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HOUSE COMMITTEE ON ENERGY
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HOUSE COMMITTEE ON
HOMELAND SECURITY

October 30, 2024

The Honorable Lloyd J. Austin III
Secretary of Defense
1000 Defense Pentagon
Washington, D.C. 20301-1000

The Honorable Frank Kendall
Secretary of the Air Force
1670 Air Force Pentagon
Washington, DC 20330-1670

Secretary Austin and Secretary Kendall:

I am writing to express my concerns regarding recent reports that the United States Air Force Academy (USAFA) prevented an attendee from entering a sporting venue while wearing a "Keep Women's Sports Female" shirt.¹

The San José State University (SJSU) women's volleyball team has been at the center of controversy due to transgender player, Blaire Fleming, being part of the roster. Fleming's participation in games has led to forfeits from several opposing teams and legal action.² Concerned Women for America recently filed a Title IX civil rights complaint to the U.S. Department of Education's Office for Civil Rights against SJSU for refusing to protect the rights of female athletes under federal law.³ Additionally, earlier this year, a dozen female athletes filed a lawsuit against the National Collegiate Athletics Association (NCAA) for allowing biologically male athletes to compete against women and the use of female locker rooms by non-female athletes.⁴ In fact, Brooke Slusser, the co-captain of the SJSU women's volleyball team and teammate of Blaire Fleming, joined this lawsuit.

On October 19, 2024, the USAFA women's volleyball team played against SJSU. While entering the facilities to attend the game, John Kopecky, a USAFA graduate, was asked to unzip his

¹ Zaksheske, Dan. "Exclusive: Air Force Stops Fan from Wearing 'Keep Women's Sports Female' Shirt during Match against Sjsu." *OutKick*, OutKick, 21 Oct. 2024, www.outkick.com/sports/air-force-fan-volleyball-womens-sports-female-sjsu-blaire-fleming.

² Fox News. "Nevada Cancels Volleyball Match With San Jose State After Clashing With Own Players Over Transgender Controversy." *New York Post*, 26 Oct. 2024, nypost.com/2024/10/25/sports/nevada-forfeits-volleyball-match-with-san-jose-state-after-clashing-with-own-players-over-transgender-controversy.

³ CWA Communications Team. "CWA Files a Federal Civil Rights Complaint Against San Jose State University for Willful Violations of Title IX in Women's Volleyball." *Concerned Women for America*, 27 Sept. 2024, concernedwomen.org/cwa-files-a-federal-civil-rights-complaint-against-san-jose-state-university-for-willful-violations-of-title-ix-in-womens-volleyball.

⁴ Block, Francesca. "EXCLUSIVE Female Athletes Sue NCAA Over Trans Women in Sports." *The Free Press*, 14 Mar. 2024, www.thefp.com/p/exclusive-female-athletes-sue-ncaa-transwomen.

sweatshirt and was told he could not display his shirt that read “Keep Women’s Sports Female” during a match. Kopecky had worn the shirt to prior matches without issue and was told by officials that the content on the shirt was “political.” This censorship of Kopecky’s First Amendment freedom is concerning, especially now that it has been reported that equally “political” shirts, like an Air Force pride shirt, were allowed to be worn.⁵

The First Amendment protects Americans’ fundamental freedoms, one of which is freedom of speech. In *Texas v. Johnson*, the United States Supreme Court found that “symbolic speech” is protected by the First Amendment, regardless of whether that speech is offensive to viewers. The USAFA is not the judge of what constitutes “political” speech and should not arbitrarily decide what “political” messages can or cannot be displayed. By selectively enforcing what constitutes a political message, the USAFA is actively policing First Amendment freedoms that they swear to protect as members of the Armed Forces.

I request written answers to the following questions no later than **November 26, 2024**:

- 1. What is the USAFA’s policy regarding biological males competing in women’s sports?**
- 2. Were the USAFA women’s volleyball athletes allowed to express their views regarding playing against a biological male before the match?**
- 3. Would the Academy punish its athletes for joining the Title IX lawsuit against the NCAA?**
- 4. Did the USAFA consider forfeiting the match against SJSU as many other schools have done?**
- 5. Were other “political” signs banned from this match? Does the USAFA prevent displays of “political” messages at all sporting events?**
- 6. What regulation did the USAFA cite when denying entry to the game for other attendees?**
- 7. How does the USAFA arbitrate what constitutes a political message? What statute allows the USAFA to decide which “political” messages are allowed or not to be displayed?**
- 8. How did the USAFA determine that an Air Force pride flag was acceptable to wear, but Kopecky’s shirt was not, when these shirts are similar exercises of First Amendment rights?**

⁵ Zaksheske, Dan. “Air Force Allowed ‘pride’ Shirt during SJSU Match but Not a ‘Keep Women’s Sports Female’ Shirt.” *OutKick*, OutKick, 22 Oct. 2024, www.outkick.com/sports/air-force-pride-shirt-san-jose-state-blaire-fleming-transgender.

While I firmly believe that biological men should not be competing in women's sports, I am also concerned by the USAFA's actions. It is critical that every service academy publicly and clearly informs students of their right to freely exercise their First Amendment freedoms without fear of undue retribution. I have spoken with Lt. Gen. Bauernfeind, Superintendent of the USAFA, and he is aware of my concerns and this correspondence. I look forward to your response.

Sincerely,

A handwritten signature in blue ink, appearing to read "August Pfluger". The signature is fluid and cursive, with the first name "August" and the last name "Pfluger" clearly distinguishable.

August Pfluger
Member of Congress

CC: Lt. Gen. Tony D. Bauernfeind, Superintendent, United States Air Force Academy