



**Re: Alaska Senate Bill 140**

Alliance Defending Freedom (ADF) is the nation's leading 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, Idaho, and other states 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 140 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 males are not eligible to compete on female teams. It further protects a school or college 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.

- 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. That hurt female athletes like Chelsea Mitchell and Alanna Smith that ADF represents in a challenge to Connecticut's policy.
- 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.
- University of Pennsylvania swimmer Lia Thomas, a male who identifies as female, has been winning women's titles and breaking records since the fall, including an NCAA Championship this spring. Thomas jumped from #462 in the male division to #1 in the female rankings. In a recent letter, sixteen of Thomas's teammates spoke out about the unfairness of Thomas competing on the women's team. "Lia's inclusion with unfair biological advantages means that we have lost competitive opportunities. Some of us have lost records.... To be sidelined or beaten by someone competing with the strength, height, and lung capacity advantages that can only come with male puberty has been exceedingly difficult."

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 Declaration International, and Fair Play for Women, more and more women are making their voices heard on this crucial issue.

Scientific research continues to point to the necessity of policies that protect women's athletic opportunities by ensuring girls and women are not forced to compete against men. Evidence further shows that suppression of testosterone in a male after puberty does not substantially eliminate the male athletic advantage. One 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://bjsm.bmj.com/content/early/2020/11/06/bjsports-2020-102329>.

SB 140 has become more urgent than ever—especially for collegiate athletes—after the NCAA’s recent actions. Rather than standing with female athletes by adopting a policy that ensures fairness, the NCAA punted to a patchwork of national and international organizations—some of which allow male-bodied athletes to compete on women’s teams with no preconditions, and others of which have no policy at all. It is urgent for this body to set a clear, fair, and scientifically based policy to guide schools and colleges throughout the state and to guarantee equal opportunities for our daughters and granddaughters to participate and win.

Finally, SB 140 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.

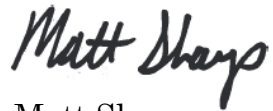
In the Supreme Court’s decision in the Virginia Military Institute (VMI) case where the court ruled that women must be permitted to attend VMI, Justice Ruth Bader Ginsburg wrote that once women were admitted to VMI, female students would “undoubtedly require” separate physical fitness standards, precisely because of the “physiological differences between male and female individuals.” *United States v. Virginia*, 518 U.S. 515, 533, 550 n. 19 (1996). It is for just this same reason that men and women “undoubtedly require” separate physical competitions—which is to say, athletics.

The 9th Circuit Court of Appeals upheld an Arizona policy that, like SB 140, merely said that males are not eligible to compete on female team. The court concluded that 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).

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 140, which ensures that all female athletes have a level playing field to compete and win.

A handwritten signature in black ink that reads "Matt Sharp". The script is fluid and cursive, with the first letters of "Matt" and "Sharp" being capitalized and prominent.

Matt Sharp  
Senior Counsel  
Alliance Defending Freedom