HOUSE BILL NO. 112

INTRODUCED BY J. FULLER

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE "SAVE WOMEN'S SPORTS ACT"; REQUIRING
PUBLIC SCHOOL ATHLETIC TEAMS TO BE DESIGNATED BASED ON BIOLOGICAL SEX; PROVIDING
CERTAIN PROTECTIONS FOR EDUCATIONAL INSTITUTIONS; PROVIDING A CAUSE OF ACTION FOR
CERTAIN VIOLATIONS OF THE ACT; PROVIDING FOR CONTINGENT VOIDNESS; AND PROVIDING AN
EFFECTIVE DATE."

WHEREAS, 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 contracts on an individual's opportunity" United States v. Virginia, 518 U.S. 515, 533 (1996); and
WHEREAS, these "inherent differences" range from chromosomal and hormonal differences to
physiological differences; and
WHEREAS, 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 haemoglobin" Neel Burton, The
Battle of the Sexes, Psychology Today (July 2, 2012); and
WHEREAS, men have a higher natural level 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, 80 Law and Contemporary Problems 63, 74 (2017) (quoting Gina Kolata,
Men, Women, and Speed. 2 Words: Got Testosterone?, N.Y. Times (Aug. 21, 2008)); and
WHEREAS, the biological differences between males and females, especially as they relate to natural
levels of testosterone, "explain the male and female secondary sex characteristics which develop during
puberty and have life-long 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; and
WHEREAS, while classifications based on sex are generally disfavored, the United States 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); and

WHEREAS, one place in which sex classification allows for the "full development of the talent and
capacities of our Nation's people" is in the context of sports and athletics; and

WHEREAS, 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
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); and

WHEREAS, 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 male and female performances
remained stable, which "suggest[s] 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); and

WHEREAS, Duke Law professor and All-American track athlete Doriane Lambelet 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 Lambelet Coleman, et al., Pass the
Equality Act, But Don’t Abandon Title IX, Washington Post (Apr. 29, 2019); and

WHEREAS, having separate sex-specific teams furthers efforts to promote sex equality and 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.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
NEW SECTION. Section 1. Short title. [Sections 1 through 4] may be cited as the "Save Women's Sports Act".

NEW SECTION. Section 2. Designation of athletic teams. (1) Interscholastic, intercollegiate, intramural, or club athletic teams or sports that are sponsored by a public elementary or high school, a public institution of higher education, or any school or institution whose students or teams compete against a public school or institution of higher education must be expressly designated as one of the following based on biological sex:

(a) males, men, or boys;
(b) females, women, or girls; or
(c) coed or mixed.

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

NEW SECTION. Section 3. Protection for educational institutions. A government entity, a licensing or accrediting organization, or an athletic association or organization may not entertain a complaint, open an investigation, or take any other adverse action against a school or institution of higher education for maintaining separate interscholastic, intercollegiate, intramural, or club athletic teams or sports for students of the female sex.

NEW SECTION. Section 3. Cause of action. (1) A student who is deprived of an athletic opportunity or who suffers any direct or indirect harm as a result of a violation of [sections 1 through 4] may bring a cause of action for injunctive relief, damages, and any other relief available under law against the school or institution of higher education.

(2) A 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 [sections 1 through 4] 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 Montana may bring a cause of
action for injunctive relief, damages, and any other relief available under law against the school, institution, or
athletic association or organization.

(3) A school or institution of higher education that suffers any direct or indirect harm as a result of a
violation of [sections 1 through 4 3] may bring a 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.

NEW SECTION. Section 4. Codification instruction. [Sections 1 through 4 3] are intended to be
codified as an integral part of Title 20, chapter 7, and the provisions of Title 20, chapter 7, apply to [sections 1
through 4 3].

NEW SECTION. Section 5. Severability. If a part of [this act] is invalid, all valid parts that are
severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 6. Contingent voidness. [This act] is void on the date that the Office
for civil rights of the United States department of education issues a letter of impending enforcement
action 21 days after the date the United States secretary of education files a written report with the proper
committees of the United States house of representatives and the United States senate as required by 34 CFR
100.8(c) due to the enforcement of [this act].

NEW SECTION. Section 7. Effective date. [This act] is effective July 1, 2021.

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