

By: Senator(s) Hill, Whaley, Younger,
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To: Education; Universities
and Colleges

SENATE BILL NO. 2240

1 AN ACT TO CREATE THE "MISSISSIPPI FAIRNESS ACT"; TO REQUIRE
2 ANY PUBLIC SCHOOL, PUBLIC INSTITUTION OF HIGHER LEARNING OR
3 INSTITUTION OF HIGHER LEARNING THAT IS A MEMBER OF THE NCAA, NAIA
4 OR NJCCA TO DESIGNATE ITS ATHLETIC TEAMS OR SPORTS ACCORDING TO
5 BIOLOGICAL SEX; TO PROVIDE PROTECTION FOR ANY SCHOOL OR
6 INSTITUTION OF HIGHER EDUCATION THAT MAINTAINS SEPARATE ATHLETIC
7 TEAMS OR SPORT FOR STUDENTS OF THE FEMALE SEX; TO CREATE PRIVATE
8 CAUSES OF ACTION; AND FOR RELATED PURPOSES.

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

10 **SECTION 1.** **Title.** This act shall be known and may be cited
11 as the "Mississippi Fairness Act."

12 **SECTION 2.** **Legislative findings and purpose.** (1) The
13 Legislature finds that:

14 (a) There are "'[i]nherent differences' between men and
15 women," and that these differences "remain cause for celebration,
16 but not for denigration of the members of either sex or for
17 artificial constraints on an individual's opportunity." *United*
18 *States v. Virginia*, 518 U.S. 515, 533 (1996).

19 (b) These "inherent differences" range from chromosomal
20 and hormonal differences to physiological differences.



21 (c) Men generally have denser, strong bones, tendons,
22 and ligaments and larger hearts, greater lung volume per body
23 mass, a higher red blood cell count, and higher hemoglobin.

24 (d) Men also have higher natural levels of
25 testosterone, which affects traits such as hemoglobin levels, body
26 fat content, the storage and use of carbohydrates, and the
27 development of Type 2 muscle fibers, all of which result in men
28 being able to generate higher speed and power during physical
29 activity.

30 (e) The biological differences between females and
31 males, especially as it relates to natural levels of testosterone,
32 "explain the male and female secondary sex characteristics which
33 develop during puberty and have lifelong effects, including those
34 most important for success in sport: categorically different
35 strength, speed, and endurance.

36 (f) While classifications based on sex are generally
37 disfavored, the Supreme Court has recognized that "sex
38 classifications may be used to compensate women for particular
39 economic disabilities [they have] suffered, to promote equal
40 employment opportunity, [and] to advance full development of the
41 talent and capacities of our Nation's people." *United States v.*
42 *Virginia*, 518 U.S. 515, 533 (1996) (internal citations and
43 quotation marks omitted).



44 (g) One place where sex classifications allow for the
45 "full development of the talent and capacities of our Nation's
46 people" is in the context of sports and athletics.

47 (h) Courts have recognized that the inherent,
48 physiological differences between males and females result in
49 different athletic capabilities. *See, e.g., Kleczek v. Rhode*
50 *Island Interscholastic League, Inc.*, 612 A.2d 734, 738 (R.I. 1992)
51 ("Because of innate physiological differences, boys and girls are
52 not similarly situated as they enter athletic competition.");
53 *Petrie v. Ill. High Sch. Ass'n*, 394 N.E.2d 855, 861 (Ill. App. Ct.
54 1979) (noting that "high school boys [generally possess
55 physiological advantages over] their girl counterparts" and that
56 those advantages give them an unfair lead over girls in some
57 sports like "high school track").

58 (i) A recent study of female and male Olympic
59 performances since 1983 found that, although athletes from both
60 sexes improved over the time span, the "gender gap" between female
61 and male performances remained stable. These suggest that women's
62 performances at the high level will never match those of men.

63 (j) As Duke Law Professor and All-American Track
64 Athlete Doriane Coleman, Tennis Champion Martina Navratilova, and
65 Olympic Track Gold Medalist Sanya Richards-Ross recently wrote:
66 "The evidence is unequivocal that starting in puberty, in every
67 sport except sailing, shooting and riding, there will always be
68 significant numbers of boys and men who would beat the best girls



69 and women in head-to-head competition. Claims to the contrary are
70 simply a denial of science.

71 (k) The benefits that natural testosterone provides to
72 male athletes is not diminished through the use of puberty
73 blockers and cross-sex hormones. A recent study on the impact of
74 such treatments found that even after twelve (12) months of
75 hormonal therapy, a man who identifies as a woman and is taking
76 cross-sex hormones had an absolute advantage over female athletes
77 and will still likely have performance benefits over women.

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

85 **SECTION 3. Designation of athletic teams.** (1)

86 Interscholastic or intramural athletic teams or sports that are
87 sponsored by a public primary or secondary school or any school
88 that is a member of the Mississippi High School Activities
89 Association or public institution of higher education or any
90 higher education institution that is a member of the NCAA, NAIA or
91 NJCCA shall be expressly designated as one of the following based
92 on biological sex:

93 (a) "Males," "men," or "boys;"



94 (b) "Females," "women," or "girls;" or

95 (c) "Coed" or "mixed."

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

98 (3) If disputed, a student may establish his or her sex by
99 presenting a signed physician's statement which shall indicate the
100 student's sex based solely upon (a) the student's internal and
101 external reproductive anatomy, (b) the student's normal
102 endogenously produced levels of testosterone, and (c) an analysis
103 of the student's genetic makeup.

104 **SECTION 4. Protection for educational institutions.** A
105 government entity, any licensing or accrediting organization, or
106 any athletic association or organization shall not entertain a
107 complaint, open an investigation, or take any other adverse action
108 against a primary or secondary school or institution of higher
109 education for maintaining separate interscholastic or intramural
110 athletic teams or sports for students of the female sex.

111 **SECTION 5. Cause of action.** (1) Any student who is
112 deprived of an athletic opportunity or suffers any direct or
113 indirect harm as a result of a violation of this act shall have a
114 private cause of action for injunctive relief, damages and any
115 other relief available under law against the primary or secondary
116 school or institution of higher education.

117 (2) Any student who is subject to retaliation or other
118 adverse action by a primary or secondary school, institution of



119 higher education, or athletic association or organization as a
120 result of reporting a violation of this act to an employee or
121 representative of the school, institution or athletic association
122 or organization, or to any state or federal agency with oversight
123 of primary or secondary schools or institutions of higher
124 education in the state shall have a private cause of action for
125 injunctive relief, damages and any other relief available under
126 law against the school, institution or athletic association or
127 organization.

128 (3) Any student whose bodily privacy is violated, including
129 encountering a person of the opposite sex in a facility
130 traditionally designated for the exclusive use of members of one
131 sex, by any action, policy or practice of a primary or secondary
132 school or institution of higher education shall have a private
133 cause of action for injunctive relief, damages and any other
134 relief available under law against the school or institution.

135 (4) Any primary or secondary school or institution of higher
136 education that suffers any direct or indirect harm as a result of
137 a violation of this act shall have a private cause of action for
138 injunctive relief, damages and any other relief available under
139 law against the government entity, licensing or accrediting
140 organization, or athletic association or organization.

141 (5) All civil actions must be initiated within two (2) years
142 after the harm occurred. Persons or organizations who prevail on
143 a claim brought pursuant to this section shall be entitled to



144 monetary damages, including for any psychological, emotional and
145 physical harm suffered, reasonable attorneys' fees and costs, and
146 any other appropriate relief. The causes of action pursuant to
147 this section shall be in addition to any other civil or criminal
148 proceeding authorized by the laws of this state or by federal law.

149 **SECTION 6. Severability.** Any provision of this act held to
150 be invalid or unenforceable by its terms, or as applied to any
151 person or circumstance, shall be construed so as to give it the
152 maximum effect permitted by law, unless such holding shall be one
153 of utter invalidity or unenforceability, in which event such
154 provision shall be deemed severable herefrom and shall not affect
155 the remainder hereof or the application of such provision to other
156 persons not similarly situated or to other, dissimilar
157 circumstances.

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

