

SENATE JUDICIARY

Exhibit No. 10

Date: 3.17.21

Bill No. HB 112

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To: [LEG Applications Email Backup](#); [LEG Committee-Senate Judiciary testimony](#)
Subject: Public Comment for Bill HB-112: Require interscholastic athletes to participate under sex assigned at birth 2021-03-17 08:00 AM - (S) Judiciary Successfully Submitted on 03-16-21 07:54
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Attachments: [HB 112 Info Sheet FINAL.pdf](#)

Details:

Bill: HB-112: Require interscholastic athletes to participate under sex assigned at birth 2021-03-17 08:00 AM - (S)

Judiciary

Position: Opponent

Representing an Entity/Another Person: Yes

Organization: Montana University System

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Written Statement: Not Provided

Files: [HB 112 Info Sheet FINAL.pdf](#)

Testify via Zoom: Yes

Zoom Method: Computer

House Bill 112 Policy Implications for Montana University System

I. Potential Implications for University System Athletic Programs

NCAA Policy on Transgender Student-Athlete Participation

The following policies clarify participation of transgender student-athletes undergoing hormonal treatment for gender transition:

1. A trans male (FTM) student-athlete who has received a medical exception for treatment with testosterone for diagnosed Gender Identity Disorder or gender dysphoria and/or Transsexualism, for purposes of NCAA competition may compete on a men's team, but is no longer eligible to compete on a women's team without changing that team status to a mixed team.
 2. A trans female (MTF) student-athlete being treated with testosterone suppression medication for Gender Identity Disorder or gender dysphoria and/or Transsexualism, for the purposes of NCAA competition may continue to compete on a men's team but may not compete on a women's team without changing it to a mixed team status until completing one calendar year of testosterone suppression treatment.
- Any transgender student-athlete who is not taking hormone treatment related to gender transition may participate in sex-separated sports activities in accordance with his or her assigned birth gender.
 - A trans-male (FTM) student-athlete who is not taking testosterone related to gender transition may participate on a men's or women's team.
 - A trans-female (MTF) transgender student-athlete who is not taking hormone treatments related to gender transition may not compete on a women's team.

Montana University System

As a member of the NCAA, both the University of Montana and Montana State University abides by the NCAA policy with regard to transgender student-athlete participation in athletics.

NCAA Inclusion Statement

As a core value, the NCAA believes in and is committed to diversity, inclusion and gender equity among its student-athletes, coaches and administrators. We seek to establish and maintain an inclusive culture that fosters equitable participation for student-athletes and career opportunities for coaches and administrators from diverse backgrounds. Diversity and inclusion improve the learning environment for all student-athletes and enhance excellence within the Association.

NCAA Policy on Championship Host Sites

The NCAA Board of Governors policy requires host sites to demonstrate how they will provide an environment that is safe, healthy, and free of discrimination, plus safeguards the dignity of everyone involved in the event.

NCAA/Big Sky Conference Enforcement of Policy

Historically, the NCAA has enforced policies (as opposed to rules) and core values through its choice of championship sites for its events.

- **North Carolina.** In March 2016, North Carolina lawmakers passed House Bill 2, also referred to as the "bathroom bill" which restricted use of restrooms to biological sex, rather than gender identity. The NCAA responded by barring all NCAA championship events from being held in North Carolina, which included early rounds of the Division I Men's Basketball Championship Tournament. Further, on March 23, 2017, the NCAA warned that North Carolina would not be elected to host championship games through 2022 unless the bill was repealed. On March 28, 2017, the NCAA gave North Carolina lawmakers 48 hours to repeal the law before final decisions on future championship sites were made. On March 30, 2017, state lawmakers passed a bill that repealed a portion of House Bill 2. As a result of this action, the NCAA removed the ban.

- **Idaho.** In 2020, when a similar bill was passed and signed into law in Idaho, the NCAA Board of Governors issued a statement. “Idaho’s House Bill 500 and resulting law is harmful to transgender student-athletes and conflicts with the NCAA’s core values of inclusivity, respect and the equitable treatment of all individuals.” Boise was set to host preliminary rounds of the NCAA Division I Men’s Basketball Championship Tournament in March 2021. When those games were hosted in 2018, the Boise Convention and Visitors Bureau estimated the economic impact to Boise at \$15 million. (All rounds of the tournament have since been moved to Indianapolis for COVID-related reasons). In addition, the Presidents of the Big Sky Conference institutions were poised to also remove the women’s and men’s basketball Conference Championship tournaments from Boise. On August 17, 2020, a federal judge granted a preliminary injunction to block the law.

Given this history, if HB 112 becomes law, it could prevent UM and MSU’s ability to host NCAA FCS Football Playoff games, which are NCAA championship events. It could also prevent UM and MSU’s ability to host any Conference championship events in impacted sports.

According to a 2016 study by UM’s Bureau of Business and Economic Research (BBER), out-of-town visitors spend approximately \$2.53 million in Missoula County, excluding airfare, each home football weekend. That results in an estimated \$7.59 million economic hit to the Missoula economy across three potential home FCS Football Playoff games if the NCAA bans the hosting of those championship events.

NCAA Statement on HB 112 (Issued January 30, 2021)

The NCAA is aware of Montana’s HB 112 and continues to closely monitor this bill, as well as other state bills and federal guidelines that impact transgender student-athlete participation. The NCAA believes in fair and respectful student-athlete participation at all levels of sport. The Association’s transgender student-athlete participation policy and other diversity policies are designed to facilitate and support inclusion. The NCAA believes diversity and inclusion improve the learning environment and it encourages its member colleges and universities to support the well-being of all student-athletes.

II. Potential Federal Funding Implications

Title IX prohibits discrimination on the basis of sex in programs or activities receiving federal financial assistance. The U.S. Department of Education, through the Office for Civil Rights, is the primary federal agency responsible for enforcing Title IX. The ultimate sanction for any school found to have violated Title IX is the loss of federal funding. *See* 20 U.S.C. § 1682.

Montana University System campuses receive approximately \$350 million in federal funding for education programs.¹ Of these funds, students attending college on Montana campuses, including residents from every legislative district, receive approximately \$200 million in federal student loans and \$50 million for federal Pell grants.

These funds which serve as your constituents’ access to college would be at risk when the U.S. Department of Education issues anticipated guidance on transgender students’ rights through administrative rulemaking or further directive.

¹ U.S. Department of the Treasury, Data Lab (2019).