

HOUSE BILL 276<sup>1</sup>: EDUCATION; UNLAWFUL FOR PUBLIC OR PRIVATE SCHOOLS WHOSE STUDENTS COMPETE AGAINST A PUBLIC SCHOOL TO OPERATE ATHLETIC PROGRAMS THAT PERMIT A PERSON WHOSE GENDER IS MALE TO PARTICIPATE IN AN ATHLETIC PROGRAM THAT IS DESIGNATED FOR FEMALES

**First Signature:** Representative Philip Singleton (71<sup>st</sup>)

**Co-Sponsors:** Representative Wes Cantrell (22<sup>nd</sup>), Jodi Lott (122<sup>nd</sup>), Todd Jones (25<sup>th</sup>), Kasey Carpenter (4<sup>th</sup>), Karen Mathiak (73<sup>rd</sup>)

**Summary:** “A BILL to be entitled an Act to amend Title 20 of the Official Code of Georgia Annotated, relating to education, so as to provide that it shall be unlawful for a public school, an institution of the University System of Georgia, or a private school whose students or teams compete against a public school to operate, sponsor, or facilitate athletic programs or activities that permit a person whose gender is male to participate in an athletic program or activity that is designated for females; to provide for a definition; to provide for remedies for violations; to waive certain immunities; to provide for related matters; to repeal conflicting laws; and for other purposes.”<sup>2</sup>

**Status:** House Second Readers on February 8, 2021.<sup>3</sup>

TEXT OF HOUSE BILL 276<sup>4</sup>

## SECTION 1.

Title 20 of the Official Code of Georgia Annotated, relating to education, is amended in Code Section 20-2-315, relating to gender discrimination prohibited, authorized separate gender teams, equal athletic opportunity, physical education classes, employee designated to monitor compliance,

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<sup>1</sup>H.B. 276, 156th Gen. Assemb., 2nd Reg. Sess. (Ga. 2022), *available at* <https://www.legis.ga.gov/api/legislation/document/20212022/196682> (last visited Sep. 8, 2022).

<sup>2</sup> 2021-2022 Regular Session-HB 276, : *Education; unlawful for public or private schools whose students compete against a public school to operate athletic programs that permit a person whose gender is male to participate in an athletic program that is designated for females; provide*, GA. GEN. ASSEMB., *available at* <https://www.legis.ga.gov/legislation/59286> (last visited Sep. 8, 2022) [hereinafter H.B. 276 Status Sheet].

<sup>3</sup> *Id.*

<sup>4</sup> H.B. 276, *supra* note 1.

grievance procedures, and reporting requirements, by adding a new subsection to read as follows:

"(k)(1) As used in this subsection, the term 'gender' shall mean a person's biological sex and shall be solely recognized based on a person's reproductive biology and genetics at birth.

(2) No local school system or private school in this state whose students or teams compete against a local school system in this state shall operate, sponsor, or facilitate interscholastic or intramural athletics that permit a person whose gender is male to participate in any interscholastic or intramural athletics that are designated for females.

(3) Any student who is deprived of an athletic opportunity or suffers any direct or indirect harm as a result of a violation of this subsection shall have a private cause of action for injunctive relief, damages, and any other relief available under law against such school system or school. Sovereign immunity shall be specifically waived for purposes of this paragraph. All civil actions shall be initiated within two years after the harm occurred. Persons who prevail on a claim brought pursuant to this subsection shall be entitled to monetary damages, including damages for any psychological, emotional, or physical harm suffered, reasonable attorneys' fees and costs, and any other appropriate relief."

## SECTION 2.

Said title is further amended in Part 2 of Article 2 of Chapter 3, relating to University System of Georgia, by adding a new Code section to read as follows:

"20-3-88.

(a) As used in this Code section, the term 'gender' shall mean a person's biological sex and shall be solely recognized based on a person's reproductive biology and genetics at birth.

(b) No institution of the University System of Georgia shall operate, sponsor, or facilitate intercollegiate or intramural athletics that permit a person whose gender is male to participate in any intercollegiate or intramural athletics that are designated for females.

(c) Any student who is deprived of an athletic opportunity or suffers any direct or indirect harm as a result of a violation of this subsection shall have a private cause of action for injunctive relief, damages, and any other relief available under law against the board of regents. Sovereign immunity of the state shall be specifically waived for purposes of this paragraph. All civil actions shall be initiated within two years after the harm occurred. Persons who prevail on a claim brought pursuant to this subsection shall be entitled

to monetary damages, including damages for any psychological, emotional, or physical harm suffered, reasonable attorneys' fees and costs, and any other appropriate relief."

### SECTION 3.

All laws and parts of laws in conflict with this Act are repealed.

#### SPONSOR'S RATIONALE

Representative Phillip Singleton filed House Bill 276 to address the issue of male born athletes who participate in female athletic programs. Sponsors of this Bill reason that male born athletes who participate in female athletic programs create a biologically unfair advantage to the female athletes.<sup>5</sup> Allowing male athletes to compete in female athlete programs creates an unfair disadvantage which can discourage female participation, access to scholarships, and other benefits of competitive sports.<sup>6</sup> The words of the Bill sponsor, Phillip Singleton (R-Sharpsburg, GA), state the rationale for this Bill best:

"It's important to Georgia that we continue to protect our girls... We're doing that with our fight against sex trafficking, we're doing it with our protection of the unborn in the womb, and now we need to protect our girls in the sports arena."<sup>7</sup>

"House Bill 276 would prohibit public and private schools' athletic programs, as well as athletic programs in the University System of Georgia that compete against other student athletic teams from allowing biological males to participate in an athletic program that is designated for biological females. If the proposed legislation is passed and signed into law, students who have been deprived of an athletic opportunity or suffered harm from a school violating HB 276 would be able to sue their school or school system for injunctive relief, damages, or other relief within two years after the violation occurred."<sup>8</sup>

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<sup>5</sup> Cindy Morley, *Bill Aims To Protects Girls' Sports*, Insider Advantage Inc. (Feb. 9, 2021), <https://insideradvantage.com/2021/02/09/bill-aims-to-protects-girls-sports/>.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

## OPPOSITION'S RATIONALE

Georgia Equality Inc. and Athlete Ally Inc. have been vocal in their opposition to House Bill 276, what they call the "Anti-Trans Bill."<sup>9</sup> Their collective view is that House Bill 276 would force an already vulnerable group of young people in Georgia onto the sidelines; this could increase the already high rates of depression and suicide within this group.<sup>11</sup> Participation in sports teach invaluable lessons and every young person deserves equal access and opportunity.<sup>12</sup> Additionally, Georgia's Universities would be required to go against the current NCAA guidance for Transgender athletes which has been in place since 2011.<sup>13</sup> Opponents (Georgia Equality Inc. and Athlete Ally Inc.)<sup>14</sup> of the Bill state: "This is a shameful attack on Georgia's transgender youth and young adults. The proposed legislation does nothing to protect or support girls' sports, rather it serves only to spread hateful stereotypes and endangers children and their ability to fully participate in important extracurricular activities."<sup>15</sup> said Statewide Outreach Manager for Georgia Equality- Shannon Clawson. Additionally, this legislation could negatively affect Georgia's chance for a bid on the World Cup.<sup>16</sup> While the opposition does not deny that the Bill will accomplish its' objectives their position is that it will do more harm to trans-gender athletes than good.

## IMPLICATIONS IN GEORGIA

The enactment of this legislation has targeted as well as broad implications. House Bill 276 will specifically prohibit biological Males from participating in Female sports in Georgia and vice versa.<sup>17</sup> The broad implications are that it will legally define what a male and female is biologically; this definition would be based on "reproductive biology and genetics at birth".<sup>18</sup> By providing a legal definition of gender under the law

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<sup>9</sup> Jeff Graham, *Georgia Equality and Athlete Ally Respond to Anti-Trans Bill HB 276*, Georgia Equality Inc., (Feb. 1, 2021), <https://georgiaequality.org/2021/02/georgia-equality-and-athlete-ally-respond-to-anti-trans-bill-hb-276>.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Graham, *supra* note 9.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

there will be a wide range of implications to Georgia citizens by setting a precedence for any other subjects and controversies related to gender.<sup>19</sup>

Georgia State Senator Marty Harbin, R-Tyrone, sponsored a similar Bill “Save Girls’ Sports Act” S.B. 266<sup>20</sup> in 2021, which seeks to prevent transgender females from participating in girl sports in public and private school systems in Georgia.<sup>21</sup> House Bill 276 makes way for students and parents of cisgendered females to file a lawsuit or a grievance and expands the restriction to the collegiate level.<sup>22</sup>

Rep. Matthew Wilson, D-Brookhaven, a member of the LGBTQ community opines:

“There are no school districts in the state of Georgia who have said this is a problem that we need the state’s help on, not a single school district,” said Wilson, who opposes anti-trans sports Bills. “In fact, there are very, very few school districts that have ever even had to deal with this issue. And the ones that have figured this out on a local basis. I think that the Bill sponsor has invented a problem so that they can get some political credit for attempting to solve a problem that doesn’t even exist.”<sup>23</sup>

While there are no cases currently filed in Georgia to challenge House Bill 276 or House Bill 1084, the controversial issues that these Bills address will likely result in a legal challenge in the future. A similar Bill (SB 228) passed in Tennessee in March 2021 was challenged in a lawsuit filed by Luc Esquivel.<sup>24</sup> On November 4, Lambda Legal and the ACLU of Tennessee filed a lawsuit challenging the law.<sup>25</sup> The lawsuit alleges that by excluding transgender students from sports, the law discriminates based on sex and transgender status in violation of the right to equal protection

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<sup>18</sup> H.B. 276, *supra* note 1.

<sup>19</sup> *Id.*

<sup>20</sup> S.B. 266, 151st Gen. Assemb., 2021-2022 Reg. Sess. (Ga. 2022), available at <https://www.legis.ga.gov/legislation/60118> (last visited Dec. 8, 2022).

<sup>21</sup> Asia Ashley, *Teen Sues To Overturn Anti-Trans Sports Law, States Have Similar Laws*, VALDOSTA DAILY TIMES (Dec. 4, 2021), [https://www.ValdostaDailyTimes.com/news/ga\\_fl\\_news/teen-sues-to-overturn-anti-trans-sports-law-states-have-similar-laws/article\\_bdbce2e0-53e9-11ec-b679-3f9c26d3abc4.html](https://www.ValdostaDailyTimes.com/news/ga_fl_news/teen-sues-to-overturn-anti-trans-sports-law-states-have-similar-laws/article_bdbce2e0-53e9-11ec-b679-3f9c26d3abc4.html).

<sup>22</sup> *Id.*

<sup>23</sup> Rep. Matthew Wilson, D-Brookhaven, a member of the LGBTQ community.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

guaranteed by the Fourteenth Amendment of the U.S. Constitution.<sup>26</sup> Signed March 26 by Tennessee Gov. Bill Lee, “the Bill asserts that boys, in general, are physically stronger than girls and that girls could get injured playing with transgendered girls.”<sup>27</sup> This lawsuit is still pending in Tennessee but could indicate how a similar case may be decided in Georgia in the future.

#### LEGISLATIVE GENEALOGY

On February 3, 2021 the Bill was introduced into the House Hopper.<sup>28</sup> The Bill was read into the House on February 4, 2021 and referred to Committee.<sup>29</sup> The Bill was reported favorable by Committee and read a second time in the House on February 8, 2021.<sup>30</sup> <sup>31</sup> The concepts of House Bill 276 were incorporated into a more expansive education Bill known as House Bill 1084 and titled “Education; curricula or training programs which encourage certain concepts; prevent use of”.<sup>32</sup> This Bill, now entitled an Act was designed to amend Title 20 of the O.C.G.A., relating to education, so as to prevent the use of and reliance upon curricula or training programs which act upon, promote, or encourage certain concepts, with exceptions; to provide for related matters; to repeal conflicting laws; and for other purposes.<sup>33</sup> House Bill 1084 was signed by GA Governor Brian Kemp and became law on July 1, 2022 and included the following verbiage derived from House Bill 276:

“(v) If the athletic association determines that it is necessary and appropriate to prohibit students whose gender is male from participating in athletic events that are designated for students whose gender is female, then the athletic association may adopt a policy to that effect; provided, however, that

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<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> H.B. 276 Status Sheet, *supra* note 2.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Interview with James Butterworth, Ga State Senator (2008-1012), in Atlanta, Ga. (Sep. 24, 2022).

<sup>32</sup> H.B. 1084, 151st Gen. Assemb., 2021-2022 Reg. Sess. (Ga. 2022), *available at* <https://www.legis.ga.gov/legislation/61477> (last visited Sep. 29, 2022).

<sup>33</sup> *Id.*

such policy shall be applied to all of the athletic association's participating public high schools.”<sup>34</sup>

The basic intent of House Bill 276 was ultimately passed in a somewhat watered-down format as part of House Bill 1084 with the more controversial parts of the Bill being left out for political considerations.<sup>35</sup> Specifically, the controversial verbiage which defined gender was left out of the Bill which allowed for its’ inclusion in House Bill 1084.<sup>36</sup> Additionally, the verbiage which made the gender exclusion mandatory was left to further determination by the “athletic association” to adopt policies at their discretion.<sup>37</sup>

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<sup>34</sup> *Id.* at 371-75.

<sup>35</sup> Interview with James Butterworth, Ga State Senator (2008-1012), in Atlanta, Ga. (Sep. 24, 2022)

<sup>36</sup> *Id.*

<sup>37</sup> H.B. 1084 at 373.