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Biden Turns Title IX Into a Weapon Against Women and Girls

Biology matters in sports and intimate spaces, even if it is irrelevant to employment decisions.

By Kristen Waggoner

May 19, 2024 3:42 pm ET



PHOTO: PHELAN M. EBENHACK/ASSOCIATED PRESS

The Biden administration’s Title IX rule, which the Education Department published on April 29, is a looming disaster for women and girls. Before this rule, the trend of men using women’s locker rooms, showers and bathrooms—and taking women’s titles, trophies and scholarships in athletic competitions—was only a partial reality, relegated to certain left-leaning states and school districts. No longer. With its sweeping decision to reinterpret “sex” discrimination to include “gender identity” in Title IX, the administration has opened the floodgates for males to enter female spaces nationwide.

My organization, Alliance Defending Freedom, is one of several groups representing parties suing the administration over this rule. We have already filed multiple lawsuits, and we object

on many grounds.

Among the most obvious, this rule is lawless. It twists the language of Title IX, the landmark civil-rights law that created equal opportunities for women, by redefining the meaning of sex discrimination. The administration seeks to include the concept of “gender identity” within it—never mind that even today it is widely recognized that “sex” (based on biology) is very different from “gender identity” (based on subjective, internal perceptions).

President Biden has pressed forward, claiming the Supreme Court’s decision in *Bostock v. Clayton County* (2020) permits it. It doesn’t. *Bostock* interpreted Title VII, the federal law that prohibits sex discrimination in employment. In that case, the court said that firing a male employee for identifying as a woman impermissibly considers sex and amounts to sex discrimination.

The logic of *Bostock* is that biology is generally irrelevant to the hiring and firing of employees. But Title IX, which regulates educational institutions, is a different statute with different language and history. Unlike Title VII, Title IX explicitly allows schools to draw sex-based distinctions, including in “living facilities.” The initial Title IX regulations, promulgated in 1975, recognized that the statute permits—and in some instances requires—many sex-specific spaces and programs, and Congress long ago ratified that understanding. Biology matters in sports and intimate spaces: Treating women fairly requires respect for their physical differences from men and their need for privacy.

Many judges have already acknowledged and affirmed the differences between Title VII and Title IX. In fact, *Bostock* seemed to anticipate this. The decision itself said it didn’t address “other laws” such as Title IX or “bathrooms, locker rooms, or anything else of the kind.”

The administration’s new rule tosses this language to the side and directly addresses locker rooms, showers and bathrooms. Virtually every school in the nation that takes federal money will now have to allow boys who identify as girls to enter girls’ physical-education classes, locker rooms, showers and bathrooms. Schools will be compelled to disregard the rights of women and girls in favor of a male’s subjective and sometimes temporary feelings. That’s immoral and unconstitutional. It makes a mockery of Title IX’s promise of equality.

Girls have already suffered the loss of their privacy and athletic opportunities to boys in many states. When female athletes have protested, they have been vilified or punished for it—including in West Virginia, where a court had to restore sanity after a school suspended protesting middle-school female athletes from participating in their own sport. It’s

reprehensible that girls are being punished for standing up for themselves. These girls should receive nothing but praise and admiration for their courage, which their coaches, school officials and even many parents seem to lack.

The administration says women's sports aren't addressed by this rule, but that is an election-year ploy. The logic of the rule demands that schools allow boys who identify as girls to participate in girls' sports. And the administration has already stated in a lawsuit ADF is litigating that Title IX requires schools to let boys who identify as girls compete in women's sports. If Mr. Biden wins in November, expect this mandate to be made official across the nation.

This rule is also an assault on the freedom of speech. It demands that students, teachers and administrators go along with the lies of gender ideology, which are harming countless students today. Anyone who resists will be exposed to investigations, punishment or firing. That has already happened in Illinois, where a teacher was terminated for declining to refer to students with opposite-sex pronouns. Situations like this would multiply nationwide under this new rule.

The administration's gender-ideology crusade is also at odds with science. England's National Health Service concluded this year that "there is not enough evidence to support the safety or clinical effectiveness of PSH"—puberty-suppressing hormones—"to make the treatment routinely available" to minors with gender dysphoria. In the U.S., the Endocrine Society found as far back as 2017 that the vast majority of children experiencing these struggles outgrow them by adolescence.

What these kids need is support, guidance and care. They aren't helped by forcing others to pretend they are a different sex or by restructuring schools to conform to a lie.

For the sake of America's youth, particularly girls, courts should quickly block the administration's unlawful mandate and protect the educational opportunities that Title IX promises girls and women.

Ms. Waggoner is president and general counsel of Alliance Defending Freedom.

Appeared in the May 20, 2024, print edition as 'Biden Turns Title IX Into a Weapon Against Women and Girls'.

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