

“Having lived for the past 30 years,” Richards says, “I know if I’d had surgery at the age of 22, and then at 24 went on the tour, no genetic woman in the world would have been able to come close to me.”<sup>148</sup>

**What about natal males who take puberty blockers from an early age and, therefore, never experience male puberty?**<sup>149</sup> Would this intervention meaningfully reduce or eliminate the male athletic advantage? Unclear, particularly since not all male-female differences are testosterone driven and also because males experience some degree of heightened exposure to testosterone even prior to puberty—both in the womb and shortly after birth.<sup>150</sup> Indeed, Hilton reports that at least one study of males treated with puberty blockers as young as 12, followed by hormone treatment at 16, found that early intervention did *not* reduce height, lean body mass, or grip strength to age-matched female levels.<sup>151</sup>

## IV. WHAT’S THE HARM?

The inclusion of male-bodied athletes in women’s sports harms female athletes by: **(a)** decreasing the chances of female athletic success; **(b)** taking away roster spots, playing time, and potential scholarships from female athletes; and **(c)** (in some sports) increasing the chances of injury.

Supporters of inclusion often argue that, because the number of natal males seeking to compete in women’s sports is relatively small, the harm to natal females as a group is negligible.<sup>152</sup> But to the individual female athletes who lose to male-bodied athletes, the harm feels quite substantial. Moreover, even a small number of natal male athletes have the potential to deny numerous females opportunities to reach the podium.

For example, in just a few short years, two natal males, Terry Miller and Andraya Yearwood, set 17 Connecticut track meet records<sup>153</sup> and captured 15 women’s State Championship titles previously held by girls. **Chelsea Mitchell**, who ran for Canton High School in Connecticut, lost four state championships, two all-New England awards, and various other honors to Miller and/or Yearwood.<sup>154</sup>



Andraya Yearwood (L) and Terry Miller (R)

“That’s a devastating experience,” Mitchell wrote for USA Today in 2021. “It tells me that I’m not good enough; that my body isn’t good enough; and that no matter how hard I work, I am unlikely to succeed, because I’m a woman.”<sup>155</sup>

## The participation of even a small number of natal males in women’s sports has the potential to deny numerous female athletes repeated opportunities to win.

competitor was so devastating for one of her female athletes that the young woman “didn’t even want to run track for the rest of the season.”

“What was the point?” Monteleone recalls her athlete saying. “I trained so hard for my events and I have no chance of winning the conference championship.”<sup>156</sup>

Female college students have also lost numerous competitions to male-bodied athletes. During the 2019-20 school year, for example **Juniper (formerly Jonathan) Eastwood**<sup>157</sup> took away wins from multiple female competitors, including Southern Utah University sophomore **Haley Tanne**, who lost to Eastwood in the open mile, the distance mile medley, and the cross country Big Sky conference races.

“I just remember being so confused and not even knowing how to feel, just like, how is this happening?” Tanne told Independent Women’s Forum.<sup>158</sup>

The world of professional sport is also beginning to see natal males beat female athletes. **Rachel McKinnon**, a transgender athlete/natal male, who has lived under various names including Rhys<sup>159</sup> and now Veronica Ivy,<sup>160</sup> has taken cycling awards from numerous women, including **Dawn Orwick**, who would have earned Gold in the 2019 Masters Worlds sprint (35-39 age category), had McKinnon not taken that top spot.<sup>161</sup>

In some cases, the participation of male-bodied athletes in female sports is so demoralizing that it decreases the desire of girls and women to compete at all. Cynthia Monteleone, who coaches track and field, in addition to competing herself, said the prospect of racing against a male-bodied



PHOTO BY OLI SCARFF/AFP VIA GETTY IMAGES

When asked about her loss to transgender/natal male cyclist Jillian Bearden at the 2016 El Tour de Tucson,<sup>162</sup> third place finisher **Suzanne Sonye** remarked, “I feel bad about saying it but, no, I do not think it’s fair play and I question her integrity knowing that she’s going into these events knowing that she is going to be stronger.”<sup>163</sup>

As disappointing as it is for a female athlete to lose a competition to a male-bodied competitor, it is perhaps even more frustrating to lose the chance to compete at all. Yet, when natal males are selected for limited-roster teams or advanced to the next level of head-to-head competition, **female athletes lose opportunities to compete.**

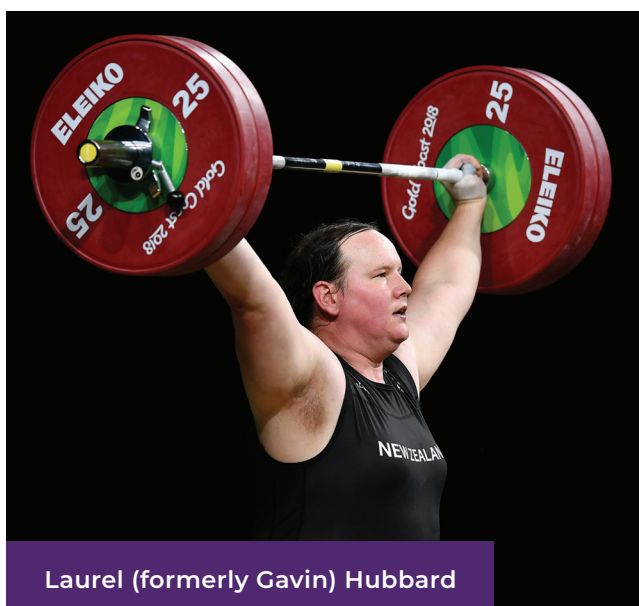


PHOTO BY DAN MULLAN VIA GETTY IMAGES

New Zealand Weightlifter **Laurel (formerly Gavin) Hubbard** made history as the first transgender athlete to compete in an individual event at the Tokyo Summer Olympics.<sup>164</sup> At the age of 45, Hubbard competed in the over-87-kilogram division, but finished last in the competition after being eliminated without registering a single lift.<sup>165</sup> But that does not make Hubbard’s selection less problematic—when the New Zealand team added Hubbard to its Olympic delegation, a female weightlifter lost a chance to compete in Tokyo.

According to Tasmanian Senator Claire Chandler, that weightlifter was **Roviel Detenamo**. “Eighteen-year-old Roviel Detenamo could have become the first woman in 20 years to qualify to represent Nauru at the Olympic Games,” Sen. Chandler said in August, 2021.

“She could have been in Tokyo proving that, if you have the talent and the work ethic, even a teenager from a nation of 12,000 people can make the Olympics and compete on the same stage as world champions from China and the USA. But we didn’t witness that, because Roviel was denied the opportunity to become an Olympian, one of the most celebrated and respected titles in the world.”<sup>166</sup>

Former New Zealand weightlifter **Tracey Lambrechts** understands this frustration all too well. Lambrechts held several New Zealand national records before

Hubbard began competing in the women's division. To avoid losing her spot on New Zealand's national team, Lambrechts lost nearly 40 pounds in three months and entered a different weight class. Ultimately, Lambrechts retired in response to how her league handled the matter.<sup>167</sup>

While Hubbard's participation in women's sports garnered international attention, it is easy to overlook similar outcomes at the high school level, which usually go unreported. In Maui, Hawaii, for example, when a natal male who had previously competed on the school's men's volleyball team joined the women's team, biological girls lost the opportunity to start for their team.<sup>168</sup> And in jurisdictions where males are allowed to compete on women's high school teams without male counterparts, males inevitably take varsity spots and playing time from girls. This, of course, directly undermines Title IX, the purpose of which is to increase opportunities for women and girls—not limit them.


**Male participation on limited roster teams inevitably takes spots and playing time from girls.**

In some sports, allowing natal males to compete with and against female athletes increases the chance of injury. For example, in her first fight as a woman, MMA fighter **Fallon Fox** fractured Tamikka Brents's orbital bone.

Not surprisingly, Brents said she felt "overwhelmed" in the fight by Fox's power.<sup>169</sup> At the high school level, injuries caused by natal males in women's sports are unlikely to be widely reported. Thus, while a teammate of the volleyball player from Hawaii reports that the natal male athlete injured at least one girl and caused a concussion in another, the mainstream press did not report the incidents.<sup>170</sup>

Because of the obvious potential for injury, **World Rugby** in October 2020 established a rule banning the participation of natal males on women's teams. After consulting with numerous experts from the fields of medicine, physiology, and psychology, as well as with players, transgender representatives, and rugby experts, the organization concluded that the "size, force- and power-producing advantages" that male-bodied individuals enjoy over female athletes translate into ***an unacceptable risk to player safety.***<sup>171</sup>

As World Rugby understands, the harm to female athletes isn't just hypothetical. It's real. Allowing male-bodied athletes to play with and against females transforms women's sport into co-ed sport, elevating the risk of injury and undermining equal opportunity for female athletes.



**“Coaches at the collegiate level are rewarded for winning, so these coaches will choose biological males in order to remain competitive in their conference. Where are the spaces for biological females then? What does this mean for equal opportunity for women?”**

CYNTHIA MONTELEONE

Team USA Masters Track Athlete, Coach, and Metabolic Practitioner

*Competed against transgender athlete Yanelle Del Mar Zape of Colombia while representing Team USA in the 2018 women's World Masters Athletics Championships in Málaga, Spain.*



***“When it comes to women’s sports, biology matters.”***

**INGA THOMPSON**

**10x National Champ, 3x Olympian, 3x World Medalist, 2x Podium Finisher in the Women’s Tour de France**

*Competed at the 1984, 1988, and 1992 Olympic Games.*

# CONCLUSION

Despite evidence that hormone therapy cannot eliminate the male-female performance gap, some supporters of transgender inclusion in women's athletics continue to insist that natal males who suppress their testosterone should be allowed to compete as women. Others, particularly those who support the participation of boys in sports such as field hockey and women's volleyball, do not deny the male athletic advantage, but simply argue that inclusion is more important than fairness.<sup>172</sup>

The fact remains, however, that (even at the high school level) the world of competitive sport is a zero-sum game where some athletes make the team and others do not; where someone wins and someone loses. And in a zero-sum competition, the inclusion of male-bodied athletes in women's sport inevitably means that females lose out.

In the short term, inclusion of natal males in women's sports hurts individual female athletes. But in the long run, the logic of allowing male participation in women's events and on women's teams could be used to eliminate sex-specific sport altogether.<sup>173</sup> As we approach the 50th anniversary of Title IX, we must resist calls for "inclusion" that result in the *exclusion* of any female athlete from competitive sport.

**Congress enacted Title IX  
to expand opportunities for  
women and girls, not limit them.**



***“[When it comes to competitive athletics,] sex segregation is the only way to achieve equality for girls and women.”***

MARTINA NAVRATILOVA  
Winner of 18 Grand Slam Tennis Singles Titles



# ENDNOTES

- 1 See Kelsey Bolar, *After Competing Against Transgender Athletes, Mom and Daughter Fight for Fairness in Women's Sports*, THE DAILY SIGNAL (June 15, 2021) (hereinafter *Fight for Fairness*), <https://www.dailysignal.com/2021/06/15/after-competing-against-transgender-athletes-mom-and-daughter-fight-for-fairness-in-womens-sports/>; see also Kelsey Bolar & Elizabeth Tew, *A Mom & Daughter Fight For Fairness In Women's Sports*, INDEPENDENT WOMEN'S FORUM (June 15, 2021), <https://www.iwf.org/2021/06/15/a-mom-daughter-fight-for-fairness-in-womens-sports/> (video).
- 2 20 U.S.C. § 1681(a).
- 3 See *Neal v. Bd. of Trs. of Cal. State Univ.*, 198 F.3d 763, 766 (9th Cir. 1999) (explaining that Title IX was designed to eliminate significant “discrimination against women in education”).
- 4 According to Senator Birch Bayh, one of Title IX’s primary sponsors, the statute promised women “an equal chance to attend the schools of their choice, to develop the skills they want, and to apply those skills with the knowledge that they will have a fair chance to secure the jobs of their choice with equal pay for work.” 118 Cong. Rec. 5808 (1972).
- 5 Pub. L. No. 93-380, § 844, 88 Stat. 484, 612 (1974) (hereinafter the Javits Amendment); see also *McCormick ex rel. McCormick v. Sch. Dist. of Mamaroneck*, 370 F.3d 275, 287 (2d Cir. 2004) (explaining the history of the Javits Amendment and the regulations promulgated thereunder).
- 6 34 C.F.R. § 106.41(b).
- 7 *Id.*; see also *O'Connor v. Bd. of Ed. of Sch. Dist. 23*, 449 U.S. 1301 (1980) (refusing to vacate a stay that prohibited a female student from trying out for the boys’ basketball team where the school also had a girls’ team).
- 8 34 C.F.R. § 106.41(b).
- 9 The Equal Protection Clause of the United States Constitution forbids arbitrary discrimination on the basis of sex, but it does not presumptively prohibit separation of the sexes in the same way that it forbids racial segregation. See *Craig v. Boren*, 429 U.S. 190 (1976) (outlining the “intermediate scrutiny” standard for sex-based classifications). The reason that courts scrutinize racial classifications more strictly than they scrutinize sex-based classifications is that biological sex differences sometimes provide relevant grounds for distinction, whereas racial classifications do not. By recognizing the inherent difference between race and sex, courts have carved out space to accommodate legitimate distinctions between males and females, while still prohibiting unjust discrimination. See e.g., Brief of Independent Women’s Law Center as Amicus Curiae, *Equal Means Equal v. Ferriero*, No. 20-1802 at 21-22 (U.S. Ct. App., 1st Cir. Feb. 2021), [https://www.iwf.org/wp-content/uploads/2021/02/EqualandEqual\\_vs\\_Ferriero\\_Amicus\\_Brief\\_of\\_IndependentWomensLawCenter.pdf](https://www.iwf.org/wp-content/uploads/2021/02/EqualandEqual_vs_Ferriero_Amicus_Brief_of_IndependentWomensLawCenter.pdf); see also Kim Forde-Mazrui, *Tradition as Justification: The Case of Opposite-Sex Marriage*, 78 U. CHI. L. REV. 281, 321 (2011) (noting that “‘real differences’ between the sexes make it more likely that there are legitimate reasons to differentiate on the basis of sex than on the basis of race”).
- 10 34 C.F.R. § 106.41(c) (emphasis added).
- 11 14 CFR § 1253.125(c) (“The obligation to comply with these Title IX regulations is not obviated or alleviated by any rule or regulation of any organization, club, athletic or other league, or association that would render any applicant or student ineligible to participate or limit the eligibility or participation of any applicant or student, on the basis of sex, in any education program or activity operated by a recipient and that receives Federal financial assistance.”).
- 12 Women’s Sports Found., *Title IX and the Rise of Female Athletes in America* (Sept. 2, 2016), <https://www.womenssportsfoundation.org/education/title-ix-and-the-rise-of-female-athletes-in-america/>; see also Fred Bowen, *Title IX Has Helped Encourage Many Girls To Play Sports*, WASH. POST (June 20, 2012) (in 1972, 295,000 girls and 3.67 million boys competed in high school sports; for the 2010-2011 academic year, 3.2 million high school girls and 4.5 million high school boys participated in school athletics).

- 13 Protect Title IX, *Title IX: History, Influence and More*, <https://www.protecttitleix.com/history-1> (last visited Aug. 11, 2021).
- 14 *Executive Summary: Sponsorship and Participation of NCAA Championship Sports (2019-2020)*, NCAA SPORTS SPONSORSHIP AND PARTICIPATION RATES DATABASE, <https://www.ncaa.org/about/resources/research/ncaa-sports-sponsorship-and-participation-rates-database>.
- 15 *United States at the 1972 München Summer Games*, SR/Olympic Sports, <https://web.archive.org/web/20200417043419/https://www.sports-reference.com/olympics/countries/USA/summer/1972/>.
- 16 Greg Myre, *U.S. Women Are The Biggest Winners At The Rio Olympics*, NPR (Aug. 21, 2016), <https://www.npr.org/sections/thetorch/2016/08/21/490818961/u-s-women-are-the-biggest-winners-in-rio-olympics>.
- 17 Steve Keating, *U.S. To Send Second Biggest Team Ever To Tokyo Games*, REUTERS (July 13, 2021), <https://www.reuters.com/lifestyle/sports/us-send-second-biggest-team-ever-tokyo-games-2021-07-13/>.
- 18 NATIONAL WOMEN'S LAW CENTER, *THE BATTLE FOR GENDER EQUITY IN ATHLETICS IN COLLEGES AND UNIVERSITIES*, Aug. 2011, [https://www.nwlc.org/sites/default/files/pdfs/2011\\_8\\_battle\\_in\\_college\\_athletics\\_final.pdf](https://www.nwlc.org/sites/default/files/pdfs/2011_8_battle_in_college_athletics_final.pdf).
- 19 *Number Of College Sport Scholarships Available In The United States In 2019/20, By Gender*, Statista (May 2020), <https://www.statista.com/statistics/1120037/college-sport-scholarships-by-gender/>.
- 20 Samantha Pell, *Girls Say Connecticut's Transgender Athlete Policy Violates Title IX, File Federal Complaint*, WASH. POST (June 19, 2019).
- 21 A guidance produced and distributed by the ACLU, GenderSpectrum, the Human Rights Campaign, the National Center for Lesbian Rights, and the National Education Association urges schools to permit male students to play on female athletic teams *even if they have not begun hormone therapy or taken any medical steps to alter their male physiology*. Asaf Orr, et al., *Schools In Transition: A Guide For Supporting Transgender Students In K-12 Schools* 29-29 (July 2016) (hereinafter *SCHOOLS IN TRANSITION*), <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/files/assets/resources/Schools-In-Transition.pdf?mtime=20200713142742&focal=none> (asserting that it is "inappropriate" for schools to require transgender students to begin any form of medical transition prior to participating in sports according to their gender identity).
- 22 NCAA, *Inclusion Of Transgender Student-athletes at 13*, August 2011, [https://ncaaorg.s3.amazonaws.com/inclusion/lgbtq/INC\\_TransgenderHandbook.pdf](https://ncaaorg.s3.amazonaws.com/inclusion/lgbtq/INC_TransgenderHandbook.pdf). The NCAA allows a female who is taking testosterone to compete on a men's team, but a female who is taking testosterone "is no longer eligible to compete on a women's team without changing that team status to a mixed team." *Id.*
- 23 Jo Yurcaba, *NCAA Backs Transgender Athletes, Says Events Will Be In Places 'Free Of Discrimination'*, NBCNEWS.com (Apr. 12, 2021), <https://www.nbcnews.com/feature/nbc-out/ncaa-backs-transgender-athletes-says-events-will-be-places-free-n1263879>.
- 24 IOC CONSENSUS MEETING ON SEX REASSIGNMENT AND HYPERANDROGENISM at 2, July 14, 2021 (hereinafter *IOC Consensus*) [https://stillmed.olympic.org/Documents/Commissions\\_PDFfiles/Medical\\_commission/2015-11\\_ioc\\_consensus\\_meeting\\_on\\_sex\\_reassignment\\_and\\_hyperandrogenism-en.pdf](https://stillmed.olympic.org/Documents/Commissions_PDFfiles/Medical_commission/2015-11_ioc_consensus_meeting_on_sex_reassignment_and_hyperandrogenism-en.pdf). The IOC allows athletes who transition from female to male to compete in the male category without restriction, meaning without undergoing medical transition. *Id.*
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- 27 590 U.S. \_\_\_, 140 S. Ct. 1731 (2020).

- 28 Federal Register Notice of Interpretation: Enforcement of Title IX of the Education Amendments of 1972 with Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of *Bockstock v Clayton County*, DOE (June 2021), <https://www2.ed.gov/about/offices/list/ocr/docs/202106-titleix-noi.pdf>; see also U.S. Department of Education, Press Release, U.S. Department of Education Confirms Title IX Protects Students from Discrimination Based on Sexual Orientation and Gender Identity (June 16, 2021), <https://www.ed.gov/news/press-releases/us-department-education-confirms-title-ix-protects-students-discrimination-based-sexual-orientation-and-gender-identity>.
- 29 See Jennifer C. Braceras & Kelsey Bolar, *Biden Administration's New Title IX Guidance Solidifies Threat To Girls' Sports*, INDEPENDENT WOMEN'S FORUM (June 17, 2021), <https://www.iwf.org/2021/06/17/biden-administrations-new-title-ix-guidance-solidifies-threat-to-girls-sports/> (explaining the impact of the new policy).
- 30 Equality Act, H.R. 5, 117th Cong. (as introduced in the House, Feb. 18, 2021).
- 31 See Inez F. Stepman, *The Equality Act Makes Women Unequal*, WALL STREET JOURNAL (Feb. 23, 2021) (explaining that the Equality Act would jeopardize myriad sex-specific programs, including women's prisons, domestic violence shelters, STEM education programs, and more).
- 32 See Doriane Coleman, Martina Navratilova, & Sanya Richards-Ross, *Pass The Equality Act, But Don't Abandon Title IX*, WASH. POST (Apr. 29, 2019) (hereinafter *Don't Abandon Title IX*).
- 33 See e.g., *Clark v. Arizona Interscholastic Ass'n* ("Clark I") 695 F.2d 1126 (9th Cir. 1982), cert. denied, 464 U.S. 818 (1983) and *Clark v. Arizona Interscholastic Ass'n*, 886 F.2d 1191 (9th Cir. 1989) ("Clark II") (rejecting claims of discrimination by a male high school student who was not allowed to compete for a place on the women's volleyball team where the school offered no men's team.)
- 34 See *Attorney Gen. v. Mass. Interscholastic Athletic Ass'n*, 378 Mass. 342 (1979) (relying on Mass. Const. art. I; Mass. Const. art. CVI in holding that the Massachusetts ERA prohibits the state athletic association from adopting a rule that "No boy may play on a girls team").
- 35 Tom Fargo, *Coalition Takes Field Hockey Concerns To The State House*, BOSTON HERALD (Jan. 23, 2020) (explaining the objection of various parents to boys playing on high school women's field hockey teams).
- 36 See Tommy Cassell, *Boys Just Want To Have Fun: Three Boys From Wayland High Teamed Up To Play Field Hockey This Fall*, MILFORD DAILY NEWS (Nov. 9, 2019); Buddy Thomas, *Playing Boys Puts Bullseye On Somerset Berkley Field Hockey*, SOUTHCOAST TODAY (Oct. 10, 2018); see also Shira Springer, *MIAA Must Draw A Line On Boys Playing Girls' Field Hockey*, BOSTON GLOBE (Nov. 27, 2015) (objecting to the Massachusetts policy).
- 37 *Bostock v. Clayton County*, 590 U.S. \_\_\_, 140 S. Ct. 1731, 1742 (2020).
- 38 The fact that the team is set up to be a single-sex team would, likely, provide no defense under a Title IX, which lacks any sort of Bona Fide Occupational Qualification (BFOQ) exemption for sex discrimination.
- 39 See Jennifer C. Braceras, *On Day One, Biden Eliminates Single Sex Sports*, INDEPENDENT WOMEN'S FORUM (Jan. 21, 2021), <https://www.iwf.org/2021/01/21/biden-eliminates-single-sex-sports/>.
- 40 *Id.*
- 41 See Nancy Leong, *Against Women's Sports*, 95 WASH. U. L. REV. 1249 (2018) (arguing that dividing athletes by sex should not be our default position); EILEEN MCDONAGH & LAURA PAPPANO, *PLAYING WITH THE BOYS: WHY SEPARATE IS NOT EQUAL IN SPORTS* (2008).
- 42 See Nancy Leong & Emily Bartlett, *Sex Segregation in Sport As A Public Health Issue*, 40 CARDOZO L. REV. 1813, 1816 (2019); ADRIENNE MILNER & JOMILLS BRADDOCK, *SEX SEGREGATION IN SPORTS: WHY SEPARATE IS NOT EQUAL* (2016).
- 43 Elizabeth Sharrow, *Five States Ban Transgender Girls From Girls' School Sports. But Segregating Sports By Sex Hurts All Girls*, WASH. POST (Apr. 16, 2021) (arguing that single-sex teams reinforce gender stereotypes and claiming that Title IX's endorsement of single-sex teams was intended to be "temporary"); see also Robin Ryle, *The Case of Transgender Athletes. Why Sports Aren't Fair and That's OK*, NEWSWEEK (Feb. 12, 2021) (arguing that "sports remain one of the last strongholds for the cult of gender differences" and suggesting that sex is not a meaningful category when it comes to competitive sport).

- 44 The 14th Amendment's Equal Protection Clause already prohibits discrimination against similarly-situated individuals. If we layer the Equal Rights Amendment on top of the existing Equal Protection mandate, courts are likely to interpret the new amendment as going further than current law and requiring that the government treat males and females not just equally, but the same. See Kim Forde-Mazrui, ***Why the Equal Rights Amendment Would Endanger Women's Equality: Lessons from Colorblind Constitutionalism***, 16 DUKE J. CONST. LAW & PUB. POL'Y 1, 22 (2021) (hereinafter *The ERA Would Endanger Women's Equality*) (explaining that courts would likely interpret the ERA as requiring the strictest of scrutiny for all sex-specific government policies and arguing, from a progressive standpoint, that this is bad for women); see also Inez Stepman, *Equal Rights Amendment Will Replace Equality With Enforced Sameness*, THE HILL (Jan. 17, 2020), <https://thehill.com/opinion/civil-rights/478765-equal-rights-amendment-will-replace-equality-with-enforced-sameness> (explaining, from a conservative perspective, the dangers of treating men and women the same in all circumstances).
- 45 See *The ERA Would Endanger Women's Equality*, supra n. 44 at 38 (explaining that the ERA would likely eliminate single-sex activities such as separate men's and women's sports).
- 46 See Jennifer C. Braceras, ***On The Anniversary Of Title IX, Are Women's Sports In Jeopardy?***, THE HILL (June 23, 2020).
- 47 Grimm v. Gloucester Cnty. Sch. Bd., 972 F.3d 586, 616 (4th Cir. 2020), *as amended* (Aug. 28, 2020), *reh'g en banc denied*, 976 F.3d 399 (4th Cir. 2020), *cert. denied*, No. 20-1163, 2021 U.S. LEXIS 3441 (U.S., June 28, 2021); Adams v. Sch. Bd. of St. Johns Cnty., 968 F.3d 1286, 1305 (11th Cir. 2020), *vacated*, No. 18-13592, 2021 U.S. App. LEXIS 20777, (11th Cir. Fla., July 14, 2021).
- 48 Protect Women's Sports Act of 2020, H.R. 8932, 116th Cong. (2019-2020).
- 49 *Id.*; see also Jennifer C. Braceras, *One Progressive's Attempt To Save Women's Sports*, INDEPENDENT WOMEN'S FORUM (Dec. 15, 2020), <https://www.iwf.org/2020/12/15/protect-womens-sports/> (describing the legislation and its objectives).
- 50 **Fairness in Women's Sports Act**, H.B. 500, 65th Leg., 2020 Second Reg. Sess. (Idaho 2020) ("Athletic teams or sports designated for females, women, or girls shall not be open to students of the male sex. 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.") The Idaho law applies to any sport or athletic team sponsored by a public school or college as well as any school that is a member of the Idaho high school activities association or any college that is a member of the national collegiate athletic association (NCAA), national association of intercollegiate athletics (NAIA), or national junior college athletic association (NJCAA). *Id.*
- 51 See Bianca Quilantan, ***This Isn't The Olympics': GOP Transgender Laws Head To Court***, POLITICO (July 3, 2021); Gillian R. Brassil, ***How Some States Are Moving to Restrict Transgender Women in Sports***, N.Y. TIMES (June 22, 2021) (as of June, 2021, at least 25 states have introduced bills banning male-bodied athletes from competing in women's sports).
- 52 See e.g., Hecox v. Little, 479 F. Supp. 3d 930 (D. Idaho 2020) (blocking enforcement of Idaho's law prohibiting natal males from participating in girls' sports ), *remanded by* Hecox v. Little, No. 20-35815, 2021 U.S. App. LEXIS 18903 (9th Cir., June 24, 2021); BPJ v. W.Va. State Bd. of Educ., No. 2:21-cv-00316 (D. W.Va., July 21, 2021) (temporarily enjoining West Virginia's law barring natal males from participating in girls' sports); D.N. v. DeSantis, No. 21-cv-61344 (S.D. Fla., June 29, 2021)(complaint filed); see also Quilantan, supra n. 51 (describing the lawsuits challenging state prohibitions on male-bodied athletes in female sport).
- 53 Tennessee v. Cardona, No. 3:21-cv-00308, (E.D. Tenn., Aug. 30, 2021)(complaint filed).
- 54 Were that the case, we would expect to see the male-female athletic gap continuing to narrow over time. In fact, over the last forty years, the gap has remained steady, despite increased opportunities and funding for women's sports. See CAROLE HOOVEN, T: THE STORY OF TESTOSTERONE: THE HORMONE THAT DOMINATES AND DIVIDES US at 107 (2021); Emma N. Hilton & Tommy R. Lundberg, ***Transgender Women in the Female Category of Sport: Perspectives on testosterone Suppression and Performance Advantage***, 51 SPORTS MED. 199, 201 (2021); Valérie Thibault, et al., ***Women and Men in Sport Performance: The Gender Gap Has Not Evolved Since 1983***, 9 J. SPORTS SCI. MED. 214 (2010).

- 55 *Don't Abandon Title IX, supra* n. 32 (“[t]he sex differential isn’t the result of boys and men having a male gender identity, more resources, better training or superior discipline. It’s because they have androgenized bodies”).
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**Questions about the report?**

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