



TO: Education Committee
FROM: Marion Miner, Associate Director of Pro-Life & Family Policy
Nebraska Catholic Conference
DATE: February 13, 2023
RE: LB575 (Sports and Spaces Act) (Support)

The Nebraska Catholic Conference advocates for the public policy interests of the Catholic Church and advances the Gospel of Life through engaging, educating, and empowering public officials, Catholic laity, and the general public. I am here to express the Conference's support for LB575, the Sports and Spaces Act.

Men and boys are different from women and girls. The law should respect those differences and, in some important circumstances, reserve programs and spaces for men and boys or women and girls. Sex is a bodily, material reality. This is starkly apparent in the contexts of intimate spaces and the athletic field, court, or track, and denying that reality has a disparate and potentially very dangerous impact on especially women and girls.

As a matter of law, separating males and females in intimate spaces serves the important governmental objective of protecting students' privacy in such spaces and shielding their bodies from exposure to the opposite sex. Likewise, barring males from competing in sports reserved for women and girls serves the important objectives of fairness and equality of opportunity for female athletes in competition and protection of those athletes from heightened risk of injury.

Numerous courts have examined these principles under both Equal Protection and Title IX claims. The 11th Circuit Court of Appeals¹ (bathroom policy) and federal courts in Tennessee² (bathroom policy), and West Virginia³ (sports policy), to name a few, have found policies with identical questions and interests at stake to be constitutionally sound under the Equal Protection Clause and in compliance with Title IX. We have every reason to be confident that the 8th Circuit Court of Appeals, whose jurisdiction includes Nebraska with respect to federal law claims, will rule similarly if LB575 were to be challenged after becoming law.

The reality of sex matters, and the consequences of that reality are not theoretical, but concrete, immediate, and important to acknowledge. Respecting girls' right to compete on a fair and safe playing field and to enjoy equal opportunity to win and receive athletic scholarships is compellingly important. So is respecting and protecting students' right not to be compelled or pressured to share intimate spaces with persons of the opposite sex. The Conference urges you to advance LB575 to General File.

¹ *Adams v. Sch. Bd. of St. Johns County*, 57 F.4th 791 (2022).

² *D.H. v. Williamson Cnty. Bd. of Educ.*, no. 3:22-cv-00570 (motion for preliminary injunction denied) (November 2, 2022) (M.D. Tenn.).

³ *B.P.J. v. W. Va. State Bd. of Educ.*, no. 2:21-cv-00316 (January 5, 2023) (S.D. W.Va.).