

CONCERNED  
WOMEN *for* AMERICA

June 25, 2020

The Honorable Betsy DeVos  
Secretary of Education  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202

Dear Madam Secretary,

On behalf of the hundreds of thousands of women supporters of Concerned Women for America (CWA) around the nation, I want to thank you and the Trump Administration for the Department of Education's (ED) support to protect female student-athletes under Title IX. We also write to urge you to take proactive measures to ensure consistency, equality, and fair play in every athletics department in every educational institution across the country.

This week marks the 48<sup>th</sup> Anniversary of Title IX. As we celebrate the strides women have made to achieve equal opportunity under the law, we are reminded that the battle to protect fair competition in women's sports is not over. We stand at a crucial moment in history where the violations of the rights of female athletes are on the rise. CWA currently has two complaints before ED's Office of Civil Rights (OCR), where two institutions (Franklin Pierce University and the University of Montana) have engaged in blatant violations of Title IX protections for female student-athletes by allowing biological men to compete on women's teams in athletic competitions, inflicting irreparable inequity and injury to their college careers. Again, we are very encouraged that ED's Office for Civil Rights (OCR) issued a Letter of Impending Enforcement Action in the Complaint filed against the Connecticut Interscholastic Athletic Conference (CIAC) and the Glastonbury Board of Education (Glastonbury) on behalf of high school student-athletes and their parents. Similar actions should follow in our college-level complaints and everywhere these unjust practices are occurring in clear violation of federal law.

As the Department of Justice pointed out in its statement of interest in Idaho federal court defending Idaho's Fairness in Women's Sports Act, "It is common ground that some sex-based classifications are constitutional because certain 'differences between men and women' are 'enduring.'"<sup>1</sup> True diversity and equality celebrates the biological differences between males and females. As Attorney General William Barr said in his statement, "Allowing biological males to compete in all-female sports is fundamentally unfair to female athletes."<sup>2</sup>

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<sup>1</sup> *United States v. Virginia*, 518 U.S. 515, 533 (1996)

<sup>2</sup> Department of Justice, "The Department of Justice Files Statement of Interest Defending the Constitutionality of Idaho's Fairness in Women's Sports Act," June 19, 2020, available at <https://www.justice.gov/opa/pr/department-justice-files-statement-interest-defending-constitutionality-idaho-s-fairness>.

The Equal Protection Clause of the United States Constitution has always allowed for the recognition of the biological reality of the physiological differences between the sexes in athletics. Nothing in law, science, or culture changes those facts historically or in our modern times.

It is worth noting that nothing in the recent *Bostock v. Clayton County* Supreme Court decision changes that reality either. Not only did the court base its decision on the scientific definition of sex (male, female), but it went out of its way to say that its decision was only applicable to Title VII, and “none of these other laws are before us.”<sup>3</sup>

Still, the reality is that activists are seeking to extend the impact of this decision, and this is why now, more than ever, it is imperative that the leadership of your Department on this issue be crystal clear. If, as Martin Luther King, Jr. famously said, “Injustice anywhere is a threat to justice everywhere,” it is incumbent that ED protects women athletes in every school in the nation. Clear guidelines on the federal enforcement of Title IX are desperately needed. We urge the promulgation of those as soon as possible. It is simply not fair for female athletes to waste their entire high school and college athletic careers awaiting litigation to enforce their existing rights under the law.

This issue has the overwhelming support of the public, and it transcends traditional political party lines. CWA, as a Christian, conservative organization, has partnered with groups of self-described radical feminists, like the Women’s Liberation Front in recognition of the substantial threat to women’s rights and progress that efforts to redefine the biological truth of sex to include self-perceived “gender identity” in federal law represent.

The battle to protect the integrity and fairness of women’s sports is ground zero in the fight for women’s rights. As mothers, daughters, granddaughters, sisters all, we urge you to heed our plea to stand firmly for our rights as women and take bold actions to ensure Title IX is protected at every level of education in our country.

In order to communicate with our supporters on the next steps ED is taking, including enforcement action in Connecticut, the status of CWA’s complaints, and actions to end the confusion and injustice, I request any information you can provide.

Sincerely,



Penny Nance

CEO and President

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<sup>3</sup> *Bostock v. Clayton County*, 590 U. S. \_\_\_\_, slip op. at 31 (2020).