



**Maryland House Ways and Means Committee**  
**House Bill 63**

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Alliance Defending Freedom is the nation’s leading nonprofit legal organization that advocates for religious liberty, free speech, life, and marriage and the family. We regularly analyze proposed laws and their effect on constitutional freedoms. ADF most recently served as co-counsel with the states of Idaho and West Virginia defending their Fairness in Women’s Sports laws before the Supreme Court of the United States.

Women and girls deserve to compete on a level playing field. Allowing males to compete in girls’ sports destroys fair competition and deprives girls of medals, podium spots, and potential scholarships. Our law firm represents numerous female athletes who have personally lost opportunities to compete in championships or advance in competition to males who were allowed to compete in their sports. We also represent girls who have been subject to vulgar comments and sexual harassment in locker rooms by males who were given access to their intimate spaces.

House Bill (HB) 63 brings commonsense protections to Maryland’s women and girls, consistent with protections that have already been enacted in 27 states. HB 63 protects athletic opportunities for girls by ensuring they are not forced to compete against males on the playing field or undress in front of them in a locker room. The bill simply requires that all high school sports teams and locker rooms be designated as either male, female, or co-ed based on biological sex and makes clear that males are not eligible to compete on girls’ teams or access their private spaces.

HB 63 ensures that girls have a legal remedy when their schools or sports teams fail to protect them. The bill also protects schools and colleges by giving them a legal remedy against governing bodies that would attempt to punish them for protecting female athletes. In other words, these laws protect both the athletes and the schools where they compete.

Protecting fairness for women athletes fully aligns with both the U.S. Constitution and federal law, including Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.). Courts have repeatedly 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. While classifications based on sex are generally disfavored, the Supreme Court has recognized that “sex classifications may be used to compensate women for particular economic disabilities [they have] suffered, to promote equal employment opportunity, [and] to advance full development of the talent and capacities of our Nation’s people.” *United States v. Virginia*, 518 U.S. 515, 533 (1996) (internal citations and quotation marks omitted).

One place where sex classifications allow for the “full development of the talent and capacities of our Nation’s people” is in the context of sports and athletics due to the “inherent differences between men and women.” *Id.* Courts and commonsense tell us that the inherent, physiological differences between males and females result in different athletic capabilities. *See, e.g., Kleczek v. Rhode Island Interscholastic League, Inc.*, 612 A.2d 734, 738 (R.I. 1992) (“Because of innate physiological differences, boys and girls are not similarly situated as they enter athletic competition.”); *Petrie v. Ill. High Sch. Ass’n*, 394 N.E.2d 855, 861 (Ill. App. Ct. 1979) (noting that “high school boys [generally possess physiological advantages over] their girl counterparts” and that those advantages give them an unfair lead over girls in some sports like “high school track”).

For example, in just a two-year span in Connecticut, two males captured 15 girls’ championship titles, set 17 new records, and took over 80 opportunities to

advance in competition that rightfully belonged to girls. And, in just one year, 275 high school boys ran faster times than the lifetime best of World Champion sprinter, Allyson Felix. The world's best female Olympic athletes would lose to literally thousands of boys and men on any given day.

That's because men generally have "denser, stronger bones, tendons, and ligaments" and "larger hearts, greater lung volume per body mass, a higher red blood cell count, and higher hemoglobin." Neel Burton, *The Battle of the Sexes*, Psychology Today (July 2, 2012). Men also have higher natural levels of testosterone, which "differentially effects male and female hemoglobin levels, body fat content, 'the absolute ability to store and use carbohydrate,' and the development of 'Type 2 muscle fibers, which are used to generate speed and power'." Doriane Lambelet Coleman, *Sex in Sport*, Law and Contemporary Problems Vol. 80, No. 4 63, 74 (2017) (quoting Gina Kolata, *Men, Women and Speed. 2 Words: Got Testosterone?*, N.Y. Times (Aug. 21, 2008)).

Having separate sex-specific teams promotes equality in athletics by providing opportunities for female athletes to demonstrate their skill, strength, and athletic abilities while also providing them with opportunities to obtain recognition and accolades, college scholarships, and the numerous other long-term benefits that flow from success in athletic endeavors. "[C]ommingling of the biological sexes in the female athletics arena would significantly undermine the benefits" that separate sports teams "afford[] to female student athletes." *Adams ex rel. Kasper v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791, 819 (11th Cir. 2022) (Lagoa, J., specially concurring).

Allowing males to compete in girls' sports reverses nearly 50 years of advances for women. But HB 63 would ensure that high school girls have a fair opportunity to compete and win!

Thank you.