2021 -- S 0638

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S T A T E O F R H O D E I S L A N D

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

A N A C T

RELATING TO EDUCATION

Introduced By: Senators Morgan, Lombardo, Raptakis, and de la Cruz

Date Introduced: March 18, 2021

Referred To: Senate Education

It is enacted by the General Assembly as follows:

SECTION 1: Title 16 of the GENERAL LAWS entitled "EDUCATION" is hereby amended to add thereto the following chapter.

CHAPTER 110

FAIRNESS IN WOMEN'S SPORTS ACT

16-110-1. Short title.

This chapter shall be known and may be cited as the "Fairness in Women's Sports Act".

16-110-2. Legislative findings and purposes.

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

(b) These "inherent differences" range from chromosomal and hormonal differences to physiological differences;

(c) Men generally have "denser, stronger bones, tendons, and ligaments" and "larger hearts, greater lung volume per body mass, a higher red blood cell count, and higher hemoglobin," Neel Burton, The Battle of the Sexes, Psychology Today (July 2, 2012);

(d) Men also have higher natural levels of testosterone, which affects traits such as hemoglobin levels, body fat content, the storage and use of carbohydrates, and the development of type 2 muscle fibers, all of which result in men being able to generate higher speed and power

during physical activity, Doriane Lambelet Coleman, Sex in Sport, Law and Contemporary Problems 63, 74 (2017) (quoting Gina Kolata, Men, Women and Speed. 2 Words: Got Testosterone?, N.Y. Times (Aug. 21, 2008));

(e) The biological differences between females and males, especially as it relates to natural levels of testosterone, "explain the male and female secondary sex characteristics which develop during puberty and have lifelong effects, including those most important for success in sport: categorically different strength, speed, and endurance," Doriane Lambelet Coleman and Wickliffe Shreve, "Comparing Athletic Performances: The Best Elite Women to Boys and Men," Duke Law Center for Sports Law and Policy;

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

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

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

(i) A recent study of female and male Olympic performances since 1983 found that, although athletes from both sexes improved over the time span, the "gender gap" between female and male performances remained stable. "These suggest that women's performances at the high level will never match those of men." Valerie Thibault et al., Women and men in sport performance: The gender gap has not evolved since 1983, 9 Journal of Sports Science and Medicine 214, 219 (2010);

(j) As Duke law professor and All-American track athlete Doriane Coleman, tennis champion Martina Navratilova, and Olympic track gold medalist Sanya Richards-Ross recently wrote: "The evidence is unequivocal that starting in puberty, in every sport except sailing, shooting, and riding, there will always be significant numbers of boys and men who would beat the best girls and women in head-to-head competition. Claims to the contrary are simply a denial of science,"

Doriane Coleman, Martina Navratilova, et al., Pass the Equality Act, But Don't Abandon Title IX, Washington Post (Apr. 29, 2019);

(k) The benefits that natural testosterone provides to male athletes is not diminished through the use of puberty blockers and cross-sex hormones. A recent study on the impact of such treatments found that even "after twelve (12) months of hormonal therapy," a man who identifies as a woman and is taking cross-sex hormones "had an absolute advantage" over female athletes and "will still likely have performance benefits" over women, Tommy Lundberg et al., "Muscle strength, size and composition following twelve (12) months of gender-affirming treatment in transgender individuals: retained advantage for the transwomen," Karolinksa Institutet (Sept. 26, 2019); and

(l) 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.

12-110-3. Designation of athletic teams.

Interscholastic, intercollegiate, intramural, or club athletic teams or sports that are sponsored by a public school or any public school district activities association or a public institution of higher education or any higher education institution 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 of the following based on biological sex:

(1) Males, men, or boys;

(2) Females, women, or girls; or

(3) Coed or mixed.

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

(ii) If disputed, a student may establish sex by presenting a signed physician's statement that shall indicate the student's sex based solely on:

(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.

16-110-4. 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 school or an institution of higher education for maintaining separate interscholastic, intercollegiate, intramural, or club athletic teams or sports for students of the female sex.

16-110-5. Cause of action.

(a) Any student who is deprived of an athletic opportunity or suffers any direct or indirect harm as a result of a violation of this chapter 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 education.

(b) Any student who is subject to retaliation or other adverse action by a school, institution of higher education, or athletic association or organization as a result of reporting a violation of this chapter to an employee or representative of the school, institution, or athletic association or organization, or to any state or federal agency with oversight of schools or institutions of higher education 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, or athletic association or organization.

(c) Any school or institution of higher education that suffers any direct or indirect harm as a result of a violation of this chapter 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.

(d) 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 attorneys' fees and costs, and any other appropriate relief.

16-110-6. Severability.

The provisions of this chapter are hereby declared to be severable and if any provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this chapter.

SECTION 2. This act shall take effect January 1, 2022.

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EXPLANATION

BY THE LEGISLATIVE COUNCIL

OF

A N A C T

RELATING TO EDUCATION

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This act would categorize women by their biological identity at birth rather than their gender identity for purpose of organized sports. A team must be categorized as males, men, or boys; females, women, or girls; or coed or mixed. If there is a dispute a student may establish sex by presenting a signed physician's statement that shall indicate the student's sex. Additionally, this act would create a cause of action for any student who is deprived of an athletic opportunity or subject to retaliation as a result of this chapter.

This act would take effect January 1, 2022.

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