

By: Representatives Hobgood-Wilkes, Brown
(20th), Carpenter, Crawford, Hopkins, Ladner,
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To: Judiciary A

HOUSE BILL NO. 1391

1 AN ACT TO CREATE "THE FAIRNESS ACT" FOR THE PURPOSE OF
2 PROHIBITING NONBIOLOGICAL MALES FROM PARTICIPATING IN ATHLETIC
3 SPORTS AND CERTAIN OTHER ACTIVITIES SPECIFICALLY DESIGNATED FOR
4 FEMALES AT PUBLIC PRIMARY AND SECONDARY SCHOOLS, STATE
5 INSTITUTIONS OF HIGHER LEARNING AND PUBLIC COMMUNITY OR JUNIOR
6 COLLEGES; TO AFFORD CERTAIN PROTECTIONS TO THOSE EDUCATIONAL
7 ENTITIES FOR MAINTAINING SEPARATE INTERSCHOLASTIC OR INTRAMURAL
8 ATHLETIC TEAMS OR SPORTS FOR STUDENTS OF THE FEMALE SEX; TO
9 ESTABLISH ENFORCEABLE CAUSES OF ACTIONS FOR VIOLATIONS OF THIS
10 ACT; AND FOR RELATED PURPOSES.

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

12 **SECTION 1.** This chapter shall be known and maybe cited as
13 "The Fairness Act."

14 **SECTION 2.** **Legislative findings and purpose.**

15 (1) The Legislature finds that there are "'inherent
16 differences' between men and women," and that these differences
17 "remain cause for celebration, but not for denigration of the
18 members of either sex or for artificial constraints on an
19 individual's opportunity." (*United States v. Virginia*, 518 U.S.
20 515, 533 (1996)).

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



23 (3) The biological differences between females and males,
24 especially as it relates to natural levels of testosterone,
25 explain the male and female secondary sex characteristics which
26 develop during puberty and have lifelong effects, including those
27 most important for success in sports, which are evidenced in
28 categorically different strength, speed and endurance.

29 (4) While classifications based on sex are generally
30 disfavored, the United States Supreme Court has recognized that
31 "sex classifications may be used to compensate women for
32 particular economic disabilities they have suffered, to promote
33 equal employment opportunity, and to advance full development of
34 the talent and capacities of our nation's people." (*United States*
35 *v. Virginia*, 518 U.S. 515, 533 (1996)).

36 (5) Courts have recognized that the inherent, physiological
37 differences between males and females result in different athletic
38 capabilities. (*Kleczek v. Rhode Island Interscholastic League,*
39 *Inc.*, 612 A.2d 734, 738 (R.I. 1992)). "Because of innate
40 physiological differences, boys and girls are not similarly
41 situated as they enter athletic competition." (*Petrie v. Ill.*
42 *High Sch. Ass'n*, 394 N.E.2d 855, 861 (Ill. App. Ct. 1979), noting
43 that "high school boys generally possess physiological advantages
44 over their girl counterparts" and that those advantages give them
45 an unfair lead over girls in some sports like "high school
46 track").



47 (6) A recent study of female and male Olympic performances
48 since 1983 found that, although athletes from both sexes improved
49 over the time span, the "gender gap" between female and male
50 performances remained stable. "These suggest that women's
51 performances at the high level will never match those of men."
52 Women and Men in Sport Performance. ("The Gender Gap Has Not
53 Evolved Since 1983," 9 *Journal of Sports Science and Medicine* 214,
54 219 (2010)).

55 (7) "The evidence is unequivocal that starting in puberty,
56 in every sport except sailing, shooting and riding, there will
57 always be significant numbers of boys and men who would beat the
58 best girls and women in head-to-head competition. Claims to the
59 contrary are simply a denial of science." ("Pass the Equality
60 Act, But Don't Abandon Title IX," *Washington Post* (Apr. 29,
61 2019)).

62 (8) The benefits that natural testosterone provides to male
63 athletes is not diminished through the use of puberty blockers and
64 cross-sex hormones. A recent study on the impact of such
65 treatments found that even "after twelve (12) months of hormonal
66 therapy," a man who identifies as a woman and is taking cross-sex
67 hormones "had an absolute advantage" over female athletes and
68 "will still likely have performance benefits" over women.
69 ("Muscle Strength, Size and Composition Following 12 Months of
70 Gender-Affirming Treatment in Transgender Individuals: Retained



Advantage for the Transwomen," Karolinska Institute, (Sept. 26, 2019)).

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

SECTION 3. Designation of athletic teams.

(1) Interscholastic or intramural athletic teams or sports that are sponsored by a public primary or secondary school or any school that is a member participant of the Mississippi High School Activities Association (MHSAA) or state institution of higher learning or any public community or junior college that is a member of the National Collegiate Athletic Association (NCAA), National Association of Intercollegiate Athletics (NAIA) or National Junior College Athletic Association (NJCAA) shall be expressly designated as one (1) of the following based on biological sex:

- (a) "Males," "men" or "boys";
- (b) "Females," "women" or "girls"; or
- (c) "Coed" or "mixed."

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



(3) If disputed, a student may establish his or her sex by presenting a signed physician's statement which shall indicate the student's sex based solely upon:

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

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

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

SECTION 4. Protection for educational institutions.

A government entity, any licensing or accrediting organization, or any athletic association or organization shall not entertain a complaint, open an investigation, or take any other adverse action against a public primary or secondary school, state institution of higher learning or public community or junior college for maintaining separate interscholastic or intramural athletic teams or sports for students of the female sex.

SECTION 5. Cause of action.

(1) Any student who is deprived of an athletic opportunity or suffers any direct or indirect harm as a result of a violation of this act shall have a private cause of action for injunctive relief, damages and any other relief available under law against the public primary or secondary school, state institution of higher learning or public community or junior college.

(2) Any student who is subject to retaliation or other



adverse action by a primary or secondary school, state institution of higher learning, public community or junior college, or athletic association or organization as a result of reporting a violation of this act to an employee or representative of the school, institution of higher learning, community or junior college, or athletic association or organization, or to any state or federal agency with oversight of public primary or secondary schools, state institutions of higher learning or public community or junior colleges in the state shall have a private cause of action for injunctive relief, damages, and any other relief available under law against the school, institution of higher learning, community or junior college, or athletic association or organization.

(3) Any student whose bodily privacy is violated, including encountering a person of the opposite sex in a facility traditionally designated for the exclusive use of members of one (1) sex, by any action, policy or practice of a public primary or secondary school, state institution of higher learning or public community or junior college shall have a private cause of action for injunctive relief, damages, and any other relief available under law against the school or institution of higher learning or community or junior college.

(4) Any public primary or secondary school, state institution of higher learning or public community or junior college that suffers any direct or indirect harm as a result of a



violation of this act shall have a private cause of action for injunctive relief, damages, and any other relief available under law against the government entity, licensing or accrediting organization or athletic association or organization.

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

SECTION 6. Severability.

If any provision of this law or its application is held invalid, the invalidity does not affect other provisions or applications of this law which can be given effect without the invalid provision or application and to this end the provisions of this law are severable.

SECTION 7. This act shall take effect and be in force from and after July 1, 2020.

