

STATE OF TENNESSEE

Office of the Attorney General



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April 21, 2023

Deborah S. Hunt, Clerk
United States Court of Appeals for the Sixth Circuit
540 Potter Stewart U.S. Courthouse
100 East Fifth Street
Cincinnati, Ohio 45202-3988

Re: *State of Tennessee, et al. v. Department of Education, et al.*, No. 22-5807

Dear Ms. Hunt:

Plaintiffs-Appellees, other than Arizona, respectfully submit this Rule 28(j) letter concerning recently enacted laws. These laws confirm States' standing because the documents arguably conflict with States' laws or ones they "desire to enact." *Kentucky v. Yellen*, 54 F.4th 325, 335-36 (6th Cir. 2022); States' Br. 16-20.

Today, Tennessee's legislature passed a law prohibiting schoolteachers from being "[r]equired to use a student's preferred pronoun when referring to the student if the preferred pronoun is not consistent with the student's biological sex." 2023 Tenn. S.B. 466. The legislature attempted to pass such a bill before the preliminary injunction. That bill failed in Senate Finance Committee after the Fiscal Review Committee and ACLU of Tennessee asserted conflict with the challenged documents. States' Br. 20.

Arkansas and Kentucky enacted laws similarly protecting teachers. 2023 Ark. Acts 542 (H.B. 1468); 2023 Ky. Laws Ch. 132 (S.B. 150).

Further, Arkansas and Idaho enacted bathroom laws that arguably conflict with the documents. 2023 Ark. Acts 317 (H.B. 1156); 2023 Idaho S.B. 1100.

For athletics, Kansas completed a multiyear effort to protect female sports. 2023 Kan. Sess. Laws (H.B. 2238). That brings the total to 17 States with arguably conflicting laws.

Finishing the process Ga. Code Ann. § 20-2-316 set in motion, States' Br. 50, the Georgia High School Association created an arguably conflicting athletics policy that a "student's sex is determined by the sex noted on his/her certificate at birth." GHSA By-Law 1.47(b) (rev. Mar. 14, 2023), <https://www.ghsa.net/constitution> [<https://perma.cc/KS9W-FSAG>].

Each house of Missouri's legislature has passed a bill arguably conflicting with the documents. 2023 Mo. H.B. 183; 2023 Mo. S.B. 39. And Ohio is considering a "Save Women's Sports Act" that would arguably conflict. 2023 Ohio H.B. 6 (introduced).

States are "entitled to special solicitude in" standing analysis. *Massachusetts v. EPA*, 549 U.S. 497, 520 (2007) (only Massachusetts demonstrated standing). The district court did not abuse its discretion in declining to verify all States had standing. *Cf. Kentucky*, 54 F.4th at 358 n.1 (Nalbandian, J., concurring in part). Moreover, all States have standing due to compliance costs and their status as objects of regulation.

Respectfully submitted,

/s/ Clark Lassiter Hildabrand

Clark Lassiter Hildabrand

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*Counsel for all Plaintiffs-Appellees
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CERTIFICATE OF SERVICE

I, Clark Hildabrand, counsel for Plaintiffs-Appellees other than the State of Arizona and a member of the Bar of this Court, certify that, on April 21, 2023, a copy of the foregoing Rule 28(j) letter was filed electronically through the appellate CM/ECF system with the Clerk of the Court. I further certify that all parties required to be served have been served.

/s/ Clark Lassiter Hildabrand

Clark Lassiter Hildabrand
Senior Counsel

ADDENDUM PROVIDING CITED LEGISLATION

Ex. No.	Description
1	2023 Tenn. S.B. 466 – passed second house Apr. 21, 2023
2	2023 Ark. Acts 542 (H.B. 1468) – enacted Apr. 11, 2023
3	2023 Ky. Laws Ch. 132 (S.B. 150) – enacted Mar. 29, 2023
4	2023 Ark. Acts 317 (H.B. 1156) – enacted Mar. 21, 2023
5	2023 Idaho S.B. 1100 – enacted Mar. 23, 2023
6	2023 Kan. Sess. Laws (H.B. 2238) – enacted Apr. 6, 2023
7	2023 Mo. H.B. 183 – passed House Apr. 17, 2023
8	2023 Mo. S.B. 39 – passed Senate Mar. 23, 2023
9	2023 Ohio H.B. 6 – third House committee hearing Apr. 19, 2023

Exhibit 1
2023 Tenn. S.B. 466

HOUSE BILL 1269
By Cochran

SENATE BILL 466

By Rose

AN ACT to amend Tennessee Code Annotated, Title 49,
Chapter 6, relative to student pronouns.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 49, Chapter 6, Part 51, is amended by adding the following as a new section:

(a) The general assembly finds that:

(1) Teachers and employees of public schools and LEAs do not shed their constitutional rights to freedom of speech or expression while at work;

(2) Protecting the right to free speech for teachers and employees of public schools and LEAs promotes important state interests;

(3) The use of pronouns by teachers and employees of public schools and LEAs in an educational setting is a matter of free speech or expression; and

(4) A teacher or employee of a public school or LEA should never be compelled to affirm a belief with which the teacher or employee disagrees.

(b) A teacher or other employee of a public school or LEA is not:

(1) Required to use a student's preferred pronoun when referring to the student if the preferred pronoun is not consistent with the student's biological sex;

(2) Civilly liable for using a pronoun that is consistent with the biological sex of the student to whom the teacher or employee is referring, even if the pronoun is not the student's preferred pronoun; and

(3) Subject to an adverse employment action for not using a student's preferred pronoun, if the student's preferred pronoun is inconsistent with the student's biological sex.

(c) A public school or LEA is not civilly liable if a teacher or employee of the public school or LEA refers to a student using a pronoun that is consistent with the biological sex of the student to whom the teacher or employee is referring, even if the pronoun is not the student's preferred pronoun.

SECTION 2. This act takes effect upon becoming a law, the public welfare requiring it.

Exhibit 2
2023 Ark. Acts 542 (H.B. 1468)

2023 Arkansas Laws Act 542 (H.B. 1468)

ARKANSAS 2023 SESSION LAWS

94th GENERAL ASSEMBLY, REGULAR SESSION, 2023

Additions are indicated by **Text**; deletions by
Text .

Vetoed are indicated by ~~Text~~ ;
stricken material by ~~Text~~ .

ACT 542

H.B. 1468

AN ACT TO CREATE THE GIVEN NAME ACT; TO PROTECT FACULTY MEMBERS, TEACHERS, AND EMPLOYEES OF PUBLIC SCHOOLS AND STATE-SUPPORTED INSTITUTIONS OF HIGHER EDUCATION FROM COMPELLED SPEECH; TO PROHIBIT REQUIRING FACULTY MEMBERS, TEACHERS, AND EMPLOYEES OF PUBLIC SCHOOLS AND STATE-SUPPORTED INSTITUTIONS OF HIGHER EDUCATION TO USE A PERSON'S PREFERRED PRONOUN, NAME, OR TITLE WITHOUT PARENTAL CONSENT; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE GIVEN NAME ACT; AND TO PROHIBIT REQUIRING EMPLOYEES OF PUBLIC SCHOOLS AND STATE-SUPPORTED INSTITUTIONS OF HIGHER EDUCATION TO USE A PERSON'S PREFERRED PRONOUN, NAME, OR TITLE WITHOUT PARENTAL CONSENT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 6, Chapter 1, Subchapter 1, is amended to add an additional section to read as follows:

<< AR ST § 6-1-108 >>

6-1-108. Given Name Act—Protection against compelled speech.

(a) This section shall be known and may be cited as the "Given Name Act".

(b) The General Assembly finds that:

(1) Faculty members, teachers, and employees of public schools and state-supported institutions of higher education do not shed their constitutional rights to freedom of speech or expression at work;

(2) Protecting the right to free speech for faculty members, teachers, and employees promotes three (3) important interests, which include:

(A) Students' interests in receiving informed opinions on matters of public concern;

(B) Faculty members', teachers', and employees' rights to disseminate their own opinions; and

(C) The public's interest in exposing our children and future leaders to different viewpoints; and

(3) The selection and use of pronouns in classrooms, on campuses, and elsewhere is a matter of free speech and academic freedom because it communicates a message on a matter of public concern and shapes classroom discussions

and debates, and is not merely an administrative or ministerial act by faculty members, teachers, and employees of public schools and state-supported institutions of higher education.

(c) As used in this section, “school” includes:

- (1) A public school or school district;
- (2) An open-enrollment public charter school; and
- (3) A state-supported institution of higher education.

(d) A faculty member, teacher, or other employee of a school, regardless of the scope of his or her official duties:

(1) Shall not address an unemancipated minor or student with a:

(A) Pronoun or title that is inconsistent with the unemancipated minor's or student's biological sex unless the faculty member, teacher, or other employee of a school has the written permission of the unemancipated minor's or student's parent, legal guardian, or person standing in loco parentis to the unemancipated minor or student if the unemancipated minor or student is under eighteen (18) years of age; or

(B) Name other than the name listed on the unemancipated minor's or student's birth certificate, or a derivative of the name listed on the unemancipated minor's or student's birth certificate, without the written permission of the unemancipated minor's or student's parent, legal guardian, or person standing in loco parentis to the unemancipated minor or student if the unemancipated minor or student is under eighteen (18) years of age; and

(2) Notwithstanding subdivision (d)(1) of this section, shall not be subject to adverse employment action for declining to address a person using a:

(A) Name other than the name listed on the person's birth certificate; or

(B) Pronoun or title that is inconsistent with the person's biological sex.

(e) A student shall not be subject to any disciplinary action for declining to address a person using a:

(A) Name other than the name listed on the person's birth certificate; or

(B) Pronoun or title that is inconsistent with the person's biological sex.

(f) A person who is harmed by a violation of this section may bring a cause of action for:

- (1) Injunctive relief;
- (2) Monetary damages;
- (3) Reasonable attorney's fees and costs; and
- (4) Any other appropriate relief.

/s/ Long

APPROVED: 4/11/2023

Exhibit 3

2023 Ky. Laws Ch. 132 (S.B. 150)

2023 Kentucky Laws Ch. 132 (SB 150)

KENTUCKY 2023 SESSION LAWS

2023 REGULAR SESSION

Additions are indicated by **Text**; deletions by
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Vetoed are indicated by ~~Text~~ ;
stricken material by ~~Text~~ .

CHAPTER 132

SB 150

AN ACT relating to children.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

<< KY ST 158.191 >>

(1) As used in this section:

(a) "External health care provider" means a provider of health or mental health services that is not employed by or contracted with the school district to provide services to the district's students;

(b) "Health services" has the same meaning as in KRS 156.502;

(c) "Mental health services" means services provided by a school-based mental health services provider as defined in KRS 158.4416 but shall not include academic or career counseling; and

(d) "Parent" means a person who has legal custody or control of the student such as a mother, father, or guardian.

(2) Upon a student's enrollment and at the beginning of each school year, the district shall provide a notification to the student's parents listing each of the health services and mental health services related to human sexuality, contraception, or family planning available at the student's school and of the parents' right to withhold consent or decline any of those specific services. A parent's consent to a health service or mental health service under this subsection shall not waive the parent's right to access the student's educational or health records held by the district or the notifications required under subsection (3) of this section.

(3) Except as provided in subsection (5) of this section, as part of a school district's effort to provide a safe and supportive learning environment for students, a school shall notify a student's parents if:

(a) The school changes the health services or mental health services related to human sexuality, contraception, or family planning that it provides, and shall obtain parental consent prior to providing health services or mental health services to the student; or

(b) School personnel make a referral:

1. For the student to receive a school's health services or mental health services; or

2. To an external health care provider, for which parental consent shall be obtained prior to the referral being made.

(4) School districts and district personnel shall respect the rights of parents to make decisions regarding the upbringing and control of the student through procedures encouraging students to discuss mental or physical health or life issues with their parents or through facilitating the discussion with their parents.

(5) (a) The Kentucky Board of Education or the Kentucky Department of Education shall not require or recommend that a local school district keep any student information confidential from a student's parents. A district or school shall not adopt policies or procedures with the intent of keeping any student information confidential from parents.

(b) The Kentucky Board of Education or the Kentucky Department of Education shall not require or recommend policies or procedures for the use of pronouns that do not conform to a student's biological sex as indicated on the student's original, unedited birth certificate issued at the time of birth pursuant to KRS 156.070(2)(g)2.

(c) A local school district shall not require school personnel or students to use pronouns for students that do not conform to that particular student's biological sex as referenced in paragraph (b) of this subsection.

(d) Nothing in this subsection shall prohibit a school district or district personnel from withholding information from a parent if a reasonably prudent person would believe, based on previous conduct and history, that the disclosure would result in the child becoming a dependent child or an abused or neglected child as defined in KRS 600.020. The fact that district personnel withhold information from a parent under this subsection shall not in itself constitute evidence of failure to report dependency, neglect, or abuse to the Cabinet for Health and Family Services under KRS 620.030.

(6) Prior to a well-being questionnaire or assessment, or a health screening form being given to a child for research purposes, a school district shall provide the student's parent with access to review the material and shall obtain parental consent. Parental consent shall not be a general consent to these assessments or forms but shall be required for each assessment or form. A parent's refusal to consent shall not be an indicator of having a belief regarding the topic of the assessment or form.

(7) Nothing in this section shall:

(a) Prohibit a school district or the district's personnel from seeking or providing emergency medical or mental health services for a student as outlined in the district's policies; or

(b) Remove the duty to report pursuant to KRS 620.030 if district personnel has reasonable cause to believe the child is a dependent child or an abused or neglected child due to the risk of physical or emotional injury identified in KRS 600.020(1)(a)2. or as otherwise provided in that statute.

Section 2. KRS 158.1415 is amended to read as follows:

<< KY ST 158.1415 >>

(1) If a school council or, if none exists, the principal adopts a curriculum for human sexuality or sexually transmitted diseases, instruction shall include but not be limited to the following content:

(a)(1) Abstinence from sexual activity is the desirable goal for all school-age children;

(b)(2) Abstinence from sexual activity is the only certain way to avoid unintended pregnancy, sexually transmitted diseases, and other associated health problems; ~~and~~

~~(c)(3)~~ The best way to avoid sexually transmitted diseases and other associated health problems is to establish a permanent mutually faithful monogamous relationship;

(d) A policy to respect parental rights by ensuring that:

1. Children in grade five (5) and below do not receive any instruction through curriculum or programs on human sexuality or sexually transmitted diseases; or

2. Any child, regardless of grade level, enrolled in the district does not receive any instruction or presentation that has a goal or purpose of students studying or exploring gender identity, gender expression, or sexual orientation; and

(e) A policy to notify a parent in advance and obtain the parent's written consent before the parent's child in grade six (6) or above receives any instruction through curriculum or programs on human sexuality or sexually transmitted diseases authorized in this section.

(2) Any course, curriculum, or program offered by a public school on the subject of human sexuality provided by school personnel or by third parties authorized by the school shall:

(a) Provide an alternative course, curriculum, or program without any penalty to the student's grade or standing for students whose parents have not provided written consent as required in subsection (1)(e) of this section;

(b) Be subject to an inspection by parents of participating students that allows parents to review the following materials:

1. Curriculum;

2. Instructional materials;

3. Lesson plans;

4. Assessments or tests;

5. Surveys or questionnaires;

6. Assignments; and

7. Instructional activities;

(c) Be developmentally appropriate; and

(d) Be limited to a curriculum that has been subject to the reasonable review and response by stakeholders in conformity with this subsection and KRS 160.345(2).

(3) A public school offering any course, curriculum, or program on the subject of human sexuality shall provide written notification to the parents of a student at least two (2) weeks prior to the student's planned participation in the course, curriculum, or program. The written notification shall:

(a) Inform the parents of the provisions of subsection (2) of this section;

(b) Provide the date the course, curriculum, or program is scheduled to begin;

(c) Detail the process for a parent to review the materials outlined in subsection (2) of this section;

(d) Explain the process for a parent to provide written consent for the student's participation in the course, curriculum, or program; and

(e) Provide the contact information for the teacher or instructor of the course, curriculum, or program and a school administrator designated with oversight.

(4) Nothing in this section shall prohibit school personnel from:

(a) Discussing human sexuality, including the sexuality of any historic person, group, or public figure, where the discussion provides necessary context in relation to a topic of instruction from a curriculum approved pursuant to KRS 160.345; or

(b) Responding to a question from a student during class regarding human sexuality as it relates to a topic of instruction from a curriculum approved pursuant to KRS 160.345.

SECTION 3. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

<< KY ST 158.189 >>

(1) As used in this section:

(a) "Biological sex" means the physical condition of being male or female, which is determined by a person's chromosomes, and is identified at birth by a person's anatomy; and

(b) "School" means a school under the control of a local board of education or a charter school board of directors.

(2) The General Assembly finds that:

(a) School personnel have a duty to protect the dignity, health, welfare, and privacy rights of students in their care;

(b) Children and young adults have natural and normal concerns about privacy while in various states of undress, and most wish for members of the opposite biological sex not to be present in those circumstances;

(c) Allowing students to use restrooms, locker rooms, or shower rooms that are reserved for students of a different biological sex:

1. Will create a significant potential for disruption of school activities and unsafe conditions; and

2. Will create potential embarrassment, shame, and psychological injury to students;

(d) Parents have a reasonable expectation that schools will not allow minor children to be viewed in various states of undress by members of the opposite biological sex, nor allow minor children to view members of the opposite sex in various states of undress; and

(e) Schools have a duty to respect and protect the privacy rights of students, including the right not to be compelled to undress or be unclothed in the presence of members of the opposite biological sex.

(3) Each local board of education or charter school board of directors shall, after allowing public comment on the issue at an open meeting, adopt policies necessary to protect the privacy rights outlined in subsection (2) of this section and

enforce this subsection. Those policies shall, at a minimum, not allow students to use restrooms, locker rooms, or shower rooms that are reserved for students of a different biological sex.

(4) (a) A student who asserts to school officials that his or her gender is different from his or her biological sex and whose parent or legal guardian provides written consent to school officials shall be provided with the best available accommodation, but that accommodation shall not include the use of school restrooms, locker rooms, or shower rooms designated for use by students of the opposite biological sex while students of the opposite biological sex are present or could be present.

(b) Acceptable accommodations may include but are not limited to access to single-stall restrooms or controlled use of faculty bathrooms, locker rooms, or shower rooms.

SECTION 4. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

<< KY ST 311.372 >>

(1) As used in this section:

(a) "Minor" means any person under the age of eighteen (18) years; and

(b) "Sex" means the biological indication of male and female as evidenced by sex chromosomes, naturally occurring sex hormones, gonads, and nonambiguous internal and external genitalia present at birth.

(2) Except as provided in subsection (3) of this section, a health care provider shall not, for the purpose of attempting to alter the appearance of, or to validate a minor's perception of, the minor's sex, if that appearance or perception is inconsistent with the minor's sex, knowingly:

(a) Prescribe or administer any drug to delay or stop normal puberty;

(b) Prescribe or administer testosterone, estrogen, or progesterone, in amounts greater than would normally be produced endogenously in a healthy person of the same age and sex;

(c) Perform any sterilizing surgery, including castration, hysterectomy, oophorectomy, orchiectomy, penectomy, and vasectomy;

(d) Perform any surgery that artificially constructs tissue having the appearance of genitalia differing from the minor's sex, including metoidioplasty, phalloplasty, and vaginoplasty; or

(e) Remove any healthy or non-diseased body part or tissue.

(3) The prohibitions of subsection (2) this section shall not limit or restrict the provision of services to:

(a) A minor born with a medically verifiable disorder of sex development, including external biological sex characteristics that are irresolvably ambiguous;

(b) A minor diagnosed with a disorder of sexual development, if a health care provider has determined, through genetic or biochemical testing, that the minor does not have a sex chromosome structure, sex steroid hormone production, or sex steroid hormone action, that is normal for a biological male or biological female; or

(c) A minor needing treatment for an infection, injury, disease, or disorder that has been caused or exacerbated by any action or procedure prohibited by subsection (2) of this section.

(4) If a licensing or certifying agency for health care providers finds, in accordance with each agency's disciplinary and hearing process, that a health care provider who is licensed or certified by the agency has violated subsection (2) of this section, the agency shall revoke the health care provider's licensure or certification.

(5) Any civil action to recover damages for injury suffered as a result of a violation of subsection (2) of this section may be commenced before the later of:

(a) The date on which the person reaches the age of thirty (30) years; or

(b) Within three (3) years from the time the person discovered or reasonably should have discovered that the injury or damages were caused by the violation.

(6) If a health care provider has initiated a course of treatment, for a minor, that includes the prescription or administration of any drug or hormone prohibited by subsection (2) of this section and if the health care provider determines and documents in the minor's medical record that immediately terminating the minor's use of the drug or hormone would cause harm to the minor, the health care provider may institute a period during which the minor's use of the drug or hormone is systematically reduced.

Section 5. Whereas situations currently exist in which the privacy rights of students are violated, an emergency is declared to exist, and Sections 1 to 3 of this Act take effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Enacted over Governor's veto March 29, 2023.

Exhibit 4
2023 Ark. Acts 317 (H.B. 1156)

2023 Arkansas Laws Act 317 (H.B. 1156)

ARKANSAS 2023 SESSION LAWS

94th GENERAL ASSEMBLY, REGULAR SESSION, 2023

Additions are indicated by **Text**; deletions by
Text .

Vetoed are indicated by ~~Text~~ ;
stricken material by ~~Text~~ .

ACT 317

H.B. 1156

AN ACT CONCERNING A PUBLIC SCHOOL DISTRICT OR OPEN-ENROLLMENT PUBLIC CHARTER SCHOOL POLICY RELATING TO THE SEX OF A PUBLIC SCHOOL STUDENT WHO ATTENDS A PUBLIC SCHOOL SPONSORED OR SUPERVISED OVERNIGHT TRIP; CONCERNING THE DESIGNATION OF A MULTIPLE OCCUPANCY RESTROOM OR CHANGING AREA BASED ON AN INDIVIDUAL'S SEX; AND FOR OTHER PURPOSES.

Subtitle

CONCERNING A PUBLIC SCHOOL DISTRICT OR OPEN-ENROLLMENT PUBLIC CHARTER SCHOOL POLICY RELATING TO A PUBLIC SCHOOL STUDENT'S SEX.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 6, Chapter 10, Subchapter 1, is amended to add an additional section to read as follows:

<< AR ST § 6-10-137 >>

6-10-137. Overnight trips.

(a) Except as provided in subsection (b) of this section, a public school district or open-enrollment public charter school that sponsors or supervises an overnight trip involving a public school student shall ensure that a public school student attending the overnight trip either:

(1) Shares sleeping quarters with a member or, if necessary, multiple members, of the same sex; or

(2) Is provided single-occupancy sleeping quarters.

(b) A public school student attending an overnight trip may share sleeping quarters with a member of the opposite sex if the member of the opposite sex is a member of the public school student's immediate family.

SECTION 2. Arkansas Code Title 6, Chapter 21, Subchapter 1, is amended to add an additional section to read as follows:

<< AR ST § 6-21-120 >>

6-21-120. Public school restrooms—Designation based on sex.

(a) As used in this section:

(1)(A) “Multiple occupancy restroom or changing area” means an area in a public school district or open-enrollment public charter school building that is designed or designated to be used by one (1) or more individuals at the same time and in which one (1) or more individuals may be in various stages of undress in the presence of other individuals.

(B) “Multiple occupancy restroom or changing area” includes without limitation the following:

- (i) A restroom;
- (ii) A locker room;
- (iii) A changing room; and
- (iv) A shower room; and

(2)(A) “Sex” means the physical condition of being male or female based on genetics and physiology.

(B) A public school district or open-enrollment public charter school may rely upon a public school student's sex as identified on his or her original birth certificate issued at or near the time of his or her birth.

(b) To ensure privacy and safety, each public school district and open-enrollment public charter school that serves students in prekindergarten through grade twelve (preK–12) in this state shall:

(1) Require each multiple occupancy restroom or changing area to be designated as follows:

- (A) For the exclusive use by the male sex; or
- (B) For the exclusive use by the female sex; and

(2)(A) Provide a reasonable accommodation to an individual who is unwilling or unable to use a multiple occupancy restroom or changing area designated for the individual's sex.

(B)(i) A reasonable accommodation under this subdivision (b)(2)(A) may include without limitation access to a single-occupancy restroom or changing area.

(ii) A reasonable accommodation shall not include access to a restroom or changing area that is designated for use by members of the opposite sex to an individual while members of the opposite sex of the individual are present or may be present in the restroom or changing area.

(c) This section does not apply to an individual who enters a multiple occupancy restroom or changing area designated for use by the opposite sex when he or she enters for at least one (1) of the following circumstances:

- (1) For custodial, maintenance, or inspection purposes;
- (2) To render emergency medical assistance; or
- (3) To address an ongoing emergency, including without limitation a physical altercation.

(d)(1) Nothing in this section shall be construed to prohibit a public school district or open-enrollment public charter school from adopting a policy that is necessary to accommodate individuals protected under the Americans with Disabilities Act of 1990, Pub. L. No. 101–336, as it existed on January 1, 2023, or young children who are in need of physical assistance when using a restroom or changing facility that is located in a public school district or open-enrollment public charter school.

- (2) However, a public school district or open-enrollment public charter school that serves students in prekindergarten through grade twelve (preK–12) in this state shall not adopt a policy under subdivision (d)(1) of this section that is contrary to this section.*
- (e)(1) An allegation of noncompliance with this section shall be referred to the Professional Licensure Standards Board by filing a formal complaint.*
- (2) Upon the board finding noncompliance with this section, the following individuals, as applicable, shall be subject to a minimum fine of one thousand dollars (\$1,000), and may receive additional sanctions as determined by the board:*
- (A) The superintendent of a public school district where the noncompliance occurred, if the superintendent is found specifically to be noncompliant with this section;*
 - (B) The principal of a public school where the noncompliance occurred, if the principal is found specifically to be noncompliant with this section;*
 - (C) The director or administrative head of an open-enrollment public charter school where the noncompliance occurred, if the director or administrative head is found specifically to be noncompliant with this section; or*
 - (D) A teacher or supervisor of a classroom or school-sponsored activity, if the teacher or supervisor is found specifically to be noncompliant with this section.*
- (f) A parent, legal guardian, or person standing in loco parentis of a public school student shall have a cause of action against a public school district or an open-enrollment public charter school if:*
- (1) His or her public school student:*
 - (A) Encounters a member of the opposite sex in a public school district or open-enrollment public charter school multiple occupancy restroom or changing area that is designated for the public school student's sex if the member of the opposite sex received permission from the public school district or open-enrollment public charter school superintendent or the public school or open-enrollment public charter school building principal to use the multiple occupancy restroom or changing area; or*
 - (B) Is required by a public school district or open-enrollment public charter school superintendent or the public school or open-enrollment public charter school building principal to share sleeping quarters with a member of the opposite sex who is not a family member of the public school student; or*
 - (2) The public school district or open-enrollment public charter school is found to be noncompliant under subsection (e) of this section.*
- (g) The Division of Elementary and Secondary Education shall promulgate rules to implement this section.*

/s/ Bentley

APPROVED: 3/21/2023

Exhibit 5
2023 Idaho S.B. 1100

2023 Idaho Senate Bill No. 1100, Idaho Sixty-Seventh Idaho Legislature, First Regular Session - 2023


IDAHO BILL TEXT

TITLE: Public schools, privacy, safety

VERSION: Adopted

March 23, 2023

EDUCATION COMMITTEE

 Image 1 within document in PDF format.

SUMMARY: EDUCATION Adds to existing law to establish privacy and safety standards in public schools.

TEXT:

LEGISLATURE OF THE STATE OF IDAHO

Sixty-seventh Legislature First Regular Session - 2023

IN THE SENATE

SENATE BILL NO. 1100, As Amended

BY EDUCATION COMMITTEE

AN ACT

RELATING TO PROTECTING THE PRIVACY AND SAFETY OF STUDENTS IN PUBLIC SCHOOLS; AMENDING TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 66, TITLE 33, IDAHO CODE, TO PROVIDE LEGISLATIVE FINDINGS, TO DEFINE TERMS, TO ESTABLISH PROVISIONS REGARDING SCHOOL RESTROOMS, TO PROVIDE EXEMPTIONS, TO PROVIDE FOR REASONABLE ACCOMMODATION IN CERTAIN INSTANCES, TO PROVIDE FOR A CIVIL CAUSE OF ACTION, AND TO PROVIDE FOR PREEMPTION; PROVIDING SEVERABILITY; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 33, Idaho Code, be, and the same is hereby amended by the addition thereto of a **NEW CHAPTER**, to be known and designated as Chapter 66, Title 33, Idaho Code, and to read as follows:

CHAPTER 66

PROTECTING THE PRIVACY AND SAFETY OF STUDENTS IN PUBLIC SCHOOLS

33-6601. LEGISLATIVE FINDINGS. The legislature finds that:

- (1) There are real and inherent physical differences between men and women;
- (2) Every person has a natural right to privacy and safety in restrooms and changing facilities where such person might be in a partial or full state of undress in the presence of others;

- (3) This natural right especially applies to students using public school restrooms and changing facilities where student privacy and safety is essential to providing a safe learning environment for all students;
- (4) Requiring students to share restrooms and changing facilities with members of the opposite biological sex generates potential embarrassment, shame, and psychological injury to students, as well as increasing the likelihood of sexual assault, molestation, rape, voyeurism, and exhibitionism;
- (5) Providing separate public school restrooms and changing facilities for the different biological sexes is a long-standing and widespread practice protected by federal law, state law, and case law;
- (6) Federal legislative action, federal executive action, and federal court judgments that prevent public schools from maintaining separate restrooms and changing facilities for different biological sexes are inconsistent with the United States constitution and violate the privacy and safety rights of students; and
- (7) A statewide policy ensuring separate school restrooms and changing facilities on the basis of biological sex is substantially related to the important governmental interest in protecting the privacy and safety of all students.

33-6602. DEFINITIONS. For the purposes of this chapter:

- (1) "Changing facility" means a facility in which a person may be in a state of undress in the presence of others, including a locker room, changing room, or shower room.
- (2) "Public school" means any public school teaching K-12 students within an Idaho school district or charter school.
- (3) "Sex" means the immutable biological and physiological characteristics, specifically the chromosomes and internal and external reproductive anatomy, genetically determined at conception and generally recognizable at birth, that define an individual as male or female.

33-6603. SCHOOL RESTROOMS. (1) Every public school restroom or changing facility accessible by multiple persons at the same time must be:

- (a) Designated for use by male persons only or female persons only; and
- (b) Used only by members of that sex.

(2) No person shall enter a multi-occupancy restroom or changing facility that is designated for one sex unless such person is a member of that sex. The public school with authority over the building shall ensure that all restrooms and changing facilities provide its users with privacy from members of the opposite sex.

(3) In any other public school setting where a person may be in a state of undress in the presence of others, school personnel must provide separate and private areas designated for use by persons based on their sex, and no person may enter these private areas unless such person is a member of the designated sex.

(4) During any school authorized activity or event where persons share overnight lodging, school personnel must provide separate sleeping quarters for members of each sex. No person shall share sleeping quarters, a restroom, or a changing facility with a person of the opposite sex, unless the persons are members of the same family.

33-6604. EXEMPTIONS. This chapter shall not apply:

- (1) To single-occupancy restrooms and changing facilities or restrooms and changing facilities that are conspicuously designated for unisex or family use;
- (2) To restrooms and changing facilities that have been temporarily designated for use by that person's biological sex;
- (3) To a person of one sex who uses a single-sex facility designated for the opposite sex, if such single-sex facility is the only facility reasonably available at the time of the person's use of the facility;
- (4) To a person employed to clean, maintain, or inspect a restroom or single-sex facility;
- (5) To a person who enters a restroom or facility to render medical assistance;
- (6) To a person who is in need of assistance and, for the purposes of receiving that assistance, is accompanied by a family member, a legal guardian, or the person's designee who is a member of the designated sex for the single-sex restroom or changing facility;
- (7) To coaching staff and personnel during athletic events; or
- (8) During an ongoing natural disaster or emergency, or when necessary to prevent a serious threat to good order or student safety.

33-6605. REASONABLE ACCOMMODATION. (1) A public school shall provide a reasonable accommodation to a student who:

- (a) For any reason, is unwilling or unable to use a multi-occupancy restroom or changing facility designated for the person's sex and located within a public school building, or multi-occupancy sleeping quarters while attending a public school-sponsored activity; and
- (b) Provides a written request for reasonable accommodation to the public school.

(2) A reasonable accommodation does not include access to a restroom, changing facility, or sleeping quarter that is designated for use by members of the opposite sex while persons of the opposite sex are present or could be present.

33-6606. CIVIL CAUSE OF ACTION. (1) Any student who, while accessing a public school restroom, changing facility, or sleeping quarters designated for use by the student's sex, encounters a person of the opposite sex has a private cause of action against the school if:

- (a) The school gave that person permission to use facilities of the opposite sex; or
 - (b) The school failed to take reasonable steps to prohibit that person from using facilities of the opposite sex.
- (2) Any civil action arising under this chapter must be commenced within four (4) years after the cause of action has occurred.
- (3) Any student who prevails in an action brought under this chapter may recover from the defendant public school five thousand dollars (\$5,000) for each instance that the student encountered a person of the opposite sex while accessing a public school restroom, changing facility, or sleeping quarters designated for use by aggrieved student's sex. The student may also recover monetary damages from the defendant public school for all psychological, emotional, and physical harm suffered.
- (4) Any student who prevails in action brought under this chapter is entitled to recover reasonable attorney's fees and costs from the defendant public school.

(5) Nothing in this chapter limits other remedies at law or equity available to the aggrieved student against the school.

33-6607. PREEMPTION. This chapter preempts any law, regulation, policy, or decree enacted or adopted by any city, county, municipality, or other political subdivision within the state that purports to permit or require public schools to allow persons to use facilities designated for the other sex.

SECTION 2. SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after July 1, 2023.

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Exhibit 6
2023 Kan. Sess. Laws (H.B. 2238)

2023 Kansas Laws Ch. 13 (H.B. 2238)
SEE VETO INFORMATION AT END OF DOCUMENT

KANSAS 2023 SESSION LAWS

REGULAR SESSION

Additions are indicated by **Text**; deletions by
~~Text~~ .

Vetoed are indicated by ~~Text~~ ;
 stricken material by ~~Text~~ .

Ch. 13 (H.B. No. 2238)

West's No. 11

AN ACT concerning education; relating to student athletes; creating the fairness in women's sports act; restricting participation on women's teams to female students; providing a cause of action for violations of the act.

Be it enacted by the Legislature of the State of Kansas:

Section 1.

The provisions of sections 1 through 6, and amendments thereto, shall be known and may be cited as the fairness in women's sports act.

Sec. 2.

As used in sections 1 through 6, and amendments thereto:

- (a) "Biological sex" means the biological indication of male and female in the context of reproductive potential or capacity, such as sex chromosomes, naturally occurring sex hormones, gonads and nonambiguous internal and external genitalia present at birth, without regard to an individual's psychological, chosen or subjective experience of gender;
- (b) "postsecondary educational institution" means the same as defined in K.S.A. 74-3201b, and amendments thereto;
- (c) "private postsecondary educational institution" means any private postsecondary educational institution as defined in K.S.A. 74-32,163, and amendments thereto, or any accredited independent institution as defined in K.S.A. 72-3222, and amendments thereto;
- (d) "public educational entity" means any public school or postsecondary educational institution;
- (e) "public school" means any elementary or secondary school maintained and operated by a school district; and
- (f) "school" means any nonpublic school offering any of the grades kindergarten through 12.

Sec. 3.

(a) Interscholastic, intercollegiate, intramural or club athletic teams or sports that are sponsored by a public educational entity or any school or private postsecondary educational institution whose students or teams compete against a public educational entity shall be expressly designated as one of the following based on biological sex:

- (1) Males, men or boys;
- (2) females, women or girls; or
- (3) coed or mixed.

(b) Athletic teams or sports designated for females, women or girls shall not be open to students of the male sex.

(c)(1) The Kansas state high school activities association shall adopt rules and regulations for its member schools to implement the provisions of this section.

- (2) The state board of regents and the governing body for each municipal university, community college and technical college shall adopt rules and regulations for the postsecondary educational institutions governed by each such entity, respectively, to implement the provisions of this section.

Sec. 4.

No governmental entity, licensing or accrediting organization or athletic association or organization shall entertain a complaint, open an investigation or take any other adverse action against a public educational entity for maintaining separate interscholastic, intercollegiate, intramural or club athletic teams or sports for students of the female sex.

Sec. 5.

(a) Any student who is deprived of an athletic opportunity or suffers any direct or indirect harm as a result of a violation of section 3, and amendments thereto, shall have a private cause of action for injunctive relief, damages and any other relief available under law against the public educational entity in which the student is enrolled.

(b) Any student who is subject to retaliation or other adverse action by a public educational entity or athletic association or organization as a result of reporting a violation of section 3, and amendments thereto, to an employee or representative of such public educational entity or athletic association or organization, or to any state or federal agency with oversight of public educational entities in this state, shall have a private cause of action for injunctive relief, damages and any other relief available under law against such public educational entity or athletic association or organization.

(c) Any public educational entity that suffers any direct or indirect harm as a result of a violation of section 3 or 4, and amendments thereto, shall have a private cause of action for injunctive relief, damages and any other relief available under law against the governmental entity, licensing or accrediting organization or athletic association or organization.

(d) All civil actions must be initiated within two years after the harm occurred. Persons or organizations who prevail on a claim brought pursuant to this section shall be entitled to monetary damages, including for any psychological, emotional and physical harm suffered, reasonable attorney fees and costs and any other appropriate relief.

Sec. 6.

The provisions of sections 1 through 5, and amendments thereto, are hereby declared to be severable. If any provision of sections 1 through 5, and amendments thereto, or the application thereof to any person or circumstance is held invalid, the invalidity shall

not affect other provisions or applications of sections 1 through 5, and amendments thereto, that can be given effect without the invalid provision or application.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.

In compliance with K.S.A. 45–304, attached please find the Certificate of Action taken by the Senate and the House of Representatives relating to the veto of **HB 2238**, AN ACT concerning education; relating to student athletes; creating the fairness in women’s sports act; restricting participation on women’s teams to female students; providing a cause of action for violations of the act.

The following message was received from the Governor:

MESSAGE FROM THE GOVERNOR
REGARDING VETO OF HOUSE BILL 2238

“As I’ve said before, we all want a fair and safe place for our kids to play and compete. That’s why I support the Kansas State High School Activities Association, which was set up to ensure nobody has an unfair advantage on the playing field. The Legislature should let the Association do its job. Let’s be clear about what this bill is all about—politics. It won’t increase any test scores. It won’t help any kids read or write. It won’t help any teachers prepare our kids for the real world. Here’s what this bill would actually do: harm the mental health of our students. That’s exactly why Republican governors have joined me in vetoing similar bills. This bill would also reverse the progress we’ve made in recruiting businesses and creating jobs. It would send a signal to prospective companies that Kansas is more focused on unnecessary and divisive legislation than becoming a place where young people want to work and raise a family.

Therefore, under Article 2, Section 14(a) of the Constitution, I hereby veto House Bill 2238.”

BY THE GOVERNOR: Laura Kelly

DATED: March 17, 2023

The veto message from the Governor having been received, a motion was made that notwithstanding the Governor’s objections to **HB 2238** the bill be passed. By a vote of 28 Yeas and 12 Nays, the motion having received the required two-thirds majority of the members elected to the Senate voting in the affirmative, the bill passed.

Sincerely,

Corey Carnahan
Secretary of the Senate

CERTIFICATE

In accordance with K.S.A. 45–304, it is certified that **HB 2238**, was not approved by the Governor on March 17, 2023; was returned by the Governor with her objections and approved on April 5, 2023 by two-thirds of the members elected to the House of Representatives notwithstanding the objections of the Governor; was reconsidered by the Senate and was approved on April 5, 2023, by two-thirds of the members elected to the Senate, notwithstanding the objections, the bill did pass and shall become law.

This certificate is made this 6th day of April, 2023 by the President of the Senate and Secretary of the Senate and the Speaker of the House and Chief Clerk of the House.

Ty Masterson
President of the Senate
Corey Carnahan
Secretary of the Senate

Daniel Hawkins
Speaker of the House
Susan W. Kannarr
Chief Clerk of the House
Signed: April 6, 2023

Approved April 6, 2023.

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Exhibit 7
2023 Mo. H.B. 183

FIRST REGULAR SESSION
[PERFECTED]
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 183
102ND GENERAL ASSEMBLY

0423H.03P

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend chapters 163 and 173, RSMo, by adding thereto two new sections relating to participation in athletic competitions, with a penalty provision.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapters 163 and 173, RSMo, are amended by adding thereto two new sections, to be known as sections 163.048 and 173.088, to read as follows:

163.048. 1. This section and section 173.088 shall be known and may be cited as the "Save Women's Sports Act".

2. As used in this section, the following terms mean:

(1) "Athletics", any interscholastic athletic games, contests, programs, activities, exhibitions, or other similar competitions organized and provided for students in grades six to twelve;

(2) "Sex", the two main categories of male and female into which individuals are divided based on an individual's reproductive biology at birth and the individual's genome.

3. (1) The general assembly hereby finds the following:

(a) A noticeable disparity continues between the athletics participation rates of students who are male and students who are female;

(b) Courts have recognized a legitimate and important governmental interest in redressing past discrimination against females in athletics on the basis of sex and promoting equality of athletic opportunity between the sexes under Title IX of the federal Education Amendments of 1972 (20 U.S.C. Section 1681 et seq.), as amended; and

EXPLANATION — Matter enclosed in bold-faced brackets ~~thus~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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18 (c) Courts have recognized that classification by sex is the only feasible
19 classification to promote the governmental interest of providing opportunities for
20 athletics for females.

21 (2) The general assembly hereby declares that it is the public policy of this state
22 to further the governmental interest of ensuring that sufficient opportunities for
23 athletics remain available for females to remedy past discrimination on the basis of sex.

24 4. (1) Except as provided under subdivision (3) of this subsection, no school
25 district or charter school shall allow any student to compete in an athletics competition
26 that is designated for the biological sex opposite to the student's biological sex as
27 correctly stated on the student's official birth certificate as described in subsection 5 of
28 this section or, if the student's official birth certificate is unobtainable, another
29 government record.

30 (2) Notwithstanding any other provision of law to the contrary, no public school
31 shall be a member of any statewide athletic organization that fails to comply with the
32 provisions of this subsection and shall not compete in athletic events with a private or
33 parochial school that does not have a policy that is substantially similar to subdivision
34 (1) of this subsection.

35 (3) A school district or charter school may allow a female student to compete in
36 an athletics competition that is designated for male students if no corresponding
37 athletics competition designated for female students is offered or available.

38 5. For purposes of this section, a statement of a student's biological sex on the
39 student's official birth certificate or another government record shall be deemed to have
40 correctly stated the student's biological sex only if the statement was:

41 (1) Entered at or near the time of the student's birth; or

42 (2) Modified to correct any scrivener's error in the student's biological sex.

43 6. In each school year, the department of elementary and secondary education
44 shall withhold from a school district, charter school, or private school that violates
45 subdivision (1) or (2) of subsection 4 of this section a percentage of any monthly
46 distribution of state formula funding and any other revenues from the state that are
47 distributed to such school district or charter or private school. The department shall
48 withhold such distributions for the month in which the violation occurs and all months
49 remaining in the school year in which the violation occurs in the following percentages:

50 (1) For the first violation, twenty-five percent;

51 (2) For the second violation, fifty percent; and

52 (3) For the third and subsequent violations, one hundred percent.

53 7. The department of elementary and secondary education shall promulgate all
54 necessary rules and regulations for the implementation and administration of this

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55 section. Such rules and regulations shall ensure compliance with state and federal law
56 regarding the confidentiality of student medical information. Any rule or portion of a
57 rule, as that term is defined in section 536.010, that is created under the authority
58 delegated in this section shall become effective only if it complies with and is subject to
59 all of the provisions of chapter 536 and, if applicable, section 536.028. This section and
60 chapter 536 are nonseverable and if any of the powers vested with the general assembly
61 pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul
62 a rule are subsequently held unconstitutional, then the grant of rulemaking authority
63 and any rule proposed or adopted after August 28, 2023, shall be invalid and void.

173.088. 1. As used in this section, the following terms mean:

2 (1) "Athletics", any intercollegiate athletic games, contests, programs, activities,
3 exhibitions, or other similar competitions organized and provided for students;

4 (2) "Intercollegiate association", a national association with athletics governance
5 authority that is composed of postsecondary educational institutions and athletic
6 conferences, that sets eligibility requirements for participation in sports at the collegiate
7 level, and that provides the coordination, supervision, and regulation of the
8 intercollegiate competitions;

9 (3) "Postsecondary educational institution", any public or private institution of
10 higher education in this state that is subject to the coordinating board for higher
11 education under section 173.005;

12 (4) "Sex", the two main categories of male and female into which individuals are
13 divided based on an individual's reproductive biology at birth and the individual's
14 genome.

15 2. (1) Except as provided under subdivision (3) of this subsection, no
16 postsecondary educational institution shall allow any student to compete in an athletics
17 competition that is designated for the biological sex opposite to the student's biological
18 sex as correctly stated on the student's official birth certificate as described in
19 subsection 3 of this section or, if the student's official birth certificate is unobtainable,
20 another government record.

21 (2) No postsecondary educational institution shall allow a student to compete in
22 an athletics competition of any intercollegiate association that does not have or adopt a
23 policy that is substantially similar to subdivision (1) of this subsection.

24 (3) A postsecondary educational institution may allow a female student to
25 compete in an athletics competition that is designated for male students if no
26 corresponding athletics competition designated for female students is offered or
27 available.

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28 **3. For purposes of this section, a statement of a student's biological sex on the**
29 **student's official birth certificate or another government record shall be deemed to have**
30 **correctly stated the student's biological sex only if the statement was:**

31 **(1) Entered at or near the time of the student's birth; or**

32 **(2) Modified to correct any scrivener's error in the student's biological sex.**

33 **4. (1) In each fiscal year, the coordinating board for higher education shall**
34 **order a public postsecondary educational institution's that violates subdivision (1) or (2)**
35 **of subsection 2 of this section to remit a fine in an amount of the postsecondary**
36 **institutions current fiscal year state operating appropriation in the following**
37 **percentages:**

38 **(a) For the first violation, twenty-five percent;**

39 **(b) For the second violation, fifty percent; and**

40 **(c) For the third and subsequent violations, one hundred percent.**

41 **(2) Any private postsecondary educational institution that violates subdivision**
42 **(1) of subsection 2 of this section shall be fined up to one million dollars per violation as**
43 **determined by the coordinating board of higher education.**

44 **5. Nothing in this section shall permit an individual to bring any claim against**
45 **any postsecondary educational institution or the employees, directors, officers, and**
46 **agents of such institution, relating to or arising out of compliance with, adherence to, or**
47 **implementation of subsection 2 of this section by such institution.**

48 **6. No postsecondary educational institution or the employees, directors, officers,**
49 **and agents of such institution, shall be civilly liable for acts relating to or arising out of**
50 **compliance with, adherence to, or implementation of subsection 2 of this section by such**
51 **institution.**

52 **7. (1) Any individual that suffers harm arising from a violation of subsection 2**
53 **of this section by a postsecondary education institution shall have a private cause of**
54 **action against such institution.**

55 **(2) A cause of action under subdivision (1) of this subsection shall be brought**
56 **within two years after the harm has occurred.**

57 **8. The department of higher education and workforce development shall**
58 **promulgate all necessary rules and regulations for the implementation and**
59 **administration of this section. Such rules and regulations shall ensure compliance**
60 **with state and federal law regarding the confidentiality of student medical information.**
61 **Any rule or portion of a rule, as that term is defined in section 536.010, that is created**
62 **under the authority delegated in this section shall become effective only if it complies**
63 **with and is subject to all of the provisions of chapter 536 and, if applicable, section**
64 **536.028. This section and chapter 536 are nonseverable and if any of the powers vested**

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65 **with the general assembly pursuant to chapter 536 to review, to delay the effective date,**
66 **or to disapprove and annul a rule are subsequently held unconstitutional, then the grant**
67 **of rulemaking authority and any rule proposed or adopted after August 28, 2023, shall**
68 **be invalid and void.**

✓

Exhibit 8
2023 Mo. S.B. 39

FIRST REGULAR SESSION

[PERFECTED]

SENATE SUBSTITUTE NO. 2 FOR

SENATE BILL NO. 39

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATORS THOMPSON REHDER, HOSKINS, MOON, CARTER, LUETKEMEYER, COLEMAN,
FITZWATER, TRENT, BLACK, BEAN, ESLINGER AND GANNON.

0815S.06P

KRISTINA MARTIN, Secretary

AN ACT

To amend chapter 163, RSMo, by adding thereto one new section relating to participation in athletic competition, with a severability clause.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 163, RSMo, is amended by adding thereto
2 one new section, to be known as section 163.048, to read as
3 follows:

163.048. 1. As used in this section, the following
2 terms mean:

3 (1) "Athletics", any interscholastic athletic games,
4 contests, programs, activities, exhibitions, or other
5 similar competitions organized and provided for students;

6 (2) "Sex", the two main categories of male and female
7 into which individuals are divided based on an individual's
8 reproductive biology at birth and the individual's genome.

9 2. (1) The general assembly hereby finds the
10 following:

11 (a) A noticeable disparity continues between the
12 athletics participation rates of students who are male and
13 students who are female; and

14 (b) Courts have recognized that classification by sex
15 is the only feasible classification to promote the

16 governmental interest of providing opportunities for
17 athletics for females.

18 (2) The general assembly hereby declares that it is
19 the public policy of this state to further the governmental
20 interest of ensuring that sufficient opportunities for
21 athletics remain available for females to remedy past
22 discrimination on the basis of sex.

23 3. (1) Except as provided under subdivision (2) of
24 this subsection, no private school, public school district,
25 public charter school, or public or private institution of
26 postsecondary education shall allow any student to compete
27 in an athletics competition that is designated for the
28 biological sex opposite to the student's biological sex as
29 correctly stated on the student's official birth certificate
30 as described in subsection 4 of this section or, if the
31 student's official birth certificate is unobtainable,
32 another government record.

33 (2) A private school, public school, public charter
34 school, or public or private institution of postsecondary
35 education may allow a female student to compete in an
36 athletics competition that is designated for male students
37 if no corresponding athletics competition designated for
38 female students is offered or available.

39 4. For purposes of this section, a statement of a
40 student's biological sex on the student's official birth
41 certificate or another government record shall be deemed to
42 have correctly stated the student's biological sex only if
43 the statement was:

44 (1) Entered at or near the time of the student's
45 birth; or

46 (2) Modified to correct any scrivener's error in the
47 student's biological sex.

48 5. A private school, public school district, public
49 charter school, or public or private institution of
50 postsecondary education that violates subdivision (1) of
51 subsection 3 of this section shall not receive any state aid
52 under this chapter or chapter 173 or any other revenues from
53 the state.

54 6. The parent or guardian of any student, or any
55 student who is over eighteen years of age, who is deprived
56 of an athletic opportunity as a result of a violation of
57 this section shall have a cause of action for injunctive or
58 other equitable relief, as well as payment of reasonable
59 attorney's fees, costs, and expenses of the parent,
60 guardian, or student. The relief and remedies set forth
61 shall not be deemed exclusive and shall be in addition to
62 any other relief or remedies permitted by law.

63 7. The department of elementary and secondary
64 education and the department of higher education and
65 workforce development shall each promulgate all necessary
66 rules and regulations for the implementation and
67 administration of this section. Such rules and regulations
68 shall ensure compliance with state and federal law regarding
69 the confidentiality of student medical information. Any
70 rule or portion of a rule, as that term is defined in
71 section 536.010, that is created under the authority
72 delegated in this section shall become effective only if it
73 complies with and is subject to all of the provisions of
74 chapter 536 and, if applicable, section 536.028. This
75 section and chapter 536 are nonseverable and if any of the
76 powers vested with the general assembly pursuant to chapter
77 536 to review, to delay the effective date, or to disapprove
78 and annul a rule are subsequently held unconstitutional,

79 then the grant of rulemaking authority and any rule proposed
80 or adopted after August 28, 2023, shall be invalid and void.

81 8. The provisions of this section shall expire on
82 August 28, 2027.

Section B. If any provision of section A of this act
2 or the application thereof to anyone or to any circumstance
3 is held invalid, the remainder of those sections and the
4 application of such provisions to others or other
5 circumstances shall not be affected thereby.

✓

Exhibit 9
2023 Ohio H.B. 6

As Introduced

135th General Assembly

Regular Session

2023-2024

H. B. No. 6

Representative Powell

Cosponsors: Representatives Hall, Jordan, Johnson, Click, Creech, Stewart, Merrin, LaRe, Kick, Stoltzfus, Lear, Wiggam, Schmidt, Barhorst, Stein, Miller, K., Klopfenstein, Gross, Thomas, J., Miller, M., King, Santucci, Willis, Demetriou, Mathews, Young, T., Manchester, Cutrona, Richardson, Plummer



A BILL

To enact sections 3313.5319 and 3345.562 of the	1
Revised Code to enact the Save Women's Sports	2
Act to require schools, state institutions of	3
higher education, and private colleges to	4
designate separate single-sex teams and sports	5
for each sex.	6

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 3313.5319 and 3345.562 of the	7
Revised Code be enacted to read as follows:	8

<u>Sec. 3313.5319.</u> (A) <u>Each school that participates in</u>	9
<u>athletic competitions or events administered by an organization</u>	10
<u>that regulates interscholastic athletic conferences or events</u>	11
<u>shall designate interscholastic athletic teams based on the sex</u>	12
<u>of the participants as follows:</u>	13

<u>(1) Separate teams for participants of the female sex</u>	14
<u>within female sports divisions;</u>	15

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(2) Separate teams for participants of the male sex within male sports divisions; 16
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(3) If applicable, co-ed teams for participants of the female and male sexes within co-ed sports divisions. 18
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(B) No school, interscholastic conference, or organization that regulates interscholastic athletics shall knowingly permit individuals of the male sex to participate on athletic teams or in athletic competitions designated only for participants of the female sex. 20
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(C) Nothing in this section shall be construed to restrict the eligibility of any student to participate on any athletic teams or in athletic competitions that are designated as male or co-ed. 25
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(D) No agency or political subdivision of the state and no accrediting organization or athletic association that operates or has business activities in this state shall process a complaint, begin an investigation, or take any other adverse action against a school or school district for maintaining separate single-sex interscholastic athletic teams or sports. 29
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(E) (1) Any participant who is deprived of an athletic opportunity or suffers a direct or indirect harm as a result of a violation of this section has a private cause of action for injunctive relief, damages, and any other relief available against the school, school district, interscholastic conference, or organization that regulates interscholastic athletics. 35
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(2) Any participant who is subject to retaliation or other adverse action by a school, school district, interscholastic conference, or organization that regulates interscholastic athletics as a result of reporting a violation of this section 41
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has a private cause of action for injunctive relief, damages, 45
and any other relief available against the entity that takes the 46
retaliatory or other adverse action. 47

(3) Any school or school district that suffers any direct 48
or indirect harm as a result of a violation of division (D) of 49
this section has a private cause of action for injunctive 50
relief, damages, and any other relief available against the 51
agency, political subdivision, accrediting organization, or 52
athletic association that violates that division. 53

(F) Any civil action brought as a result of a violation of 54
this section shall be initiated within two years after the date 55
on which the violation occurs. Persons or organizations who 56
prevail on a claim brought pursuant to this section shall be 57
entitled to monetary damages, including for any psychological, 58
emotional, or physical harm suffered, reasonable attorney's fees 59
and costs, and any other appropriate relief. 60

Sec. 3345.562. (A) As used in this section: 61

(1) "Private college" means a nonprofit institution that 62
holds a certificate of authorization issued under section 63
1713.02 of the Revised Code; 64

(2) "State institution of higher education" has the same 65
meaning as in section 3345.011 of the Revised Code. 66

(B) Each state institution of higher education or private 67
college that is a member of the national collegiate athletics 68
association, the national association of intercollegiate 69
athletics, or the national junior college association shall 70
designate intercollegiate athletic teams and sports based on the 71
sex of the participants as follows: 72

(1) Separate teams for participants of the female sex 73

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<u>within female sports divisions;</u>	74
<u>(2) Separate teams for participants of the male sex within male sports divisions;</u>	75 76
<u>(3) If applicable, co-ed teams for participants of the female and male sexes within co-ed sports divisions.</u>	77 78
<u>(C) No state institution or private college to which division (B) of this section applies shall knowingly allow individuals of the male sex to participate on athletic teams or in athletic competitions designated for only participants of the female sex.</u>	79 80 81 82 83
<u>(D) Nothing in this section shall be construed to restrict the eligibility of any student to participate on any athletic teams or in athletic competitions that are designated as male or co-ed.</u>	84 85 86 87
<u>(E) No agency or political subdivision of the state and no accrediting organization or athletic association that operates or has business activities in this state shall process a complaint, begin an investigation, or take any other adverse action against a state institution of higher education or private college for maintaining separate single-sex intercollegiate athletic teams or sports for participants of the female sex.</u>	88 89 90 91 92 93 94 95
<u>(F) (1) Any participant who is deprived of an athletic opportunity or suffers a direct or indirect harm as a result of a violation of this section has a private cause of action for injunctive relief, damages, and any other relief available against the state institution or the private college.</u>	96 97 98 99 100
<u>(2) Any participant who is subject to retaliation or other adverse action by a state institution, private college, or</u>	101 102

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athletic association as a result of reporting a violation of 103
this section has a private cause of action for injunctive 104
relief, damages, and any other relief available against the 105
entity that takes the retaliatory or other adverse action. 106

(3) Any state institution or private college that suffers 107
any direct or indirect harm as a result of a violation of 108
division (E) of this section has a private cause of action for 109
injunctive relief, damages, and any other relief available 110
against the agency, political subdivision, accrediting 111
organization, or athletic association that violates that 112
division. 113

(G) Any civil action brought as a result of a violation of 114
this section shall be initiated within two years after the date 115
on which the violation occurs. Persons or organizations who 116
prevail on a claim brought pursuant to this section shall be 117
entitled to monetary damages, including for any psychological, 118
emotional, or physical harm suffered, reasonable attorney's fees 119
and costs, and any other appropriate relief. 120

Section 2. This act shall be known as the Save Women's 121
Sports Act. 122