

Kansas Family Voice Testimony in Support of H.B. 2236

Senate Education Committee

March 6, 2023

Chair Baumgardner and members of the committee, my name is Brittany Jones. I am an attorney and the Director of Policy and Engagement for Kansas Family Voice. We represent thousands of members in Kansas who are concerned about the threat to women's sports by actions taken on both the federal and state level.

I will lay out the legal context of this discussion, what is happening on both the state and federal level to attack women's sports, and the impact this is having on female athletes necessitating the urgent passage of H.B. 2238, The Fairness in Women's Sports Act.

While there was an obvious need for this type of legislation last two year, the threats to women's athletics have only grown in the year since we discussed this issue. Whether it was Laurel Hubbard replacing a woman on the Australian Olympic weightlifting team, or it is Lia Thomas who went from ranking the 500s in the means division to first in the women's, many across the culture are starting to see that we need fairplay for women.¹ And just last week new headlines were created when the World Surfing League decided to allow men to compete in the women's division.²

Even Michael Phelps has said, "Because it has to be a level playing field. That's something that we all need. Because that's what sports are. For me, I don't know where this is going to go. I don't know what's going to happen."³ We have a real problem that needs a solution that in order to create consistency and fairness must come from this body.

What is the background of Title IX?

Title IX was signed into law 1972 to ensure opportunities for women who had few to no athletic opportunities up to this point.⁴ In the 50 years since Title IX was signed it has had a marked effect on athletic opportunities for women. It has increased the number of women competing by 140,000 yearly at the college level as opposed to just 30,000 in 1972. In high school athletics, just 295,000 women played in high school.⁵ Today, 3.4 million girls play sports.⁶ In Kansas, over 42,000 girls compete in high school athletics today.⁷ These numbers do not take into account the number of women who now have the opportunity to compete on private teams – a ripple of effect of the success of Title IX. Other effects of Title IX are decreased dropout rates from high school

¹ Nicola Williams, National Review, The Problems with Laurel Hubbard's Qualifying for the Olympics as a Woman, June 24, 2021, <https://www.nationalreview.com/2021/06/the-problems-with-laurel-hubbards-qualifying-for-the-olympics-as-a-woman/>; John Lohn, Swimming World, Feb. 19, 2022 <https://www.swimmingworldmagazine.com/news/a-look-at-the-numbers-and-times-nodenying-the-advantages-of-lia-thomas/>; Matt Bonesteel, Sixteen Penn swimmers say transgender teammate Lia Thomas should not be allowed to compete, Washington Times, Feb. 23, 2022, <https://www.washingtonpost.com/sports/2022/02/03/lia-thomas-pennswimming-teammates/>.

² <https://www.deseret.com/sports/2023/2/8/23589511/bethany-hamilton-wsl-transgender-policy-surf>

³ Michael Phelps to Christiane Amanpour, Jan. 13, 2022, <https://twitter.com/amanpou>

⁴ Dep't of Justice, Equal Access to Education: Forty Years of Title IX (June 23, 2012)

⁵ The Nat'l Federation of State High School Assoc., 2018-19 High School Athletics Participation Survey.

⁶ *Id.*

⁷ *Id.*

for girls and increased number of women who pursue higher education and complete college degrees.⁸

What is the threat?

On President Biden's first day in office, he signed an Executive Order that clearly was intended to threaten these hard one victories by requiring that women's athletic opportunities be open to biological boys.⁹ A federal court has enjoined his proposed rules that would require Title IX to be reinterpreted to allow biological boys to be equated with biological females, but this case has not been fully litigated yet.¹⁰ However, this is not just a threat from the federal government, but KSSHA has provided schools with guidance documents¹¹ and has admitted that there are 5 athletes that are taking advantage of their guidance policy.¹² That is 5 spots for women who have been training their whole lives for this.

Despite Title IX's history of advancing opportunities for females, this current trend exploits Title IX to do just the opposite – letting biological males steal opportunities reserved for girls. Allowing boys to compete in girls' sports reverses forty-seven years of advances for women under Title IX.

What impact does this have on female athletes?

It has an immediate impact on their ability to win competitions. As we have seen across the country, the vast majority of the time they will be defeated by boys. When it comes to sports, we have always recognized there is an inherent difference between boys and girls especially after puberty. Multiple studies show that puberty in males creates for a height and body mass difference that gives a significant athletic advantage to males.¹³

Here are some basic facts:

- In Connecticut, Terry Miller and Adraya Yearwood, the two biologically male athletes at the heart of a lawsuit, have won 15 girls indoor and outdoor state championships since 2017. They finished 1st and 2nd in the 55-meter state championship, with Miller breaking the state record.¹⁴
- Just in the single year 2017, Olympic, World, and U.S. Champion Tori Bowie's 100 meters lifetime best of 10.78 was beaten 15,000 times by men and boys.¹⁵

⁸ White House Council on Women and Girls, Women in America: Indicators of Social and Economic Well-Being 17 (March 2011).

⁹ Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation, (Jan. 20, 2021) <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-preventing-and-combatingdiscrimination-on-basis-of-gender-identity-or-sexual-orientation/>

¹⁰ Devon Cole, Federal judge temporarily blocks Biden administration from protecting transgender students and workers in 20 states CNN, (July 17, 2022) <https://www.cnn.com/2022/07/17/politics/biden-administration-transgender-protections-lawsuit-tennessee/index.html>.

¹¹ Kansas High School Athletic Assoc., [KSHSAA Policy for Transgender Student Participation](#)

¹² Kansas proposal against transgender athletes gains traction, (Feb. 12, 2021). <https://www.kwch.com/2021/02/12/kansasproposal-against-transgender-athletes-gains-traction/>

¹³ David J. Handelsman, Angelica L. Hirschberg, et al., Circulating Testosterone as the Hormonal Basis of Sex Differences in Athletic Performance, 39 ENDOCRINE REV. 803 (2018); G. A. Brown, Michael W. Ray, et al., Oxygen Consumption, Heart Rate, and Blood Lactate Responses to an Acute Bout of Plyometric Depth Jumps in College-Aged Men And Women, 24 J. STRENGTH COND RES 2475-2482 (2010).

¹⁴ Complaint Ltr to U.S. DOE from Alliance Defending Freedom, Re: Title IX Discrimination Complaint on Behalf of Minor Children, (June 17, 2019).

¹⁵ 13 Doriane Lambelet Coleman & Wickliffe Shreve, Comparing Athletic Performances the Best Elite Women to Boys and Men.

- Olympic, World, and U.S. Champion Allyson Felix’s 400 meters lifetime best of 49.26 was beaten by thousands elite high school boys.¹⁶

This has serious psychological consequences on women & girls competing now – if they can only dream for third place or in some instances not even medaling – why are they are sacrificing and pushing themselves to compete? Essentially third place becomes the new first place. It also discourages girls sitting at home who would have competed in sports and learned lifelong leadership and healthy habits from ever competing.

In the long run, it denies women & girls scholarship opportunities. For some, athletic scholarships are the only way out of poverty and into a better life. Further, sports play a crucial role in the development of young people by helping them build character, learn the value of hard work, learn discipline, and how to compete well. Sports can bring people together and give a student-athlete the opportunity to be part of something bigger than herself. All of these will be taken away from girls if we don’t protect the women’s sports.

The Fairness in Women’s Sports Act, that has passed in 18 states,¹⁷ ensures that the intent of Title IX is honored and that the amazing benefits it has provided to women across our state and country continue to be available for the next generation of women. On behalf of the thousands of Kansas families and myself, I want to ensure that girls in Kansas have the opportunity to shoot for the basketball hoop, the soccer goal, the finish line, or whatever sport they chose. Everyone has a chance to compete and play in this bill. This bill is simply asking for fairness and that you maintain these hard-won victories for women. I ask that you support H.B. 2238 for the female student athletes of today and of the future.

¹⁶ Id.

¹⁷ Alabama, Arizona, Arkansas, Florida, Idaho, Indiana, Iowa, Kentucky, Louisiana, Mississippi, Montana, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virginia