



**Kansas Senate Education Committee
Senate Bill 208**

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Alliance Defending Freedom is the nation's large non-profit legal organization that advocates for religious liberty, free speech, life, and marriage and the family. We regularly analyze proposed laws and their effect on constitutional freedoms. ADF also currently represents female athletes in Connecticut and Idaho in federal court who have personally lost out on championships and other athletic opportunities to biological males who were permitted to compete in female sports.

Women deserve to compete on a level playing field. Allowing males to compete in women's sports destroys fair competition and women's athletic opportunities.

SB 208 protects opportunities for women and girls in athletics by ensuring women are not forced to compete against men playing on women's sports teams. The bill simply requires that all sports teams be designated as either male, female, or co-ed based on biological sex and makes clear that biological males cannot play on female teams. It further protects a school that follows the law from any adverse action by a government entity, accrediting or licensing organization, or a state athletic association.

Biological sex is indisputably the single biggest driver of athletic advantage. Males generally have a 10-20% performance advantage (depending on the sport) over females. Having separate teams for men and women is the time-tested way to ensure that women have the opportunity to showcase their talents and become champions. The science shows that comparably fit and trained males will always have physical advantages over women. Even the world's best female Olympic athletes would lose to literally thousands of boys and men on any given day. That's the reason we have women's sports as a separate category.

Unfortunately, across the country, we are seeing a growing number of instances where biological males have taken away championships, records, and countless athletic opportunities from female athletes. For example:

- In 2019, CeCe Telfer, a biological male who identifies as female, dominated the NCAA Division II National Championship in the 400m Hurdles. Telfer actually *improved* in several track and field events after a year of

testosterone suppression. Female athletes at every other Division II school—including those in your state—have little hope of winning against biological males.

- In Connecticut, two biological males captured 15 women’s state championship titles, set 17 new individual meet records, and took over 80 opportunities to advance in competition in the 2017-19 seasons alone that rightfully belonged to females. One of the males competed for three seasons in the male category and never qualified for a championship, and then switched just a couple weeks later to begin competing in the girls’ category and dominated girls’ track events.
- June Eastwood, who competed on the University of Montana men’s track team before switching to the female team, easily beat the female competitors to win the women’s mile at the Big Sky Indoor Track & Field Championship in 2019. It was one of several instances where female athletes in the Big Sky Conference lost opportunities because of Eastwood.

Women are already losing out. We shouldn’t make them pay the price while we wait to protect their opportunities to compete on a fair playing field.

Fairness in sports is an issue that a growing number of female athletes are speaking out about. From tennis legend Martina Navratilova to women’s rights organizations like Save Women’s Sports, Women’s Liberation Front (WoLF), Women’s Human Rights Campaign, and Fair Play for Women, more and more women are making their voices heard on this crucial issue.

Policies like those advocated by the International Olympics Committee that allow a male to compete in female events if the male has been on testosterone suppression for a certain period of time do not solve the problem. Science proves and common sense tells us that males are generally bigger, faster, and stronger than females. They have larger hearts and lungs, denser bones, and stronger muscles. No amount of testosterone suppression can undo all those advantages.

A recent scientific study found that “superior anthropometric, muscle mass and strength parameters achieved by males at puberty, and underpinning a considerable portion of the male performance advantage over females, are not removed by the current regimen of testosterone suppression” permitted by the International Olympic Committee and other sports organizations. See <https://doi.org/10.1007/s40279-020-01389-3>.

Another study of the physical fitness of Air Force personnel reached a similar conclusion: “[T]he pretreatment differences between transgender and [biological] women persist beyond the 12 month time requirement currently being proposed for

athletic competition by the World Athletics and the IOC.” See <https://bjism.bmj.com/content/early/2020/11/06/bjsports-2020-102329>.

SB 208 does not conflict with any current eligibility requirements set by the NCAA regarding students who identify as transgender. The NCAA’s policy is permissive. A college may allow a male to compete on the women’s team after a year of testosterone suppression without making it a mixed sex team. But the NCAA does not require colleges to allow men on women’s teams. Nor should the NCAA be the final arbiter of what is best for female athletes in a state. That decision should be made by the people of the state through their elected representatives.

Finally, SB 208 is consistent with both the U.S. Constitution and federal law, including Title IX. Federal courts have long recognized that it is constitutional to provide separate programs based on biological sex—including sports teams, locker rooms, or even single-sex schools. As one federal appellate court explained, it is a “physiological fact” that “males would have an undue advantage competing against women,” and the evidence was clear that “due to average physiological differences, males would displace females to a substantial extent if they were allowed to compete for positions” on the women’s team. *Clark v. Ariz. Interscholastic Ass’n*, 695 F.2d 1126, 1131 (9th Cir. 1982). The result would be that “athletic opportunities for women would be diminished.” *Id.*

Other federal appellate courts have reached the same conclusion: “It takes little imagination to realize that were play and competition not separated by sex, the great bulk of the females would quickly be eliminated from participation and denied any meaningful opportunity for athletic involvement.” *Cape v. Tenn. Secondary Sch. Athletic Ass’n*, 563 F.2d 793, 795 (6th Cir. 1977).

SB 208 builds on the success of Title IX by preserving the equal athletic opportunities that Title IX helped create, ensuring that females in the state continue to have the opportunity to compete—and win—on a level playing field. Indeed, both the U.S. Department of Education and Attorneys General from 14 states filed briefs supporting the legality of Idaho’s recently enacted women’s sports legislation.¹

In sports, biology is what matters. When we ignore science and biological reality, women pay the price. Allowing males to compete in girls’ sports reverses nearly 50 years of advances for women. That’s neither fair nor equal. The solution is SB 208, which ensures that all female athletes have a level playing field to compete and win.

¹ <https://adfmedia.org/press-release/broad-support-filed-9th-circuit-protecting-girls-sports>.