

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

A Bill

DRAFT

5 By:
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7

8 **For An Act To Be Entitled**
9 THE GENDER INTEGRITY
10 REINFORCEMENT LEGISLATION FOR
11 SPORTS (GIRLS) ACT.
12
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14

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF
16 ARKANSAS:
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18 SECTION 1. Arkansas Code Title 6, Chapter 1, is
19 amended to add an additional subchapter to read as
20 follows:
21

22 Subchapter 7. The Gender Integrity Reinforcement
23 Legislation for Sports (GIRLS) Act.
24

25
26 (a) Title. This subchapter shall be known and may
27 be cited as the "The Gender Integrity
28 Reinforcement Legislation for Sports (GIRLS)
29 Act."
30

31 (b) Legislative intent and findings.
32

33 (1) Like the U.S. Senate, the General Assembly
34 recognizes that "athletic participation
35 helps develop self-discipline, confidence,
36 and leadership skills." S. Res. 398, 115th
37 Cong. (2018).
38

39 (2) "[O]pportunities for athletic
40 participation should," therefore, "be
41 available to all individuals," both male and

1 female. Id.

2
3 (3) Although "the share of athletic
4 participation opportunities of high school
5 girls has increased more than sixfold since
6 the passage of title IX of the Education
7 Amendments of 1972 . . . high school girls
8 still experience . . . a lower share of
9 athletic participation opportunities than
10 high school boys." Id.

11
12 (4) Disparities also still remain at the
13 collegiate level. See id.

14
15 (5) This Act seeks to address these lingering
16 disparities and "promote equality in sports
17 and access to athletic opportunities for
18 girls and women." Id.

19
20 (6) To serve these goals, the General Assembly
21 finds that there are "inherent differences
22 between men and women," borrowing the words
23 of Justice Ruth Bader Ginsburg for a
24 majority of the U.S. Supreme Court. United
25 States v. Virginia, 518 U.S. 515, 533
26 (1996).

27
28 (7) As Justice Ginsburg said, these
29 differences "remain cause for celebration
30 but not for denigration of the members of
31 either sex or for artificial constraints on
32 an individual's opportunity." Id.

33
34 (8) These "inherent differences" range from
35 chromosomal and hormonal differences to
36 physiological differences.

37
38 (9) Men generally have "denser, stronger
39 bones, tendons, and ligaments" and "larger
40 hearts, greater lung volume per body mass, a

1 higher red blood cell count, and higher
2 hemoglobin.” Neel Burton, M.D., *The Battle*
3 *of the Sexes*, Psychology Today (July 2,
4 *2012).*

5
6 (10) Men also have a higher natural level of
7 testosterone, which affects traits such as
8 “hemoglobin levels, body fat content, ‘the
9 absolute ability to store and use
10 carbohydrate,’ and the development of ‘Type
11 2 muscle fibers, which are used to generate
12 speed and power.’” Doriane Lambelet
13 Coleman, *Sex in Sport*, 80 *Law and*
14 *Contemporary Problems* 63, 74 (2017) (quoting
15 Gina Kolata, *Men, Women, and Speed. 2 Words:*
16 *Got Testosterone?*, N.Y. Times (Aug. 21,
17 *2008)).*

18
19 (11) The biological differences between males
20 and females, especially as they relate to
21 natural levels of testosterone, “explain the
22 male and female secondary sex
23 characteristics which develop during puberty
24 and have life-long effects, including those
25 most important for success in sport:
26 categorically different strength, speed, and
27 endurance.” Doriane Lambelet Coleman &
28 Wickliffe Shreve, *Comparing Athletic*
29 *Performances: The Best Elite Women to Boys*
30 *and Men*, Duke Law Center for Sports Law &
31 *Policy.*

32
33 (12) While classifications based on sex are
34 generally disfavored, the United States
35 Supreme Court has recognized that “sex
36 classifications may be used to compensate
37 women ‘for particular economic disabilities
38 [they have] suffered,’ to ‘promote equal
39 employment opportunity,’ [and] to advance
40 full development of the talent and

1 capacities of our Nation's people."
2 Virginia, 518 U.S. at 533 (citations
3 omitted).

4
5 (13) One place in which sex classification
6 allows for the "full development of the
7 talent and capacities of our Nation's
8 people" is in the context of sports and
9 athletics.

10
11 (14) Courts have recognized that the inherent,
12 physiological differences between males and
13 females result in different athletic
14 capabilities. See, e.g., Kleczek v. R.I.
15 Interscholastic League, Inc., 612 A.2d 734,
16 738(R.I. 1992) ("Because of innate
17 physiological differences, boys and girls
18 are not similarly situated as they enter
19 athletic competition."); Petrie v. Ill. High
20 Sch. Ass'n, 394 N.E.2d 855, 861 (Ill. App.
21 Ct. 1979) ("[A]lthough high school boys had
22 innate advantages for some sports, in those
23 sports featuring balance, precision or
24 strategy, girls were apparently at least
25 equal and possibly excelled.")

26
27 (15) A historical analysis of female and male
28 Olympic performances since 1983 found that,
29 although athletes from both sexes improved
30 over that period, the gender gap between
31 male and female performances remained
32 stable, which "suggest[s] that women's
33 performances at the high level will never
34 match those of men." Valerie Thibault, et
35 al., Women and men in sport performance: The
36 gender gap has not evolved since 1983, 9 J.
37 of Sports Science & Med. 214, 219 (2010).

38
39 (16) Science supports the continued need to
40 pursue equity in sports for women and girls.

1 In a recent article, Doriane Lambelet
2 Coleman, a Duke law professor and former
3 national track champion, Martina
4 Navratilova, one of the greatest tennis
5 players of the twentieth century, and Sanya
6 Richards-Ross, an Olympic gold medalist,
7 said, "The evidence is unequivocal that
8 starting in puberty, in every sport except
9 sailing, shooting, and riding, there will
10 always be significant numbers of boys and
11 men who would beat the best girls and women
12 in head-to-head competition. Claims to the
13 contrary are simply a denial of science."
14 Doriane Lambelet Coleman, et al., *Pass the*
15 *Equality Act, But Don't Abandon Title IX,*
16 Washington Post (Apr. 29, 2019) (emphasis
17 added).

18
19 (17) As Professor Coleman put it elsewhere with
20 different coauthors, "in sport, . . . sex
21 and the sex-linked physical traits
22 associated with the male and female body are
23 outcome determinative." Doriane Lambelet
24 Coleman, et al., *Re-Affirming the Value of*
25 *the Sports Exception to Title IX's General*
26 *Non-Discrimination Rule,* 70 Duke J. of
27 Gender L. & Pol'y 69, 73 (2020) (emphasis
28 added).

29
30 (18) Having separate sex-specific teams
31 promotes equity for girls and women in
32 sports by providing opportunities for female
33 athletes to demonstrate their skill,
34 strength, and athletic abilities while also
35 providing them with opportunities to obtain
36 recognition and accolades, college
37 scholarships, and the numerous other long-
38 term benefits that flow from success in
39 athletic endeavors.

1 (c) Definitions. The following definitions apply
2 to this subchapter.

3
4 (1) "Covered entity" means:

5
6 (A) Any elementary school, high school,
7 secondary school, or postsecondary
8 school that is located in Arkansas and
9 receives state funds;

10
11 (B) Any other school or institution that is
12 located in Arkansas whose students or
13 teams compete in athletics, sports, or
14 other similar activities against an
15 entity covered by subdivision (A);

16
17 (C) Any entity that receives membership fees
18 or any other funds from an entity
19 covered by subdivisions (A), (B), or
20 both.

21
22 (2) (A) "Sex" means a person's immutable
23 biological sex as objectively determined by
24 anatomy and genetics existing at the time of
25 birth.

26
27 (B) A person's original birth certificate
28 may be relied upon to establish his or
29 her sex.

30
31 (C) A birth certificate amended pursuant to
32 Ark. Code Ann. § 20-18-307(d) must not
33 be relied upon to establish a person's
34 sex.

35
36 (d) Prohibition on members of the male sex from
37 athletics, sports, or other similar activities
38 designated for females, women, or girls.
39

1 (1) Any athletics, sports, or other similar
2 activities that are sponsored by a covered
3 entity must be expressly designated for one
4 of the following groups based on sex:

5
6 (A) males, men, or boys;

7
8 (B) females, women, or girls; or

9
10 (C) coed or mixed.

11
12 (2) Members of the male sex are prohibited
13 from athletics, sports, or other similar
14 activities designated pursuant to
15 subdivision (1) for females, women, or
16 girls.

17
18 (e) Enforcement.

19
20 (1) A person who, as a result of a violation
21 of this subchapter by a covered entity, is
22 deprived of an athletic opportunity or who
23 suffers any direct or indirect harm may
24 bring a cause of action for injunctive
25 relief, damages, attorneys' fees, and any
26 other relief available at law or in equity
27 against the covered entity and its
28 directors, officers, agents, and employees.

29
30 (2) A person who, as a result of reporting a
31 violation of this subchapter, is subject to
32 retaliation or other adverse action by a
33 covered entity or its directors, officers,
34 agents, and employees may bring a cause of
35 action for injunctive relief, damages,
36 attorneys' fees, and any other relief
37 available at law or in equity against the
38 covered entity and its directors, officers,
39 agents, and employees.

1 (3) A school that, as a result of a violation
2 of this subchapter by a covered entity,
3 suffers any direct or indirect harm may
4 bring a cause of action for injunctive
5 relief, damages, attorneys' fees, and any
6 other relief available at law or in equity
7 against the covered entity and its
8 directors, officers, agents, and employees.

9
10 (4) The Attorney General may bring a cause of
11 action for injunctive relief and any other
12 relief available at law or in equity against
13 a covered entity that violates this
14 subchapter and its directors, officers,
15 agents, and employees.

16
17 (f) Penalty for violations by certain covered
18 entities.

19
20 (1) Except as provided in subdivision (2), a
21 court that finds a covered entity has
22 violated this subchapter must, in addition
23 to awarding any relief pursuant to
24 subsection (e), enter an injunction barring
25 the covered entity from receiving funds from
26 any public source, including membership fees
27 from a school, for a period of one year.

28
29 (2) Subdivision (1) does not apply to a
30 covered entity that is an elementary school,
31 high school, secondary school, or
32 postsecondary school that is located in
33 Arkansas and receives state funds.

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36 SECTION 2. DO NOT CODIFY. SEVERABILITY CLAUSE.

37 If any provision of this act or the application of
38 this act to any person or circumstance is held invalid,
39 the invalidity shall not affect other provisions or
40 applications of this act that can be given effect

Stricken language would be deleted from and underlined language would be added to present law.

1 without the invalid provision or application, and to
2 this end, the provisions of this act are declared
3 severable.

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