

ALASKA STATE LEGISLATURE
SENATE EDUCATION STANDING COMMITTEE

April 6, 2022

9:08 a.m.

MEMBERS PRESENT

Senator Roger Holland, Chair
Senator Gary Stevens, Vice Chair
Senator Shelley Hughes
Senator Peter Micciche
Senator Tom Begich (via teleconference)

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 140

"An Act relating to school athletics, recreation, athletic teams, and sports."

- MOVED CSSB 140 (EDC) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 140

SHORT TITLE: DESIGNATE SEX FOR SCHOOL-SPONSORED SPORTS

SPONSOR(S): SENATOR(S) HUGHES

05/12/21	(S)	READ THE FIRST TIME - REFERRALS
05/12/21	(S)	EDC
03/03/22	(S)	EDC AT 10:00 AM BUTROVICH 205
03/03/22	(S)	Heard & Held
03/03/22	(S)	MINUTE (EDC)
03/12/22	(S)	EDC AT 10:00 AM BUTROVICH 205
03/12/22	(S)	Heard & Held
03/12/22	(S)	MINUTE (EDC)
04/06/22	(S)	EDC AT 9:00 AM BUTROVICH 205

WITNESS REGISTER

JENNIFER BRACERAS, Director
Independent Women's Law Center
Boston, Massachusetts

POSITION STATEMENT: Provided invited testimony in support of SB 140.

MATT SHARP, Senior Counsel
Alliance Defending Freedom
Atlanta, Georgia

POSITION STATEMENT: Provided invited testimony in support of SB 140.

LAUREN ADAMS, Legal Director
Women's Liberation Front (WOLF)
Madison Wisconsin

POSITION STATEMENT: Provided invited testimony in support of SB 140.

DANIEL PHELPS, Staff
Senator Shelley Hughes
Alaska State Legislature

POSITION STATEMENT: Presented amendments on behalf of the sponsor of SB 140.

ACTION NARRATIVE

[9:08:23 AM](#)

CHAIR ROGER HOLLAND called the Senate Education Standing Committee meeting to order at 9:08 a.m. Present at the call to order were Senators Hughes, Stevens, Begich (via teleconference), and Chair Holland. Senator Micciche arrived shortly thereafter.

SB 140-DESIGNATE SEX FOR SCHOOL-SPONSORED SPORTS

[9:09:17 AM](#)

CHAIR HOLLAND announced the consideration of SENATE BILL NO. 140 "An Act relating to school athletics, recreation, athletic teams, and sports."

[SB 140 was previously heard on 3/3/2022 and 3/12/2022.]

[9:09:39 AM](#)

SENATOR HUGHES, speaking as sponsor, stated that the spirit of SB 140 was rooted in Title IX, which prohibits discrimination based on sex in education programs and activities that receive federally funded assistance. She stated that SB 140 was designed to maintain the integrity of Title IX by protecting women and

girls in school athletic programs and allowing them to compete on an even-playing field against other women.

[9:10:30 AM](#)

SENATOR HUGHES noted that some had accused her bill of discriminating against individuals who may choose an identity differing from their biological sex. She stated that this is an unfounded allegation. She emphasized that SB 140 was neutral regarding gender identity. She said she accepts, values, and loves everyone, but the issue was not about acceptance but one of fair competition.

SENATOR HUGHES stated that school sports and athletic programs center around competition, and the ability of women and girls to compete was at risk due to male-bodied athletes being allowed to compete on women's and girl's teams across the country over a range of grade levels.

[9:11:10 AM](#)

SENATOR HUGHES stated that SB 140 would address this concern by basing women's or girls' team membership on the participant's biological sex found on their birth certificates that were issued at or near their birth. She noted that birth certificates were required for public school enrollment in Alaska. She clarified that this bill was not excluding anyone from participating in school sports. She explained that every student would have two options: 1) The student could participate on a team in alignment with their biological sex, or 2) the person could choose to participate on a coed team.

SENATOR HUGHES stated that she appreciated the suggestions members made. She highlighted that her office had prepared some amendments to address concerns and strengthen the bill. She indicated that she is confident that SB 140 would prove to be constitutionally sound. She characterized the invited testifiers as attorneys who were constitutional scholars familiar with Title IX.

SENATOR HUGHES stated that this bill was not about divisiveness or polarization. She said she heard from people from various political parties and genders.

[9:11:19 AM](#)

SENATOR MICCICHE joined the meeting.

[9:14:37 AM](#)

JENNIFER BRACERAS, Director, Independent Women's Law Center, Boston, Massachusetts, began invited testimony in support of SB 140. She stated that she was a former commissioner for the US Commission on Civil Rights.

MS. BRACERAS stated that 2022 marked the 50th anniversary of Title IX, a statute enacted to end discrimination in federally-funded programs and to expand educational opportunities for women and girls. She said Title IX is a federal nondiscrimination mandate prohibiting recipients of federal funds from discriminating based on their sex.

MS. BRACERAS stated that in 1972, society had a common understanding that sex was male and female. Title IX prohibited schools from implementing policies that favored members of one sex over the other. While Title IX requires schools to treat male and female students equally, the law did not prohibit the separation of the sexes for specific purposes, such as bathrooms and locker rooms. Early regulations explained how it would apply to school sports and included sex separation for competition. Schools may operate single-sex athletic teams so long as the policies provide equal athletic opportunities for members of both sexes. She elaborated that it does not mean that these opportunities must be identical, such as the same sports teams, but an equal number. Title IX's binary framework helped usher unprecedented athletic opportunities and achievements for women and girls.

[9:18:13 AM](#)

MS. BRACERAS indicated that this progress is at risk from biological men entering and competing in biologically women's sports. She noted that this included transgender athletes who identify as female and male. For example, many schools implemented field hockey and volleyball teams to add opportunities for women. Many schools do not offer male volleyball or field hockey teams. Some males have sought spots on female volleyball teams with varying degrees of success. She offered her view that this was removing opportunities for female athletes, displacing them, or in the case of Lia Thomas, [a transgender swimmer on the University of Pennsylvania swim team], taking away a chance to win.

[9:20:21 AM](#)

MS. BRACERAS stated that it was not about transgender politics, but it relates to fairness and equal opportunity for women in competitive sports.

[9:20:55 AM](#)

SENATOR MICCICHE recalled her stating that Title IX had nothing to do with sports although it identified some allowances for sports. He related his understanding that Title IX related to nondiscrimination. He asked how it came to be known as Title IX sports.

MS. BRACERAS responded that Title IX prohibits discrimination in all aspects of the educational experience, including sports. She explained that Title IX clearly covers sports because it doesn't exempt sports. Schools can't discriminate in terms of academics, only allowing girls to take home economics and boys to take wood shop. She highlighted that sports were treated differently because they involved biological differences. The statute forbids discrimination, but it doesn't mean teams must be separate.

[9:23:27 AM](#)

SENATOR MICCICHE asked for the outcome of any field hockey lawsuits.

MS. BRACERAS responded that it would depend on the state. She indicated that Massachusetts has a state Equal Rights Amendment. The courts have ruled that the state constitutional guarantee overrides Title IX, and schools must allow male athletes to play on female teams. She stated from her own experience that her daughter played against at least three teams with male participants. She related that in the Ninth Circuit Court of Appeals (Ninth Circuit) case [Clark v. Arizona Interscholastic Association], a boy sued to obtain a spot on a women's volleyball team. The Ninth Circuit determined he was ineligible, recognizing the physiological fact that males would have an undue advantage competing against women.

[9:25:27 AM](#)

SENATOR MICCICHE related his understanding that the only difference between the two states was that Massachusetts had a constitutional ERA, but Arizona did not have it.

MS. BRACERAS agreed. She explained that the ERA would prohibit discrimination and require full integration of the sexes in each arena. She stated that other states lack that provision, so it had not impacted women's sports similarly.

[9:26:20 AM](#)

CHAIR HOLLAND related his understanding that in Clark v. Arizona, a biological male wanted to compete as a male on the girls' volleyball team.

MS. BRACERAS responded that he was correct.

[9:26:31 AM](#)

SENATOR STEVENS offered his view that this was a controversial issue. Although he was sympathetic to people who were transitioning, he was also sympathetic that a male could displace a girl on their team. He asked whether Title IX addresses changing rooms or locker rooms.

MS. BRACERAS responded that if schools accept federal funding, the schools agree to abide by Title IX requirements.

[9:27:54 AM](#)

SENATOR STEVENS asked whether Title IX had impacted changing rooms in schools, hospitals, or prisons.

MS. BRACERAS responded that she could not address it specifically. She stated that it was never considered a violation of federal law to allow private spaces for men or women based on privacy, safety, or other relevant characteristics. She indicated that under Title IX, it would be discriminatory to favor one sex over the other. She indicated that as long as institutions provided bathrooms or changing spaces for both men and women, they would not treat members of either sex less favorably, so it was not considered discriminatory. She noted that Title IX does not change those considerations.

[9:30:17 AM](#)

SENATOR BEGICH surmised that she disagreed with the current administration's position in June 2021, which was that Title IX equates to gender identity.

MS. BRACERAS responded that sex does not mean the same thing as gender identity. She stated that Bostock v. Clayton applied only to Title VII, related to employment discrimination.

[9:31:07 AM](#)

SENATOR BEGICH stated that on June 16, 2022, the Biden administration interpreted sex under Title IX to equate to gender identity. He asked if she disagreed that that was the current state of play.

[9:31:37 AM](#)

MS. BRACERAS agreed that the Biden administration had interpreted it that way but had not yet issued regulations. She stated that US Presidents could not change the meaning of federal statutes by executive order. She said that for a department policy to have the force of law, it must be publicly noticed, allow for a comment period, and the department must promulgate regulations. She stated that it had not yet happened. She highlighted that any guidance from the administration was non-binding as a matter of law.

[9:32:12 AM](#)

SENATOR BEGICH asked whether she disagreed with the Biden administration's interpretation.

MS. BRACERAS answered yes, she disagreed with the interpretation.

[9:32:35 AM](#)

SENATOR BEGICH noted that she had described conflicts in Massachusetts and Arizona, so she recognized that states might have differences in constitutional protections and how they interpret Title IX.

MS. BRACERAS responded that it wasn't about different interpretations of Title IX; it was a conflict between state and federal regulations.

[9:33:37 AM](#)

SENATOR BEGICH explained that what he was speaking about was that SB 140 raised complex state constitutional and Title IX questions. He pointed out that different decisions between the Ninth Circuit and the US Supreme Court cases mentioned earlier were because of the differences in Arizona and Massachusetts' Constitutions.

[9:34:19 AM](#)

SENATOR BEGICH asked whether she was familiar with Alaska's Constitution and its protection for individual rights of privacy.

MS. BRACERAS answered that she did not have any expertise in Alaska Constitutional Law, but rather in federal constitutional and statutory civil rights law.

[9:35:05 AM](#)

MATT SHARP, Senior Counsel, Alliance Defending Freedom, Atlanta, Georgia, provided invited testimony on SB 140. He stated that one of the arguments the organization often hears is that laws like SB 140 would violate the Equal Protection Clause of the US Constitution, which guarantees that everyone receives equal protection under the law. However, the court cases looking at that issue, including binding Ninth Circuit precedent, have upheld that states can draw a distinction based on sex. For example, the US Supreme Court, *United States v. Virginia* [518 U.S. 515 (1996)], regarding Virginia Military Institute's policy of only admitting males. The court ruled that policy unconstitutional but recognized that the Equal Protection clause would allow for different housing facilities and physical standards students must meet. Other courts, including the Ninth Circuit Court of Appeals decision in *Clark v. Arizona*, have upheld policies for separate things based on physiological differences relevant to the sports context. For example, in the Ninth Circuit decision, men weren't allowed to compete in women's sports because of muscle mass and biological differences that would displace women. Arizona still allowed for equal opportunity but excluded males from female sports.

MR. SHARP said that SB 140 would say that males are not eligible to compete on female teams, which is consistent with the Equal Protection Clause and raises no concerns. In response to Senator Steven's questions about separate spaces for males and females under Title IX, he stated that Title IX allows for separate sports programs and provides separate toilets, locker rooms, and showers under 34 CFR 106.33. It would also allow for separate housing. He indicated that Title IX was written to allow states to have equal opportunities for women.

[9:38:45 AM](#)

LAUREN ADAMS, Legal Director, Women's Liberation Front (WOLF), Madison, Wisconsin, provided invited testimony on SB 140. She stated that WOLF was the largest radical feminist nonpartisan nonprofit agency. She said WOLF has over 1,000 members throughout the US, including in Alaska. She highlighted that nine states have had bipartisan support, passing bills similar to SB 140. She stated that WOLF had conducted national and statewide polling in red and blue states, which suggests that policies like this were supported by a majority of voters across the political spectrum. She offered her view that the public knows having only coed sports was unfair. Separate sports are permitted under Title IX because of the sex differences that are highly relevant to athletics. She noted that the only reason sports are separated was because of the physiological

differences and not because of race, ethnicity, sexual orientation, religion, or anything else, so gender identity should not be a factor for eligibility.

[9:40:30 AM](#)

MS. ADAMS stated that her organization promotes feminist values, so it deeply offensive to say that a female athlete's place on a girls' soccer team was contingent on how much she expresses femininity. She said to say that a male athlete who might embrace femininity and reject masculinity does not belong on a mens' or boys' team is not inclusive. Instead, schools should be focused on ensuring that male athletes are safe and welcome on teams that are open to their sex instead of asking female athletes to give up limited spaces available to them. She offered her view that it violates the Equal Protection Clause because the status quo is that there are single sex mens' teams, and coed teams. Thus, when these policies are enacted, women and girls are being deprived of single sex sports opportunities.

MS. ADAMS stated that when these athletes are forced to compete on coed teams, they are deprived of scholarships, medals, and records. She acknowledged that transgender athletes in the US have been publicized, including Lia Thomas, but one of the most striking examples was in Iran, where homosexuality is condemned by death, but sex-changes are state sponsored. She noted that eight members of the Iranian women's soccer team are biological males, thereby displacing eight female athletes.

[9:42:41 AM](#)

MS. ADAMS said that many polls, including Gallup, suggest that up to 20 percent of young people playing high school and college sports identify as transgender, nonbinary, or some other identity. She said it was very much a feature of the current generation not to be stuck with one label. She offered her belief that a single male athlete could repeatedly displace dozens of women or girls by winning the top slot repeatedly, displacing female athletes. She indicated that asking women to give up their spots wouldn't be fair.

[9:44:04 AM](#)

SENATOR BEGICH asked if she was aware that the Alaska School Activities Association (ASAA) has indicated on the record and in the press that there is no instance where a person in Alaska has been denied an opportunity for a scholarship or any other element on a sports team because of transgender sports.

MS. ADAMS responded that she was unaware that there were not instances in Alaska but had heard of instances elsewhere

[9:44:51 AM](#)

MS. ADAMS suggested if there was no displacement, there shouldn't be any issue putting it into law. If the argument is that it means that there might not be any athletic opportunities being realized for transgender athletes, then that should be the debate. As Ms. Braceras noted, this guidance by the Department of Education and possible rulemaking, will likely make it unavoidable that this will happen.

SENATOR BEGICH remarked that the reason for that not occurring is that it is not constitutional in the State of Alaska. He indicated that she had mentioned the Gallup poll and evidence about the Iranian soccer team. He requested that she provide that data to the committee.

[9:45:45 AM](#)

SENATOR MICCICHE noted that she used the term radical female liberation organization. He asked her what makes the Women's Liberation Front (WOLF) "radical."

[9:46:02 AM](#)

MS. ADAMS responded that radical refers to root feminism. The organization examines the sex-based oppression of women and girls, including exploiting reproductive, domestic, and sexual labor. She stated that WOLF opposes policies that take away rights from women-only spaces on teams but it also works against commercial sexual and reproduction exploitation in the multi-billion dollar pornography business, commercial surrogacy, and other forms of male violence. She said WOLF fights for the rights of lesbian and bisexual women disproportionately harmed by policies by allowing males into female-only spaces.

MS. ADAMS explained that radical doesn't mean fringe or extreme but was focused on the root cause of discrimination against women in this country and culture and why they are exploited in different ways. She surmised that the reason women are exploited was because women are physiologically and biologically different from men. For instance, the reason pregnancy discrimination is a form of sex discrimination was because only women can get pregnant and have babies. WOLF acknowledges that women can get pregnant, so they're the moms and are culturally expected to forego their careers. Radical feminism fights against that type of discrimination and works to protect women.

[9:48:03 AM](#)

MS. ADAMS noted that if people could identify as either sex, some women identifying as men would mean that men could get pregnant. This could potentially affect existing laws because sex discrimination couldn't occur if people could identify as either male or female.

[9:48:46 AM](#)

SENATOR MICCICHE stated that WOLF discussed gender abolition. He asked how gender abolition was defined and dovetails into this issue.

MS. ADAMS responded that the National Institute of Health (NIH) and the World Health Organization (WHO) defines sex by biology. She noted that some people view gender as a social construct, which means that any society creates gender roles. She stated that biological roles would be the roles someone would play if they chose to reproduce. However, society's expectations of behavior for women includes their dress, hair, and employment and education avenues open to people. She explained that gender-identity policies are an issue for WOLF because a gender identity or self-identity was typically defined as male, female, or not binary. She wondered how people can identify as something any more than a person could identify with a different body type than they have. Instead, the person would be identifying with the social role prescribed for women in this country, Iran, or other countries, which is a subordinate role.

MS. ADAMS highlighted that the reason to have women-only spaces was to protect them from violence, access to public life, and the ability to use public spaces. She pointed out that women fought for women's public bathrooms 100 years ago to have places to congregate outside the home. She offered her view that [policies that allow women to be displaced] feel like the US is going backward. Further, WOLF has a substantial lesbian and bisexual women membership, a demographic that some of these policies have very much harmed. Under Title IX, lesbian, gay, bisexual, transgender, and queer (LGBTQ) campus centers were telling college girls that they needed to accept opposite-sex partners because they were experiencing same-gender attraction, but not same-sex attraction. She expressed concern that a hetero-normative culture was being imposed on girls at a point when they are just beginning to accept themselves and be accepted for their sexual orientation. It can lead to young women going back in the closet because they don't want to admit they don't want to accept biological males as partners. She opined that these things feel very regressive.

[9:52:57 AM](#)

SENATOR STEVENS related his understanding that she had indicated that that one in five young people identify as transgender. However, in his experience, he did not find this to be true. He asked if she could provide more information on these statistics.

MS. ADAMS agreed to provide information to the committee. She stated that it wasn't that 20 percent identify as transgender, but that 80 percent identify as cisgender, which is a person who identifies with their birth sex. The remaining 20 percent identify as other genders, including nonbinary, gender queer, and gender fluid.

MS. ADAMS offered her belief that it was worth researching information de-transitioning and de-cisgendering. She stated that a large population, especially young people, identify as transgender for a period of time, but over time, they don't, which means they don't have a fixed identity. She indicated that many people advocating for certain policies tend to focus on a small population of young kids who had experienced persistent gender identities rather than on all gender identities. Some gender fluidity was due to experimentation, for instance, some boys don't want to be pigeonholed as masculine, and some girls don't like limitations or being defined by their sex. In society, gender-fluid young women are told that if they don't identify as female, then they must be nonbinary or transgender. Thus, people signal to those who had rejected these sex stereotypes that stereotypes define their sex.

[9:55:38 AM](#)

MS. ADAMS highlighted that these kids were also being medicalized. She indicated that the well-meaning policymakers, in an effort to compromise, suggest young people transition by taking puberty blockers and starting hormone therapy. She offered her belief that it was not a solution for those who had adopted a temporary identity. She offered to provide studies that show the long-term follow-up for gender fluidity, because those studies show that 10 years later many transgenders identify as gay or bisexual adults. Medicalization leads to irreversible changes in fertility and sexual function for a group, mainly LGB, which some people believe is a form of conversion therapy. She related the story of Kai Shappley, [featured in a docuseries "Trans in America" by the American Civil Liberties Union (ACLU)], whose conservative family doesn't accept that their male child by birth identified as a girl until the young child wanted to die. She said in Iran, a man who wants

to have a sexual relationship with another man is considered a degenerate. Still, a biological male who wants the same thing but identifies as a woman would be accepted in society. She characterized it as people who must fit into a specific box. She emphasized that these boxes existed and were being reinforced.

[9:58:21 AM](#)

SENATOR STEVENS expressed an interest in the data that showed that 20 percent of American youth identified themselves as transgender.

CHAIR HOLLAND acknowledged that he had heard the same statistics and requested that Ms. Adams provide documentation.

MS. ADAMS clarified that 20 percent referred to those identifying as transgender, nonbinary, or other identities. She offered to provide the statistics to the committee.

[9:59:48 AM](#)

CHAIR HOLLAND stated that Senator Begich commented that SB 140 was unconstitutional. He offered his belief that SB 140 was in compliance with Title IX.

[10:00:10 AM](#)

SENATOR BEGICH clarified that SB 140 was unconstitutional under Alaska's Constitution, which has stronger protections regarding the right to privacy and equal protection rights.

SENATOR HUGHES stated that she held a long discussion with Mr. Sharp on those issues. She deferred to Mr. Sharp to explain why SB 140 does not infringe on privacy rights or equal protection.

MR. SHARP related his understanding that Alaska mirrored how the federal courts have interpreted equal protection. He stated that his previous discussion of how the federal courts have interpreted the Equal Protection Clause holds true.

[10:01:30 AM](#)

MR. SHARP stated that he studied the Alaska Constitution's Right to Privacy provision. He related his understanding that it protects publicly disclosing private information. However, SB 140 would not require, permit, or allow any public disclosure of information about a student in violation of the privacy clause of the Alaska Constitution because it would all be done privately. Any student wanting to participate in sports would be subject to certain eligibility determinations. For example, questions at the collegiate level would include age and the

length of time competing. High school students seeking to compete would answer questions about which geographic district they live in, their age, and weight class for certain sports, including wrestling. He explained that SB 140 would add to the list of eligibility questions such that a biological male would not be able to compete on female teams.

[10:02:42 AM](#)

MR. SHARP maintained that the eligibility determination would be a private conversation, and the student would be told privately they were ineligible. He acknowledged that students would have the prerogative if they wanted to raise awareness or complain about it. The school would handle this the same way that student eligibility was determined for other sports.

SENATOR BEGICH responded by stating that the Alaska Supreme Court had opined on the Equal Protection Clause, explicitly stating that it was designed to be stronger than the equal protection provided by the US Constitution. Although he appreciated his comments, he pointed out that Mr. Sharp was not licensed to practice law in Alaska and had not made those arguments before the Alaska Supreme Court or other courts. He emphasized that the legal advice does not concur with his opinion and states the opposite. He said it begs the question of whether this bill should be referred to the Senate Judiciary Committee.

[10:04:26 AM](#)

SENATOR MICCICHE stated that it was a strange bedfellow bill. He related that SB 140 appeared to address a conservative concern. Yet, WOLF was unabashedly pro-choice, considering themselves radical in their approach, were teamed up with very conservative groups, such as Alliance Defending Freedom. He emphasized that he absolutely supports that biological males should not compete against biological females in Title IX sports. He wondered what Ms. Adams thought about the intersex condition regarding sports participation.

MS. ADAMS responded that she did not have a good answer for the medical aspect, noting that intersex was very rare. She said every single disorder or sexual development is sex-specific, such as having more masculine appearances than feminine ones. She offered her view that it was very apparent at puberty. She suggested not conflating that issue with another issue. She stated that sports were based on bodies and physical abilities.

[10:07:30 AM](#)

MS. ADAMS suggested that it was so rare that schools or school districts should have the flexibility to address cases on a case-by-case basis as they arise. She was unsure whether the Alaska School Activities Association, unaware of any transgender dominance cases in Alaska, was aware of discrimination against athletes with sexual development disorders. She offered her view that these people need compassion and that the state needed a curated solution that she doubted should be addressed at the legislative level.

SENATOR MICCICHE offered his view that it should not be life-defining for young people struggling with a medical anomaly. He wondered if ADA covered intersex issues. He acknowledged that while Alaska does not have a single case where a transgender athlete tried to compete on a female team, the legislature was acting proactively to address future transgender athletes. He viewed intersex as a potential issue that should be considered. He asked Mr. Sharp how other states were ensuring that young athletes without a clear male or female sex delineation sex were treated so they felt like they belonged and could feel successful.

[10:10:15 AM](#)

MR. SHARP responded that he completely agreed that any student born with an intersex or similar condition would be fully protected. He indicated that the Americans with Disabilities Act (ADA) explicitly covers those individuals in 42 USC 12211, which includes gender identity disorder based on physical impairment, chromosomal issues, or other developmental issues such as ambiguous reproductive anatomy. He clarified that it does not include someone who is self-identifying but who has those conditions. He stated that any student with such a condition would be entitled to full accommodations. He said any student with a medically-diagnosed intersex condition would receive full protection. He said the school and parents would work together to develop a plan similar to other individualized Education Programs (IEPs).

[10:12:38 AM](#)

SENATOR HUGHES moved to adopt Amendment 1 work order 32-LS0911\A.9.

32-LS0911\A.9
Marx
4/5/22

AMENDMENT 1

OFFERED IN THE SENATE
TO: SB 140

Page 1, following line 2:

Insert a new bill section to read:

"* Section 1. The uncodified law of the State of Alaska is amended by adding a new section to read:

LEGISLATIVE FINDINGS AND INTENT. (a) The legislature finds that

(1) maintaining fairness in athletic opportunities for women is an important state interest;

(2) requiring the designation of separate sex-specific athletic teams or sports is necessary to maintain fairness in athletic opportunities for women;

(3) significant biological and physiological differences between males and females, including greater strength, speed, and endurance capabilities among males on average, provide a competitive advantage to male athletes in sports; and

(4) having separate sex-specific teams furthers efforts to promote sex equality and that discrimination against women and girls in sports is counter to that effort.

(b) It is the intent of the legislature to preserve an even playing field in school athletic programs, to maintain opportunities for female athletes to demonstrate their strength, skills, and athletic abilities, and to provide female athletes with opportunities to obtain recognition and accolades, college scholarships, and the numerous other long-term benefits that result from participating and competing in athletic endeavors."

Page 1, line 3:

Delete "**Section 1**"

Insert "**Sec. 2**"

Renumber the following bill section accordingly.

[10:12:42 AM](#)

CHAIR HOLLAND objected for purposes of discussion.

[10:12:52 AM](#)

DANIEL PHELPS, Staff, Senator Shelley Hughes, Alaska State Legislature, on behalf of the sponsor, explained Amendment 1. He stated that although page 14 of the drafting manual typically advises against statements of purpose, it was helpful in this case because of some of the constitutional challenges raised.

MR. PHELPS stated that Amendment 1 would provide specific legislative intent and that the goal of SB 140 was fairness in athletic opportunities for women and girls.

[10:13:36 AM](#)

SENATOR BEGICH offered his view that it did not add to the bill. Second, he stated that legislative findings and intent are findings of fact. He directed attention to paragraphs 1 and 3. He expressed concern that it was demonstrating the fact that there had been a demonstrated unfairness in athletic opportunity, which clearly isn't the case. It defines how different sexes are but doesn't acknowledge that women have greater endurance for some sports, such as the Iditarod race. He questioned whether the findings and intent were factual. He stated that he intended to oppose Amendment 1.

[10:14:47 AM](#)

SENATOR HUGHES acknowledged that there would always be exceptions, but these were based on factual research presented in the first hearing.

[10:15:12 AM](#)

CHAIR HOLLAND stated that he appreciated the article "Transgender Women in the Female Category of Sport: Perspectives on Testosterone Suppression and Performance Advantage" by Emma N. Hilton and Tommy Lundberg. He related that the article indicated that even after eight years of hormone therapy, there was still an advantage of transgender females over females based on their biological male beginnings.

CHAIR HOLLAND noted that Senator Begich maintained his objection to Amendment 1.

[10:15:55 AM](#)

A roll call vote was taken. Senators Stevens, Hughes, Micciche, and Holland voted in favor of Amendment 1, and Senator Begich voted against it. Therefore, Amendment 1 was adopted on a 4:1 vote.

CHAIR HOLLAND announced that Amendment 1 was adopted on a vote of 4 yeas and 1 nay.

[10:16:26 AM](#)

SENATOR HUGHES moved to adopt Amendment 2, work order 32-LS0911\A.6.

32-LS0911\A.6

Marx

4/5/22

AMENDMENT 2

OFFERED IN THE SENATE

Page 1, line 14, following "sex":

Insert "as either female or male, as designated at the participant's birth. The biological sex listed on a participant's birth certificate may be relied on to establish the participant's biological sex designated at the participant's birth if the sex designated on the birth certificate was designated at or near the time of the participant's birth."

[10:16:30 AM](#)

CHAIR HOLLAND objected for discussion purposes.

[10:16:33 AM](#)

MR. PHELPS explained that Amendment 2 would provide a definition for biological sex.

[10:16:49 AM](#)

SENATOR MICCICHE asked what if the determination of birth was incorrect and as the child developed, the child was clearly a gender other than listed on the birth certificate.

[10:17:37 AM](#)

SENATOR HUGHES responded that the Americans with Disability Act (ADA) would accommodate the child. She offered her belief that sometimes it was difficult to confirm the baby's sex at birth visually.

[10:18:07 AM](#)

MR. SHARP suggested that it would likely be an individual with an intersex condition or a disorder of sexual development. ADA

would cover it, and their eligibility would be determined by their Individualized Education Plan or other accommodation necessary. He emphasized that Amendment 2 was meant to provide a default rule. For example, a student who had emigrated from another country might not have a birth certificate, or their birth certificate may have been amended. He explained that nothing would preclude schools from asking for additional evidence. For example, the school could say that because the student was missing their birth certificate, it would need a statement from the student's physician verifying their sex.

[10:19:33 AM](#)

SENATOR MICCICHE directed attention to the language in Amendment 1 [on line 5], which read, "... was designated at or near the time of the participant's birth." He related his understanding that the bill would allow the school to evaluate sex using different methods. He wondered if this definition locked in the child's gender at birth as a male or female.

[10:20:34 AM](#)

SENATOR HUGHES referred to line 3 of Amendment 2, which read, "may be relied on," allowing a physician's statement to be used.

[10:21:06 AM](#)

SENATOR BEGICH offered his view that "may be relied on" was not meant to provide an exception. He said he shared Senator Micciche's concern. He asked whether Legislative Legal Services provided advice regarding that interpretation.

[10:21:29 AM](#)

SENATOR HUGHES responded that Legislative Legal Services drafted it. She deferred to Mr. Phelps.

MR. PHELPS, on behalf of the sponsor, stated that Legislative Legal Services drafted Amendment 2, and he also had input from outside counsel. He explained that the intent behind "may" was that it was a "may" and not a "shall." Thus, the birth certificate may be relied upon, which would allow for another potential document or determination if there was a specific situation that merited it.

[10:22:27 AM](#)

SENATOR BEGICH wondered if Legislative Legal Services could answer whether the language in Amendment 2 would prohibit a student whose birth certificate erroneously identified the baby's sex at birth from being able to participate.

CHAIR HOLLAND answered that no one from Legislative Legal Services was available.

[10:22:47 AM](#)

SENATOR HUGHES stated that she was confident it would address Senators Micciche and Begich's concerns.

[10:23:13 AM](#)

CHAIR HOLLAND agreed.

[10:23:20 AM](#)

SENATOR BEGICH stated that he interpreted Amendment 2 to say that the birth certificate may be relied on if the sex designated on the birth certificate was designated at or near the time of the participant's birth. He offered his view that it would mean that it would not be relied upon if it came later. He said that is why he believes Amendment 2 is ambiguous.

[10:23:47 AM](#)

SENATOR MICCICHE agreed that was the same question he had at the beginning of this discussion. He offered his view that it did not seem to allow a birth certificate to be amended, which could lock in a biological male or female's sex incorrectly. He noted that Alaska has less conventional medical care available in some rural areas. He asked whether there could be an exception if the sex of the child turns out to be wrong and whether the birth certificate could be amended.

[10:25:40 AM](#)

MR. SHARP responded that he was not concerned. He explained that if a baby was assigned the wrong sex at birth, but through testing or other means, it was determined that the person's gender on their birth certificate was listed wrong, it would be covered under ADA. It would trump state law, and ADA provisions would determine their eligibility. He noted that several states currently allow individuals to change their birth certificates to reflect their gender identity without any medical diagnosis. He noted that this had resulted in some males being allowed to compete as females in sports.

[10:26:42 AM](#)

MR. SHARP related a scenario where a 13 or 14-year-old had their birth certificate amended to reflect their gender identity. If they insisted that they be allowed to compete on a female team [even though they are biologically a male], the amendment would require the school to refer to the sex assigned at or near the birth as shown on their birth certificate.

[10:27:00 AM](#)

MR. SHARP stated that Amendment 2 would inform schools that they could rely on the birth certificate as long as the sex listed on the birth certificate was designated at or near the time of the participant's birth. If the birth certificate was changed at a later date, this language would inform the school that it could not rely on the birth certificate, so the school would need further documentation, such as a signed affidavit from a physician or other evidence to verify their sex. He related that the bill provides flexibility because some schools require a sports physical that lists the student's sex, which a physician signs.

[10:28:28 AM](#)

SENATOR HUGHES related her understanding that Alaska allows some birth certificates to be amended. She said she was glad that in the rare instances of intersex, the students would be covered under ADA.

[10:29:03 AM](#)

CHAIR HOLLAND removed his objection.

[10:29:11 AM](#)

SENATOR BEGICH objected.

SENATOR BEGICH said that Amendment 2 would create legal ambiguity, so it should have a referral to the Senate Judiciary Committee.

[10:29:37 AM](#)

A roll call vote was taken. Senators Hughes, Micciche, Stevens, and Holland voted in favor of the motion to adopt Amendment 2, and Senator Begich voted against it. Therefore, Amendment 2 was adopted on a 4:1 vote.

[10:29:53 AM](#)

CHAIR HOLLAND announced that Amendment 2 was adopted on a 4:1 vote.

[10:30:04 AM](#)

SENATOR HUGHES moved to adopt Amendment 3, work order 32-LS0911\A.12.

32-LS0911\A.12
Marx
4/5/22

AMENDMENT 3

OFFERED IN THE SENATE
TO: SB 140

BY SENATOR HUGHES

Page 1, line 15, following "**protected.**":
Insert "(a)"

Page 2, lines 1 - 2:
Delete "consider a complaint, open an investigation, or"

Page 2, following line 3:
Insert new subsections to read:
" (b) A school or a school district may decline to consider a complaint brought against the school or school district for complying with AS 14.18.150.
 (c) Nothing in this section abrogates, restricts, or otherwise limits
 (1) the access of any person to a state or federal court; or
 (2) a person's right to bring in state or federal court a complaint or cause of action arising out of this section."

[10:30:08 AM](#)

CHAIR HOLLAND objected for discussion purposes.

[10:30:12 AM](#)

MR. PHELPS explained Amendment 3 would provide clarifying language to Sec. 14.18.160. He stated that this section intended to reduce the burden and expense for schools and school districts for costs associated with complaints for complying with the law. The sponsor expressed an interest in allowing school districts to make their own choices about responding to complaints. Amendment 3 would remove the restriction on consideration of such complaints and open an investigation for a complaint arising from this legislature. The bill would grant a school or district the power to decline to consider a complaint against them for complying with the law. He indicated that other language provides that nothing in this section would abrogate, restrict, or otherwise limit a person's access to the courts or their right to bring a cause of action arising out of this section.

[10:31:21 AM](#)

SENATOR BEGICH stated that he was uncertain whether Amendment 3 resolves the issue raised in a letter from Legislative Legal Services that he had provided to the committee dated March 2, 2022, from Marie Marx, Legislative Counsel.

SENATOR HUGHES responded that due process rights were discussed with Legislative Legal Services when drafting Amendment 3. She said she was confident that it does address the question raised.

[10:32:11 AM](#)

CHAIR HOLLAND stated he appreciated the sponsor's action on Amendment 3. He indicated his support for Amendment 3.

[10:32:16 AM](#)

CHAIR HOLLAND removed his objection.

SENATOR BEGICH stated he would not object to Amendment 3 but would seek a legal opinion on Amendment 3.

[10:32:36 AM](#)

CHAIR HOLLAND found no further objection, and Amendment 3 was adopted.

[10:32:51 AM](#)

SENATOR HUGHES moved to adopt Amendment 4, work order 32-LS0911\A.3.

32-LS0911\A.3
Marx
4/4/22

AMENDMENT 4

OFFERED IN THE SENATE
TO: SB 140

Page 2, following line 19:

Insert a new section to read:

"Sec. 14.18.180. Access to courts. Nothing in AS 14.18.150 - 14.18.190 abrogates, restricts, or otherwise limits

(1) the access of any person to a state or federal court; or

(2) a person's right to bring in state or federal court a complaint or cause of action arising out of AS 14.18.150 - 14.18.190."

Page 2, line 20:

Delete "**Sec. 14.18.180**"

Insert "**Sec. 14.18.190**"

Delete "AS 14.18.150 - 14.18.180"

Insert "AS 14.18.150 - 14.18.190"

[10:32:53 AM](#)

SENATOR HOLLAND objected for discussion purposes.

[10:32:55 AM](#)

MR. PHELPS, on behalf of the sponsor, explained that Amendment 4 pertains to court access. It makes a similar statement as the previous amendment. Still, it would apply to the entire bill, such that nothing in the bill would prevent a person's access to state or federal court or a person's right to bring a complaint or cause of action to a state or federal court arising from the bill.

[10:33:50 AM](#)

CHAIR HOLLAND removed his objection; he found no further objection, and Amendment 4 was adopted.

[10:34:11 AM](#)

SENATOR HUGHES clarified that Senator Micciche sought after and would offer Amendment 5.

[10:34:24 AM](#)

SENATOR MICCICHE moved to adopt Amendment 5, work order 32-LS0911\A.10.

32-LS0911\A.10

Marx

4/5/22

AMENDMENT 5

OFFERED IN THE SENATE
TO: SB 140

BY SENATOR HUGHES

Page 2, lines 6 - 7:

Delete "for injunctive relief, damages, and any other relief available under law"

Page 2, lines 12 - 13:

Delete "for injunctive relief, damages, and any other relief available under law"

Page 2, lines 16 - 17:

Delete "for injunctive relief

[10:34:29 AM](#)

CHAIR HOLLAND objected for discussion purposes.

[10:34:32 AM](#)

SENATOR MICCICHE explained Amendment 5. He stated that Sec. 14.18.170, relating to liability, provides a student the right to bring a private cause of action against a school. He said he thought the bill went too far by suggesting categories of action. Amendment 4 would remove the language "for injunctive relief, damages, and any other relief available under law" from all three sections.

[10:35:27 AM](#)

CHAIR HOLLAND removed his objection; he found no further objection, and Amendment 5 was adopted.

[10:35:43 AM](#)

SENATOR MICCICHE moved to adopt Amendment 6, work order 32-LS0911\A.11.

32-LS0911\A.11
Marx
4/5/22

AMENDMENT 6

OFFERED IN THE SENATE
TO: SB 140

BY SENATOR HUGHES

Page 2, following line 19:

Insert a new section to read:

"Sec. 14.18.180. Relationship to rights under federal law. AS 14.18.150 - 14.18.190 may not be construed to modify a person's rights under 20 U.S.C.

1400 - 1482 (Individuals with Disabilities Education Act), 29 U.S.C. 794, or 42 U.S.C. 12101 - 12213"

Page 2, line 20:

Delete "**Sec. 14.18.180**"

Insert "**Sec. 14.18.190**"

Delete "AS 14.18.150 - 14.18.180"

Insert "AS 14.18.150 - 14.18.190"

[10:36:14 AM](#)

CHAIR HOLLAND objected for discussion purposes.

[10:36:17 AM](#)

SENATOR MICCICHE explained Amendment 6. He said he wanted to clarify that there are cases of physiological issues associated with an intersex condition. He said he would like to support youth with this condition, which is beyond their control. He stated that nothing in the bill would modify a person's rights under the Individuals with Disabilities Education Act or ADA issues.

[10:37:00 AM](#)

CHAIR HOLLAND removed his objection; he found no further objection, and Amendment 6 was adopted.

[10:37:29 AM](#)

SENATOR STEVENS said he supports moving SB 140. He expressed concern that the bill did not receive a referral to the Senate Judiciary Committee. He stated that many of the issues are constitutional issues, which transcend the scope of the Senate Education Committee.

[10:38:56 AM](#)

SENATOR BEGICH agreed with Senator Stevens. He said he would do his best to ensure the bill gets a hearing in the Senate Judiciary Committee. He wondered if the sponsor was chasing a problem that doesn't exist, as Billy Strickland, the executive director for the Alaska School Activities Association (ASAA), had indicated. He said he was disappointed the committee spent so much time on this bill. Since he is participating via teleconference, he cannot vote on the motion to report it from the committee, but if so, he would oppose it.

[10:40:03 AM](#)

SENATOR MICCICHE stated that the committee dealt with many issues that would be considered judiciary issues. He said he

would have referred it to the Senate Judiciary Committee had he realized the constitutional issues that would be raised.

SENATOR MICCICHE emphasized that sports save lives, because many extracurricular activities provide youth with activities they love. He offered his view that the bill provides some protections or the committee highlighted that the protections were provided under federal law. He stated that his vote on SB 140 would be to separate and defend female sports from medically biological males from participating in them.

[10:42:00 AM](#)

SENATOR HUGHES offered her view the Senate Education Committee improved the bill by amending it to clarify and put to rest some constitutional issues. She highlighted that this issue has had a national conversation. She noted that 12 or 13 other states considering this issue only had one committee of referral. She reminded members that legislators take an oath to the constitution. She related that she had served on various committees, and constitutional issues arose. She noted that the invited testifying attorneys offered their views that this bill would withstand constitutional scrutiny and be upheld by the courts. In response to Senator Begich's concern that this bill doesn't address a current problem, legislators don't just fix problems but also prevent them.

SENATOR HUGHES stated that she wanted to assure the young girls and women who work hard in sports that they will continue to have what Title IX had afforded to women's sports. She said the bill wasn't about excluding anyone but was to ensure that all students have an opportunity to be included in a team aligned by their biological sex or a coed team. She offered her belief that delaying addressing this issue could erode girls' and women's sports.

[10:45:45 AM](#)

SENATOR STEVENS moved to report SB 140, work order 32-LS0911\A, as amended, from committee with individual recommendations and attached fiscal note(s).

CHAIR HOLLAND found no objection and CSSB 140(EDC) was reported from the Senate Education Standing Committee.

[10:46:27 AM](#)

There being no further business to come before the committee, Chair Holland adjourned the Senate Education Standing Committee meeting at 10:46 p.m.