

2023 -- S 0391

LC001518

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

RELATING TO EDUCATION -- FAIRNESS IN WOMEN'S SPORTS ACT

Introduced By: Senator E Morgan

Date Introduced: February 16, 2023

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. The general assembly hereby finds that:

2 (1) There are "inherent differences between men and women," and that these differences
3 "remain cause for celebration, but not for denigration of the members of either sex or for artificial
4 constraints on an individual's opportunity," United States v. Virginia, 518 U.S. 515, 533 (1996);

5 (2) These "inherent differences" range from chromosomal and hormonal differences to
6 physiological differences;

7 (3) Men generally have "denser, stronger bones, tendons, and ligaments" and "larger hearts,
8 greater lung volume per body mass, a higher red blood cell count, and higher hemoglobin," Neel
9 Burton, The Battle of the Sexes, Psychology Today (July 2, 2012);

10 (4) Men also have higher natural levels of testosterone, which affects traits such as
11 hemoglobin levels, body fat content, the storage and use of carbohydrates, and the development of
12 type 2 muscle fibers, all of which result in men being able to generate higher speed and power
13 during physical activity, Doriane Lambelet Coleman, Sex in Sport, Law and Contemporary
14 Problems 63, 74 (2017) (quoting Gina Kolata, Men, Women and Speed. 2 Words: Got
15 Testosterone?, N.Y. Times (Aug. 21, 2008));

16 (5) The biological differences between females and males, especially as it relates to natural
17 levels of testosterone, "explain the male and female secondary sex characteristics which develop
18 during puberty and have lifelong effects, including those most important for success in sport:
19 categorically different strength, speed, and endurance," Doriane Lambelet Coleman and Wickliffe

1 Shreve, "Comparing Athletic Performances: The Best Elite Women to Boys and Men," Duke Law
2 Center for Sports Law and Policy;

3 (6) While classifications based on sex are generally disfavored, the Supreme Court has
4 recognized that "sex classifications may be used to compensate women for particular economic
5 disabilities [they have] suffered, to promote equal employment opportunity, [and] to advance full
6 development of the talent and capacities of our Nation's people," *United States v. Virginia*, 518
7 U.S. 515, 533 (1996);

8 (7) One place where sex classifications allow for the "full development of the talent and
9 capacities of our Nation's people" is in the context of sports and athletics;

10 (8) Courts have recognized that the inherent, physiological differences between males and
11 females result in different athletic capabilities. See e.g. *Kleczek v. Rhode Island Interscholastic*
12 *League, Inc.*, 612 A.2d 734, 738 (R.I. 1992) ("Because of innate physiological differences, boys
13 and girls are not similarly situated as they enter athletic competition."); *Petrie v. Ill. High Sch. Ass'n*,
14 394 N.E.2d 855, 861 (Ill. App. Ct. 1979) (noting that "high school boys [generally possess
15 physiological advantages over] their girl counterparts" and that those advantages give them an
16 unfair lead over girls in some sports like "high school track");

17 (9) A recent study of female and male Olympic performances since 1983 found that,
18 although athletes from both sexes improved over the time span, the "gender gap" between female
19 and male performances remained stable. "These suggest that women's performances at the high
20 level will never match those of men." Valerie Thibault et al., *Women and men in sport performance:*
21 *The gender gap has not evolved since 1983*, 9 *Journal of Sports Science and Medicine* 214, 219
22 (2010);

23 (10) As Duke law professor and All-American track athlete Doriane Coleman, tennis
24 champion Martina Navratilova, and Olympic track gold medalist Sanya Richards-Ross recently
25 wrote: "The evidence is unequivocal that starting in puberty, in every sport except sailing, shooting,
26 and riding, there will always be significant numbers of boys and men who would beat the best girls
27 and women in head-to-head competition. Claims to the contrary are simply a denial of science,"
28 Doriane Coleman, Martina Navratilova, et al., *Pass the Equality Act, But Don't Abandon Title IX*,
29 *Washington Post* (Apr. 29, 2019);

30 (11) The benefits that natural testosterone provides to male athletes is not diminished
31 through the use of puberty blockers and cross-sex hormones. A recent study on the impact of such
32 treatments found that even "after twelve (12) months of hormonal therapy," a man who identifies
33 as a woman and is taking cross-sex hormones "had an absolute advantage" over female athletes and
34 "will still likely have performance benefits" over women, Tommy Lundberg et al., "Muscle

1 strength, size and composition following twelve (12) months of gender-affirming treatment in
2 transgender individuals: retained advantage for the transwomen," Karolinksa Institutet (Sept. 26,
3 2019); and

4 (12) Having separate sex-specific teams furthers efforts to promote sex equality. Sex-
5 specific teams accomplish this by providing opportunities for female athletes to demonstrate their
6 skill, strength, and athletic abilities while also providing them with opportunities to obtain
7 recognition and accolades, college scholarships, and the numerous other long-term benefits that
8 flow from success in athletic endeavors.

9 SECTION 2. Title 16 of the General Laws entitled "EDUCATION" is hereby amended by
10 adding thereto the following chapter:

11 CHAPTER 112

12 FAIRNESS IN WOMEN'S SPORTS ACT

13 **16-112-1. Short title.**

14 This chapter shall be known and may be cited as the "Fairness in Women's Sports Act".

15 **16-112-2. Designation of athletic teams.**

16 Interscholastic, intercollegiate, intramural, or club athletic teams or sports that are
17 sponsored by a public school or any public school district activities association or a public
18 institution of higher education or any higher education institution that is a member of the national
19 collegiate athletic association (NCAA), national association of intercollegiate athletics (NAIA), or
20 national junior college athletic association (NJCAA) shall be expressly designated as one of the
21 following based on biological sex:

22 (1) Males, men, or boys;

23 (2) Females, women, or girls; or

24 (3) Coed or mixed.

25 (i) Athletic teams or sports designated for females, women, or girls shall not be open to
26 students of the male sex.

27 (ii) If disputed, a student may establish sex by presenting a signed physician's statement
28 that shall indicate the student's sex based solely on:

29 (A) The student's internal and external reproductive anatomy;

30 (B) The student's normal endogenously produced levels of testosterone; and

31 (C) An analysis of the student's genetic makeup.

32 **16-112-3. Protection for educational institutions.**

33 A government entity, any licensing or accrediting organization, or any athletic association
34 or organization shall not entertain a complaint, open an investigation, or take any other adverse

1 action against a school or an institution of higher education for maintaining separate interscholastic,
2 intercollegiate, intramural, or club athletic teams or sports for students of the female sex.

3 **16-112-4. Cause of action.**

4 (a) Any student who is deprived of an athletic opportunity or suffers any direct or indirect
5 harm as a result of a violation of this chapter shall have a private cause of action for injunctive
6 relief, damages, and any other relief available under law against the school or institution of higher
7 education.

8 (b) Any student who is subject to retaliation or other adverse action by a school, institution
9 of higher education, or athletic association or organization as a result of reporting a violation of this
10 chapter to an employee or representative of the school, institution, or athletic association or
11 organization, or to any state or federal agency with oversight of schools or institutions of higher
12 education in the state, shall have a private cause of action for injunctive relief, damages, and any
13 other relief available under law against the school, institution, or athletic association or
14 organization.

15 (c) Any school or institution of higher education that suffers any direct or indirect harm as
16 a result of a violation of this chapter shall have a private cause of action for injunctive relief,
17 damages, and any other relief available under law against the government entity, licensing or
18 accrediting organization, or athletic association or organization.

19 (d) All civil actions shall be initiated within two (2) years after the harm occurred. Persons
20 or organizations who prevail on a claim brought pursuant to this section shall be entitled to
21 monetary damages, including for any psychological, emotional, and physical harm suffered,
22 reasonable attorneys' fees and costs, and any other appropriate relief.

23 **16-112-5. Severability.**

24 The provisions of this chapter are hereby declared to be severable and if any provision of
25 this chapter or the application of such provision to any person or circumstance is declared invalid
26 for any reason, such declaration shall not affect the validity of the remaining portions of this
27 chapter.

28 SECTION 3. This act shall take effect January 1, 2024.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO EDUCATION -- FAIRNESS IN WOMEN'S SPORTS ACT

1 This act would categorize women by their biological identity at birth rather than their
2 gender identity for purpose of organized sports. A team would be categorized as males, men, or
3 boys; females, women, or girls; or coed or mixed. If there is a dispute, a student would establish
4 sex by presenting a signed physician's statement that shall indicate the student's sex. Additionally,
5 this act would create a cause of action for any student who is deprived of an athletic opportunity or
6 subject to retaliation as a result of violations of this chapter.

7 This act would take effect January 1, 2024.

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