

SENATE BILL NO. 44

BY SENATORS MIZELL, ABRAHAM, ALLAIN, CORTEZ, FESI, FOIL, HENRY, HENSGENS, HEWITT, LAMBERT, MILLIGAN, ROBERT MILLS, MORRIS, PEACOCK, POPE, REESE, STINE, TALBOT, TARVER, WARD, WHITE AND WOMACK AND REPRESENTATIVES AMEDEE, BACALA, BUTLER, CREWS, DAVIS, DEVILLIER, EDMONDS, EDMONSTON, EMERSON, FARNUM, FIRMENT, FONTENOT, FRIEMAN, GADBERRY, GAROFALO, GOUDEAU, HARRIS, HODGES, HORTON, MIKE JOHNSON, MCFARLAND, MIGUEZ, MINCEY, CHARLES OWEN, PRESSLY, RISER, ROMERO, SCHAMERHORN, SCHLEGEL, SEABAUGH, THOMPSON, VILLIO, WHEAT AND WHITE

1 AN ACT

2 To enact Chapter 7-A of Title 4 of the Louisiana Revised Statutes of 1950, to be comprised
3 of R.S. 4:441 through 446, relative to athletic activities; to require that schools
4 designate intercollegiate and interscholastic athletic teams according to the biological
5 sex of the team members; to provide that teams designated for females are not open
6 to participation by biological males; to provide immunity protections for schools
7 from certain adverse actions; to provide for causes of action; to provide for
8 legislative findings; to provide for definitions; to provide for remedies; and to
9 provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Chapter 7-A of Title 4 of the Louisiana Revised Statutes of 1950,
12 comprised of R.S. 4:441 through 446, is hereby enacted to read as follows:

13 **CHAPTER 7-A. FAIRNESS IN WOMENS SPORTS ACT**

14 **§441. Short title**

15 **This Chapter shall be known as and may be cited as the "Fairness in**
16 **Womens Sports Act".**

17 **§442. Legislative findings**

18 **The legislature finds and declares that:**

19 **(1) Title IX of the Education Amendments Act of 1972, 20 U.S.C. §1681**

1 et seq., was designed to ensure that women are free from discrimination on the
2 basis of sex in both education and athletics so that women would be afforded the
3 opportunity to compete for athletic scholarships and to potentially launch their
4 own athletic careers after they have completed their education.

5 (2) The United States Supreme Court has recognized that there are
6 "[i]nherent differences' between men and women", and that these differences
7 "remain cause for celebration, but not for denigration of the members of either
8 sex or for artificial constraints on an individual's opportunity" in *United States*
9 *v. Virginia, et al.*, 518 U.S. 515, 533 (1996).

10 (3) Inherent differences between men and women range from
11 chromosomal and hormonal differences to physiological differences resulting
12 in men generally having denser and stronger bones, tendons, and ligaments,
13 larger hearts, greater lung volume per body mass, a higher red blood cell count,
14 and higher hemoglobin as well as higher natural levels of testosterone, which
15 affects traits such as hemoglobin levels, body fat content, the storage and use of
16 carbohydrates, and the development of Type II muscle fibers, all of which result
17 in men generally being able to generate higher speed and power during physical
18 activity.

19 (4) The biological differences between females and males, especially as
20 they relate to natural levels of testosterone, explain the male and female
21 secondary sex characteristics which develop during puberty and have lifelong
22 effects, including those most important for success in sports; categorically, they
23 are strength, speed, and endurance generally found in greater degrees in
24 biological males than biological females.

25 (5) While classifications based on sex are generally disfavored, the
26 United States Supreme Court has recognized that sex classifications may be
27 used to compensate women "for particular economic disabilities [they have]
28 suffered," (see *Califano v. Webster*, 430 U.S. 313, 320 (1977)(per curiam)), to
29 promote equal employment opportunity and "to guarantee women the basic
30 right to participate fully and equally," (see *California Fed. Sav. & Loan Assn.*

1 v. Guerra, 479 U.S. 272, 289 (1987)), and "to advance full development of the
2 talent and capacities of our Nation's people." (see *United States v. Virginia, et al.*,
3 supra, 518 U.S. 515, 533 (1996)).

4 (6) In furtherance of the goals set forth in *United States v. Virginia, et al.*,
5 518 U.S. at 533, one area where sex classifications should allow for the "full
6 development of the talent and capacities of our Nation's people" is in the area
7 of sports and athletics.

8 (7) A recent study of female and male Olympic performances found that,
9 although athletes from both sexes improved over the time span, the athletic
10 gender performance gap between female and male performances remained
11 stable. These studies suggest that women's performances at a high level will
12 never match those of men. The evidence is unequivocal that, starting in puberty,
13 in every sport except sailing, shooting, and riding, there will always be
14 significant numbers of boys and men who would prevail over the best girls and
15 women in head-to-head competition. Claims to the contrary are simply a denial
16 of science.

17 (8) Scientific studies have established that the benefits that natural
18 testosterone provides to male athletes is not diminished through the use of
19 testosterone suppression. A recent study on the impact of such treatments found
20 that, even after twelve months of testosterone suppression, the "superior
21 anthropometric, muscle mass, and strength parameters achieved by males at
22 puberty, and underpinning a considerable portion of the male performance
23 advantage over females, are not removed".

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

30 §443. Definitions

1 In this Chapter, unless otherwise indicated, the following definitions
2 shall apply:

3 (1) "Biological sex" means a statement of a student's biological sex on
4 the student's official birth certificate which is entered at or near the time of the
5 student's birth.

6 (2) "Postsecondary education board member" means a person who
7 serves as a board member or officer of a postsecondary education management
8 board.

9 (3) "Postsecondary education management board" means a board which
10 governs postsecondary educational institutions, pursuant to R.S. 17:3351.

11 (4) "Schools" means all of the following:

12 (a) A public elementary or secondary school.

13 (b) A nonpublic elementary or secondary school that receives state funds.

14 (c) A public postsecondary educational institution.

15 (d) A nonpublic postsecondary educational institution that receives state
16 funds.

17 (5) "School coach" means a person who is a coach or assistant coach,
18 whether paid or on a volunteer basis, of a school intercollegiate or
19 interscholastic athletic team or sporting event.

20 (6) "School board" means a school board or school governing authority
21 subject to the provisions of R.S. 17:81 or any nonpublic school governing
22 authority.

23 (7) "School employee" means a person who is employed by a school, a
24 school board, a postsecondary education management board, or any
25 postsecondary institution under the authority of a postsecondary education
26 management board.

27 (8) "School board member" means a person who serves as a board
28 member or officer for a school board or school governing authority subject to
29 the provisions of R.S. 17:81 or for any nonpublic school governing authority.

30 §444. Designation of athletic teams

1 A. Each intercollegiate or interscholastic athletic team or sporting event
2 that is sponsored by a school and that receives state funding shall be expressly
3 designated, based upon biological sex, as only one of the following:

4 (1) Except as provided in Subsection C of this Section, a male, boys, or
5 mens team or event shall be for those students who are biological males.

6 (2) A female, girls, or womens team or event shall be for those students
7 who are biological females.

8 (3) A coeducational or mixed team or event shall be open for
9 participation by biological females and biological males.

10 B. Athletic teams or sporting events designated for females, girls, or
11 women shall not be open to students who are not biologically female.

12 C. Nothing in this Chapter shall be construed to restrict the eligibility of
13 any student to participate in any intercollegiate or interscholastic athletic team
14 or sport designated as "male", "mens", or "boys", or designated as "coed" or
15 "mixed".

16 D. Nothing in this Chapter is intended to prevent any school from
17 implementing or maintaining a coeducational or mixed athletic team or sporting
18 event which is open to both biological males and biological females so long as a
19 female, girls, or womens athletic team or sporting event is not disbanded for the
20 purpose of creating a coeducational or mixed team or event which would
21 thereby result to the detriment of students of the female biological sex.

22 E. Nothing in this Chapter shall be construed to apply to an intramural
23 athletic team or intramural sport.

24 §445. Protection of educational institutions; limitation on liability

25 A. No government entity, licensing or accrediting organization, or
26 athletic association shall entertain a complaint, open an investigation, or take
27 any other adverse action against a school, school board, or postsecondary
28 education management board for maintaining a separate intercollegiate or
29 interscholastic athletic team or athletic event reserved for students of the female
30 biological sex.

1 **B. No cause of action may be maintained against any school, school**
2 **coach, school employee, school board, school board employee, school board**
3 **member, postsecondary education board, or postsecondary education board**
4 **member who prohibits a biological male from participating in a female, girls,**
5 **or womens athletic team or sporting event pursuant to the requirements of this**
6 **Chapter.**

7 **§446. Remedies; cause of action**

8 **A. A biological female student who is deprived of an athletic opportunity**
9 **or suffers or is likely to suffer from any direct or indirect harm as a result of a**
10 **violation of this Chapter may assert that violation as a cause of action for**
11 **remedies provided for in Subsection E of this Section. Requiring a biological**
12 **female to compete against a biological male on a team that is designated as a**
13 **"female", "girls", or "womens" team is inherently discriminatory to biological**
14 **females and is a cognizable harm to biological females under this Chapter.**

15 **B. A biological female student who is subjected to retaliation or other**
16 **adverse action by a school, athletic association, or other organization as a result**
17 **of reporting a violation of this Chapter to an employee or representative of the**
18 **school, athletic association, or to any local, state, or federal agency with**
19 **oversight of schools shall have a cause of action for remedies provided for in**
20 **Subsection E of this Section.**

21 **C. For purposes of this Chapter, the designation of "female" entered on**
22 **the student's official birth certificate at or near the time of the student's birth**
23 **creates a rebuttable presumption that the student's biological sex is female.**

24 **D. A school, school coach, school employee, school board, school board**
25 **employee, school board member, postsecondary education board, or**
26 **postsecondary education board member who suffers any direct or indirect harm**
27 **for prohibiting a biological male from participating in a female, girls, or**
28 **womens athletic team or sporting event pursuant to the requirements of this**
29 **Chapter shall have a cause of action for remedies provided for in Subsection E**
30 **of this Section.**

1 **E. Any person who brings a cause of action pursuant to this Chapter**
2 **may obtain appropriate relief, including but not limited to:**

3 **(1) Injunctive relief, protective order, writ of mandamus or a**
4 **prohibition, or declaratory relief to prevent any violation of this Chapter.**

5 **(2) Actual damages, reasonable attorney fees, and costs.**

6 **F. All civil actions under this Chapter must be initiated within two years**
7 **from the date that the harm occurred.**

8 Section 2. If any provision or item of this Act, or the application thereof, is held
9 invalid, such invalidity shall not affect other provisions, items, or applications of the Act
10 which can be given effect without the invalid provision, item, or application and to this end
11 the provisions of this Act are hereby declared severable.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____