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Response to PA House Bill 972

April 12, 2021

The Pittsburgh Commission on Human Relations, as an agency charged with defending equal rights to access public accommodations regardless of a person's protected class identity, the Gender Equity Commission of the City of Pittsburgh, and the LGBTQIA+ Commission of the City of Pittsburgh (collectively, "the Commissions") must speak out against PA House Bill 972 of 2021 ("the Bill"). Inaccurately and ironically named as "The Fairness in Women's Sports Act," the Bill neither promotes fairness nor protects women. Rather, the Bill presents harm to all people, particularly women -- both cisgender and transgender -- and contradicts established law, including but not limited to the Pennsylvania Human Relations Act and the U.S. Constitution.

First and foremost, creating legislation that specifically discriminates or discerns rights and treatment on the basis of sex, as it pertains to biological sex, gender identity, or gender expression, is generally unconstitutional and goes against the Fourteenth Amendment ensuring equal protection under the law (See, e.g., *Reed v. Reed*, 404 U.S. 71; *United States v. Virginia*, 518 U.S. 515 (1996)). The Bill stipulates unequal treatment for people of different sexes. The notion that women need segregation to succeed in sports assumes that women are less capable than their male counterparts. This perpetuates the false and toxic tropes that women are "helpless" or that women are less worthy competitors in and of themselves. Additionally, there is insufficient data or scientific consensus to claim that there is any inherent, unfair, competitive advantage for transgender women over cisgender women, especially in children or adolescents. Indeed, transgender athletes were given permission to compete in the Olympic Games after a study of elite athletes commissioned by the International Olympic Committee determined that there was greater physiological variance within the male and female genders than there is between male and female athletes. The Bill is based on flawed assumptions, false dichotomies, and negative, false stereotypes, instead of true scientific evidence and data.

Furthermore, the Bill creates false definitions, violently erases the existence of entire populations of people, and is contradictory. The Bill inaccurately defines sex as "based solely on an individual's reproductive organs, biology or genetics at birth," disregarding the fact that endocrinology and gene expression also determine sex. The Bill requires that schools designate that sports be classified as either "(1) Male, men or boys. (2) Female, women or girls. (3) Coed or mixed," denying the idea that intersex and nonbinary people exist and have the right to do so. Because the bill requires that all students fit into specious categories, which do not contain the entire diversity of the human population, every student, especially intersex and nonbinary students, will be denied the athletic opportunity to perform at their best. Organizations including the American Medical Association and National College Athletics Association (NCAA) have noted the importance of students' opportunity to participate in sports. Since 2011 the NCAA has had a policy protecting students' rights to participate in collegiate sports regardless of gender identity and has spoken out against legislation restricting trans youth participation in athletics.

The Commissions, in their commitments to equal rights, believe that fairness in women's sports could be better achieved by ensuring equal funding and opportunity at the educational or institutional level and ensuring equal rights, pay or pay structures, and working conditions at the professional level for all women. As always, the Commissions stand ready to be sources of further education and policy review if the Sponsors of House Bill 972 truly wish to ensure fairness in women's sports and other arenas where civil rights can be strengthened for all persons.

