a student to compete in a competition designated for the biological sex opposite to the student's as correctly stated on the student's official birth certificate, or if the birth certificate was unobtainable, another government record. The birth certificate's statement of biological sex would be considered correct if it had been entered at or near the person's birth, or changed to correct a clerical error. Such teams could allow female students to compete in an athletic competition designated for male students if a corresponding competition for female students was not offered or available.

The University Interscholastic League (UIL) would have to adopt rules to implement the bill, subject to approval by the education commissioner.

The bill would include legislative findings that:

- historically, boys participate in interscholastic sports at a higher rate than girls, including in UIL member schools;
- courts have recognized a governmental interest in redressing past discrimination against girls in athletics and promoting equality of athletic opportunity under Title IX of the Education Amendments of 1972; and
- courts have recognized that sex is the only feasible classification to promote the governmental interest of providing interscholastic athletic opportunities for girls.

The bill would include the stated purpose of furthering the governmental interest of ensuring that sufficient interscholastic athletic opportunities remain available for girls to remedy past discrimination on the basis of sex.

The bill would take immediate effect if finally passed by a two-thirds vote of each house. Otherwise, it would take effect on the 91st day after the last day of the legislative session. The bill would apply to any interscholastic athletic competition sponsored or authorized by a school district that occurred on or after its effective date.

**SUPPORTERS
SAY:**

HB 25 would promote safety and fairness in school sports by placing in statute current University Interscholastic League rules for the use of birth certificates for participants in UIL competitions, while specifying that a student only could compete in an interscholastic athletic event designated for the student's sex as assigned at or near birth. This would protect girls' opportunities to excel in their chosen sports by ensuring ample opportunities for fair athletic competition.

Allowing students to participate in sports events contrary to their sex at birth could put other athletes at a competitive disadvantage due to inherent physiological differences between males and females. It could increase the chances of female athletes being injured, displace girls from teams, and prevent individual girls from winning competitions. It also could deprive female students of athletic scholarships they otherwise would have received and could weaken the protection against discrimination in sports guaranteed to female students in federal law by Title IX.

A recent increase in requests to change the sex recorded on a minor's birth certificate for reasons other than to correct a clerical error, which can be done on the basis of a physician's statement and court order, could lead to more students competing in sports contrary to their biological sex under current UIL rules. The Legislature should not wait for major problems to arise to address this issue.

The bill would not prevent anyone from participating in school sports, as long as the person competed with others of the same sex. In addition, opportunities are available for participating in sports outside of competitive events and teams sponsored by public schools. Many options other than school sports also are available for cultivating a sense of community and inclusion. Students' mental health should be a priority, but unfairly forcing girls to compete against biological males is not the right way to address concerns about mental health.

Concerns that HB 25 would violate some students' privacy are unfounded, as the bill would not authorize or facilitate any invasive investigations or physical inspections to determine a student's sex, nor would it change the existing UIL procedures for complaints and investigations.

While some businesses have expressed concerns about the bill, the Legislature ultimately is responsible to constituents as a whole. The passage of similar measures outside Texas has not had significant negative economic effects. Without legislation similar to HB 25, the state and school districts could face litigation from parents of female student athletes.

CRITICS
SAY:

By prohibiting transgender students in Texas schools from competing in events designated for the gender with which they identified, HB 25 could negatively impact those who wanted to compete in interscholastic athletics. Sports provide a sense of inclusion and can be critical to the physical, mental, and emotional well-being of children, and all children should have the right to enjoy these benefits.

The bill could place transgender students at a greater risk of bullying by requiring them to compete with students who did not match their gender identity. Denying transgender youth the chance to fully participate in sports could harm the mental health of youth who already experience a higher than average risk for suicide.

With no evidence that transgender students are dominating girls' sports at

the expense of cisgender girls, or that they will do so in the future, or that they are causing disruption or increasing injuries, HB 25 would attempt to address a problem that does not exist. In addition, substantial variations in physical characteristics and hormone levels exist not only between but within the sexes, so sex assigned at birth is not necessarily the determining factor in athletic ability.

The bill could violate the privacy of all participants in girls' sports by potentially subjecting them to invasive questions about their gender if they were particularly tall or athletic or simply not perceived as "feminine" enough, while transgender students could be forced to come out to their peers before they were ready to do so. The bill would provide no clear guidelines on implementation and enforcement and could discourage participation in girls' sports generally.

The bill could subject the state and school districts to costly legal challenges and could have adverse economic consequences if it prompted the withdrawal of business and large planned events from Texas.