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Opponent Testimony for SB180

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Senate Public Health and Welfare Committee
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Committee Chair and Members of the Committee,

I appreciate the opportunity to present testimony here today on behalf of the American Civil Liberties Union of Kansas. I'm D.C. Hiegert, a lawyer, and the LGBTQ+ legal fellow with the ACLU of Kansas. We are a nonpartisan, non-profit organization that works to preserve and strengthen the civil rights and liberties of every person in our state.

The ACLU of Kansas stands strongly opposed to SB 180 and urges you to not vote this bill out of committee. While SB 180 is framed as a bill protecting women's rights, it does no such thing—instead, it attempts to codify into law outdated, inaccurate, and underinclusive definitions of sex and families and tries to absolve the state of its responsibility to not discriminate against transgender people. And at its core, SB 180 attempts to remove trans peoples' ability to live a public life—by trying to codify into law a right to exclude trans people from athletics, restrooms, locker rooms, domestic violence shelters and other necessary spaces.

The ACLU of Kansas fully supports protecting women's rights—but it is unclear how this bill would do so. The text of the bill asserts it is necessary because “[i]nconsistencies in court rulings and policy initiatives with respect to the definitions of “sex,” “male,” “female”, “man” and “woman” have led to the endangerment of single-sex spaces and resources thereby necessitating the clarification of certain terms.”¹ This premise necessitating SB 180 falls flat—because single-sex spaces and resources are not in danger of being eliminated. Rather, courts have made clear that single-sex spaces can and should exist, and trans people have a right to access those spaces just as their cisgender peers do.²

¹ See http://www.kslegislature.org/li/b2023_24/asures/documents/sb180_00_0000.pdf

² See *United States v. Virginia*, 518 U.S. 515 (1996); see e.g., *Grimm v. Gloucester Cty. Sch. Bd.*, 972 F.3d 586, 616 (4th Cir. 2020); *Whitaker By Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1051 (7th Cir. 2017); *A.M. by E.M. v. Indianapolis Public Schools*, No. 1:22-cv-01075-JMS-DLP, --- F.Supp.3d ----, 2022 WL 2951430 (July 26, 2022); *B.E. v. Bigo Cty. Sch. Corp.*, No. 2:21-cv-00415-JRS-MG, --- F.Supp.3d ----, 2022 WL 2291763 (S.D. Ind. June 24, 2022); *A.C. by M.C. v. Metropolitan Sch. Dist. of Martinsville*, 601 F. Supp. 3d 345 (S.D. Ind. 2022); *Evancho v. Pine-Richland Sch. Dist.*, 237 F. Supp. 3d 267, 288 (W.D. Pa. 2017); *M.A.B. v. Bd. of Educ. of Talbot Cty.*, 286 F. Supp. 3d 704, 719-722 (D. Md. 2018).

SB 180 is not only attempting to solve a problem that does not exist, but it is encroaching on the power of the courts in its attempt to do so. Section 1(b) of the bill appears to be an attempt to usurp the role of the judiciary in analyzing the legality of legislation, in an effort to avoid having to respect trans peoples' rights under antidiscrimination law. But the courts are granted the authority to determine whether legislation passes Constitutional muster—not the legislature itself. That principle speaks to the very system of checks and balances that underpins our democracy.

Regardless of what this bill is purported to be about, if passed, its effect would be to allow rampant discrimination against transgender people and to cause the erasure of intersex and other gender diverse individuals. And the research shows that when bills like this are introduced and debated, it negatively impacts the mental health of trans young people in our state.³

There have been nearly 300 anti-LGBTQ+ bills filed across the United States so far in the 2023 legislative session—counting SB 180, there have been 7 filed in the Kansas legislature.⁴ SB 180, like these other bills, will only cause harm to thousands of transgender people that call Kansas home. For these reasons, the ACLU of Kansas urged you to oppose SB 180.

Thank you.

³ See, e.g., Transgender Athletes: A Research-Informed Fact Sheet, KU School of Social Welfare, <https://socwel.ku.edu/sites/socwel/files/documents/Transgender-Sports-Youth-FactSheet.pdf>.

⁴ See <https://www.aclu.org/legislative-attacks-on-lgbtq-rights>