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United States Senate

COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

WARREN GUNNELS, MAJORITY STAFF DIRECTOR
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www.help.senate.gov

March 20, 2024

To: Members of the Senate Health, Education, Labor, and Pensions Committee
From: Ranking Member Bill Cassidy, M.D.
Date: March 20, 2024
Re: Investigation into the Biden Administration's Changes to Title IX and the Impact on Women in Sports

Dear Fellow Committee Members:

For approximately fifty years, Title IX of the Education Amendments of 1972 has served as the foundation for the protection of women in sports. However, the Biden Administration is working to undermine that foundation and has sought to rewrite the fundamental purpose of Title IX through agency guidance and the rulemaking process. States, colleges, and athletic governing bodies are also weakening Title IX by adopting policies consistent with liberal gender ideology.

At my direction, in June 2023, Committee staff initiated an investigation to examine the rollback of protections for women's sports by schools and athletic conferences and the impact of recent developments for women and girls. This work is ongoing. What follows is a mid-investigation summary outlining preliminary findings from this investigation and a description of ongoing oversight efforts.

I. HELP's Investigation and Interviews with Female Athletes

During the course of this investigation, staff have interviewed 43 individuals, many of whom have been impacted by the Biden Administration's decision to overhaul Title IX, including 16 female athletes, 10 parents, five industry experts, four coaches, four representatives from colleges and universities, two medical doctors, a psychologist, and a former federal official with experience enforcing Title IX matters. These interviews suggest a number of concerns stemming from policies that allow men to compete on women's teams including fairness, equality, freedom of speech, indoctrination, and retribution.

Many women interviewed for this investigation bravely gave staff permission to use their names when attributing testimonials. However, some did not grant permission for fear of retribution, retaliation, or public ridicule for sharing their opinions on men competing in women's sports. Out

of respect, and in order to protect their privacy and anonymity, these testimonials are presented as anonymous.

i. Fairness

Based on interviews and information collected for this investigation, female athletes, parents, coaches, and industry professionals overwhelmingly believe that it is unfair for men to compete in women's sports because men have a physiological advantage over women. When explaining their concerns, several drew a sharp distinction between their feelings toward people who identify as transgender generally and the fairness issue.

a. Abby Carr, Harvard University

Abby Carr, an athlete on the Harvard University women's swim team, said it is unfair for men to compete in women's sports, stating, "there is an inherent biological advantage to being born a man that doesn't disappear after transitioning." According to Carr, this view is widely held among her peers at Harvard, even among many who identify with the LGBTQ community. She also stated that "the opposition is smaller than people think. It's just very loud." She noted that the majority of the student body was apathetic on the issue and that one fellow student who has been particularly outspoken in support of LGBTQ issues told her that he did not agree with participation by athletes who identify as transgender on women's teams.

b. Female Athletes, Roanoke College

A female athlete on the women's swim team at Roanoke College in Salem, Virginia stated that, when an athlete who identified as transgender decided to join her team during the fall 2023 season, she and other athletes raised fairness concerns with college administrators and coaching staff. She made it clear that she did not want the athlete to leave the team and that a solution could have been for the athlete "to swim [during the competition] for the love of the sport," but "not score points or take records." She described this as a "middle ground" and a "solution where [the athlete who identified as transgender] didn't have to quit, but didn't take podium spots from us or any other women in the competition." In this situation, however, the athlete who identified as transgender chose to resign from the team before attending any competitions.

Another female athlete at Roanoke stated that, when the athlete who identified as transgender joined the school's swim team, "it felt unfair and demotivating . . . to even want to try" or "to want to swim better." She noted that one of the women on her team arranged to graduate early because of the issue, and most of the female athletes on the team considered sitting out of competition altogether if the male athlete was allowed to compete. Another athlete noted, "I watched him race" during a team practice and that "he was swimming times that half of us could never go." She explained, "[m]y eyes were locked on [the athlete that identified as transgender] the whole time, and I was thinking I don't even want to be here. Giving up became a pretty persistent thought."

According to a female athlete at Roanoke, on September 20, 2023, the team submitted a letter signed by sixteen of its seventeen female members to Curtis Campbell, the Director of Athletics at Roanoke College. A portion of that letter read as follows:

In addition to feeling manipulated and scared, we have also begun to lose all motivation to get into the pool after seeing her swim. She has blown us out of the water not only in fast paced sets, but also ones that are supposed to be smooth and relaxed. This may not make sense to people who have never swum competitively at this level, but that shouldn't take away from the fact that this is our reality. We have worked way too hard, some for close to fifteen years, in order to get where we are. Yet, we are watching it all go away for a biological man who "hasn't swam for over a year". For example, we had our first Saturday practice this past weekend and she was going times that most of our women's team goes either in season, shaved and tapered at conference, or not at all. Hearing the times that were shouted out for her after only one week of practice was completely demoralizing and disheartening. Giving up was the only thing we could think about from that moment on, however, we couldn't. We would like to emphasize that this has nothing to do with [REDACTED] as a human, but it has everything to do with the integrity of women's sports. Throughout history, women have struggled to break away from the chains of the patriarchy which prevented women from being able to experience the same opportunities as men. Women fought long and hard for people like the seventeen biological women on this team to be able to participate in sports at the collegiate level. Title IX was made to protect those opportunities for women in sports, so where is our support from that now? Instead of getting that support, we are being forced to go along with an agenda.

Our lives have been consumed by this issue. We cannot think about our classes as we sit in lectures, we cannot enjoy our practices when we see a biological male in a women's suit, and we can't even sleep because our minds are constantly racing, pondering the unknowns surrounding this one person. Even when we call home in hopes of talking about anything other than this, it gets brought up due to the concern of our families who have yet to be notified as to how the school is handling it.

To summarize our feelings, we do not think that having a biological male on the women's team is ethical or fair, especially for a sport as intense as swimming. We believe that there is more to think about than just ourselves. We have little sisters, cousins, and future daughters to think about. The amount of mental and emotional strife that this has put the

seventeen of us through is enough. The only way we are going to be satisfied is if transgender athletes compete in an open category with closer, more fair competition. If a man transitions to be a woman, then the only fair thing to do is stay in the male category simply because of biology. There is a reason that there are different categories for men and women, and it is time that people recognize that and fight for the biological women who put in work every day to be the best they can and compete fairly. It is unjust that we have had to sit here and wait for one person to make a decision that will affect our lives. We would like to know what will be done about this without any doubt as soon as possible.

Thank you for listening,

Roanoke College Women's Swim Team

Following the incident, in which the athlete who identified as transgender withdrew the request to swim on the women's team, Roanoke College issued a public statement blaming the National Collegiate Athletic Association (NCAA) for "creat[ing] confusing and contradictory guidance for schools to navigate . . . [which] puts student-athletes, coaches and college leaders in a difficult and uncertain position."¹

The Director of Athletics at Roanoke College refused an interview with Committee staff, stating that "[Roanoke College's] general counsel...instructed [him] not to have a conversation with [them] at this time." A college representative subsequently contacted Committee staff to further explain that the college was unable to answer questions due to an investigation by the Virginia Office of the Attorney General.

c. Raime Jones, Yale University

Raime Jones, a former member of the women's swimming team at Yale University (Yale) who competed against Lia Thomas, a male who swam on the University of Pennsylvania's (Penn) women's swimming team during the 2021-2022 season, told Committee staff that Thomas "didn't put in a full effort during the first 3/4 of a race" and remained "neck and neck" with the other female swimmers before ultimately moving out in front. She indicated that competing with Thomas was inherently unfair and disadvantaged the women participating in the competition. Jones was ultimately knocked out of advancing to an A-level final race in her competition by only one slot because Thomas took one of the top positions. She said she had to tell herself, "this doesn't reflect on me as an athlete. I can only do what I can do and put all I have into it."

¹ Press Release, Roanoke College Statement Regarding Transgender Student Participation in Athletics (Oct. 5, 2023), https://www.roanoke.edu/news/transgender_sports_statement.

d. Margot Kaczorowski, University of Pennsylvania

Margot Kaczorowski, a current member of the Penn swim team, put it this way: “when swimming against Lia Thomas, you knew you would lose. You could see Lia not trying, then start trying, then ultimately win.”

During the course of this investigation, Committee staff transmitted interview requests to an official at Penn’s Pottruck Center for Student-Athlete Success as well as the Head Coach for Swimming. Instead, a representative for the University’s Office of Government and Community Affairs contacted Committee staff and pointed to Penn Athletics’ statement on the issue, as well as a January 6, 2022, statement from the Ivy League.² In an e-mail, the representative noted that “both [statements] say that Penn was complying with the NCAA regulations on the issue” and that [t]he bottom line is that [Thomas] was eligible under NCAA rules at the time she was competing for the women’s swim team.” The representative further stated that the University did not “have anything to add beyond these statements.”

From: [Andresen, William G](#)
To: [REDACTED]
Subject: Penn Statement on Lia Thomas
Date: Tuesday, October 31, 2023 11:40:14 AM
Attachments: [Penn Athletics statement.png](#)

I wanted to circle back to you about your interest in Lia Thomas. I've attached Penn's statement on the issue and included below a link to the Ivy League's statement on the issue.

As you will see, both say that Penn was complying with the NCAA regulations on the issue. The bottom line is that she was eligible under NCAA rules at the time she was competing for the women's swim team.

We really don't have anything to add beyond these statements.

Thanks again for Sen. Cassidy's and your interest in this issue.

<https://ivyleague.com/news/2022/1/6/general-the-ivy-league-releases-statement-of-support-regarding-penns-lia-thomas-participation-in-womens-swimming-diving.aspx>



[The Ivy League Releases Statement of Support Regarding Penn's Lia Thomas' Participation In Women's Swimming & Diving](#)

PRINCETON, N.J. -- The Ivy League releases the following statement of support regarding Penn's Lia Thomas' participation on the women's swimming & diving team:

ivyleague.com

Bill Andresen
Associate Vice-President, Federal Affairs
Office of Government and Community Affairs

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

e. Lauren Lackman, Colorado Mesa University

Lauren Lackman, a female cyclist who competed against a male cyclist enrolled at Fort Lewis College in Durango, Colorado who self-selected into the female class, echoed the view that the male athlete wasn't trying. She explained that during a recent race, "it seemed like he almost wanted the satisfaction of being physically next to you. He was breathing through his nose, cruising along easily and keeping pace." However, she said, "as soon as you would sprint, he'd take off." She described this as an apparent "mental game" of racing against the women by pretending to be at their speed, then going faster whenever necessary to keep pace.

Lackman also said she felt that there was "no chance if he really wants to win that I'll beat him at the national." She went on to state, "I've wondered what's the point in even racing... I was very close to calling up my coach and skipping nationals. I didn't want the feeling of not having a shot and knowing that no matter how hard I train I'll never be the same biologically to him. It's really sad. I'm there because I want to race. I don't want to have to give that up because someone else wants an easy win."

Travis Whipple, the Director of Athletics at Fort Lewis College, stressed that cycling is a club sport and that the college adheres to the athlete participation policies set by the sport's governing body, USA Cycling. However, Lackman expressed frustration about the manner in which USA Cycling has responded to her concerns about fairness. After she and her fellow teammates wrote emotional, impassioned e-mails to the governing body expressing their views, they received only formulaic and impersonal letters in response.

On September 4, 2023, Lackman expressed her concerns in an e-mail to several USA Cycling officials. On September 5, 2023, Technical Director Bonnie Walker responded on behalf of USA Cycling.³

From: <[REDACTED]>
Subject: Transgender Grievance
Date: September 4, 2023 at 9:38:24 PM CDT
To: "Kelsey Erickson" <[REDACTED]@usacycling.org>, <[REDACTED]@usacycling.org>, <[REDACTED]@usacycling.org>

To whom it may concern,

My name is Lauren Lackman, I am an elite level cyclist competing in the Rocky Mountain collegiate conference. I am emailing (I could not find the forms on USAC website) you to file a grievance I have on the eligibility of Kylie Small to compete in the women's category at Collegiate mountain bike nationals. I am in my final year of college and was excited to start off my last collegiate mountain bike season with big goals and the hopes of seeing years of training and preparation pay off. Unfortunately for me this past weekend at the first RMCC conference race at Powderhorn resort, I had to race with a biological male. To say it was heart breaking is an understatement. I have trained and raced at the elite level for several years and have continued to fight hard for my goals, but racing against someone born with a major physiological advantages is beyond discouraging.

³ E-mail correspondence on file with Committee staff.

I have no hate for anyone in my heart but I do not believe that Kylie Small USAC Lic. # [REDACTED] (formally known as Kyle Small) should not be allowed to compete with biological Females at collegiate nationals. It is not fair to every person born a female to have to give up on everything they have worked for and watch and a seemingly unbeatable biological man take a podium position away. Kylie Small raced as Kyle Small less than 6 months ago in a high level cyclocross race proving my point that it is unfair for her to be able to compete in the women's category in collegiate. There is no shame in losing to someone who has earned the win but getting a deserved position taken do to the unfair advantage of an individuals birth gender is something I never thought id have to deal with. The team relay is a very important event for me at the collegiate mountain bike nationals and to go 1 against a team with 3 biological men is deeply crushing. I plead you to think about the impact of letting Kylie Small race at nationals against biological women.

Thank you for your consideration,

Lauren Lackman

Sent: Tuesday, September 5, 2023 1:41 PM

To: [REDACTED] <[REDACTED]>

Cc: Nat Ross <[REDACTED]@usacycling.org>

Subject: Re: Transgender Grievance

Hi Lauren,

Thanks for reaching out to us with your concern.

Our current policy for transgender athletes may be found in [USA Cycling's Policy VII](#) located below. Collegiate races and categories fall under the non-elite competition section in our Policy.

Non-Elite Competition

At non-elite competition levels, a member may self-select their gender. Members who transition to a gender different from their gender on file with USA Cycling should contact USA Cycling to be placed in a class and category appropriate for that person's racing resume and experience. Members will be subject to the mandatory upgrade policy, and USA Cycling may re-categorize a member based on results achieved after a change in gender identity. This policy may be used to either downgrade a member who is not able to compete in a higher category, or to upgrade a member who shows exceptional results in a given category outside of normal upgrade regulations.

In the event that a question should arise about a member's eligibility to participate in a manner consistent with their gender, any member may file a grievance with USA Cycling following the procedures described in [USA Cycling's Policy III](#). In such a situation, criteria that may be used to determine a member's eligibility in a chosen gender include evidence of one or more of the following:

- Does the member's gender in their "everyday life" match their specified racing gender?*
- Has the member obtained civil documents with their racing gender identified (i.e. state I.D., driver's license, birth certificate)?*
- Attestation of gender identity from a medical professional.*
- Attestation of gender identity from a certified counselor, public official, school administrator, or other academic advisor.*
- Compliance with UCI guidelines (below).*

Regards,
Bonnie



BONNIE WALKER | Technical Director
USA Cycling

M: [REDACTED] | E: [REDACTED]@usacycling.org

210 USA Cycling Point Suite 100 | Colorado Springs, CO 80919

f. Female Swimmer

A female swimmer who recently placed second in a race during the Fall 2023 season against Ramapo College swimmer Meghan Cortez-Fields, a biological male, noted that there was “tension because there was no cheering going on” at the event she attended and that Ramapo College “wasn’t that excited” for Cortez-Fields to win. She explained that she was “very frustrated” when she lost the race because she trained hard and felt she should have won. She also stated, “after the event, a lot of my teammates came up to me saying I was the one who won . . . they disagree with how a male is swimming in our category.” Regarding her personal views on the matter, the athlete noted, “[i]f you decide to switch genders, that’s good for you, but I don’t believe you can do it in a sport. We’re built differently. Females aren’t as strong as males.”

Lisa Ambrose, the director of communications and public relations at Ramapo College, reportedly justified the school’s decision to allow Cortez-Fields to compete, citing NCAA guidelines.⁴ Ambrose reportedly stated, “[w]e are an affiliate member of the NCAA. We are in compliance [with their rules]. We have done everything the NCAA says needs to be done regarding trans athletes competing on the team. All of the steps were taken, and documentation was provided for approval of Meghan’s participation.”⁵

ii. Equality in Women’s Sports

Many female athletes interviewed for this investigation believe that the needs and concerns of women are being subordinated and marginalized relative to men.

a. Female Athletes, University of Pennsylvania

Two members of Penn’s women’s swimming team told Committee staff that they felt the university prioritized Lia Thomas’s needs over their own. Former Penn swimmer Paula Scanlan told Committee staff that there was no formal notice to female athletes that Thomas would be using the women’s locker room. Her teammate, Margot Kaczorowski, also told Committee staff that Thomas changed in the locker room every day before and after practice and showered with the other women on the team. The situation made many of the teammates uncomfortable. Kaczorowski explained, “I don’t understand people who can’t seem to fathom the impact on women. How depressed and burdened we felt. The damper this put on us. We were told our rights didn’t matter anymore because the rights of a man mattered more. Our voices as women were completely silenced. If we wanted privacy and safety and equality, then we were bigots. This has roots in misogyny, and allowing this to go on is misogynistic.” She also expressed extreme frustration that government officials have not done enough to stand up for women on this issue. She stated, “they are not upholding our rights. This goes against Title IX, and we still do not have justice.”

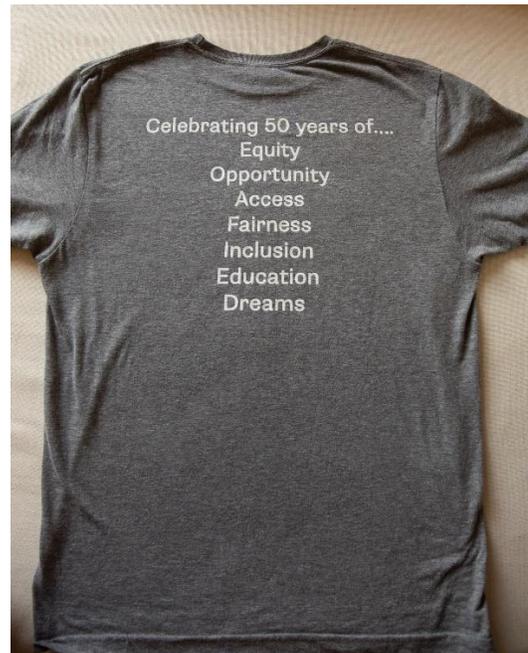
⁴ Amanda Wallace, *Ramapo College faces controversy, threats after transgender swimmer breaks school record* NORTHJERSEY.COM (Nov. 22, 2023), <https://www.northjersey.com/story/sports/college/2023/11/22/ramapo-college-faces-controversy-regarding-a-transgender-swimmer/7167754007/>

⁵ *Id.*

b. Kylee Alons, North Carolina (NC) State

Former NC State Swimmer Kylee Alons said that, during the 2021-2022 season, she had many conversations about what was happening at Penn with other female athletes. She said that as a group, female athletes felt very insulted that it was even a possibility for a male to compete as a woman. She described it as “insulting and degrading to be required to race [Lia Thomas] knowing biologically we are not the same.” With respect to the NCAA finals, Alons noted every event that Thomas entered took a spot from a female athlete who did not get invited to compete in that event.

Alons showed Committee staff a t-shirt that the NCAA gave to players at the championship event. The front reads, “NCAA Title IX Fiftieth Anniversary.” The back of the shirt reads, “Celebrating 50 years of . . . Equity, Opportunity, Access, Fairness, Inclusion, Education, Dreams.” Alons said she saw this as an affront, since the NCAA’s policies were not fair and curtailed opportunities for women athletes, in direct contradiction to the spirit of Title IX.



Alons also described it as “uncomfortable and violating” to be forced to change in the same locker room as a male athlete. “Who would be comfortable,” she asked, “changing in a room in front of the opposite sex?” She noted that the locker room situation is particularly uncomfortable for female swimmers, who must change into extremely tight-fitting swimsuits multiple times during a single competition. Alons confirmed press reports that she used the locker room at the NCAA Championship during the first day of the competition, covering herself with a towel to feel more

comfortable, after which she began changing in a dimly lit closet that offered total privacy.⁶ The closet that Alons used was also used by other female athletes at the competition for the same purpose. Alons further explained, “it makes you feel horrible as a woman to know that the NCAA didn’t care by making the locker rooms unisex.” At the time, Alons said she felt “powerless” and that she “couldn’t speak up publicly.” She stressed the importance of allowing the voices of women athletes to be heard.

c. Female swimmer

The female athlete who competed against Ramapo College swimmer Meghan Cortez-Fields, a biological male, noted that the “most uncomfortable thing” about the meet she attended was that it was used to film a documentary on Cortez-Fields and that other athletes who were participating in the event were filmed without their permission. She also noted that at the meet, Cortez-Fields was “in the locker room” with the other female athletes and that “[t]he most uncomfortable part of that was showering and [Cortez-Fields] being there, as well.”

d. Riley Gaines, University of Kentucky

Riley Gaines told Committee staff that women were never told at the 2022 NCAA Championship event that they would be sharing a locker room with a “fully intact biological male.” She said that when she found out, she “experienced feelings of betrayal” and “immediately left.” She then went up to an official on the pool deck to question the policy, and was told that the NCAA “got around the issue by making the locker rooms unisex.” Gaines noted that the prevailing attitude is that “if women feel uncomfortable with this, they should feel apologetic” and are “the ones who should seek counseling.”

Gaines alleges that the NCAA gave preferential treatment to Lia Thomas when Thomas tied Gaines for fifth place in the women’s 200 freestyle. An NCAA official told Gaines that there was only one trophy, that Thomas would be the one to hold it, and that the organization would mail Gaines a separate trophy, “end of story.” The official did not explain why Thomas, a male, was allowed to hold the trophy instead of Gaines, a female.

e. Female Athletes, Roanoke College

Female athletes on the women’s swim team at Roanoke College told Committee staff that they felt the college prioritized the concerns of the athlete that identified as transgender over the women on the team. One of the athletes noted, “it seemed like nobody outside of the team really cared about how the women’s team was dealing with the whole process. We weren’t offered any support with counseling, anything, until the very end.” She explained that “the coach said to have empathy for [the athlete who identified as transgender]. We all did and we understood it was something difficult for them, as well. But there was nobody saying to have empathy for us. There was no empathy for us. I don’t think I was ever asked by anyone in authority how I was doing or how I felt about the whole situation. The fact that they didn’t ask upset a lot of people.” According to the female athlete,

⁶ Ryan Gaydos, *NC State swim star Kylee Alons changed in storage closet during 2022 NCAA Championships: rep*, FOX NEWS (Jun. 22, 2023, 6:54 AM), <https://www.foxnews.com/sports/nc-state-swim-star-kylee-alons-changed-storage-closet-during-2022-ncaa-championships-rep>

only after the athlete who identified as transgender decided to leave the team did the school offer for team members to meet with a counselor. She noted that the team captains had a different experience because they frequently met with school administrators to discuss the situation.

iii. Freedom of Speech and Fear of Retribution

Based on interviews and information collected for this investigation, female athletes, parents, and coaches are fearful of speaking out against men competing against women in sports. Some individuals interviewed for this investigation wished to remain anonymous, fearing retribution by their friends, colleagues, school officials, and others.

Harvard athlete Abby Carr explained that “the greatest issue facing female athletes right now is that by speaking out, they’re risking their reputation . . . [t]hey are being told [by university personnel] that they won’t be able to work in finance or in corporate America if they go public about these issues. That’s why they’re deterred. They don’t want something labelled as ‘transphobic’ tied to their name forever.” Carr said that she was warned by a teaching fellow after she appeared at an event organized by the group, Moms for Liberty. The teaching fellow told her that she should “probably be wary that think tanks and research institutes will look at that and rule you out,” which made her panic.

Paula Scanlan, who competed on Penn’s swimming team, told Committee staff that university administrators did not tell athletes that they couldn’t speak to the media, but that they did say that students would “regret” doing so. Her teammate, Margot Kaczorowski, also shared that university officials warned students that they would “never get a job” if they spoke out in opposition to Lia Thomas’s placement on the team, also adding that the university’s warning “scared a lot of people.” She also noted that “[t]he majority of people on the team felt [Thomas’s placement] was wrong, but felt like they didn’t have a voice to speak up. They were afraid.” For example, Scanlan told Committee staff that she was invited to write a piece for the *Daily Pennsylvanian* about why she did not believe it was fair for Thomas to join the women’s team. Initially, the newspaper posted an edited version of her article, and then, after newspaper staff expressed opposition, the article was taken down completely. The editor told Scanlan that the staff had threatened to quit because Scanlan’s article was “transphobic” and that it created too much of a liability because the paper could not operate without staff. I have included the version of Scanlan’s article that was removed from the *Daily Pennsylvanian*’s website as an attachment to this letter.

Several athletes indicated that they have coaches and teammates who agree with their position who are afraid to speak out for fear of facing a backlash. NC State swimmer Kylee Alons put it this way: “I have compassion for the coaches. They are probably afraid to speak up and know that their jobs are on the line. There is nothing keeping the school from firing the coaches from a non-revenue generating sport.”

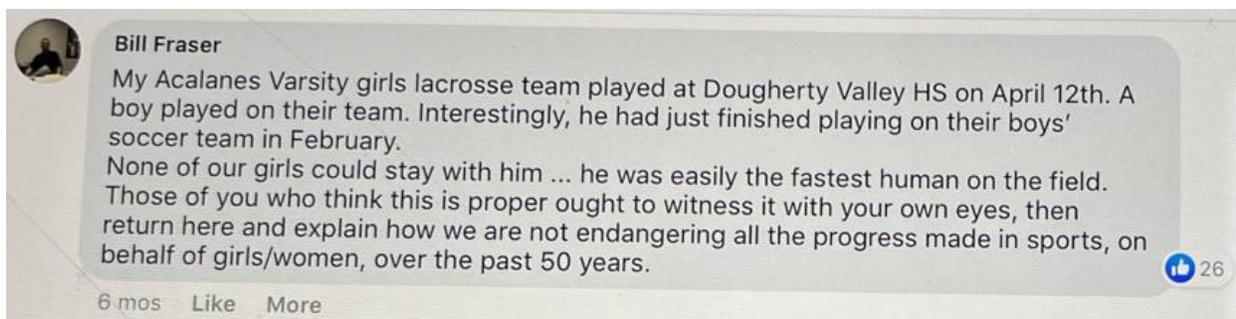
Riley Gaines described a case in which she attempted to schedule a booth at an athletic conference. During the event, many athletic directors walked up to her and said, “hey keep fighting, we agree with you.” However, when she asked them if they could say so publicly, most said no, that they were afraid of lawsuits, and quickly walked away. According to Gaines, even Mark Emmert, then-

President of the NCAA, walked up and encouraged the coalition of advocates to keep fighting. Gaines stressed that pressure exists not only for athletes, but also for coaches and athletic directors.

The athlete who placed second in a race against Meghan Cortez-Fields, a biological male, said she felt silenced as well. She noted, “we knew going into the event that we had to keep our opinions to ourselves because if we said something out loud, we could get bullied or yelled at for it.”

Raime Jones, a Yale swimmer, explained, “My teammates were hush hush about their feelings. People would whisper that it was unfair. They were absolutely petrified to make any complaint to their captain or coaches, and were afraid of social backlash from other teammates. We felt like nothing would change, and if we just got through this, things would be ok.” Margot Kaczorowski noted that her coach’s hands were also tied, though she didn’t indicate any awareness of how he felt personally about the matter. She explained, “If Mike [Schnur] had tried in any way to not let Lia Thomas swim, he would’ve been fired.”

Unfortunately, these fears are a reality for those who speak out. Two individuals who spoke with Committee staff were removed from their positions after speaking out publicly and in their personal capacity.⁷ Bill Fraser, a former volunteer football and lacrosse coach in California, was removed from all of his coaching assignments after speaking out in support of a friend in his personal capacity. According to Fraser, his friend wrote a post on Facebook saying she was disappointed that not a single Democrat had voted in favor of legislation supporting women and girls in sports. After writing the post, his friend was verbally attacked by others on social media, so Fraser stepped in to defend her, stating in a post on Facebook:



Fraser’s post was subsequently flagged at a school board meeting, and Fraser was called to a meeting with the principal of the school and a school district representative. At the meeting, he was told that he would not be coaching football or lacrosse anymore. The school officials refused to give a reason, telling Fraser, “sometimes it’s just time for a change.”

Kim Russell, the now-former head lacrosse coach at Oberlin College, was also removed from her position after sharing her support for women athletes on social media. Russell told Committee staff that, in Spring 2022, when Lia Thomas won the women’s 500 in swimming at the NCAA

⁷ Taylor Penley, *Oberlin College coach reassigned after trans athlete comments, says new role has ‘no contact with students’*, FOX NEWS (Sept. 13, 2023), <https://www.foxnews.com/media/oberlin-college-coach-reassigned-stance-trans-athletes-says-new-role-contact-students>.

Championship, Russell posted a note of congratulations on her Instagram account calling Olympic silver medalist Emma Weyant, who came in second, the real winner of the event.

Afterward, her post was sent by a player to the school's athletic director, who called Russell into a meeting and told her that she needed to apologize to her team. Russell refused to do so. She was then required to attend a meeting with the entire team, during which students were allowed to stand up and express their concerns about her. Russell said that certain students were vocal in their criticism, and when one student tried to speak up in Russell's defense, the student was shouted down.

According to Russell, as these events unfolded, the athletic director changed her tone, moving from an initial position of saying she wasn't sure how she felt personally to one of support for Lia Thomas, telling Russell, "Lia is so brave." Russell was eventually required to attend a second meeting with the team, the school's athletic director, and a Diversity Equity and Inclusion (DEI) coordinator, which Kim said felt like a "stoning" and "hanging" and in which students criticized Russell and Russell was asked by school administrators to repeat everything that students said to ensure that she heard it. Russell said that administrators also appeared to be looking for reasons to fire her, questioning the amount of time she spent on campus during the summer of 2022. Russell told Committee staff that the experience was challenging for her mentally. She was ultimately removed from her position as coach and offered an administrative position, which she told Committee staff that she refused.⁸

iv. Impact on High School Athletic Programs

Based on interviews and information collected for this investigation, the stress of competing against male athletes can also take a particularly heavy toll on high-school age girls.

a. Chelsea Mitchell, Canton High School, Connecticut

Christy Mitchell, mother of Chelsea Mitchell, explained that during her daughter's career as a Canton High School track and field athlete in Connecticut, Chelsea competed head to head with male athletes twenty-four times and lost "four state championship titles because boys came in first." Mitchell described the conditions that her daughter had to endure during this time as "pervasive, stressful, and demoralizing." In race after race, Chelsea had just a matter of seconds to prove she was the best, under conditions that weren't fair, and "had to keep doing this year after year, against male athletes." According to Mitchell, media celebrated the male athletes with national news features, courage awards and best female athlete designations. At the meets, reporters questioned whichever girl lost, asking whether she thought the race was fair. According to Christy, her daughter was told by her coach that she should not comment on the issue. Chelsea also had to contend with a documentary film crew following the athletes who identify as

⁸ Russell was removed for reasons over which the parties involved disagree. See Taylor Penley, *Oberlin College coach reassigned after trans athlete comments, says new role has 'no contact with students'*, FOX NEWS (Sept. 13, 2023), <https://www.foxnews.com/media/oberlin-college-coach-reassigned-stance-trans-athletes-says-new-role-contact-students>.

transgender at the state championship meet, intruding with their cameras in spaces normally reserved for athletes only.⁹

b. Russell Belden, Parent of a High School Athlete in Washington

Committee staff interviewed Russell Belden, the father of a high school cross country and track athlete in Washington State whose daughter was required to compete against two male athletes from other schools in 2023. According to Belden, one athlete initially competed as a male during his freshman year in high school, but switched to the girls' team after performing poorly.¹⁰ After changing to the girls' team, in 2022 the player "won league MVP" and helped his school qualify to attend state competition, which prevented Belden's daughter's school from qualifying.¹¹ Belden noted that while the student is not consistently winning in individual races, he is performing much better relative to the other female competitors, having moved from seventy-second place in the Emerald Sound Conference Championships 5,000 Meters Varsity in the men's division in 2021 to first place in the 5,000 Meters Varsity in the women's division in 2022. Had the athlete continued to compete in the men's division, his winning time in 2022 would have put him in forty-eighth place in the men's division.¹²

Belden explained that his daughter has been outspoken about the lack of fairness, and asked school administrators if she could protest by withdrawing from a race and making a small statement about fairness. She was told by her school that she couldn't do so. Instead, the girls from her school chose to run together as a pack at a recent race in silent protest. Belden said that the school's athletic director hasn't done anything about the situation and that the "greatest fear of the school is upsetting the Washington Interscholastic Activities Association, which has the ability to remove schools' ability to compete."

Recently, another male joined a team for an opposing school. That team won the competition. Regarding the views of school officials and other parents, Belden noted that, "socially everyone is terrified. Nobody wants to speak out about this." After Belden raised concerns publicly, a parent for an athlete on another team called him a "transphobe." His daughter was also called a "transphobe" by another runner when she complained about this.

c. Payton McNabb, Hiwassee Dam High School, North Carolina

Committee staff interviewed former North Carolina high school volleyball player Payton McNabb, whose experience was instrumental in leading to changes in state law relating to athletic participation. McNabb stated that when a male athlete came as part of a women's team for another school to compete, it was presented to students as a final decision that was not open for debate. She said that the male athlete was noticeably larger than the women at first glance and physically dominated the competition. During the match, McNabb was severely injured when the player spiked a ball in her direction, causing her to suffer a concussion and neck injury. The injury did

⁹ Chelsea Mitchell has been involved in litigation against the Connecticut Association of Schools relating to its transgender athlete participation policy. *See Soule v. Conn. Assoc. of Schools, Inc.*, 90 F.4th 34 (2d Cir. 2023).

¹⁰ Race statistics are on file with Committee staff.

¹¹ Race statistics are on file with Committee staff.

¹² Race statistics are on file with Committee staff.

more than end her career as an athlete. She told Committee staff that afterward, her grades dropped noticeably, and she was partially paralyzed on her right side. She also can no longer enjoy certain activities that she used to enjoy, including certain sports, tubing, and riding roller coasters.

d. Parent of a High School Athlete in Massachusetts

During the course of this investigation, Committee staff discovered a direct case of harassment involving Massachusetts youth in a private, free-standing rowing league whose policies are governed by USA Rowing. In Massachusetts and New England, competitive rowing occurs mainly via private leagues as it is too expensive for high schools to offer.¹³ According to a parent who spoke with Committee staff, a male athlete was allowed to join the women's varsity crew team, which caused many issues for the female athletes. The male athlete was also allowed to use the women's locker room in accordance with USA Rowing policy. The female athletes avoided using the locker room, but nonetheless a few months later, the male athlete was caught staring openly at one of the female athletes while she changed her clothes in the women's locker room and remarked, "oooh [REDACTED]!"¹⁴ When a female athlete nearby asked if it was the first time he had seen female breasts, the male responded, "uhh yeah" with a laugh. The male athlete was suspended for this incident.

e. Parent of a High School Athlete in California

Jarrod Jacobi, a parent in California, spoke with Committee staff about his daughter's experience on her high school's alpine ski racing team, where she competed in the state final for slalom. Jacobi noted that his daughter was initially unconcerned about the fact that a male competed and won her race, mentioning to him only in passing that the overall winner had been "trans." He said he had to explain to his daughter that the situation was unfair and that the male athlete had displaced her and other girls down the line. He stated, "kids are conditioned to be accepting or else" and that his "role as a parent and adult is to point out that it's wrong."

Jacobi reached out to his daughter's coaches, division athletic coordinator, and school superintendent, who unanimously told him they believe the California Interscholastic Federation (CIF) policy is wrong. He shared the attached e-mails from his local superintendent which noted that "a significant majority [in his California high school superintendent group] have significant reservations about biological males identifying as female and playing in high school competitive sports." California's policy, which Jacobi alleges is modeled on a similar policy in Washington State, allows students to self-select into either the male or female category. He reached out to the CIF Commissioner's office, which pointed to Title IX as a justification for its policy. Jacobi emphasized the irony of this during his interview with Committee staff, noting, "this is the very thing Title IX was created to guard against."

¹³ While some public schools offer rowing, children interested in pursuing the sport at a collegiate level or above often join private boathouses as these offer the most rigorous training, according to parents and students.

¹⁴ Redacted profanity.

v. Psychological Impact

The unfair performance advantage that male athletes who identify as transgender have over female athletes can have a significant psychological impact on the female athletes who face them in competition. During this investigation, Committee staff learned of several cases where female athletes considered withdrawing from competition altogether rather than compete against a man. Dr. Larry Maile, the President of USA Powerlifting and a clinical psychologist who works with mostly adolescent patients, some of whom identify as transgender, told Committee staff that it is “demoralizing for women to know that no matter how hard they train ... they can’t ever win.” He explained that from a psychological standpoint, “people like to believe that if they do everything right, they’re going to rise to the highest level that they can. When there’s a barrier to that, they can’t get there no matter what they do. All that work goes to waste, and it’s just discouraging.” When asked for his view on why some female athletes consider withdrawing from competition altogether rather than face an athlete who identifies as transgender, Dr. Maile explained, “sports are about realizing your potential, and if you know that you can’t, you may as well jog rather than run and you may as well just train rather than compete because it’s not going to make any difference. It’s the shattering of their dreams that if they work hard, they know they can’t win.”

There is also an inherent psychological tradeoff that comes with allowing athletes who identify as transgender to compete in the female category. Dr. Maile explained that the prevailing argument is that the mental health of transgender athletes is more important and trumps the mental health of women simply because they see themselves as a protected class. He noted, “you can’t inflict psychological harm on one group to make another group whole.” Dr. Maile added, “it’s the reverse of the good of the many versus the good of the few. This is the good of the few versus the good of the many.” USA Powerlifting has established policies that do not allow male athletes who identify as transgender to compete in the female category for reasons of fairness.¹⁵

A medical doctor and fitness expert who spoke with Committee staff on the condition of anonymity expressed similar concerns. He noted that in sports, athletes get “a lot of satisfaction even in placing third” and that if there’s a possibility that an athlete could win, there’s an incentive for them to train harder and try harder. This is especially true for those who are really good and passionate about their sport because they feel that they have a shot at winning. That mindset changes, however, when an athlete enters the field of competition with an unfair performance advantage, regardless of whether the advantage comes from illicit steroid use or from natural biological factors, as with athletes who identify as transgender. In those cases, athletes can develop what the expert called a “sense of learned helplessness.” He added that if there is a sense that the overall playing field is not level, some athletes tend to ask, “why bother?”

¹⁵ Transgender Participation Policy, USA POWERLIFTING, <https://www.usapowerlifting.com/transgender-participation-policy/> (last accessed March 5, 2024); USA Powerlifting is currently engaged in litigation in Minnesota relating to their transgender participation policy. *See* Notice of Case Filing, *Cooper v. USA Powerlifting*, No. 62-CV-21-211 (Minn. Ct. App. March 10, 2023).

II. Conclusion and Next Steps

The testimonials collected during the course of this investigation suggest that schools, colleges, and government administrators have failed to live up to the promise and mandate of Title IX, which was intended to prevent discrimination against women. In the rush to accommodate athletes who identify as transgender, these officials have brushed aside the concerns and needs of women, asking them to give up their rights to privacy and fair competition without complaint.

This is entirely unacceptable. The Biden Administration should abandon its misguided effort to rewrite the purpose of Title IX through the rulemaking process. Instead, the Department of Education's Office of Civil Rights (OCR) should spend its resources enforcing the law as Congress intended, and that means ensuring that women are provided equal opportunities in an environment that is free from discrimination against them.

This investigation suggests that rigorous congressional oversight of OCR is required. Congress must determine exactly what OCR is telling stakeholders regarding their obligations to female athletes under Title IX. The Biden Administration must also explain why it has made preventing discrimination against women an optional enterprise and explain what steps it will take to address the forms of discrimination the Committee has identified through its investigation.

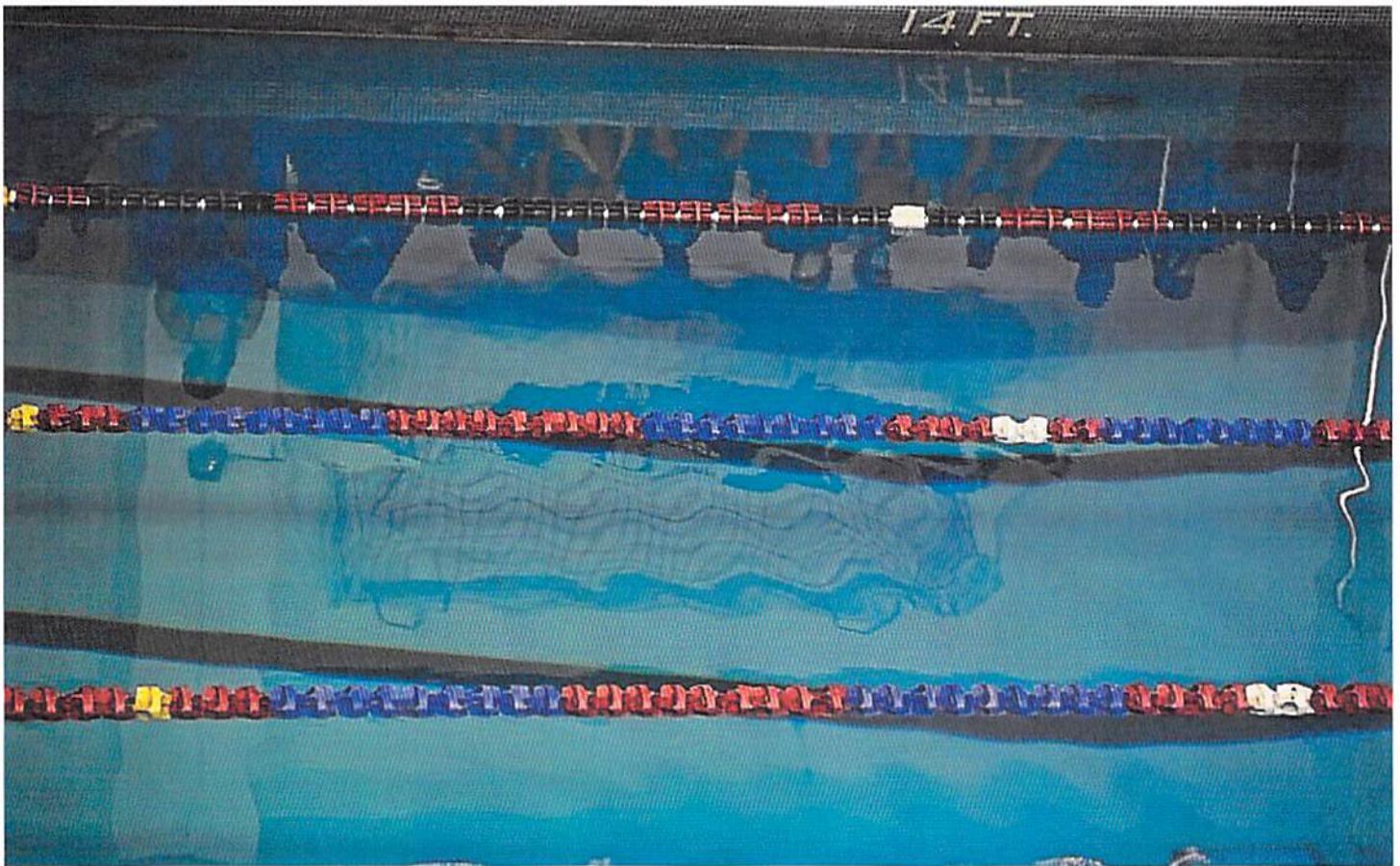
Further, Congress requires information in order to assess whether changes to federal law may be necessary to ensure women are protected from discrimination. In addition to the evidence presented in this interim summary, during the course of this investigation, Committee staff heard allegations and gathered evidence suggesting governing bodies and athletic associations such as the NCAA have adopted policies to compensate for biological differences between men and women which are ineffective and come into direct conflict with the purpose of Title IX. Although these governing bodies themselves are not subject to Title IX, the educational institutions that follow their policies regulating athletic competition receive federal financial assistance and are subject to Title IX. Accordingly, it's important for Congress to investigate the basis for the policies that governing bodies have adopted and the extent to which these policies interfere with the enforcement of existing laws. Committee staff are continuing to examine these matters, and their investigation is ongoing.

The Daily Pennsylvanian

Anonymous Penn Women's swimmer | How the NCAA's transgender policies affect college sports

Guest Column | Penn swimming catalyzed the national debate between upholding women's rights and encouraging inclusion

By Anonymous | 1 hour ago



Sheerr Pool on Jan. 8, 2022.

Credit: Sukhmani Kaur

The last several weeks of our swimming season at the University of Pennsylvania have been overshadowed by one big question: “Do you think Lia Thomas should be allowed to compete on the women’s team?”

This question has been unavoidable. Friends and family alike have been asking, on an almost daily basis, to hear a unique insider’s perspective. But the truth is this is not a question that can be answered simply.

To preface this piece, I would like to clearly emphasize one thing: The precarious situation that we, Penn women's swimmers, find ourselves in is not Thomas' fault. Thomas, who began taking testosterone suppressants and estrogen supplements more than two years ago, has followed all NCAA eligibility requirements. She works as hard in the pool as anyone else on our team, and she deserves a fair opportunity to swim competitively. She has not cut any corners nor done anything malicious, and she does not deserve to be mocked, bullied, or humiliated in any manner whatsoever. I fully support Thomas in her affirmation of her gender identity. While Thomas is an easy person to target amid the controversy of transgender athletes participating in women's sports, this anger is woefully misplaced. The debate, instead, centers around the National Collegiate Athletic Association, whose ill-informed rules have failed to preserve integrity and fairness in women's sports.

Swimming, like all sports, is meant to be contested on an equal and level playing field. This idea is rooted in organized sports everywhere: The separation of men and women, age restrictions, and weight classes are all means through which athletic associations level the playing field to ensure fair competition for their athletes. The idea of putting restrictions in place to increase parity is not discriminatory; rather, these restrictions exist to ensure fairness — a key pillar of athletic competition. Men's and women's sports are discrete due to their inherent physiological differences. On average, men possess athletic advantages over women — a gap that's insurmountable even when comparing elite female athletes to non-elite male athletes. This difference is especially apparent in swimming, where male swimmers dominate female swimmers in every event. In the 50-meter freestyle alone, on average top men are 11.7% faster than top women, with women completing 89.4% of their swim in that same time.

Granted, even with restrictions in place, there will obviously still exist some variability among participants competing in the same categories. For example, some women are taller than others, and some have more muscle mass. Many people have tried to write off Thomas' participation as existing within the natural realm of variability between athletes, but this is a false narrative that is damaging to the fairness of sports.

The NCAA's guidelines for transgender athletes, which was set in 2011, states: "A trans female treated with testosterone suppression medication may continue to compete on a men's team but may not compete on a women's team without changing it to a mixed team status until completing one year of testosterone suppression treatment."

In this statement, the NCAA clearly acknowledges that there are salient biological differences between men and women. In the current regulation, once you begin testosterone hormone therapy you are no longer eligible to compete as a woman. This alone is an admittance on the NCAA's part that male athletes have a physiological advantage over female ones. Despite requiring transgender female athletes to undergo testosterone suppression treatments to compete on the women's team, the NCAA's rationale for this requirement is not grounded in science. On the NCAA page on transgender policy background, there is a link to a handbook on "Inclusion of Transgender Student-Athletes." In this handbook, there is only one citation of peer-reviewed scientific research or literature out of over 20 sources; instead, the handbook contains mostly anecdotal data — stories, quotes, and guidance on how

foster an inclusive environment. While this information is still imperative, it ignores a pivotal question: How can we promote inclusion while still giving every athlete an equal opportunity to compete?

The NCAA claims to have received input from experts in science, medicine, and inclusion to inform its policy-making decisions. Notably, however, transgender athletes make up only a minuscule fraction of all collegiate athletes, rendering it difficult to make properly informed decisions for a population so small. But transgender athletes, despite their small numbers, are en route to making history in women's sports: In her short time on Penn women's swim team, Lia Thomas has already posted the national top time for the 2021-22 season in the women's 200-yard freestyle. In response to Thomas' success, the NCAA released a policy update for transgender athletes recently. Now, transgender athletes' participation for each sport will be determined by the policy set forth by each individual sport's governing body. But this new policy is not a solution; instead, it allows the NCAA to evade its responsibility of ensuring integrity in women's sports. Every additional day that the NCAA postpones making a definitive commitment toward working on a policy that promotes both inclusion and fairness, the integrity of women's sports will continue to be jeopardized.

Today, there is significantly more research on the effects of testosterone blockers and other hormone therapies compared to when the NCAA's transgender policy first emerged in 2010. Testosterone blockers, specifically, may decrease your strength, decrease muscle mass, and redistribute body fat. While all these factors tend to negatively affect one's athletic performance overall, the degree to which this occurs in adults is unclear at best, with one research finding that trans women's strength, lean body mass, and muscle area were still greater than the levels found in cisgender women even after 36 months on testosterone blockers.

In Thomas' case, she was ranked No. 462 on the men's team, and is now No. 1 on the women's team — she is a likely NCAA top-eight finisher in the women's division at the 2022 NCAA Swimming and Diving Championships, despite failing to qualify for the meet while competing with the men. To put this into statistical framework, at a recent meet, Thomas won the 200-yard free by almost seven seconds, and swam 6.22% faster than her second-place competitor; for comparison, Michael Phelps won the gold medal in the 200-meter free at the 2008 Olympics with just under a two-second lead — only a 1.80% advantage. As Thomas continues to compete in the women's category, one would reasonably expect her to have a relative performance on the women's team that was comparable to her relative performance on the men's team. Such a vast improvement should be grounded in sporting merit, for example, amending training habits or eating better — not an inherent biological advantage.

I am hopeful that one day there will be ways to fully equilibrate the differences between men and women during a transgender individual's transition process. It's vital for the NCAA and other sporting bodies to devote more energy toward conducting research about the participation of transgender athletes in sports, in order to maintain fairness while ensuring the highest level of inclusion possible.

PennConnects

From: [REDACTED] <[REDACTED]>
Date: August 7, 2023 at 9:57:39 AM PDT
To: Jared Lewis <[REDACTED]>
Subject: Re: Biological Men in Women's Sports

Hi Jared,

This is certainly an interesting adventure. We did discuss the issue with our high school superintendent group. A significant majority have significant reservations about biological males identifying as female and playing in high school competitive sports.

I think everyone is looking for Title IX to come into play in a meaningful way. I wanted to share this source just in case you have not seen it.

<https://womenssportspolicy.org/the-issue/>

My best,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

CONFIDENTIALITY NOTICE: This communication falls within the scope of the Electronic Communication Privacy Act, 18 USCA 2510 and may be privileged and confidential. DO NOT forward without express permission of original sender. If you are not the intended recipient, please delete the email and notify me immediately. Thank you.

On Aug 3, 2023, at 11:49 AM, Jared Lewis <[REDACTED]> wrote:

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or on clicking links from unknown senders.

Good afternoon [REDACTED],

I hope you had a good summer! Hard to believe we're back to school already.

This summer, I have had some success raising the visibility of males competing in women's sports. Senator Cassidy of Louisiana is the chairman of the Senate health, education labor and pension (HELP) oversight committee. A while back you said that you were going to bring the issue up at the CA High School Coalition meeting you attended at the end of March. I am curious if there is any information you will share with me from that meeting, or if I can put you in touch with his office for a confidential call.

Thanks,

Jared

On Thursday, March 9, 2023 at 07:55:19 AM PST, Jared Lewis <[REDACTED]> wrote:

[REDACTED],

I truly appreciate your prompt response and attention to this matter. It gives me faith in the system.

Best,

Jared

On Thursday, March 9, 2023 at 07:40:17 AM PST, [REDACTED] > wrote:

Jared,

Thank you very much for your letter. I became aware of this situation shortly after the alpine awards ceremony. I am very concerned about outcomes where biological males have in most cases significantly more physical strength that results in an unfair advantage in competition and raises the potential for physical injury in some sports.

These recent decisions by State Legislators and Governor Newsom completely undermine Title IX and threaten to harm those it intended to protect. Our school board shares the same concerns expressed here.

Next Thursday I will be bringing this item up for discussion at our California High School Coalition to see if we can help bring some common sense back to this issue. I simply cannot believe in a democratic society that this new reality is the will of the people where Title IX, which I would argue as one of our great successes as the American people, is being severely damaged.

I am very proud of your daughter's achievements as well as all of the athletes who diligently train and complete. All of our students become better when they work hard to improve themselves. As adults we need to further support ensuring the categories of competition make sense and do not undermine the historic accomplishments achieved under Title IX.

I sincerely appreciate your thoughtful reflection in the words you shared.

My sincere best,

[REDACTED]

[REDACTED]
[REDACTED]

CONFIDENTIALITY NOTICE: This communication falls within the scope of the Electronic Communication Privacy Act, 18 USCA 2510 and may be privileged and confidential. DO NOT forward without express permission of original sender. If you are not the intended recipient, please delete the email and notify me immediately. Thank you.

On Mar 9, 2023, at 6:41 AM, Jared Lewis <[REDACTED]> wrote:

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or on clicking links from unknown senders.

[REDACTED],

Living in a school district where alpine ski racing is a varsity sport is a privilege. On March 5-6, the CA/NV Interscholastic Ski & Snowboard Federation (CNISSF) state finals for ski athletes occurred at Northstar. Forty to 50 schools were represented, with approximately 200 athletes in total. My daughter worked hard all season and qualified to represent her high school this year.

I was riding the chairlift with her when she told me that the overall winner of the slalom race the day before, who placed third in GS later that day, was "trans." I asked her how she felt. She said she was supportive, and her team had "come to terms" with it. This prompted a thoughtful, reflective discussion. I said I'm glad she has a kind, supportive heart, but to consider the young ladies down the line (her included) who were displaced in standings by a biological male. How might they feel? What if a few more biological males compete in the women's division next year, and the following year, more? Or she does not qualify for states because she lost out to a biological male; or didn't get a college scholarship for the same reason. These are not hypothetical questions; this is where we're headed unless sane people, not afraid to point out the obvious, speak up and take a stand.

These kids, they are kids, live in the world adults have created. I don't blame the winning athlete; this is a failure at the administrative level and higher. I'll point out the obvious: you ruin women's sports by allowing biological males to compete in women's sports.

Speaking for parents of female athletes, are we just expected to "come to terms" with this? No amount of hormone therapy or re/deconstructive surgery will change the biological muscular and skeletal differences between those born with XX and those born with XY chromosomes. The assumption is that when my daughter competes in the women's division, she competes against other biological females. She is not in a coed or open division.

It's one thing to read about these things happening in other places; quite another to witness it firsthand. This injustice to young women cannot continue anywhere, especially not on my doorstep.

Sincerely,

Jared Lewis
[REDACTED]