

April 30, 2024

The Heritage Foundation’s submission to the “Call for input to the report of the Special Rapporteur on violence against women and girls to the UN General Assembly on violence against women and girls in sport”

In the request for input for her upcoming report on the topic of violence against women and girls in sport, the Special Rapporteur notes that “in some jurisdictions, sports traditionally reserved for female athletes, are now open to male athletes based on their gender identity and who identify as women and girls. This has had significant human rights implications for all women and girls, including their right to equality and non-discrimination.” This submission from The Heritage Foundation, an ECOSOC-accredited nongovernmental organization based in Washington, DC, will focus on this aspect of violence against women and girls in sports.

As the Special Rapporteur well knows, gender theory/ideology is the controversial view that sex is merely assigned at birth and is subordinate to an internal “gender identity.” Proponents of gender theory insist that a person self-determines his or her own gender as male or female, or both, or neither, based on the “gender identity” at their emotional or psychological core.

Gender theory treats distinct sex categories as oppressive. Its champions seek to force everyone - and all social institutions -- to reject the reality of biological sex and to repeat falsehoods about human reproduction, the family, and immutable characteristics of the human body. It must be noted that there is no biological or scientific marker for “gender identity,” but merely a highly-disputed philosophy held by a minority of Western activists. This rejection of biological reality comes at a steep cost, especially for women and girls.

Policies that treat people based upon a subjective “gender identity” undermine decades of efforts to remedy historical and societal injustices that disproportionately affect women and girls. Allowing for the self-identification of gender gives men and boys unfettered access to female-only private spaces like restrooms, showers, and changing rooms if those men or boys claim to identify as female. These situations are rife with risk of violence—physical, sexual, and psychological—for women and girls. For instance, where governments have moved male inmates who self-identify as female into female prisons, women have been sexually assaulted and impregnated by male cellmates.¹

So too does self-identification of gender create situations of unfairness and the potential for physical harm to female athletes. It is indisputable that, on average, human males are bigger, faster and stronger than females. For example, the fastest female runners in the world hold records that hundreds of teenage boys beat every year. The world’s strongest female powerlifters lift the same weights that countless male college athletes lift in typical workouts.

¹ See Women’s Liberation Front, “Condom Purchases and Sexual Assault,” November 11, 2021 at <https://womensliberationfront.org/news/condom-purchases-and-sexual-assault> and “Two NJ Women’s Prison Inmates Impregnated by Male Criminal,” April 19, 2022 at <https://womensliberationfront.org/news/two-nj-womens-prison-inmates-impregnated-by-male-criminal> (accessed April 29, 2024).

Biological men have many significant physical advantages relative to women, which translate into superior athletic abilities. As the authors of a Duke University paper argue, “[t]hese biological differences explain the male and female secondary sex characteristics which develop during puberty and have lifelong effects, including those most important for success in sport: categorically different strength, speed, and endurance. There is no other physical, cultural, or socioeconomic trait as important as testes for sports purposes.”²

Men have larger hearts, larger lungs, more bone mass, more muscle mass, stronger muscles, and less fat than women. These physiological differences, which become more pronounced during puberty, contribute to males’ athletic advantage in a variety of ways, including by improving their aerobic capacity and utilizing different biomechanics to produce more force in running, jumping and throwing. As detailed in a recent report by the Independent Women’s Forum, “the science is consistent and irrefutable that the 20-fold boost in testosterone that occurs during male puberty creates a significant, and lasting, athletic advantage for males.”³

These physical advantages of biological men manifest in a variety of harms to women and girls when males are permitted to compete against females in sports. In head-to-head competition—such as in sports like running, swimming or track and field—women and girls have a reduced chance of victory when competing against males. While defeat on the playing field does not always amount to violence, it is deeply unjust.⁴

Perhaps the most notorious example in the U.S. is University of Pennsylvania swimmer Lia Thomas, who formerly went by the name Will Thomas and competed on the men’s swim team, where he was an average collegiate male swimmer. When Thomas changed his name to Lia to reflect his new “gender identity,” he joined the women’s swim team and competed against female swimmers, defeating all of them in national championships.⁵

Similarly, with respect to team sports, if a space on the team’s roster is taken by a male because of his superior athletic ability, a female has lost a spot on the team. But the most significant and dangerous harm to women and girls is the risk of violence and injury to female athletes in competition with males, owing to the differences in size and strength discussed above.

² See Doriane Lambelet Coleman and Wickliffe Shreve, *Comparing Athletic Performances: The Best Elite Women to Boys and Men*, Duke Center for Sports Law & Pol’y (2018), available at <https://law.duke.edu/sites/default/files/centers/sportslaw/comparingathleticperformances.pdf> (accessed April 24, 2024).

³ Independent Women’s Forum, “Competition: Title IX, Male-Bodied Athletes, and the Threat to Women’s Sports,” 2nd ed., 2022, available at https://www.iwf.org/wp-content/uploads/2023/06/IWLC_CompetitionReport_2ndEdition.pdf (accessed April 24, 2024).

⁴ For example, see Kelsey Bolar, “After Competing Against Transgender Athletes, Mom and Daughter Fight for Fairness in Women’s Sports,” *The Daily Signal*, June 15, 2021 at <https://www.dailysignal.com/2021/06/15/after-competing-against-transgender-athletes-mom-and-daughter-fight-for-fairness-in-womens-sports/> (accessed April 26, 2024) and Mary Margaret Olohan, “Female Athletes Ask Circuit Court to Keep Biological Males Out of Women’s Sports,” *The Daily Signal*, June 6, 2023 at <https://www.dailysignal.com/2023/06/06/female-athletes-ask-circuit-court-to-keep-biological-males-out-of-womens-sports/> (accessed April 26, 2024).

⁵ See Daily Signal Staff, “Riley Gaines Describes Sharing Locker Room With Lia Thomas,” *The Daily Signal*, June 21, 2023 at <https://www.dailysignal.com/2023/06/21/riley-gaines-describes-sharing-locker-room-lia-thomas/> (accessed April 30, 2024).

Regrettably, numerous examples of female injury already exist in the brief history and limited locations where males are permitted to compete in women or girls' sports on the basis of their self-identification.⁶ Take, for example, the story that made headlines in the United States last year when a female high school volleyball player in North Carolina suffered a severe concussion and other health problems after being knocked unconscious when a biological male opponent, who identifies as transgender, spiked a volleyball in her face.⁷ In these instances, the policies themselves expose girls and women to significantly greater risk of violence, regardless of whether the injuries inflicted by male players are intentional. In pitting biologically unequal opponents against each other, these policies are inherently dangerous and discriminatory to women and girls.

While the risk of injury to female athletes from competition against males is significant, it is not the only source of potential violence against women and girls stemming from gender ideology that the Special Rapporteur should consider in her forthcoming report. When men are permitted to self-identify as women and have access to female-specific spaces (locker rooms, bathrooms, and showers in particular) as a result, women's privacy is violated. Not only does the presence of men—no matter how they may identify—in a locker room make many women uncomfortable, but it also increases the risk of making them unsafe. By eliminating female-only spaces, women and girls are at increased risk of sexual violence from predatory men.

Unfortunately, the Biden administration has chosen to promote the special interests of gender ideologues and trans activists in the United States above those of women and girls, particularly with its National Strategy on Gender Equity and Equality and its rewrite of Title IX.⁸ As the Special Rapporteur has noted in her communication to the United States last year, "[i]f the proposed changes [to Title IX] are adopted, they would contravene the United States' international human rights obligations and commitments concerning the prevention of all forms of violence and discrimination against women and girls on the basis of sex."⁹

⁶ See Virginia Allen and Lauren Evans, "How Many More Female Athletes Will Be Injured by Trans Players Before Biden Gives Up Trying to Rewrite Title IX?" *The Daily Signal*, February 22, 2024 at <https://www.dailysignal.com/2024/02/22/another-female-athlete-injured-man-how-many-more-until-biden-gives-up-rewriting-title-ix/> and Kirsten Fleming, "Letting trans players participate in girls' and women's sports is a ticking time bomb," *The New York Post*, February 20, 2024 at <https://nypost.com/2024/02/20/opinion/trans-players-in-girls-sports-is-a-ticking-time-bomb/>.

⁷ Alec Schemmel, "Injured volleyball player speaks out after alleged transgender opponent spiked ball at her," *abc13 News*, April 20, 2023 at <https://wlos.com/news/local/volleyball-player-injured-after-transgender-opponent-spiked-ball-at-her-speaks-out>.

⁸See Jay Richards, PhD and Grace Melton, "The White House Plan to Make Gender Ideology a Central Theme of the American Experiment," Heritage Foundation *Backgrounder* No. 3686, February 17, 2022, <https://www.heritage.org/gender/report/the-white-house-plan-make-gender-ideology-central-theme-the-american-experiment> (access April 30, 2024) and Sarah Parshall Perry, "Women's Sports on the Chopping Block," testimony before the Subcommittee on Health Care and Financial Services, House Committee on Oversight and Accountability, U.S. House of Representatives, December 5, 2023, <https://www.heritage.org/gender/report/womens-sports-the-chopping-block> (accessed April 30, 2024).

⁹ See "United States: Proposed Title IX changes will impact rights of women and girls in sports and education says UN expert," December 27, 2023 at [https://www.ohchr.org/en/press-releases/2023/12/united-states-proposed-title-ix-changes-will-impact-rights-women-and-girls#:~:text=GENEVA%20\(27%20December%202023\)%20-.a%20UN%20expert%20warned%20today](https://www.ohchr.org/en/press-releases/2023/12/united-states-proposed-title-ix-changes-will-impact-rights-women-and-girls#:~:text=GENEVA%20(27%20December%202023)%20-.a%20UN%20expert%20warned%20today) (accessed April 29, 2024).

It is essential to note that the Biden Administration's promotion of gender identity over biological reality represents only the view of a powerful ideological minority and is not supported by most of the American public. Polls show that in the years the Biden Administration has aggressively pursued these anti-women policies, support for them has declined significantly, even among President Biden's own party.¹⁰ A recent poll shows the vast majority of Americans support fairness and safety for women and girls in sports (73% in March 2024).¹¹

To date, legislation has been introduced in over 30 states in the U.S. to protect fairness in women and girls' sports by restricting them to women and girls and excluding men or boys who "identify" as women. Twenty-five of those states have passed these policies into law.

The Heritage Foundation thanks the Special Rapporteur for her work to protect women and girls from violence and commends her interest in addressing the threats that gender ideology poses to women and girls' safety, dignity and equality.

¹⁰ Jeffrey M. Jones, "More Say Birth Gender Should Dictate Sports Participation," *Gallup News*, June 12, 2023 at <https://news.gallup.com/poll/507023/say-birth-gender-dictate-sports-participation.aspx> (accessed April 30, 2024).

¹¹ Mary Elise Cosgray, "Supermajorities Oppose 'Gender-Affirming Care' for Minors, Against Biological Males Playing Female Sports, Poll Finds," *The Daily Signal*, March 12, 2024 at <https://www.dailysignal.com/2024/03/12/new-survey-finds-most-voters-dont-support-gender-affirming-services-minors/> (accessed April 30, 2024).