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Prepared Remarks in Opposition to SB 266
Senate Committee
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Good afternoon. I am here today on behalf of the ACLU of Georgia to testify in opposition to SB 266. I want to focus my testimony on the many legal problems with this and similar bills. SB 266 discriminates based on transgender status and sex in violation of the United States Constitution and Title IX of the Civil Rights Act.

The ACLU is currently counsel challenging a similar bill passed by the State of Idaho in 2020, *Hecox v. Little* and was also counsel in *Carcaño et al. v. Cooper et al.*, the legal challenge to North Carolina's anti-trans laws, HB 2 and HB 142. As such, we are very familiar with litigation in this area of law and have direct knowledge of the costs and fees associated with litigation of this kind.

Courts across the country, including the Eleventh Circuit, are clear that where a law singles out and discriminates against people because they have a gender identity that does not match the sex assigned to them at birth, it violates both the Constitution and Title IX.

As the Supreme Court of the United States held last term: “[I]t is impossible to discriminate against a person for being ... transgender without discriminating against that individual based on sex.” Applying *Bostock* and lower court precedent, an Idaho court enjoined a similar ban on transgender women and girls participating in women's athletics in August finding the state's proffered justifications wholly insufficient. Idaho, like Georgia already had rules governing sex separation in sports and could not justify a targeted ban just on transgender women and girls – particularly in the absence of any examples of any transgender athletes even competing in state.

Since the Supreme Court's decision in *Bostock*, two federal appeals courts, including the Eleventh Circuit, have also affirmed that Title IX's prohibition on sex discrimination likewise prohibits discrimination against transgender students when accessing single-sex spaces and activities in education.

The Biden-Harris administration has made clear that it intends to enforce federal civil rights statutes, including Title IX, consistent with the Supreme Court's holding in *Bostock*. This means that should Georgia pass SB 266 or bills like it that target transgender students for discrimination, it will not only face costly and protracted litigation against private parties but also against the federal government. And by risking the state's Title IX compliance, this puts Georgia's billions of dollars of federal funding for education in jeopardy.



This extreme bill is out-of-step with prevailing international and national norms of athletic competition, violates the United States Constitution and federal civil rights law, puts Georgia at risk of losing hundreds of millions of dollars in federal funding, and harms transgender youth, all to solve a problem that plainly does not exist.

Transgender students already live and go to school in Georgia, they play sports and enjoy time with their friends, and they deserve the chance to succeed and thrive like any other student. For these reasons, we urge your “no” vote.

Thank you.