



House Bill 68
Ohio Senate, Government Oversight Committee

Written Testimony of Matt Sharp
Senior Counsel, Alliance Defending Freedom

Alliance Defending Freedom is the nation’s leading nonprofit legal organization that advocates for religious liberty, free speech, life, and marriage and the family. We regularly analyze proposed laws and their effect on constitutional freedoms. ADF currently serves as co-counsel with the State of Alabama defending its law that protects children from dangerous puberty blockers, cross-sex hormones, and sterilizing surgeries. ADF also currently represents female athletes in West Virginia, Connecticut, Idaho, and other states who have personally lost out on championships and other athletic opportunities to biological males who were permitted to compete in female sports.

Protecting Children from “Gender Transition” Drugs and Surgeries

Children who experience discomfort with their biological sex deserve to be treated with dignity and respect and need compassionate, effective mental health care. But radical activists and profit-driven gender clinics have deceived children and parents alike into believing that unnatural, life-altering, and even permanently sterilizing puberty blockers, hormones, and surgeries are the solution to their struggle.

HB 68 would protect children and parents from being pressured into agreeing to these harmful, experimental “gender transition” procedures by prohibiting the administration of puberty blockers, cross-sex hormones, and surgeries on minors who experience discomfort with their biological sex.

We must be clear: the experimental gender-transition procedures—including puberty blockers and hormones—pushed on our children are often irreversible. They prevent healthy puberty, radically alter the child’s hormonal balance, and may even remove healthy external or internal organs and body parts.

Such drugs and surgeries are not only dangerous, but they are also experimental and unproven. In fact, multiple long-term studies show that when young children who experience gender dysphoria are allowed to mature naturally, most of them—over 90 percent according to some sources—grow out of their dysphoria.

And there is a growing movement of “detransitioners” who have come to

realize—after undergoing puberty blockers, hormone treatments, and more—that they were lied to and that their medical gender transition was a devastating mistake. Many are now bravely speaking out about the damage caused by being rushed into these drugs and surgeries without understanding the consequences.

Our laws have long protected children from things that society has determined are harmful or that a child lacks the maturity and experience to handle. If a child lacks the maturity to sign a contract, vote, purchase alcohol, or even get a tattoo, how can they be mature enough to consent to experimental, irreversible medical procedures that lead to permanent sterilization?

States have a compelling interest in protecting the physical and psychological well-being of children. *Sable Communications of Cal., Inc. v. FCC*, 492 U.S. 115, 126 (1989) (“[T]here is a compelling interest in protecting the physical and psychological wellbeing of minors.”). “States validly may limit the freedom of children to choose for themselves in the making of important, affirmative choices with potentially serious consequences.” *Bellotti v. Baird*, 443 U.S. 622, 635 (1979). Human experience has repeatedly proven that “during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them.” *Id.*

Ohio further has the authority to regulate the medical field, authority that is even stronger “in areas where there is medical and scientific uncertainty.” *Gonzales v. Carhart*, 550 U.S. 124, 157, 163 (2007) (recognizing that states have “a significant role to play in regulating the medical profession”). As the Supreme Court recently explained, “health and welfare laws” are “entitled to a strong presumption of validity” and will be upheld so long as the legislature simply has a rational basis—like protecting children from damaging, sterilizing medical procedures. *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228, 2284 (2022).

When regulating experimental gender transition procedures—where the science is rapidly shifting as more and more countries are reversing course and advising against the efficacy and ethics of these treatments—the Ohio legislature has broad discretion as it sets policy to best protect the health and safety of children.

Systematic reviews have shown insufficient evidence to support the use of puberty blockers and cross-sex hormones to treat children with gender dysphoria. Many organizations, including the U.K. National Institute for Health & Care Excellence, have systematically reviewed available evidence supporting the use of hormonal intervention to treat gender-dysphoric minors and concluded it has “very

low” quality.¹ On this basis, England’s National Health Service has stopped using puberty blockers to treat gender-dysphoric youth in clinical settings.²

Swedish and Finnish authorities have also systematically reviewed the evidence and concluded that its quality is insufficient to justify using puberty blockers and cross-sex hormones for children with gender dysphoria in clinical settings.³

Likewise, McMaster University, where evidence-based medicine originated, systematically reviewed the “[e]ffects of gender affirming therapies in people with gender dysphoria” and concluded that (1) “there is great uncertainty about the effects of puberty blockers, cross-sex hormones, and surgeries in young people with gender dysphoria” and (2) available evidence “is not sufficient to support ... using these treatments.”⁴ The Cochrane Library agrees, finding not a single study sufficiently rigorous to warrant inclusion in its systematic review.⁵

And earlier this year, 21 clinicians and researchers from nine countries publicly warned that treating gender-dysphoric minors with puberty blockers and cross-sex hormones “is not supported by the best available evidence,” expressly criticizing “the Endocrine Society’s claims” to the contrary.⁶ Per this report, “[e]very systematic review of evidence to date, including one published in the Journal of the Endocrine Society, has found the evidence for mental-health benefits of hormonal interventions for minors to be of low or very low certainty.”⁷ “By contrast, the risks are significant and include sterility, lifelong dependence on medication and the anguish of regret.”⁸

Using puberty blockers and cross-sex hormones to treat minors with gender dysphoria has no proven benefits and poses substantial risk. Start with supposed benefits. No reliable evidence suggests that puberty blockers and hormones reduce the risk of suicide. WPATH’s own commissioned review shows no link between the use of cross-sex hormones and decreased suicide rates in gender-dysphoric

¹ *Evidence review: Gonadotrophin releasing hormone analogues for children & adolescents with gender dysphoria*, NICE (2020) (NICE I), App.307-437; *Evidence review: Gender-affirming hormones for children & adolescents with gender dysphoria*, NICE (2020) (NICE II).

² *Implementing advice from the Cass Review*, NHS (2023), <https://perma.cc/L2CV-M7ND>.

³ *Medical treatment methods for dysphoria associated with variations in gender identity in minors – recommendation 1*, Council for Choices in Health Care in Finland (2020), App.537; *Care of children & adolescents with gender dysphoria 4*, Socialstyrelsen (2022).

⁴ Romina Brignardello-Petersen & Wojtek Wiercioch, *Effects of gender affirming therapies in people with gender dysphoria: evaluation of the best available evidence 5* (2022).

⁵ C. Haupt et al., Cochrane Library, *Antiandrogen or estradiol treatment or both during hormone therapy in transitioning transgender women (Review)* (2020).

⁶ Riittakerttu Kaltiala et al., *Youth Gender Transition is Pushed Without Evidence*, Wall St. J., July 13, 2023, <https://perma.cc/5P6X-KNHL>.

⁷ *Id.* (emphasis added).

⁸ *Id.*

individuals.⁹ Multiple studies have also found high suicide rates before, during, and after attempted gender transition.¹⁰ And more alarmingly, a recent study found that rates of suicidal ideation, suicide attempts, and non-suicidal self-harm increased after minors began using puberty blockers and cross-sex hormones.¹¹

Likewise, no reliable evidence shows that drug use improves psychosocial outcomes. As the NICE systematic review found, studies showing puberty blockers and cross-sex hormones' effect on mental health outcomes trigger “very low certainty” and suggest little or no change.¹² Indeed, many studies report no mental health improvement after such intervention.¹³

Moving to risks, drug intervention may impair cognitive development. Researchers know that “the pubertal and adolescent period is associated with profound neurodevelopment,” which depends heavily on sex-specific hormones; and many academics worry that “pubertal suppression may prevent key aspects of development during a sensitive period of brain organization.”¹⁴ So a respected research group published a “consensus parameter” requesting more research on this issue—a point supported by other reviews and reports—and noting the critical information deficit.¹⁵

What's more, the long-term safety of “treatments in children and adolescents with gender dysphoria” is “largely unknown” because many identified risks tend to manifest later in life—e.g. the risk of cognitive impairment, cardiovascular decline, and osteoporosis.¹⁶ Indeed, early studies report substantial increases in mortality from suicide, cardiovascular events, and other problems more than ten years after

⁹ Kellan E. Baker et al., *Hormone Therapy, Mental Health, & Quality of Life Among Transgender People: A Systematic Review*, 5:4 *J. Endocrine Soc'y* 1, 12 (2021).

¹⁰ C.M. Wiepjes et al., *Trends in suicide death risk in transgender people: results from the Amsterdam Cohort of Gender Dysphoria study (1972-2017)*, 141 *Acta Psychiatrica Scandinavica* 486, 490 (2020); Jay McNeil et al., *Suicide in Trans Populations: A Systematic Review of Prevalence and Correlates*, 4:3 *Psychology of Sexual Orientation & Gender Diversity* 341, 348 (2017); Cecilia Dhejne et al., *Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden*, 6:2 *PLOS ONE* 1, 5 (2011).

¹¹ Laura E. Kuper et al., *Body Dissatisfaction & Mental Health Outcomes of Youth on Gender-Affirming Hormone Therapy*, 145:4 *Pediatrics* 1, 8 (2020).

¹² NICE I, *supra*, at 13; NICE II, *supra*, at 50.

¹³ Riittakerttu Kaltiala et al., *Adolescent development and psychosocial functioning after starting cross-sex hormones for gender dysphoria*, 74:3 *Nordic J. Psychiatry* 213, 217 (2020); Annette L. Cantu et al., *Changes in Anxiety & Depression from Intake to First Follow-Up Among Transgender Youth in a Pediatric Endocrinology Clinic*, 5:3 *Transgender Health* 196, 198 (2020); Polly Carmichael et al., *Short-term outcomes of pubertal suppression in a selected cohort of 12 to 15 year old young people with persistent gender dysphoria in the UK*, 16:2 *PLOS ONE* 1 (2021); Elizabeth Hisle-Gorman et al., *Mental Healthcare Utilization of Transgender Youth Before & After Affirming Treatment*, 18 *J. Sexual Med.* 1444, 1447 (2021).

¹⁴ Diane Chen et al., *Consensus Parameter: Research Methodologies to Evaluate Neurodevelopmental Effects of Pubertal Suppression in Transgender Youth*, 5:4 *Transgender Health* 246, 248-249 (2020).

¹⁵ NICE I, *supra*, at 38; Cass Review 38-39.

¹⁶ NICE II, *supra*, at 14.

drug and surgical intervention. One study found that suicide rates surged over 19 times the rate of controls in this population, and that mortality rates from cardiovascular disease more than doubled.¹⁷ Another study found that adults treated with cross-sex hormones faced increased long-term risk of death by suicide, stroke, and ischemic heart disease.¹⁸

Based on this evidence, 21 states have enacted laws like HB 68 to protect children from puberty blockers, cross-sex hormones, and sterilizing, experimental “gender transition” surgeries. Among those states are Tennessee and Kentucky, which, like Ohio, are part of the U.S. Court of Appeals for the 6th Circuit. Earlier this year, the 6th Circuit reversed an injunction against Tennessee’s and Kentucky’s laws, concluding that nothing in the Constitution prevents states from passing laws like HB 68.

The court recognized that “[t]here is a long tradition of permitting state governments to regulate medical treatments for adults and children. So long as a federal statute does not stand in the way and so long as an enumerated constitutional guarantee does not apply, the States may regulate or ban medical technologies they deem unsafe.” *L. W. by & through Williams v. Skrmetti*, 83 F.4th 460, 474 (6th Cir. 2023). Both states “offered considerable evidence about the risks of these treatments and the flaws in existing research”—from “diminished bone density, infertility, and sexual dysfunction” to “breast and uterine cancer” in females and “coronary artery disease, cerebrovascular disease, cholelithiasis, and hypertriglyceridemia” in males. *Id.* at 489. The court noted that “no one disputes that these treatments carry risks or that the evidence supporting their use is far from conclusive.” *Id.* The court concluded that “[a]t bottom, the challengers simply disagree with the States’ assessment of the risks and the right response to those risks. That does not suffice to invalidate a democratically enacted law on rational-basis grounds.” *Id.* at 491.

Denying the truth that every person is either male or female hurts real people, especially vulnerable children. Science and common sense tell us that children are not mature enough to properly evaluate the serious, lifelong ramifications when making important medical decisions. And the decision to undergo dangerous, experimental, and likely sterilizing gender transition procedures is no exception. Laws like HB 68 protect children from being pushed toward life-altering, sterilizing surgeries and drugs that cause permanent harm.

¹⁷ Dhejne, *supra*, at 5.

¹⁸ Henk Asscheman et al., *A long-term follow-up study of mortality in transsexuals receiving treatment with cross-sex hormones*, 164:4 Eur. J. Endocrinology 635, 635-42 (2011).

Protecting Fairness in Sports for Women and Girls

Women deserve to compete on a level playing field. Allowing males to compete in women's sports destroys fair competition and women's athletic opportunities.

HB 68 protects opportunities for young women in athletics by ensuring they are not forced to compete against men playing on women's sports teams. The bill simply requires that all K-12 and collegiate sports teams be designated as either male, female, or co-ed based on biological sex and makes clear that males are not eligible to compete on female teams. It also protects a school or college that follows the law from any adverse action by a government entity, accrediting or licensing organization, or any athletic association.

Biological sex is indisputably the single biggest driver of athletic advantage. Males have a 10-50% performance advantage (depending on the sport) over females. Having separate teams for men and women is the time-tested way to ensure that women have the opportunity to showcase their talents and become champions. The science shows that comparably fit and trained males will always have physical advantages over women. Even the world's best female Olympic athletes would lose to thousands of boys and men on any given day. That's the reason we have women's sports as a separate category.

Unfortunately, across the country, we are seeing more and more instances in which biological males have taken away championships, records, and countless athletic opportunities from female athletes. For example:

- In Connecticut, two biological males captured 15 girls' high school state championship titles, set 17 new individual meet records, and took over 80 opportunities to advance in competition in the 2017-19 seasons alone that rightfully belonged to females. One of the males competed for three seasons in the male category and never qualified for a championship, and then switched just a couple of weeks later to begin competing in the girls' category and dominated girls' track events. That hurt female athletes like Chelsea Mitchell, Alanna Smith, and others that ADF represents in a challenge to Connecticut's policy.
- In 2019, CeCe Telfer, a biological male who identifies as female, dominated the NCAA Division II National Championship in the 400m Hurdles. Telfer actually *improved* in several track and field events after a year of testosterone suppression.
- June Eastwood, who competed on the University of Montana men's track team before switching to the female team, easily beat the female competitors to win the women's mile at the Big Sky Indoor Track & Field Championship

in 2019. It was one of several times when female athletes in the Big Sky Conference lost opportunities because of Eastwood.

- University of Pennsylvania swimmer Lia Thomas, a male who identifies as female, won several women's titles and broke several records, including three new records at the Ivy League Championship and an NCAA Championship. Thomas jumped from #462 in the male division to #1 in the female rankings.

Women are already losing out. We shouldn't make them pay the price while we wait to protect their opportunities to compete on a fair playing field.

HB 68 has become more urgent than ever—especially for collegiate athletes—after the NCAA declined to adopt a policy that ensures fairness for women. Instead, the NCAA punted to a patchwork of unaccountable national and international organizations—some of which allow male-bodied athletes to compete on women's teams with no preconditions, and others of which have no policy at all. It is vital for states to step up and set a clear, fair, and scientifically based policy to guide schools and colleges throughout the state and to guarantee equal opportunities for our daughters and granddaughters to participate and win.

Indeed, 23 states have already acted to protect fairness in women's sports. These states want to attract and retain the best women athletes to their colleges and universities with a guarantee that they will never lose their spot on a team to a male competitor. And none of them has experienced any economic consequences for doing so: no lost NCAA tournaments or events; no boycotts; and no businesses pulling out of their states. This should be unsurprising because poll after poll shows that Americans believe that women and girls should not lose medals or opportunities to male athletes.

But this isn't just about losing medals or championships. Allowing males on girls' teams means that a young woman will also lose the many benefits that flow from participating in sports—learning teamwork, how to overcome adversity, and leadership skills. In fact, a recent survey of women business leaders from Inc.com found that 94% of these leaders participated in sports. They described how vital those athletic experiences were to their professional development. Young women in Ohio—many of whom will grow up one day to be business and community leaders—should have the same athletic opportunities available to them.

Finally, HB 68 is consistent with both the U.S. Constitution and federal law, including Title IX. Federal courts have long recognized that it is constitutional to provide separate programs based on biological sex—including sports teams, locker rooms, or even single-sex schools.

As Justice Stevens of the U.S. Supreme Court explained, without separate athletic teams for males and females, “there would be a substantial risk that boys would dominate the girls' programs and deny them an equal opportunity to compete

in interscholastic events.” *O’Connor v. Bd. of Educ. of Sch. Dist. 23*, 449 U.S. 1301, 1307 (1980) (Stevens, J., in chambers).

In the Supreme Court’s decision in the Virginia Military Institute (VMI) case in which the court ruled that women must be permitted to attend VMI, Justice Ginsburg wrote that once women were admitted to VMI, female students would “undoubtedly require” separate physical fitness standards, precisely because of the “physiological differences between male and female individuals.” *United States v. Virginia*, 518 U.S. 515, 533, 550 n. 19 (1996). It is for just this same reason that men and women “undoubtedly require” separate physical competitions.

The 9th Circuit Court of Appeals upheld an Arizona policy that, like HB 68, merely said that males are not eligible to compete on female team. The court found that it is a “physiological fact” that “males would have an undue advantage competing against women,” and the evidence was clear that “due to average physiological differences, males would displace females to a substantial extent if they were allowed to compete for positions” on the women’s team. *Clark v. Ariz. Interscholastic Ass’n.*, 695 F.2d 1126, 1131 (9th Cir. 1982). The result would be that “athletic opportunities for women would be diminished.” *Id.*

Or as Judge Lagoa explained in a recent decision out of the 11th Circuit Court of Appeals, “commingling of the biological sexes in the female athletics arena would significantly undermine the benefits” that separate sports teams “afford[] to female student athletes.” *Adams ex rel. Kasper v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791, 819 (11th Cir. 2022) (Lagoa, J., specially concurring).

Finally, although the Biden Administration has pushed a new interpretation of Title IX that redefines “sex” to include gender identity, a federal court recently stopped the U.S. Department of Education from forcing 20 states—including Ohio—to comply with its unlawful interpretation. In *Tennessee v. United States Dep’t of Educ.*, the court enjoined the Title IX guidance and held that the Department failed to follow necessary procedures when making this change and its interpretation conflicted with Supreme Court precedent. 2022 WL 2791450 (E.D. Tenn. July 15, 2022). The court found that the states’ sovereignty and ability to enforce their laws would be irreparably harmed without an injunction. The court also held that the Department “ignore[d] the limited reach of *Bostock*” which “only addressed sex discrimination under Title VII” and “does not require [the Department’s] interpretations of Title VII and IX.” The court concluded that none of the 20 states that joined the lawsuit need to follow the Department’s new guidance redefining the term “sex,” nor can the Department enforce the guidance against them. *Id.* at *16.

In sports, biology is what matters. When we ignore science and biological reality, women pay the price. Allowing males to compete in girls’ sports reverses nearly 50 years of advances for women. That’s neither fair nor equal. The solution is HB 68, which ensures that all female athletes have a level playing field to compete and win.