

THE HUMAN RIGHTS PERSPECTIVE SUPPORTS SEX SEGREGATION IN SPORT

**CWI – Clearinghouse for Women’s Issues
TRANSGENDER GIRLS AND WOMEN IN FEMALE SPORTS
May 24th, 2022 / Noon – 1:30pm Eastern / Zoom**





Sports Illustrated

T H E

UNRELENTING

Introducing our list of the most powerful, most influential and most outstanding women in sports right now—the game-changers who are speaking out, setting the bar and making a difference



Women's
Sports
Policy
Working
Group



Me, age 22, at Olympic Trials, with normal female levels of testosterone.

If East Germany hadn't boycotted the 1984 Olympics, I would not have won 3 gold medals and 1 silver.

Sex Discrimination in Collegiate Sports: This is a National Crisis

CHAMPIONWOMEN[®]

How badly are colleges failing women?

183,130

Sports
Opportunities...
Each Year

\$972,988,046

in Sports Scholarships...
Each Year

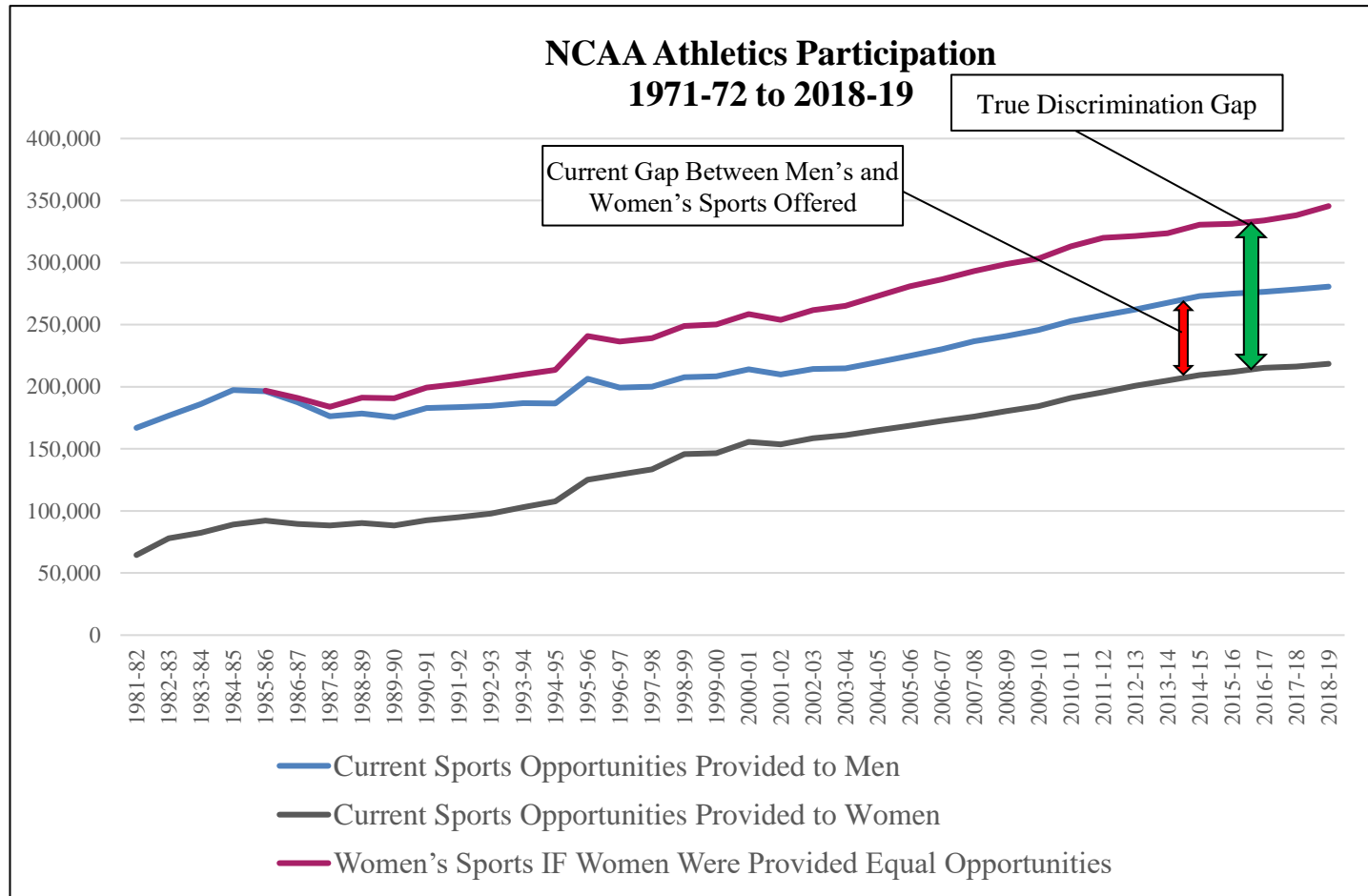
\$162,572,190

in Recruitment Funds...
Each Year

(not including facilities, equipment,
publicity, locker rooms, coaching, or
travel...)

#TitleIXFail

How bad is the problem?



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Advocacy for Girls &
Women in Sports

Spoiler: It's Getting Worse

- In 10 of the last 15 years, more participation opportunities have been added for men than women.
- The True Discrimination Gap has widened from:
 - 100,308 in the 2001-02 school year to
 - 126,974 in the 2018-19 school year.
 - **That's a 27% increase in sex discrimination.**

*These numbers reflect participation at NCAA-member schools gathered from EADA.

CHAMPION **WOMEN**®

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Women in Sports

Women's Sports Advocates Have Been Repeating For 50 Years:

**“In order to give girls and women
'equal opportunities' in sports,
they need their own team.”**

- Equality requires sex-segregation

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Overview of my presentation today:

- Any type of segregation based on an immutable characteristic (race, sex, religion) is unusual in law.
- The law does not define “sex” in all the statutes protecting females.
- The Biden Administration has said it would conflate “Sex” with “Gender identity.”

#1 Bad Outcome: If “Sex Discrimination” = “Gender Identity Discrimination,” someone who identifies as a woman, but is biologically male, could compete in the women’s sport category.

#2 Bad Outcome: A judge could not affirm formal sex-segregation if it was not based on biology.

- Interests that are hostile to women’s sports – think: football – will argue to abolish sex segregation in sports. Like the math classroom, schools would be required to offer one team. Women would not be entitled to equality in sex-segregated sports.





Generally, civil rights laws do not allow for race, religion, or sex-segregation.

- Employment
- Public Accommodations
- Family Law
- Education Broadly

Law Permits Sport Sex-Segregation - UNIQUELY



HISTORY: How did we get here?

1964: Congress passed **Title VI**, the pre-cursor to Title IX:

- No person in the United States shall, **on the ground of race, color, or national origin**, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.



1972: Congress passed Title IX

- 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 program or activity receiving Federal financial assistance.

20 U.S.C. § 1681(a)



1975, Administrative Agency:

The Department of Education Regulations
Affirm Sex-Segregation in Sport.

Provided Directions to Measure Equality:

- 1) Equal Participation, and
- 2) Equal Scholarships, and
- 3) Equal Benefits and Treatment



Other Anti-Discrimination Laws Permit Sex-Segregation in Sport:

The law recognizes that in order to give women an equal opportunity to participate in competitive sports, they need their own team.

- Separate sex sport is recognized and supported throughout our legal structure;
 - Statutes,
 - Administrative regulations, and
 - Caselaw.
- Title IX of the Education Amendments of 1972,
- The Ted Stevens Olympic and Amateur Sports Act,
- The Equity in Athletics Disclosure Act.
- Community Public Accommodations (Like California AB 2404)
- Courts have held that Title IX, as it is related to athletics, is not merely remedy past sex discrimination; the women's team is not an "affirmative action" team or the "B Team."



Government and Sports Equality for Women

Legislative

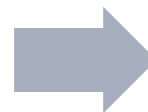
➤ Congress

- 1972: Legislature passes Title IX
- 1988: Title IX passed again to overrule a U.S. Supreme Court decision holding Title IX only applied to the part of the school receiving the federal funds.



Executive

- Executive Branch:
 - President
 - Department of Education
 - Office of Civil Rights
- 1975: Measuring Sex Discrimination in Sports; Affirms Sex-Segregation
- 1979: More Sex Segregation in Sport



Judiciary

- Courts
 - Case Law
 - Athletes sue their schools to require equality in school athletics.
 - Sex Segregation is affirmed.



The Looming Biden Administration Regulations

• The Biden Administration's position is that while men's and women's sport remains lawful, **Title IX does not permit distinctions on the basis of biological sex**.

• In other words, someone who self-identifies as a woman, but has not taken gender affirming hormones or surgery, would be able to compete as a woman, in our category.

See, e.g., *Jackson v. West Virginia State Board of Education*, Case No. 2:21-cv-00316 (S.D. WVA 2021).

https://www.wvsd.uscourts.gov/sites/default/files/opinions/2-21-cv-00316_MemorandumOrder.pdf

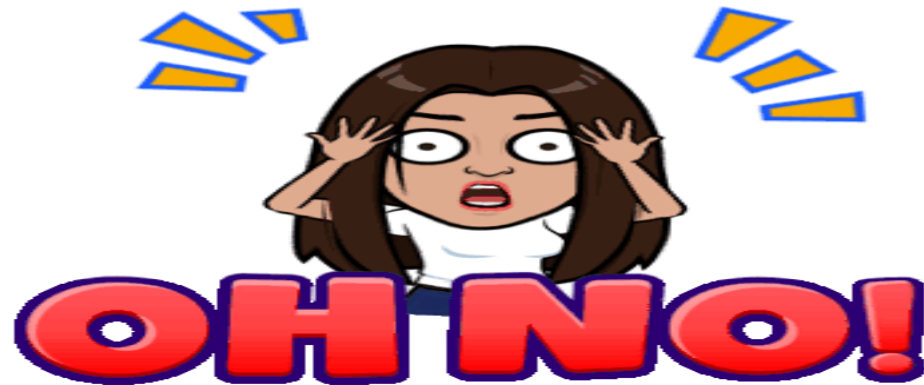
• Washington Post:

<https://www.washingtonpost.com/education/2022/03/30/transgender-discrimination-title-ix-rule-students/>



New Title IX Regulations proposed by the Biden Administration:

- The Biden Administration regs would equate “Sex Discrimination” with “Gender Identity Discrimination.”
- This means that girls and women would have no right to single-sex sport, as we’ve had for the past 50 years.



Lia Thomas Did Not Move Laterally from Men's to Women's Competition

Lia Thomas: Swimming Event	Best Women's Time 2021-22	Pre-Transition Men's Time	Percent difference (negative = slower now)	Expected difference bt men's/ women's times	NCAA D-I Women's Ranking as of 3-19-22	D-I Men's 2018-19 Ranking Swim Cloud
100y freestyle	47.37	47.15*	-.4%	-12.61%	# 11	N/A – Did not swim the event
200y free	1:42.09 102:09	1:39.31 99.31	-2.79%	-10.22%	# 5	# 465
500y free	4:33.2 273.2	4:18.72 258.72	-5.59%	-8.98%	# 1	# 65
1650y free	959.71	894.76	-7.26%	-7.20%	# 11	# 32



- Shaunae Miller-Uibo and Wayde Van Niekerk
- Both are reigning Olympic Champions in the 400 meters.
- Wayde is the current men's world record holder and Shaunae is the fastest female in history never to have been associated with doping.
- Both have had access to first class training, coaching, and support.
- Both are about the same height (6'1"/185 cm and 6'0"/183 cm) and weight (152 and 154 pounds).
- Wayde's best time – 43.03 – is over 5 seconds faster than Shaunae's – 48.37.
- #SexMatters





- Missy Franklin and Ryan Lochte
- They are both multiple Olympic and world champions in swimming.
- Both had first class training, coaching, and support.
- Both are 6'2" with reported 6'4" wingspans.
- Both held the world record in the 200 meter backstroke.
- But Ryan's best time of 1:52.96 is a half lap ahead of Missy's at 2:04.06.
- Missy's world record time would tie for 50th in the U.S. men's Olympic Trials.
- #SexMatters

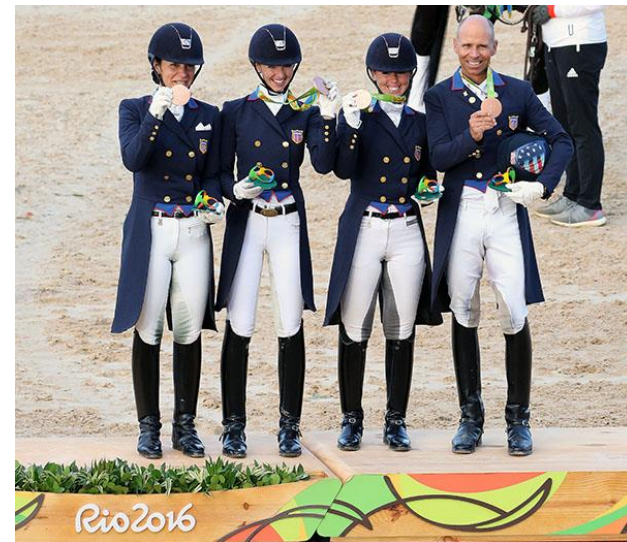


Michael Phelps and “Natural Advantages”

.2% over his male competitors
14% over female competitors



When Testosterone Doesn't Matter, Men and Women Compete Together



Should we create new categories for sports participation?

- [First, there are no serious conversations about restructuring sport to remove sex.]
- There are no other physical criteria that could be used to determine eligibility that would similarly assure biological women – half the population – would have equal opportunities in competitive sport.
 - Height
 - Weight
 - Matching leg length
 - Wingspan
 - Age, post-puberty
 - Ability to remove lactic acid from the body
 - Double-jointed



Solution:

- When transgender girls or women cannot compete head-to-head against females due to playing-safety and fairness,
- 1) include TW into the social construct of sport; the 90 – 95% of sport.
- 2) Provide Accommodations in competitive sport for transgender athletes.
 - could include separate:
 - Scoring
 - Events
 - Podiums
 - Handicapping
 - Akin to wheelchair or amputee races.



Needed Amendments Regarding the Equality Act

- We ask Congress to affirm Title IX's long-standing commitment to providing biological females with equal opportunities in competitive sport, and to protect their safety in contact sports, by allowing schools to continue to provide separate athletic teams and events for males and females.
- In addition, we ask Congress to provide for the participation of transgender girls and women within girls' and women's sports programs with appropriate accommodations if they have experienced all or part of male puberty.
- These accommodations should apply throughout interscholastic, intercollegiate sport, and the U.S. Olympic and Paralympic Movement.
- This request is limited to *competitive* sports.
 - It would not apply to physical education, intramurals, or recreational sports sponsored by municipalities, schools, and colleges.



<https://womenssportspolicy.org/>

See more here!



Women's
Sports
Policy
Working
Group