



TO: Judiciary Committee
FROM: Nebraska Catholic Conference
Marion Miner, Associate Director for Pro-Life & Family
DATE: January 29, 2020
RE: LB873 (Gender Neutral Operator's Licenses & ID Cards and Sex Change on Birth Certificates) (Oppose)

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.

The NCC opposes LB873.

Proponents of LB 873 would argue that the bill is motivated by a desire to affirm the equal dignity of and society's respect for persons who feel a sense of incongruence between their biological sex and the gender with which they identify, often accompanied by feelings of anxiety and of being unaccepted. Love, compassion, and respect for such persons, who are our brothers and sisters, along with an affirmation of their equal dignity and worth, is due to them. With this affirmation we fully agree.

We also agree that the way our society addresses and cares for such persons is inadequate. Those who have adopted a "transgender" identity are, in many cases, either told to embrace their new identity, despite its incongruence with their physical body, or they are held at arm's length. Both responses are inadequate, and neither is deemed acceptable by the Church. If we are to treat these brothers and sisters of ours with the compassion and respect that is due to them, we owe them first of all the truth.

Pope Francis has spoken out forcefully on this issue on several occasions. Speaking on what he has called "the ideology of gender,"¹ he reminds us that "[i]t is one thing to be understanding of human weakness and the complexities of life, and another to accept ideologies that attempt to sunder what are inseparable aspects of reality."² In the encyclical *Laudato si'*, known best for the Holy Father's appeal to the West to respect and care for the natural world, he expresses:

"The acceptance of our bodies as God's gift is vital for welcoming and accepting the entire world as a gift from the Father and our common home, whereas thinking that we enjoy absolute power over our own bodies turns, often subtly, into thinking that we enjoy absolute power over creation. Learning to accept our body, to care for it and to respect its fullest meaning, is an essential element of any genuine human ecology."³

¹ Francis, Apostolic Exhortation *Amoris Laetitia*, 19 March 2016, 56.

² *Ibid.*

³ Francis, *Laudato Si'*, 24 May 2015, 155.

We must begin by acknowledging the truth.

LB 873 would, with regard to driver's licenses and state identification cards, provide in the sex or gender indication an option of "non," along with female and male. With regard to birth certificates, LB 873 would, among other things, provide a new process, devoid of any requirement of medical documentation, by which a person could amend the sex on his or her birth certificate seemingly at will, by virtue of a simple court order.

Nebraska law currently allows a person to obtain a *new* certificate of birth upon receipt of: (i) a notarized affidavit from a physician who performed sex reassignment surgery on the petitioner; *and* (ii) a certified copy of a court order. LB 873 mostly leaves this alone, but then adds a whole new subsection, by which a person may *amend* his birth certificate without obtaining a new one. An application for that amendment, according to LB 873, would require: (a) an affidavit from a physician stating an amendment "is warranted," accompanied by "documentary evidence to substantiate such amendment"; *or* (b) a certified copy of a court order directing amendment of the certificate of birth.

Significantly, this court order seems to be something that can be obtained rather easily and without medical evidence. No affidavit from a physician is required. Rather, the court simply must be satisfied by the contents of petitioner's application that there is "proper and reasonable cause" for changing the sex of the petitioner on his birth certificate. It is difficult to see, were LB 873 to become law, what discretion, if any, the court would have to weigh whether the petitioner's request is proper and reasonable. Further, it is not difficult to foresee that courts will simply rubber-stamp these petitions in order to avoid the backlash that would come from denying them. One might recall a certain Nebraska district court judge whose name was all over the news, and against whom certain groups filed ethics complaints, when he made a finding that a 16 year-old girl was not mature enough to have an abortion without parental consent.^{4,5} Despite the fact that these complaints were unsuccessful and the judge's ruling was upheld on appeal, it sent a strong deterrent message to Nebraska's judges.

Finally, the impact of the bill on female athletes in the state of Nebraska is potentially very harmful. In 2016, the Nebraska School Activities Association (NSAA) promulgated a policy regarding biologically male athletes who wished to compete in female sports. This policy was a compromise that the Catholic Conference was not satisfied with, but to its credit it was an attempt to safeguard the safety and fairness of girls' high school sports. The NSAA gender policy states that, first of all, a student's eligibility will be determined *by the sex on the student's birth certificate*. Only where there is discrepancy between the student's sex on the birth certificate and the sex under which he wants to compete does the NSAA policy on transgender athletes apply. This policy requires that a male seeking to compete in girls' sports complete either a year of hormonal treatment or evidence of having completed sex reassignment surgery, among other things. LB 873, in providing male students an easy route to change the sex on their

⁴ https://www.omaha.com/news/ethics-panel-dismisses-complaint-filed-against-judge/article_5d842b4e-100a-57c5-ad3e-5b11325a7fb8.html

⁵ https://journalstar.com/news/local/petition-urges-investigation-into-judge-s-abortion-ruling/article_b88b28d3-82a7-530d-8eb2-13b225638872.html

birth certificates, would allow students to sidestep the whole NSAA policy requiring that these young men take measures to reduce the significant physical advantages they have over female athletes.

Girls deserve to compete on a level playing field. Forcing female athletes to compete against biological males is unjust and deprives them of athletic opportunity. Science and common sense demonstrate that males are stronger than females: the difference between the two biological sexes manifests in size, strength, bone density, and even the heart and lungs. A male's belief about his gender identity does not cancel out those physical advantages he has over girls, and every boy on the winner's podium means one fewer girl.

This is not idle speculation; the families of high school female athletes in Connecticut have sued the state under Title IX because boys identifying as female have swept the state track and field meets and rewritten the state's record books. The consequences of this uneven playing field have extended beyond high school, as girls who do not qualify for state meets lose the opportunity to showcase their talents at the highest level. That can make the difference in determining whether a female athlete receives a college scholarship offer.

For all the foregoing reasons—respect for those who identify as transgender, the law's baseline obligation to reflect the truth, and fairness for female high school athletes—the Conference asks that you indefinitely postpone LB 873.