

HB 1489

Rep. Ben Koppelman- Testimony

Madame Chairman and Members of the Committee,

Thank you for the opportunity to introduce HB 1489 to you today.

This bill is the sister bill to HB1249. In the same way as HB1249 protects opportunities in female sports in K-12, this bill does the same in higher education.

Each year we spend a lot of money as a state supporting our state schools of higher education. Part of this college experience is the athletic opportunities that allow students to chase their athletic dreams.

I introduced this bill to ensure that all students 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.

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 outperformed by more than 15,000 times by males also 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, the participation in High School sports has gone from 295,000 girls compared with 3.7 million boys, and is now 3.4 million girls compared to 4.6 million boys. The statistical trend is similar in college sports.

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.

For consistency throughout the state, it needs to be the Legislature that defines this policy. Let's be clear, HB 1489 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. High school, college, amateur and professional female athletes all over the world, in many sports, are being dominated by biological males who compete as females. We must find a solution where women are not denied their rightful place on the podium. I believe that HB1249 and HB1489 are those solutions.

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 replace it with the social construct of self-identification. As a husband, a father of a former female athlete, and 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.