

HB 1249

Rep. Ben Koppelman- Testimony

Madame Chairman and Members of the Committee,

Thank you for the opportunity to introduce HB 1298 to you today.

I introduced this bill to ensure that all students continue to have the opportunity to participate on a level playing field with their peers without having to compete with a member of the opposite sex that is likely to have physical and physiological advantages.

Many of you may have enjoyed watching your sisters, daughters or granddaughters participate in a sport like basketball, volleyball, track, softball, or dance. Many of you may also have watched them participate in other competitive events such as music, speech, debate, or chess league. They may have even been fortunate enough to receive a college scholarship based on that activity.

How many of you are aware that that opportunity may have been thanks to a change in education policy in 1972? Title IX of the federal education code says:

“No Person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

In sports, Title IX requires that boys and girls, men and women, have an equal opportunity to participate, but does not require institutions to offer identical sports. It also requires that scholarships and other resources be applied equitably.

Now, in order to understand what the intent was of this law, and how it applies, we need to first look at the definition of sex and how it differed from the definition of gender and what both terms meant in 1972. In order to put it in context, I have provided you the definition of both words in the Webster’s New World Dictionary--Second College Edition published in 1970, in which ***Sex is defined as: “either of the two divisions, male or female, into which persons, animals, or plants are divided with reference to their reproductive functions”***, and ***Gender is simply defined as: “sex”***. In Webster’s New Twentieth Century Dictionary—Second Edition published in 1979, the definitions are nearly identical.

Now that we have a context of what the term 'sex' meant when the Title IX law was written, let's explore why that term was used. It is commonly understood that there are physical and physiological traits that differ between the sexes, and in order to provide equal opportunity in activities, it was necessary to determine how to ensure fair competition. In activities that do not involve athletic or physical competition, there is probably little reason to separate boys and girls, however in sports, the differences become obvious.

Women are smaller in stature than men, the average 18-year-old woman is 64.4 inches tall and weighs 126.6 pounds compared to men at 70.2 inches tall and a weight of 144.8 pounds. Women's hearts are 25% smaller than men's and they also have less red blood cell percentage which doesn't allow their blood to carry as much oxygen. Their lung capacity is 30% less. They have 50% less upper body strength and 30% less lower body strength. A woman who is the same size as her male counterpart is only 80% as strong on average. Women have less bone mass and have less-durable ligaments than men. These differences consistently show up in the data.

According to a white-paper titled *"Comparing Athletic Performances—the Best Elite Women to Boys and Men"* (by Doriane Lambelet-Coleman and Wickliff Shreve), Males consistently outperform females of the same age and training by about 10-12% however it varies slightly by sport. In fact, boys under the age of 18 are even able to outperform elite adult women. For example, in 2017, the lifetime-best time record of 10.78 seconds for US Champion Tori Bowie in the 100-meter was beaten 15,000 times by men and boys. Elite runner, Allyson Felix's 400-meter lifetime-best time record of 49.26 seconds was also outperformed by more than 15,000 times by males in 2017. The authors of the paper go on to say: **"This differential isn't the result of boys and men having a male identity, more resources, better training, or superior discipline."** These statistical comparisons play out in a similar way in all the track and field events. Other sports also show the differentials.

As you can see, there was a scientific reason to use sex (as defined at the time as biological sex) as the delineating factor to ensure opportunity for girls and women. This has provided exponential opportunity for young women to shatter the glass ceiling that had previously been holding back their potential. Since Title IX was implemented in 1972, when the participation in High School sports was 295,000 girls compared to 3.7 million boys or 1 girl for every 12.5 boys the ratio has significantly

tightened to 3.4 million girls compared to 4.6 million boys, or 1 girl for every 1.35 boys. The statistical trend is similar in college sports.

Across the nation—states, schools, and athletic organizations have been trying to grapple with individuals who want to participate in a sport that is intended for the opposite sex. In some instances, they have been allowing play solely on the stated 'gender-identity' of the individual, to disastrous results. In Connecticut, a biological male, who reportedly has not 'transitioned' using female hormones at all, has consistently beat female opponents, and is one of two biological males to win multiple female events and shatter state female records in track. In other instances, there have been policies set in place that limit this sort of crossover play to individuals taking hormone therapies with some subjective medical finding such as the policy of the North Dakota High School Activities Association, which says:

NDHSAA Transgender Student Board Regulation

A transgender student will be defined as a student whose gender identity does not match the sex assigned to him or her at birth.

Any transgender student who is not taking hormone treatment related to gender transition may participate in a sex-separated interscholastic contest in accordance with the sex assigned to him or her at birth.

The following clarifies participation in sex-separated interscholastic contests of transgender students undergoing hormonal treatment for gender transition:

- A trans male (female to male) student who has undergone treatment with testosterone for gender transition may compete in a contest for boys but is no longer eligible to compete in a contest for girls.

- A trans female (male to female) student being treated with testosterone suppression medication for gender transition may continue to compete in a contest for boys but may not compete in a contest for girls.

Updated medical treatment and/or hormone therapy verification is required annually.

If a trans male or trans female student can show, from a medical perspective, that the student does not have a competitive advantage based on their testosterone treatment or prior physical development as a male, the student's

member school may submit a letter and medical evidence to the NDHSAA Executive Director. The Executive Director will then review, investigate, and render a decision. If the student disagrees with the Executive Director's decision, the student's member school may appeal to the NDHSAA Board of Directors for a final decision. (NDHSAA Board Approved: Nov. 2015, Revised Aug. 2022.)

However, these types of policies can not contemplate the full effects of puberty and stature, and there is no agreed upon science or medical research that shows with certainty that all male advantages could be neutralized with hormone treatment or what harm the long-term effects of such treatment might cause.

President Biden has issued guidance through an executive order suggesting that his administration should treat 'gender identity' as a way of defining 'sex'. Although presidential executive orders cannot change the law, they can cause pressure on states and schools to follow suit. If we were to define 'sex' in this way in North Dakota, it would have massive consequences on women of all ages in our state. **In addition to reduced opportunity and competitiveness for women in sports this change could reduce the number of women receiving scholarships intended for women in sports, STEM, music, and other career targeted scholarships.**

For consistency throughout the state, it needs to be the Legislature that defines this policy. Let's be clear, HB 1248 does not prohibit any student from participating in sports, but rather to the contrary. Just as has been the case for the past 50 years, this bill will ensure that ALL students have equal opportunity to participate in safe and fair environment with members of the same sex. If we choose to do nothing, we will by default be allowing those opportunities of our women to be lost or greatly reduced as society attempts to remove any reference to biological sex and replaces it with the social construct of self-identification. We will in essence be allowing the panels in the glass ceiling to be reconstructed and reinstalled over the heads of women in the name of feelings rather than science. As a husband, a father of a former female athlete, and soon a grandfather of a granddaughter that might someday choose to be a female athlete; I cannot sit back and let society strip away opportunity from women in our state.

Madame Chairman and Members of the Committee, I request that you give this bill a Do-Pass recommendation. I would be happy to answer any questions that you may have.