

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 500

BY EDUCATION COMMITTEE

AN ACT

1 RELATING TO THE FAIRNESS IN WOMEN'S SPORTS ACT; AMENDING TITLE 33, IDAHO
2 CODE, BY THE ADDITION OF A NEW CHAPTER 62, TITLE 33, IDAHO CODE, TO
3 PROVIDE A SHORT TITLE, TO PROVIDE LEGISLATIVE FINDINGS AND PURPOSE, TO
4 PROVIDE FOR THE DESIGNATION OF ATHLETIC TEAMS, TO PROVIDE PROTECTION
5 FOR EDUCATIONAL INSTITUTIONS, TO PROVIDE FOR A CAUSE OF ACTION, AND TO
6 PROVIDE SEVERABILITY.
7

8 Be It Enacted by the Legislature of the State of Idaho:

9 SECTION 1. That Title 33, Idaho Code, be, and the same is hereby amended
10 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
11 ter 62, Title 33, Idaho Code, and to read as follows:

12 CHAPTER 62

13 FAIRNESS IN WOMEN'S SPORTS ACT

14 33-6201. SHORT TITLE. This chapter shall be known and may be cited as
15 the "Fairness in Women's Sports Act."

16 33-6202. LEGISLATIVE FINDINGS AND PURPOSE. (1) The legislature finds
17 that there are "inherent differences between men and women," and that these
18 differences "remain cause for celebration, but not for denigration of the
19 members of either sex or for artificial constraints on an individual's op-
20 portunity," United States v. Virginia, 518 U.S. 515, 533 (1996);

21 (2) These "inherent differences" range from chromosomal and hormonal
22 differences to physiological differences;

23 (3) Men generally have "denser, stronger bones, tendons, and liga-
24 ments" and "larger hearts, greater lung volume per body mass, a higher red
25 blood cell count, and higher haemoglobin," Neel Burton, The Battle of the
26 Sexes, Psychology Today (July 2, 2012);

27 (4) Men also have higher natural levels of testosterone, which affects
28 traits such as hemoglobin levels, body fat content, the storage and use of
29 carbohydrates, and the development of type 2 muscle fibers, all of which re-
30 sult in men being able to generate higher speed and power during physical
31 activity, Doriane Lambelet Coleman, Sex in Sport, 80 Law and Contemporary
32 Problems 63, 74 (2017) (quoting Gina Kolata, Men, Women and Speed. 2 Words:
33 Got Testosterone?, N.Y. Times (Aug. 21, 2008));

34 (5) The biological differences between females and males, especially
35 as it relates to natural levels of testosterone, "explain the male and female
36 secondary sex characteristics which develop during puberty and have life-
37 long effects, including those most important for success in sport: cate-
38 gorically different strength, speed, and endurance," Doriane Lambelet Cole-
39 man and Wickliffe Shreve, "Comparing Athletic Performances: The Best Elite
40 Women to Boys and Men," Duke Law Center for Sports Law and Policy;

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

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

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

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

26 (10) As Duke Law professor and All-American track athlete Doriane Cole-
27 man, tennis champion Martina Navratilova, and Olympic track gold medalist
28 Sanya Richards-Ross recently wrote: "The evidence is unequivocal that
29 starting in puberty, in every sport except sailing, shooting, and riding,
30 there will always be significant numbers of boys and men who would beat the
31 best girls and women in head-to-head competition. Claims to the contrary are
32 simply a denial of science," Doriane Coleman, Martina Navratilova, et al.,
33 *Pass the Equality Act, But Don't Abandon Title IX*, *Washington Post* (Apr. 29,
34 2019);

35 (11) The benefits that natural testosterone provides to male athletes
36 is not diminished through the use of puberty blockers and cross-sex hor-
37 mones. A recent study on the impact of such treatments found that even "after
38 12 months of hormonal therapy," a man who identifies as a woman and is taking
39 cross-sex hormones "had an absolute advantage" over female athletes and
40 "will still likely have performance benefits" over women, Tommy Lundberg
41 et al., "Muscle strength, size and composition following 12 months of gen-
42 der-affirming treatment in transgender individuals: retained advantage for
43 the transwomen," *Karolinksa Institutet* (Sept. 26, 2019); and

44 (12) Having separate sex-specific teams furthers efforts to promote sex
45 equality. Sex-specific teams accomplish this by providing opportunities
46 for female athletes to demonstrate their skill, strength, and athletic abil-
47 ities while also providing them with opportunities to obtain recognition and
48 accolades, college scholarships, and the numerous other long-term benefits
49 that flow from success in athletic endeavors.

1 33-6203. DESIGNATION OF ATHLETIC TEAMS. (1) Interscholastic, inter-
2 collegiate, intramural, or club athletic teams or sports that are sponsored
3 by a public school or any school that is a member of the Idaho high school
4 activities association or a public institution of higher education or any
5 higher education institution that is a member of the national collegiate
6 athletic association (NCAA), national association of intercollegiate ath-
7 letics (NAIA), or national junior college athletic association (NJCAA)
8 shall be expressly designated as one (1) of the following based on biological
9 sex:

10 (a) Males, men, or boys;

11 (b) Females, women, or girls; or

12 (c) Coed or mixed.

13 (2) Athletic teams or sports designated for females, women, or girls
14 shall not be open to students of the male sex.

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

17 (a) The student's internal and external reproductive anatomy;

18 (b) The student's normal endogenously produced levels of testosterone;
19 and

20 (c) An analysis of the student's genetic makeup.

21 33-6204. PROTECTION FOR EDUCATIONAL INSTITUTIONS. A government
22 entity, any licensing or accrediting organization, or any athletic associa-
23 tion or organization shall not entertain a complaint, open an investigation,
24 or take any other adverse action against a school or an institution of higher
25 education for maintaining separate interscholastic, intercollegiate, in-
26 tramural, or club athletic teams or sports for students of the female sex.

27 33-6205. CAUSE OF ACTION. (1) Any student who is deprived of an ath-
28 letic opportunity or suffers any direct or indirect harm as a result of a vi-
29 olation of this chapter shall have a private cause of action for injunctive
30 relief, damages, and any other relief available under law against the school
31 or institution of higher education.

32 (2) Any student who is subject to retaliation or other adverse action by
33 a school, institution of higher education, or athletic association or organ-
34 ization as a result of reporting a violation of this chapter to an employee
35 or representative of the school, institution, or athletic association or or-
36 ganization, or to any state or federal agency with oversight of schools or
37 institutions of higher education in the state, shall have a private cause of
38 action for injunctive relief, damages, and any other relief available under
39 law against the school, institution, or athletic association or organiza-
40 tion.

41 (3) Any school or institution of higher education that suffers any di-
42 rect or indirect harm as a result of a violation of this chapter shall have a
43 private cause of action for injunctive relief, damages, and any other relief
44 available under law against the government entity, licensing or accrediting
45 organization, or athletic association or organization.

46 (4) All civil actions must be initiated within two (2) years after the
47 harm occurred. Persons or organizations who prevail on a claim brought pur-
48 suant to this section shall be entitled to monetary damages, including for

1 any psychological, emotional, and physical harm suffered, reasonable attor-
2 ney's fees and costs, and any other appropriate relief.

3 33-6206. SEVERABILITY. The provisions of this chapter are hereby de-
4 clared to be severable and if any provision of this chapter or the applica-
5 tion of such provision to any person or circumstance is declared invalid for
6 any reason, such declaration shall not affect the validity of the remaining
7 portions of this chapter.