

CONCERNED
WOMEN *for* **AMERICA**
LEGISLATIVE ACTION COMMITTEE

Protecting Women's Sports for Female Athletes

The Issue:

Female athletics are a pathway to development, opportunity, and success for girls and women in America. The passage of Title IX in 1972, the federal law that prohibits discrimination in education programs or activities on the basis of sex, resulted in huge increases in female sports' participation. It gave women the right and opportunity to compete in their own sports. Only one in 27 girls participated in school sports before Title IX. Since its enactment, two in five girls now participate in school sports.¹

Today, fair competition and equality in women's sports are under threat. Many U.S. states, interscholastic athletic conferences, and the Olympics currently allow biological males who claim transgender status as women or girls to compete in female sports. The Supreme Court's decision in an employment case, *Bostock v. Clayton County*, and Congress' so-called "Equality Act" redefine sex in civil rights law to include "gender identity," a self-defined perception, not biological reality.

On his first day in office, President Joe Biden issued an executive order saying students should play on sports teams based on their "gender identity." In a direct attack on women's rights, the Biden Administration policy overturns nearly 50 years of equal opportunities for women and girls to compete in female-only sports teams. The need for action to protect a fair playing field for female athletes is more urgent than ever.

Science, biology, and common sense expose the unfair advantage biological male athletes possess when pitted against female athletes in competition. Title IX must stand on the side of equality and protection for female athletes based on inherent and distinct biological differences. We must insist on fairness and equity in women's sports at every level.

The Facts:

Physiological distinctions between the sexes matter in protecting equal opportunity and a fair playing field.

- Puberty, testosterone, and innate biological differences give physical advantages to males that cannot be erased. Inherent male and female distinctions range from chromosomal and hormonal differences to physiological differences. Men generally have greater density and strength in bones, tendons, and ligaments, larger hearts, greater lung capacity, and higher red blood cell count.
- Exercise physiology expert Dr. Gregory A. Brown of the University of Nebraska published an exhaustive review of existing research, concluding that men and adolescent boys perform better in almost all sports than women and adolescent girls because of their inherent physiological advantages that develop during male puberty."²

- Researchers at the Karolinska Institute and University of Manchester concluded that after one year of treatment “the physical advantage enjoyed by biological males over females is only minimally reduced when testosterone is suppressed ... Furthermore, the reductions observed in muscle mass, size, and strength are very small compared to the baseline differences between males and females in these variables.”³
- Team USA sprinter Allyson Felix holds the most World Championship medals in history. Yet in 2018 alone, 275 high school boys ran faster times in the 400-meter on 783 occasions, exemplifying how allowing biological males to compete in female sports would be a detriment to females everywhere.⁴

The impact of transgender policies in female athletics is occurring at all levels of sport, including at the high school, college, and international levels.

- In Connecticut, high school female athletes were forced to compete in track against males identifying as girls, losing medals, state titles, and numerous other would-be-earned victories. The Connecticut Interscholastic Athletic Conference was challenged for violating Title IX for their transgender participation policy in a federal complaint and in federal court.⁵
- Two Boise State female track athletes faced losses in the Big Sky Conference because a college runner previously on the University of Montana men's team claimed transgender status and competed on the women's team. They joined in defense of Idaho's “Fairness in Women's Sports Act” as victims of the injustice in female athletics.⁶
- The NCAA is forcing female athletes to compete on an unfair playing field and lose their place on the podium. In 2019, the Division II NCAA national title in the women's 400-meter hurdles went to a male transathlete from Franklin Pierce University who had competed for three years on the men's team.⁷
- The International Olympic Committee (IOC) allows biological males identifying as women to compete in female Olympic sports competition after meeting limited male hormone suppression standards. Even the world's best female Olympic athletes would lose to thousands of male athletes—including those who would be second tier in the men's category—on any given day.⁸
 - Weightlifter Laurel Hubbard, 43, a biological male from New Zealand who went through gender transition at age 35, met the IOC and International Weightlifting Federation's requirements and is the first transgender athlete to compete in the Olympics in the women's category.⁹

Lawmakers and citizens are recognizing the unfairness of allowing biological males to compete in women's sports. They also face intense activist opposition in trying to act.

- In state polls, 70-80 percent of Americans responded NO to the question: “Should boys and men who say they identify as transgender be allowed to compete in girls' and women's athletics?”¹⁰

- In 2020, Idaho became the first state to sign the “Fairness in Women’s Sports Act” into law. In 2021, lawmakers in over 30 states proposed similar legislation to ensure participation in women’s sports is based on female biology, not gender identity.
 - As of July 2021, eight states have passed and signed into law a policy that will prevent biological males from competing in female sports: Idaho, Montana, Arkansas, Mississippi, West Virginia, Florida, Alabama, and Tennessee.
- In 2021, federal legislation, the “Protection of Women and Girls in Sports Act” was re-introduced in the House and the Senate (H.R. 426, S. 251) to reclaim the purpose of Title IX and protect sports for women and girls based on biological sex.
- Idaho’s law was immediately challenged in federal court by the American Civil Liberties Union (ACLU). In addition, West Virginia’s law banning transgender athletes from competing in female sports from middle school through college is being challenged in *B.P.J. v. West Virginia State Board of Education*.
- In retaliation for Idaho’s actions to protect fair competition for women and girls, trans activist groups are pressuring the NCAA to boycott the state of Idaho (and now other states) from hosting national tournaments.¹¹

Under federal law, equal rights and opportunities for women and girls should not be denied on the basis of biological sex. In 2020, the Executive Branch made this clear.

- The U.S. Department of Justice provided clear legal analysis defending the biological basis for female athletics under Title IX and the constitutionality of Idaho’s Fairness in Women’s Sports Act.

“Allowing biological males to compete in all-female sports is fundamentally unfair to female athletes. Under the Constitution, the Equal Protection Clause allows Idaho to recognize the physiological differences between the biological sexes in athletics.”¹²
- The U.S. Department of Education asserted that the Supreme Court decision in *Bostock* does not overrule biological sex under Title IX.

“The Supreme Court’s opinion in *Bostock* does not affect the Department’s position that its Title IX regulations authorize single-sex teams based only on biological sex at birth—male or female—as opposed to a person’s gender identity.”¹³

The Biden Administration has reversed course and re-interpreted the meaning of “sex” under Title IX threatening to erase equal opportunity for female athletes.

- On June 23, 2021, the U.S. Department of Education’s Office for Civil Rights sent a Letter to Educators on the 49th Anniversary of Title IX explaining that “sex-based discrimination” includes gender identity and sexual orientation.¹⁴ This change in definition to include gender identity puts five decades of progress for women and girl athletes under Title IX at risk.

¹ Women's Sports Foundation. (September 2, 2016). *Title IX and the Rise of Female Athletes in America*. Retrieved from: <https://www.womenssportsfoundation.org/education/title-ix-and-the-rise-of-female-athletes-in-america/>

² Expert Declaration of Gregory A. Brown, Ph.D. (January 7, 2020). Filed in support of the U.S. Department of Education Complaint Nos. 01-19-4025 & 01-19-1252. Retrieved from:

<https://img1.wsimg.com/blobby/go/a69528e3-c613-4bcc-9931-258260a4e77f/downloads/2020.01.07%20G%20Brown%20Report%20Executed.pdf?ver=1580495895886>

³ Emma Hilton, Ph.D. and Tommy Lundberg, Ph.D. (13 May 2020). University of Manchester, UK. and Karolinska Institute. Department of Laboratory Medicine/ANA Futura. Division of Clinical Physiology. Huddinge, Sweden. Retrieved from:

[https://img1.wsimg.com/blobby/go/a69528e3-c613-4bcc-9931-258260a4e77f/downloads/preprints202005.0226.v1%20\(1\).pdf](https://img1.wsimg.com/blobby/go/a69528e3-c613-4bcc-9931-258260a4e77f/downloads/preprints202005.0226.v1%20(1).pdf)

⁴ Doriane Lambelet Coleman, Martina Navratilova, et al. Pass the Equality Act, But Don't Abandon Title IX, Washington Post (April 29, 2019). https://www.washingtonpost.com/opinions/pass-the-equality-act-but-dont-abandon-title-ix/2019/04/29/2dae7e58-65ed-11e9-a1b6-b29b90efa879_story.html.

⁵ Denny, D. (March 13, 2020). *The NCAA's black eye in women's sports*. Townhall. Retrieved from <https://townhall.com/columnists/doreendenny/2020/03/13/draft-n2564836>

⁶ Ridler, K. (May 28, 2020). *Idaho republican joins transgender sports lawsuit fight*. AP News. Retrieved from <https://apnews.com/93016b958a704517c897b16feef26dda>

⁷ Johnson, R. (May 28, 2019) *What No One Is Telling You: An Athlete Who Ran NCAA Track As A Man For 3 Years Just Won An NCAA Women's Title*. Retrieved from <https://www.letsrun.com/news/2019/05/what-no-one-is-telling-you-an-athlete-who-ran-ncaa-track-as-a-man-for-3-years-just-won-an-ncaa-womens-title/>

⁸ Doriane Lambelet Coleman Oral Testimony on H.R. 5 before the U.S. House of Representatives Committee on the Judiciary April 2, 2019, available at <https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-Wstate-LambeletColemanP-20190402.pdf>.

⁹ Wamsley, L. (June 21, 2021). *New Zealand Weightlifter Will Be the First Openly Trans Competitor At The Olympics*. NPR. Retrieved from <https://www.npr.org/2021/06/21/1008711240/new-zealand-weightlifter-will-be-the-first-openly-trans-competitor-at-the-olympi>

¹⁰ APP and SPRY Strategies Release Polling Results from Ten Battleground States (July 22, 2020). Retrieved from: <https://americanprinciplesproject.org/elections/app-spry-strategies-release-polling-results-ten-battleground-states/>

¹¹ ACLU letter to the NCAA Board of Governors (June 10, 2020). Retrieved from: https://images.saymedia-content.com/.image/cs_srgb/MTczMTcxNjc0MjM2MDY5NjY4/final-ncaa-idaho-letter.pdf

¹² U.S. Department of Justice. (June 19, 2020). *The Department of Justice Files Statement of Interest Defending the Constitutionality of Idaho's Fairness in Women's Sports Act*. Retrieved from:

<https://www.justice.gov/opa/pr/department-justice-files-statement-interest-defending-constitutionality-idaho-s-fairness>

¹³ U.S. Department of Education Letter to Concerned Women for America. (September 1, 2020) Retrieved from: https://concernedwomen.org/wp-content/uploads/2020/09/CWA_9.1.2020-1.pdf

¹⁴ U.S. Department of Education Letter to Educator. (June 23, 2021). Retrieved from

<https://www2.ed.gov/about/offices/list/ocr/correspondence/stakeholders/educator-202106-tix.pdf>