

CAUSE NO: _____

THE STATE OF TEXAS

Plaintiff,

v.

NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION

Defendants.

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IN THE DISTRICT COURT

LUBBOCK COUNTY, TEXAS

_____ JUDICIAL DISTRICT

THE STATE OF TEXAS'S ORIGINAL PETITION

The National Collegiate Athletics Association (“NCAA”) is engaging in false, deceptive, and misleading practices by advertising and selling goods and services associated with women’s sporting events that are, instead, mixed sex sporting events where men can compete against women.

Most consumers know that a “woman” means an adult human female. *See infra* ¶¶82-90. “Sex is an immutable characteristic determined solely by birth.” *Gibson v. Collier*, 920 F.3d 212,-217 n. 2 (5th Cir. 2019) (cleaned up) (quoting *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973) (plurality op.)). This definition of sex is ubiquitous and has been the same throughout human history. It is how the NCAA understood the word from its founding in 1906 until 2019. And, most importantly, it is how Texas consumers understand the word.¹

Consumers purchase goods and services associated with women’s college sports because they enjoy watching *women* compete against *women*—not *men* competing against *women*. Consumers make these purchases to support female empowerment and fair competition among women. The impact of women’s sports on the self-esteem, academic achievement, future employment, and development of women and girls is profound and enduring. *See infra* ¶¶134-64.

¹ Male and female, man and woman, refer in this Petition to biological sex. *See* Andrea Orwoll, *Pregnant “Persons”*: *The Linguistic Defanging of Women’s Issues and the Legal Danger of “Brain-Sex” Language*, 17 Nev. L.J. 670 (2017) (discussing the legal and historical meaning of the word “woman”); *see also* SEX, FEMALE, MALE, Oxford English Dictionary (re-issued ed. 1978) (defining “sex” as “[e]ither of two divisions of organic beings distinguished as male and female respectively, “female” as “[b]elonging to the sex which bears offspring,” and “male” as “[o]f or belonging to the sex which begets offspring, or performs the fecundating function of generation”); Sex, Webster’s New World Dictionary (1972) (“[E]ither of the two divisions, male or female, into which persons, animals, or plants are divided, with reference to their reproductive functions.”); SEX, FEMALE, MALE, Webster’s Seventh New Collegiate Dictionary (1969) (defining “sex” as “either of two divisions of organisms distinguished respectively as male or female,” “female” as “an individual that bears young or produces eggs as distinguished from one that begets young,” and “male” as “of, relating to, or being the sex that begets young by performing the fertilizing function”); SEX, Random House College Dictionary (rev. ed. 1980) (“[E]ither the male or female division of a species, esp. as differentiated with reference to the reproductive functions”).

Men competing in women's sports is inherently unfair and unsafe due to their physiological advantages. *See infra* ¶¶165-91; *United States v. Virginia*, 518 U.S. 515, 533 (1996) (recognizing that “[p]hysical differences between men and women . . . are enduring . . . [i]nherent differences between men and women, we have come to appreciate, remain cause for celebration, but not for denigration of the members of either sex or for artificial constraints on an individual's opportunity.”).

When female athletes are forced to compete against men in women's sports, they are deprived of titles, records, medals, scholarships, and opportunities to win; opportunities to participate in a fair and safe environment; and the ancillary benefits that sports participation provides. Consumers do not purchase goods and services associated with women's sporting events to watch men steal medals and records from female participants. When consumers have purchased goods and services associated with women's sporting events only to discover a man competing, they have invariably reacted with revulsion and outrage. *See infra* ¶¶9-132.

The NCAA is a college sports association that adopts governing rules and administers championship and tournament events. It divides its sporting events into “men,” “women,” and “mixed” (co-ed) categories. The NCAA's history, advertising, logos, and branding lead consumers to believe that these sex-based classifications mean that men compete against men in “men's sports,” women compete against women in “women's sports,” and men and women compete against each other in “mixed sports.” Not so. In fact, the NCAA permits males to compete in some, but not all, “women's sports” if they have a testosterone level lower than 10 nanomoles per liter (nmol/L) for a short period of time immediately prior to the sporting event.

The NCAA is engaging in false, misleading, and deceptive practices by advertising using similar logos and branding for its “women’s” sporting events restricted solely to women and “women’s” sporting events open to both men and women—a practice designed to confuse consumers.

The NCAA is engaging in false, deceptive, and misleading practices by advertising using logos and branding representing that the goods and services offered to consumers are for “women’s” sporting events when, in fact, the sporting events are “mixed” with both male and female participants.

The NCAA is further engaging in false, deceptive, and misleading practices by failing to disclose to consumers which participants in “women’s” sporting events are women and which are men, leaving consumers who want to purchase goods and services associated with women in women’s sporting events confused and frustrated. Disclosure of all male participants in women’s sporting events or rebranding of the event as “mixed” or “co-ed,” would allow consumers the choice of whether to purchase goods and services associated with the event, whether in support or protest, and allow rival teams, players, and member schools to decide whether to participate in the event.

Texas consumers are legally entitled to spend their hard-earned dollars on the competitions that matter to them, without being misled. This Court should enjoin the NCAA from its misleading and unlawful conduct to protect Texas consumers from the NCAA’s false, deceptive, and misleading practices.

I. THE PARTIES

1. Defendant, the NCAA, is a foreign unincorporated association with its headquarters and principal place of business in Indianapolis, Indiana. It may be served through the Chair of the NCAA Board of Governors, Baylor University President, Linda Livingstone, at Pat Neff Hall, Ste. 100, One Bear Place #97096, Waco, TX, 76798, or wherever she may be found. *See* NCAA REPLY BRIEF, *NCAA v. Yeo*, 2004 WL 1810919, at *5 (July 9, 2004) (NCAA admitting that it is both an agent of its member schools and has its own unique interests) (*citing NCAA v. Tarkanian*, 488 U.S. 179, 189 (1988)).

II. DISCOVERY CONTROL PLAN

2. Discovery in this case should be conducted under Level 3 pursuant to Tex. R. Civ. P. 190.4.

3. This case is not subject to the restrictions of expedited discovery under Tex. R. Civ. P. 169 because Texas seeks nonmonetary injunctive relief.

4. Additionally, Texas claims entitlement to monetary relief in an amount greater than \$1,000,000 including civil penalties, reasonable attorneys' fees, litigation expenses, restitution, and costs.

III. JURISDICTION AND VENUE

5. Venue is proper in Lubbock County, Texas, because a substantial part of the events or omissions giving rise to the State's claims occurred in Lubbock County and because Defendant has done business in Lubbock County. Tex. Civ. Prac. & Rem. Code § 15.002(a)(1), Tex. Bus. & Com. Code § 17.47(b); *see also NCAA v. Jones*, 1 S.W.3d 83 (Tex. 1999) (appeal from a temporary

injunction brought by a Texas Tech football player against the NCAA arising from an ineligibility determination).

6. Venue is also proper because Lubbock County was (and is) located within Texas at all times during which the cause of action accrued. Tex. Civ. Prac. & Rem. Code § 15.002(a)(4).

7. This Court has jurisdiction over the NCAA because it established minimum contacts in Texas such that maintenance of this suit does not offend traditional notions of fair play and substantial justice. *See Int'l Shoe Co. v. State of Wash., Off. of Unemployment Comp. & Placement*, 326 U.S. 310, 316 (1945).

8. The NCAA is subject to Texas' long-arm statute because it does business in Texas. Tex. Civ. Prac. & Rem. Code §§ 17.01-.093; *see, e.g., NCAA v. Yeo*, 171 S.W.3d 863 (Tex. 2005) (appeal from a trial verdict against the NCAA brought by a former member of the University of Texas swim team arising from an ineligibility determination).

9. The Court has general jurisdiction over the NCAA because its contacts and affiliations with Texas are so continuous and systematic as to render it essentially at home in Texas. *Luciano v. SprayFoamPolymers.com, LLC*, 625 S.W.3d 1, 8 (Tex. 2021) (citing *TV Azteca v. Ruiz*, 490 S.W.3d 29, 37 (Tex. 2016)).

10. Alternatively, the Court has specific jurisdiction over the NCAA because it purposefully availed itself of the privileges of conducting activities in Texas and the causes of action in this suit arises out of or relate to the NCAA's contacts in Texas. *State v. Volkswagen Aktiengesellschaft*, 669 S.W.3d 399, 412-13 (Tex. 2023); *In re NCAA*, 543 S.W.3d 487 (Tex. App.—Dallas 2018) (denying mandamus relief and holding that the trial court acted within its discretion

in compelling the NCAA to produce chronic traumatic encephalopathy records to the widow of a former University of Texas football player).

IV. The Texas Deceptive Trade Practices Act

The DTPA's History and Construction

11. The DTPA was enacted half a century ago to protect Texas consumers and authorizes suits by both private parties and the Attorney General. *See* Joe Longley, *The DTPA Turns 50*, Texas Bar Journal (May 2023) (co-author of the DTPA recounting the enactment of consumer protection laws during the 1973 legislative session), <https://tinyurl.com/5n8uh7t9>.

12. The DTPA mandates that the law “*shall be liberally construed* and applied to promote its underlying purposes, which are to protect consumers against false, misleading, and deceptive business practices, unconscionable actions, and breaches of warranty and to provide efficient and economical procedures to secure such protection.” Tex. Bus. & Com. Code § 17.44(a) (emphasis added); *see also Singleton v. Pennington*, 568 S.W.2d 382, 385 (Tex. Civ. App.—Dallas 1978) (recognizing that “[t]he Deceptive Trade Practices Act is probably the most far-reaching legislation that has been enacted in Texas since the adoption of the English common law in 1840.”).

13. The DTPA declares unlawful any “[f]alse, misleading, or deceptive acts or practices in the conduct of any trade or commerce,” Tex. Bus. & Com. Code § 17.46(a), which it defines as including, *inter alia*, “causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services,” *id.* § 17.46(b)(2), “representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation,

or connection which the person does not,” *id.* § 17.46(b)(5), “advertising goods or services with intent not to sell them as advertised,” *id.* § 17.46(b)(9), and “failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed,” *id.* § 17.46(b)(24).

14. Texas Bus. & Com. Code § 17.45(1) defines “goods” as “tangible chattels or real property purchased or leased for use.” *See also United Postage Corp. v. Kammeyer*, 581 S.W.2d 716, 721 (Tex. Civ. App.—Dallas 1979) (“tangible chattels” are “those items of personal property which may be seen, weighed, measured, felt or touched.”).

15. Texas Bus. & Com. Code § 17.45(2) defines “services” as “work, labor, or service purchased or leased for use, including services furnished in connection with the sale or repair of goods.” *See also Riverside Nat’l Bank v. Lewis*, 603 S.W.2d 169, 174 (Tex. 1980) (“services” means “action or use that furthers some end or purpose: conduct or performance that assists or benefits someone or something: deeds useful or instrumental toward some object.”).

16. Texas Bus. & Com. Code § 17.45(6) defines “trade” and “commerce” as “the advertising, offering for sale, sale, lease, or distribution of any good or service, of any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value, wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of this state.” *See Collums v. Ford Motor Co.*, 449 S.W.3d 189, 192-93 (Tex. App.—Houston [14th Dist.] 2014, no pet.) (rejecting Ford’s argument that the DTPA’s “trade” and “commerce” definition creates a residency requirement).

17. Texas is not required to allege injuries to bring claims under the DTPA. *See* Tex. Bus. & Com. Code § 17.47(a) (Providing a cause of action “[w]henver the consumer protection division has reason to believe that any person is engaging in, has engaged in, *or is about to engage in* any act or practice declared to be unlawful by [the DTPA] ...” (emphasis added)); *see e.g. Holzman v. State*, No. 13-11-00168-CV, 2013 WL 398935, at *3 (Tex. App.—Corpus Christi 2013, pet. denied) (“Moreover, it is not necessary for the State to allege any injury to a [consumer] to recover the civil penalties it seeks in its live petition.”); *see also Texas v. Colony Ridge, Inc.*, Civil Case No.: CV-H-24-0941, 2024 WL 4553111, at *8 (S.D. Tex. 2024).

18. The DTPA has withstood numerous facial and as-applied constitutional challenges ranging from overbreadth, vagueness and free speech, *see e.g. Mother & Unborn Baby Care of N. Texas, Inc. v. State*, 749 S.W.2d 533, 540 (Tex. App.—Fort Worth 1988, writ denied), to vagueness, dormant commerce clause, and takings clause challenges, *see e.g. State v. Cal-Maine Foods, Inc.*, 695 S.W.3d 321, 329 (Tex. App.—Houston [1st Dist.] 2022, pet. denied); *see also Pennington v. Singleton*, 606 S.W.2d 682, 690 (Tex. 1980) (rejecting vagueness challenge to the DTPA).

The DTPA’s Application

19. Under the DTPA, “an act is false, misleading, or deceptive if it has the capacity to deceive an ignorant, unthinking, or credulous person.” *Doe v. Boys Clubs of Greater Dallas, Inc.*, 907 S.W.2d 472, 479–80 (Tex. 1995) (quoting *Spradling v. Williams*, 566 S.W.2d 561, 562 (Tex. 1978)); *see also Streber v. Hunter*, 221 F.3d 701, 728 (5th Cir. 2000) (same).

20. While “[i]t is well-established that the Texas courts will not interfere with the internal management of voluntary associations,” that non-interference ends when “the governing bodies of such associations” begin to “overstep the bounds of reason or violate public policy or the

laws of this state [like the DTPA] while doing so.” *Burge v. Am. Quarter Horse Ass’n*, 782 S.W.2d 353, 355 (Tex. App.—Amarillo 1990, no pet.)(collecting cases).

V. Facts

The NCAA

21. The NCAA is engaged in the trade or commerce of providing goods or services to Texans as defined by the DTPA. *See* Tex. Bus. & Com. Code §§ 17.45(1)-(2), (6).

i. History of the NCAA

22. The NCAA was formed in the early part of the twentieth century to save college football.

23. Organized college football looked a lot different than it does today when it started in the 1870s with participants who did not wear helmets, mouthpieces, or protective padding. Bill Carey, *Football Was So Brutal in the 1890s That Many Called for Its Ban*, THE TENN. MAG. (Nov. 1, 2022), <https://tinyurl.com/3pm8ycxe>.

24. College football games frequently devolved into barbaric brawls with players biting each other and gouging each other’s eyes out, leaving many crippled, disfigured, or dead. *Id.*

25. In 1897, the state of Georgia almost banned football after a 17-year-old member of the University of Georgia football team died from a head injury during a football game against the University of Virginia. Dave Revsine, *There’s Murder In That Game*, ESQ. (Aug. 6, 2014), <https://tinyurl.com/2wn78r59>.

26. Things only got worse. “During the 1904 season alone, there were 18 deaths and 159 serious injuries on the field. At the college level, hired players not enrolled in school often filled out rosters. Some colleges and universities halted football on their campuses. The public outcry

grew for the sport to be reformed or abolished.” *HISTORY*, NCAA (accessed Dec. 12, 2024), <https://tinyurl.com/mwtdxruh>.

27. On October 9, 1905, during a year the Chicago Tribune called college football’s “death harvest,” President Theodore Roosevelt, a longtime football fan, invited college leaders to a summit to discuss regulating college football to save the sport from being banned. Aaron Gordon, *Did Football Cause 20 Deaths In 1905? Re-Investigating A Serial Killer*, DEADSPIN (Jan. 22, 2014) (recounting stories of the many males (and one female) killed or maimed playing football during the “death harvest” of 1905), <https://tinyurl.com/4b8x8jxv>; see also Abbott Kahler, *Score One for Roosevelt*, SMITHSONIAN (Sept. 20, 2011) (“‘Football is on trial,’ Roosevelt declared. ‘Because I believe in the game, I want to do all I can to save it. And so I have called you all down here to see whether you won’t all agree to abide by both the letter and spirit of the rules, for that will help.’”), <https://tinyurl.com/49d4kk83>.

28. On March 31, 1906, 62 colleges and universities became charter members of the Intercollegiate Athletic Association of the United States, which immediately began overhauling the rules of college football. *Id.*

29. On December 29, 1910, the Intercollegiate Athletic Association of the United States was renamed the NCAA. *Id.*

30. Over the next century the NCAA continued to add (and drop) sports and member schools and adopt rules and regulations governing each sport and participation in same. *Id.*

31. The NCAA first began administering Women’s Championships in 1981. CHAMPIONSHIP YEAR-BY-YEAR SUMMARY THROUGH JUNE 25, 2024, NCAA (accessed Dec. 12, 2024), <https://tinyurl.com/33bn2nh7>.

ii. *The NCAA Today*

32. Today, the NCAA administers most of collegiate athletics and is the largest “voluntary, unincorporated association of colleges and universities created for the stated purpose of preserving the proper balance between athletics and scholarship in intercollegiate sports. Among other things, the NCAA promulgates rules and regulations to prevent any member institution from gaining an unfair competitive advantage in an athletic program.” *NCAA v. Jones*, 1 S.W.3d 83, 85 (Tex. 1999).

33. “The NCAA generated nearly \$1.3 billion in revenue for the 2022-23 fiscal year, more than half of which was distributed back to Division I members ... the bulk of the NCAA’s revenue—\$945 million—came from media rights and marketing deals tied to championship events.” *NCAA generates nearly \$1.3 billion in revenue for 2022-23*, ASSOC. PRESS (Feb. 1, 2024), <https://tinyurl.com/546evdun>.

34. The NCAA’s revenue comes from selling the rights to broadcast NCAA championship tournament games; licensing NCAA branded content, goods, and merchandise; the sale of tickets to the NCAA championship and tournament events; membership dues; and from certifying prospective student athletes registering to participate. Consolidated 2022-23 Financial Statements, NCAA at *9 (accessed Dec. 12, 2024), <https://tinyurl.com/3wkz54kx>.

35. The NCAA has 350 Division 1 (D1) member schools with 24 dues-paying member schools located in Texas. OUR D1 MEMBERS, NCAA (accessed Dec. 12, 2024), <https://tinyurl.com/4drkea2s>.

36. The NCAA has 310 Division 2 (D2) member schools with 13 dues-paying member schools located in Texas. OUR D2 MEMBERS, NCAA (accessed Dec. 12, 2024), <https://tinyurl.com/yc2xkrvh>.

37. The NCAA has 425 Division 3 (D3) member schools with 16 dues-paying member schools located in Texas. OUR D3 MEMBERS, NCAA (accessed Dec. 12, 2024), <https://tinyurl.com/e5zj3rb5>.

38. The NCAA administers 90 championships in 24 sports. CHAMPIONSHIPS ADMINISTRATION, NCAA (accessed Dec. 12, 2024), <https://tinyurl.com/4dhtd86a>.

39. NCAA Championships include Men's Championships, Women's Championships, Mixed Championships (co-ed), and Combined Championships (multiple championships held at the same time). STATISTICS AND RECORDS, NCAA (accessed Dec. 12, 2024), <https://tinyurl.com/2hadrd2>

40. The NCAA generates significant revenue from the administration of women's championships and tournaments.

41. For example, the 2023-24 NCAA women's basketball tournament experienced a tenfold rise in demand from consumers, with viewership and ticket resale prices for some of the tournament games exceeding those in the men's basketball tournament. Lindsey Darvin, *NCAA Women's Basketball Tournament Final Four Tickets Near \$800*, FORBES (Mar. 21, 2024), <https://tinyurl.com/35328hdc>; *Women's Final Four ticket on resale market selling for average of \$2,300, twice as much as for men*, ASSOC. PRESS (Apr. 3, 2024), <https://tinyurl.com/4c39c8u2>.

42. "The 2023 NCAA D1 Women's Volleyball Championship broke the all-time collegiate volleyball attendance record for an indoor venue as 19,727 fans gathered in Amalie Arena

in Tampa, Florida, to watch Texas defeat Nebraska to win the national title Sunday. The previous record was set just three days prior, when 19,598 volleyball fans attended the semifinal matches. The championship match between Texas and Nebraska — the first NCAA volleyball championship to be broadcast on ABC — set a TV viewership record for the sport, averaging 1.7 million viewers opposite Sunday NFL games.” Press Release, *Division I women’s volleyball championship sets attendance, TV ratings records to close out historic season*, NCAA (Dec. 19, 2023), <https://tinyurl.com/27vzcjvy>.

43. The NCAA advertises its women’s championships and tournaments to consumers. See, e.g., *NCAA’s 2024 D1 Volleyball Championship Selection Show*, YOUTUBE (Dec. 1, 2024) (NCAA show streamed and recorded showing the selection of teams competing in the 2024 NCAA women’s volleyball championship), <https://tinyurl.com/248ez93h>.

44. Consumers purchase cable and subscription packages to watch NCAA women’s championships and tournaments on television or the internet. See, e.g., Katie Callahan, *Press Release: ESPN Presents Every Match of the 2024 NCAA D1 Women’s Volleyball Championship*, ESPN (Dec. 8, 2024), <https://tinyurl.com/5a396dtb>.

45. Consumers purchase merchandise and event tickets to attend NCAA women’s championships and tournaments. See Daniel Bates, *Report: Men’s vs. Women’s Final Four Ticket Sales Are Not Close*, THE SPUN (Mar. 19, 2024), <https://tinyurl.com/4z5zmmhz>.

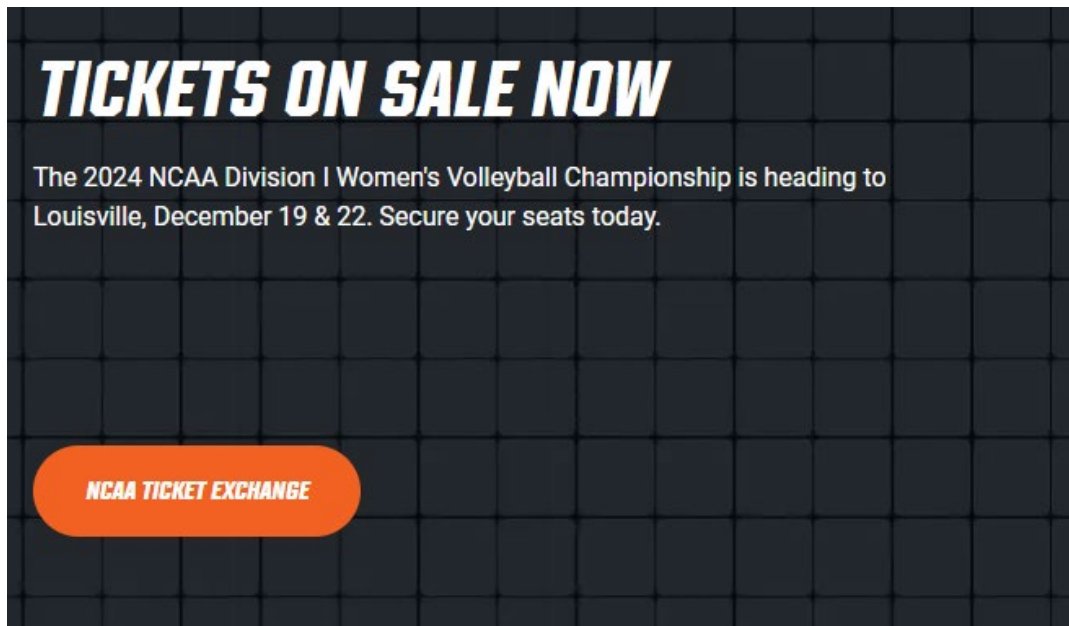


Figure 1: NCAA Website

iii. Transgender Policies in Women's Sports

46. During the twentieth century, various women's sports associations arose, with all limiting participation in women's sports competitions to biological females, including the National Association for Girls and Women in Sport, the Women's Division of the National Amateur Athletic Federation, the Commission of Intercollegiate Athletics for Women, and the women's sports divisions in the Amateur Athletic Union.

47. In recent years, however, some—but not all—women's sports associations have begun allowing biological males to compete.

48. For example, in 1938, 38 women came together in San Angelo, Texas, to create the Women's Professional Rodeo Association ("WPRA") (originally named the Girl's Rodeo Association) due to their historic exclusion and lack of opportunities among male-dominated rodeo associations. Julie Mankin, *Women's Professional Rodeo Celebrates 75 Years*, THE TEAM ROPING JOURNAL, (Sept. 4, 2023), <https://tinyurl.com/da5fwj6n>.

49. From 1938 to 2019, participation in women's professional rodeo was restricted to females; but in 2019, the WPRA changed its bylaws to permit biological males to participate so that a Houston-area transgender stripper turned barrel racer could compete in women's barrel racing. Jenny Block, *Fourth Generation Cowgirl Arqueze Girdy defied the odds to continue her family's rodeo legacy*, OUTSMART MAG. (Mar. 1, 2022), <https://tinyurl.com/3r6mzp58/>.

50. Some have vacillated. For instance, the Ladies Professional Golf Association ("LPGA"), founded in 1950 by 13 women in Wichita, Kansas, restricted participation to women until 2010 when it lifted the restriction in response to a lawsuit brought by Lana Lawless, a man, who argued preventing him from competing violated California civil rights laws. *LPGA scraps 'female at birth' policy*, AP NEWS (Dec. 1, 2010), <https://tinyurl.com/ed97vwxt>.

51. Recently, Hailey Davidson, a man, began competing and winning tournaments in LPGA qualifying women's golf tournaments. Beth Nichols, *Transgender golfer Hailey Davidson fails to advance at LPGA Qualifying but earns Epson Tour status for 2025*, USA TODAY (Oct. 25, 2024), <https://tinyurl.com/ynwmsd9v>.

52. More than 275 players responded with a letter asking the LPGA to ban men from competing in women's golf, noting the unfairness and that "the male advantage in driving the ball is estimated around a 30% performance advantage; this is an enormous difference in the context of sport. Anatomical differences between males and females affect clubhead speed and regulating consistency at ball contact. Females have higher mean heart rates and encounter greater physiological demands while playing, especially at high altitudes. The anatomical differences are not removed with male testosterone suppression. There is no way to turn a male into a female. Being a female is not equated to being male with a reduction in strength." Beth Nichols, *Report:*

More than 275 players sign letter calling for changes to LPGA transgender policy as Hailey Davidson competes for status, USA TODAY (Oct. 22, 2024), <https://tinyurl.com/3789c5yy>.

53. On December 4, 2024, the LPGA implemented a new policy banning males from women's professional golf if they went through male puberty and have a free serum testosterone level above 2.5 nmol/L, effectively banning Hailey Davidson and all other males from the sport. See Jackson Thompson, *Women's golf tour owner reveals harrowing experience with trans golfer that sparked push for new LPGA ban*, Fox News (Dec. 6, 2024), <https://tinyurl.com/4c42zpkp5>.

54. Still other college sports associations, such as the second largest, the National Association of Intercollegiate Athletics, decided to ban males from competing in all women's sports following a two-year study that found that male participation in women's sports was unfair. Justin Gamble & Chelsea Bailey, *National Association of Intercollegiate Athletes effectively bans transgender women from its women's sports programs*, CNN, (April 8, 2024), <https://tinyurl.com/3jhuawk2>.

55. Sports associations permitting males to participate in women's sports have adopted myriad conflicting and unscientific rules governing testosterone levels seeking to do the impossible—overcome the inherent and permanent physiological advantages of male athletes.

56. In 2003, the International Olympic Committee (“IOC”) Medical and Scientific Commission adopted a statement, known as the “Stockholm Consensus,” that permitted biological males to compete in women's sports provided the athlete: (1) has undergone complete “surgical anatomical changes” including “external genital changes and gonadectomy;” (2) the changed sex is recognized by the “appropriate official authorities;” and (3) the athlete has undergone hormone therapy “for a sufficient length of time to minimize gender-related advantages

in sports competition,” which the committee recognized as a minimum of two years. *Statement on the Stockholm Consensus on Sex Reassignment in Sports*, IOC (Oct. 28, 2003), <https://tinyurl.com/mr2xksye>.

57. Despite the adoption by the IOC and other federations of the so-called Stockholm Consensus, no biological male athlete ever competed in an international women’s sporting event pursuant to the policy.

58. In 2009, after South African runner Caster Semenya won the World Championships for the women’s 800 meters race, the International Amateur Athletic Federation (“IAAF”) (the international governing body for track and field and other running events) required Semenya to undergo sex testing. Heather Saul, *Caster Semenya: The female athlete subjected to a gender test in 2009 expected to take gold at Rio*, THE INDEPENDENT, (Aug. 17, 2016), <https://tinyurl.com/y2xmyfuy>.

59. Tests revealed that Semenya was a male with disorders of sex development (“DSD”), despite displaying some physical traits of a female, and that Semenya’s blood “had three times the normal female level of testosterone”—in other words, the normal male range of testosterone. Frank Pingue, *Semenya offered to show her body to officials to prove she was female*, REUTERS, (May 24, 2022), <https://tinyurl.com/kxnh5ayw>; *Regulations Governing Eligibility of Female Athletes with Hyperandrogenism to Compete in Women’s Competition*, IAAF (Apr. 12, 2011), <http://tinyurl.com/IAAF-HA-reg>.

60. In response to these testing results, in 2011 the IAAF adopted a Hyperandrogenism Rule, whereby male athletes whose testosterone levels are higher than 10 nmol/L may only compete if they undertake medical treatment to suppress the effect of testosterone in their body,

or if they prove that their body is insensitive to androgen. International Association of Athletic Federations, *IAAF Regulations Governing Eligibility of Female Athletes with Hyperandrogenism to Compete in Women's Competition* (Apr. 12, 2011), <http://tinyurl.com/IAAF-HA-reg>. A year later, the IOC adopted the same policy. Alice Dreger, *The Olympic Struggle Over Sex*, THE ATLANTIC, (July 2, 2012), <https://tinyurl.com/3yva2b99>.

61. The 10 nmol/L value was chosen because the normal range for serum testosterone in adult men is between 10 and 35 nmol/L, which is three standards of deviation from the normal range in adult women between 0.5 and 2.4 nmol/L. John P Mulhall, et. al., *Evaluation and Management of Testosterone Deficiency: AUA Guideline, AUA Guideline*, Journal of Urology (Aug. 1, 2018), <https://tinyurl.com/k7ewt7yw>.

62. In 2015, the IOC updated the so-called Stockholm Consensus to a new, lower standard that urged member federations to permit biological males in women's sports competitions if those males (1) consistently declare their gender identity as female for a period of at least four years and (2) have testosterone levels that do not exceed 10 nmol/L for a period of at least 12 months prior to, and through, the competition. A.L. Shaw, et al., *The perspective of current and retired world class, elite and national athletes on the inclusion and eligibility of transgender athletes in elite sport*. Journal of Sports Sciences, (Apr. 16, 2024), <https://tinyurl.com/6vdu8ws6>.

63. Dutee Chand was a male Indian track star with DSD who was excluded from competing in women's 100m and 200m races at the 2014 Commonwealth Games pursuant to the

IAAF's Hyperandrogenism Rule due to his testosterone levels and refusal to undergo medical intervention to reduce same.²

64. In July 2015, the Court of Arbitration for Sport ruled in favor of Chand and suspended the 2011 Hyperandrogenism Rule after finding that that the IAAF had failed to establish that the hyperandrogenism regulations were necessary and proportionate to pursue the legitimate objective of organizing competitive female athletics to ensure fairness in elite women's competition and there was not enough scientific evidence to conclude that hyperandrogenic female athletes have a significant performance advantage that is necessary for exclusion or prohibition from competition. *Dutee Chand v. Athletics Fed'n of India (AFI) & The Int'l Ass'n of Athletics Fed'ns (IAAF)*, Interim Arbitral Award, CAS 2014/A/3759.

65. In response to the *Chand* ruling, the IAAF commissioned a study to determine whether there is evidence that females with higher serum testosterone levels had a competitive advantage. Stéphane Berman & Pierre Yves Garnier, *Serum androgen levels and their relation to performance in track and field: mass spectrometry results from 2127 observations in male and female elite athletes*, British Journal of Sports Medicine (Sept. 2017), <https://tinyurl.com/2nabecdd>.

66. The study found that women with serum testosterone levels above 5 nmol/L had a significant competitive advantage. Roger Pielke Jr., *A Call for Berman and Garnier (2017) to be Retracted*, SPORTS INTEGRITY INITIATIVE (July 13, 2018) (critiquing methodological flaws in the study and calling for its retraction), <https://tinyurl.com/57zmpnet>.

² Dutee Chand, the two time Olympian and holder of the national women's 100m record in India, retired in 2024, married a woman, and hopes to soon become a "father." Diana Sahu, Want to marry officially and be a father, says Dutee Chand, THE NEW INDIAN EXPRESS (May 12, 2023), <https://tinyurl.com/yc25272e>.

67. In 2018, relying in large part on the results of the study, the IAAF adopted a Difference of Sexual Development (DSD) Rule prohibiting male athletes recognized by law as either female or intersex from having serum testosterone levels above 5 nmol/L for a period of at least six months prior, and at all times while competing, in women's 400m races, 400m hurdle races, 800m races, 1500m races, one-mile races and all other track events over distances between 400m and one mile.

68. Castor Semenya was excluded from competition pursuant to the IAAF's DSD Rule and refusal to undergo medical intervention to reduce his serum testosterone levels.

69. Semenya challenged the rule prohibiting male athletes with DSD from having serum testosterone levels above 5 nmol/L value.

70. On April 30, 2019, the Court of Arbitration for Sport ruled in favor of the IAAF and held that the DSD Rule was necessary to ensure fairness and the evidence showed that it was proportionate to pursue the legitimate objective of organizing competitive female athletics to ensure fairness in elite women's competition. *Mokgadi Caster Semenya v. The Int'l Ass'n of Athletics Fed'ns*, Interim Arbitral Award, CAS 2018/O/5798.

71. The NCAA has, nonetheless, adopted the same discredited 10 nmol/L testosterone value struck down in the *Chand* ruling as unfair as the standard permitting males to compete in some of its women's college sports. Lawrence Richard & Ryan Gaydos, *NCAA changes transgender athlete participation policy amid calls for reevaluation*, (Jan. 20, 2022), <https://tinyurl.com/mnhc2ctj>.

72. There is no scientific evidence that males with serum testosterone levels at or below 10 nmol/L for a brief period prior to a sporting event eliminates the profound and significant competitive advantages that males have over females due to their physiology.

73. Even the NCAA President recently admitted during testimony to Congress, after first claiming that it was debatable, that males competing in women’s sports have an unfair advantage over the female participants. *See Kennedy questions NCAA’s Baker in Judiciary*, YOUTUBE (Dec. 17, 2024), <https://tinyurl.com/mrrfp99b>.

NCAA Misrepresentations and Nondisclosures

74. The NCAA has engaged in false, deceptive, or misleading practices because its women’s championships and tournaments include both biological males and females.

75. Consumers reasonably believe that the NCAA only permits biological men to compete in the men’s championships and tournaments and only permits biological women to compete in the women’s championships and tournaments.

76. The NCAA’s separate recognition of “mixed” championships and tournaments that expressly disclose the participation of both men and women underscores by contrast the NCAA’s allowance for men in a women’s competitions is misleading because it implies that men can participate in a sport with women *only* in the mixed leagues.

77. The NCAA advertising, signage, and logos lead consumers to believe that they are purchasing goods and services associated with biological sex-based sporting events. *See Chambliss v. Barry Robinson Farm Supply, Inc.*, 667 S.W.2d 598, 602 (Tex. App.—Dallas 1984, writ ref’d n.r.e.) (“We hold that, absent any representations (oral or written) to the contrary, by displaying the tractor with the clevis on it, Robinson represented that the clevis would be included in the sale of the tractor.”).



Figure 2: NCAA Men's Basketball logo.



Figure 3: NCAA Women's Basketball logo.



Figure 4: NCAA Mixed Rifling logo.

78. The NCAA does not adequately disclose to consumers that biological males can compete in some, but not all, of its women's championships and tournaments.

79. The NCAA does not disclose to consumers the individual participants in women's championships and tournaments who are males.

80. The NCAA is causing confusion and misunderstanding to consumers by labeling these competitions as either men, women, or mixed; when some of the women's competitions are actually mixed sex.

81. By using the term "women" in its championship and tournaments, without qualification, the NCAA is engaging in false, deceptive, or misleading practices.

Consumers Do Not Want Biological Males in Women's Sports

82. Most consumers **do not believe** that "transgender women are women."

83. Instead, most consumers believe that "women" means biological females. *Compare* MALE, Webster's Dict. (1828) (defining male as "[p]ertaining to the sex that procreates young") *with* FEMALE, Webster's Dict. (1828) (defining female as "one of that sex which conceives and brings forth young").

84. A recent national survey conducted by a top-rated polling firm found that 79% of respondents said that the definition of "woman" is "adult humans who are female," with only 16% saying they define "women" as "adult humans who are either female or male and consider themselves women." *Results of Markey Research Study #26869*, SURVEYUSA (Sept. 28, 2023), <https://tinyurl.com/5n6vh336>.

85. Another national survey found that 60% of consumers believe that "gender identity" is determined by their biological sex. *See* Kim Parker, *Americans' Complex Views on Gender Identity and Transgender Issues*, PEW RESEARCH CENTER (June 28, 2022), <https://tinyurl.com/3mphmh78>.

86. Gender dysphoria is a mental-health diagnosis in the DSM-V; however, a person's subjective feelings about their gender identity cannot change the objective reality of their biological

sex. J. Michael Bailey & Kiira Triea, *What Many Transgender Activists Don't Want You to Know: And Why You Should Know it Anyway*, 50 Perspectives in Biology and Medicine 521–34 (Fall 2007), <https://tinyurl.com/2jmu2w3n>.

87. Consumers reasonably believe that NCAA women's sports are restricted to biological women because for all of sports history, sports have generally been divided by biological sex, usually with different rules, to promote fairness. *See generally* Mary Anne Case, *Heterosexuality As A Factor in the Long History of Women's Sports*, Law & Contemp. Probs., 2017 (summarizing history of women in sports).

88. Two separate national surveys conducted in the past year both found that 69% of consumers oppose biological males being “allowed to compete on women's teams in sports.” NORC, *Increasing Understanding of LGBTQ+ Health Equity Issues*, Univ. of Chic. (2024), <https://tinyurl.com/3dxj52bj>; Jeffrey Jones, *More Say Birth Gender Should Dictate Sports Participation*, GALLUP (June 12, 2023), <https://tinyurl.com/59zjytw3>.

89. A survey of Texas consumers last year similarly found that 75% oppose biological males playing on women's sports teams, with only 13% supporting same. Jesse Arm, *Testing Texas Survey Analysis of Likely Lone Star State Voters on Election 2024 and Transgender Issues*, MANHATTAN INST. (July 3, 2024), <https://tinyurl.com/ye4v4ttp>.

90. Many states have enacted legislation that reflects the consumers' expectation—namely, that only women can participate on women's sports teams. *See, e.g.*, Tex. Educ. Code 51.980; The Associated Press, *NAIA all but bans transgender athletes from women's sports*, NATIONAL PUBLIC RADIO, (Apr. 8, 2024) (“At least 24 states have laws barring transgender

women and girls from competing in certain women's or girls sports competitions.”) , <https://tinyurl.com/4y2nn86d>.

Historical and Modern Evidence Shows Consumers Reject Men in Women's Sports

91. Women's sports are not simply men's sports played by biological women; they have their own history, traditions, and rules that have developed to foster competitiveness based on biology.³

92. The inherent unfairness of men competing against women in women's sports is a material fact impacting consumer's decisions about whether to purchase goods and services associated with women's sporting events.

93. In the twentieth century, consumers reacted with indignation at the prospect of males competing in women's sports.

94. Numerous high-profile examples of men competing in women's sports led to the implementation of testing criteria to ensure that the sports would factually present what they advertised—namely, that they were for women only.

95. The first such example was Mary (nee Mark) Weston, a biological male with DSD, competed in women's sports in the 1920s.

³ Sex-segregated sports are as old as time. For instance, in ancient Greece, males competed in the Olympic Games, honoring Zeus, while women competed in the Heraean Games, honoring Hera. Georgia Tsouvala, *Female Athletes in the Late Hellenistic and Roman Greek World*, in Ronnie Ancona and Georgia Tsouvala, *New Directions in the Study of Women in the Greco-Roman World* (Apr. 22, 2021), <https://tinyurl.com/hhv3jmi5>. The Heraean Games were also held every four years, were limited to maidens, and were administered by the Sixteen Women, representing the most influential Greek city-states. Pausanias, *Description of Greece* 5, 16-27 (W. H. S. Jones & H. A. Ormerod trans., 1926), <https://www.theoi.com/Text/Pausanias5B.html>. The Heraean Games consisted of foot races in the Olympic stadium with modified rules for participants—namely, “the course of the stadium [was] shortened for them by about one-sixth of its length.” *Id.*

96. Mark Weston became the National Champion in women's javelin and discus throws in 1929, won the women's shot-put title in 1925, 1928, and 1929, and placed sixth at the 1926 Women's World Games in two-handed shot put.



Figure 5: Mark Weston competing as a woman.



Figure 6: Mark Weston living as a man.

97. The public was outraged by the case of Mary Weston and what was called at the time the threat of the “man-woman problem” in women's sports, demanding that testing occur in women's sports to ensure that only biological females participate.

98. The public has always opposed men competing in women's sports and been confused by men disguised as women who compete in women's sports.

99. For example, in the 1936 Olympics in Berlin, Germany, newspapers reported the general sentiment held by the public at the time that “some of the women in Berlin last week looked more like men.” See generally Clare Tebbutt, *The Spectre of the ‘Man-Woman Athlete’: Mark*

Weston, Zdenek Koubek, the 1936 Olympics and the uncertainty of sex, WOMEN'S HISTORY REVIEW (Apr. 16, 2015), <https://tinyurl.com/mr4cpuww>.

100. As it turned out, the public was right.

101. At the 1936 Summer Olympics, a biological male and *Hitlerjugend* (Hitler Youth) member, Dora (nee Heinrich) Ratjen, used a piece of cloth to bind his penis and scrotum and competed in the women's high jump.



Figures 7: Heinrich at the 1936 Olympics.

102. Heinrich Ratjen placed fourth at the 1936 Olympics and went on to win a gold medal in women's high jump at the 1938 European Athletic Championships in Vienna, Austria, then set the world record in women's high jump in 1929, before his biological sex was discovered after he

was arrested for moonlighting on a train masquerading as a woman. *Id.* Heinrich returned his medals and his women's sports records were expunged.

103. Later in life, Heinrich gave an interview defending his actions as, “*zur Ehre des [nationalsozialistischen] Deutschlands!*”⁴ Jaime Schultz, *Qualifying Times: Points of Change in Women's Sports* p. 107 (2014).

104. The deceptive presence of men in women's sports at the 1936 Olympics had significant collateral effects.

105. For example, at the same 1936 Olympics, Helen Stephens (the Fulton Flash) was *falsely* accused by Polish media of being a man after defeating their national hero, Stanisława Walasiewicz. *See generally*, Sharon Hanson, *The Life of Helen Stephens – The Fulton Flash* (2004); *Helen Stephens is real girl*, HARRISBURG TELEGRAPH 14 (Aug. 6, 1936) (rebutting the accusation in Polish newspapers that the U.S. Olympic Committee knowingly permitted “a man to run in the woman's 100m race in Berlin”).

106. And American media responded in kind, by accusing Poland's Stanisława Walasiewicz of being a man, dubbing her “Stella the Fella.” Ross Tucker & Malcolm Collins, *The Science and Management of Sex Verification in Sport*, 21 S. Afr. J. Sports Med. 147, 148 (2009).

107. In 1980, an autopsy on Stanisława Walasiewicz discovered that “Stella the Fella” was, in fact, a man with an underdeveloped penis, testes, and prostate. *Id.*

⁴ “for the honor and glory of [Nazi] Germany!”

108. These discoveries of males competing in women's sports in the 1930s was scandalous and resulted in the imposition of sex verification in most international women's sports competitions.

109. The first sex verification testing in women's sports came in the form of "nude parades" requiring women to undress completely and submit to a visual inspection by a panel of female physicians. Ruth Padawer, *The Humiliating Practice of Sex-Testing Female Athletes*, The New York Times (June 28, 2016), <https://tinyurl.com/4uv6m4jm>.

110. The IOC and most international bodies shifted to the Barr body test from 1968 through 1998, wherein women would submit a cell sample for chromosomal testing to confirm the presence of the Barr body (the Barr body is the inactive, second X chromosome found in the cells of women with XX chromosomes).

111. International bodies, including the IOC and the IAAF, discontinued the wildly successful Barr body test in the 1990s after complaints from females with abnormal chromosomal compositions. They instead adopted a suspicion-based model. Sheila L. Cavanagh & Heather Sykes, *Transsexual Bodies at the Olympics: The International Olympic Committee's Policy on Transsexual Athletes at the 2004 Athens Summer Games*, 12 *Body & Society* 75, 76 (2006).

Consumer outrage at the discovery of men competing in "women's" sporting events continues to this day.

112. Males have won women's USA Fencing events, stealing dozens of medals from women, upsetting many of the women participants and attendees who purchased tickets to support women and watch women compete against each other. Fiona Connor, *Fencing competitor says trans athletes in female events 'unfair, short-sighted' - as incoming national board executive says he's OK with*

natural-born women being at a disadvantage, DAILY MAIL (Sept. 10, 2023), <https://tinyurl.com/yc2dvnaz>; see also Brittany Chain, *Transgender fencer dominates female athletes at first competition*, DAILY MAIL (Sept. 23, 2024) (discussing the outrage at Annika Rose Suchoski, a “towering [male] athlete,” receiving a second-place medal in women’s fencing six months after taking up the sport), <https://tinyurl.com/bdzhu3wn>.

113. In 2022, attendees and women participants were horrified to discover that Lia Thomas, a male who competed and failed to excel in men’s swimming, competing in NCAA women’s swimming event, stealing medals from, and erasing records held by, women. See Ryan Gaydos, *Lia Thomas, panel rail against Iowa law banning trans inclusion in women’s sports*, FOX NEWS (Nov. 25, 2024), <https://tinyurl.com/s3kk78d5>.

114. A recent case study confirmed what consumers duped into purchasing goods and services associated with NCAA women’s swimming events only to see Lia Thomas win witnessed—that despite complying with the NCAA’s transgender policy, men like Lia Thomas have an unfair advantage when competing in women’s sports. Jonathon Senefeld, et al., *Case Studies in Physiology: Male to female transgender swimmer in college athletics*, J Appl Physiol (Mar. 17, 2023) (finding that Lia Thomas’s performance in the women’s category were outliers and that cross-sex hormones did not undo the legacy effects of male biology), <https://tinyurl.com/3fyuz6me>.

115. Similarly, a male weightlifter, Anne Andres, recently won eight women’s weightlifting tournaments, setting national records by lifting 400 pounds more than her closest female in the combined bench press, deadlift, and squat combined events. Jackson Walker, *Trans*

powerlifter faces backlash for setting Canadian women's record: 'Bodies play sports, not identities,' KATV (Aug. 16, 2023), <https://tinyurl.com/37kdatpn>.

116. Anne Andres, who self-describes as a “tranny freak,” questioned why “women are so bad at the bench press.” *Id.*

117. One male attendee, after paying to attend a women's weightlifting event only to discover Anne Andres competing, was so incensed that he entered the competition and promptly smashed Andres' 273 pound bench press national record by over 99 lbs. Lee Brown, *Bearded man smashes women's weightlifting record held by trans lifter*, FOX SPORTS (Mar. 31, 2023), <https://tinyurl.com/3pwy9rp2>; see also Will Potter, *Canadian Powerlifting Union is set to suspend female bodybuilder April Hutchinson for two years, after she slammed transgender rival who's smashed records and bragged about it*, DAILY MAIL (Nov. 7, 2023), <https://tinyurl.com/4z4rtckw>.

118. Anne Andres was recently banned from competing in women's weightlifting competitions for bullying, discrimination, harassment, racism, and at least one death threat against female competitors. Rachel Bowman, *Hulking trans powerlifter is BANNED from competing in women's events after slew of vile threats - but female-born rival who complained gets even LONGER suspension*, DAILY MAIL (Aug. 1, 2024), <https://tinyurl.com/yhv2sudx>.

119. During the 2024 Summer Olympics Imane Khelif competed in women's boxing.

120. Consumers and female participants became increasingly suspicious that Imane was a man based on his size, speed, strength, and physiology.

121. As consumer confusion grew, the mainstream media and IOC officials worked tirelessly to obfuscate and mislead the public by denying that Imane was a male and accusing those who questions his “womanhood” as bigoted.

122. But it turned out the public was right.

123. Imane Khelif is a male with DSD. *Boxer Imane Khelif Confirmed As ‘Biological Male’ In Leaked Medical Report, Harbhajan Singh Reacts*, NDTV SPORTS (Nov. 5, 2024), <https://tinyurl.com/2kyu95jc>; Colin Wright, *Imane Khelif*, WALL ST. J. (Aug. 6, 2024), <https://tinyurl.com/yc22vbhy>.

124. Not only was Imane a male, he fought against *another male* boxer with DSD, Lin Yu-Ting, in the final round of the women’s boxing competition at the 2024 Olympics. Ryan Gaydos, *Who is Lin Yu-Ting? The Taiwanese Olympic boxer deemed to have male chromosomes*, FOX NEWS (Aug. 1, 2024), <https://tinyurl.com/4s6jwswx>.

125. The IOC’s actions, like those of the NCAA, ultimately left consumers confused, angry, and feeling cheated after they purchased goods and services associated with women’s boxing thinking they were supporting women’s competition, only to witness men fighting women and, ultimately, two men fighting each other over the gold medal.

126. During the 2024 season, male Blaire Fleming competed in NCAA women’s volleyball for San Jose State University (“SJSU”), leading the team to win second place in the Mountain West Conference Championship and coming in second in the conference for kills per set. Jackson Thompson, *SJSU transgender volleyball player Blaire Fleming’s college career likely over after championship loss*, FOX NEWS (Nov. 30, 2024), <https://tinyurl.com/859rfk3s>.

127. Blaire Flemming is capable of spiking volleyballs at speeds greater than 80 mph, which is 15 mph faster than Kerri Walsh Jennings, the winningest professional female volleyball player in history, whose spike was famously dubbed the “The Kerri Cannon.” *See* Paulina Dedaj,

Transgender San Jose State volleyball player Blaire Fleming who's provoked forfeits spikes ball in opponent's face, FOX NEWS (Oct. 11, 2024), <https://tinyurl.com/2cv3478c>.

128. Blaire Fleming's participation in NCAA women's volleyball caused a national uproar, with several rival teams refusing to play against San Jose State University and both coaches and players on Blaire Fleming's team joining a lawsuit seeking to prohibit Fleming from playing NCAA women's volleyball. *Id.*

129. Five women's volleyball teams in the Mountain West Conference chose to forfeit their games against SJSU upon learning that a man was competing on the team. Jackson Thompson, *SJSU Women's Volleyball's 1st Opponent Didn't Know About Trans Player, Suggests Match Wouldn't Have Happened*, OUTKICK (Nov. 20, 2024), <https://tinyurl.com/m6d5f5ps>.

130. But not all of the women's volleyball teams that played SJSU knew that there was a male on the team; indeed, at least one other team suggested that had they known before playing SJSU that Blaire was a man then they would have forfeited. *Id.*

131. The NCAA refused to confirm that Blaire Flemmings is a man—leaving rival teams and consumers unsure whether they are actually watching women's volleyball.

132. The NCAA knows that consumers do not want men competing in women's sports which is why it refuses to disclose the sex of the participants in women's sporting events, lest consumers decide to stop purchasing goods and services associated with the events.

Consumers Support Women's Sports to Support Biological Women

133. The reason consumers choose to support women's sports is *because* they want to support female athletes, their empowerment, and enjoy fair athletic competition among biological females.

iv. *Female Empowerment*

134. Consumers purchase goods and services associated with women's sporting events because of the incredible opportunities they provide to women. Rachel Axon, *Survey: Consumers want brands to invest in women's sports*, STREET & SMITH'S SPORTS BUSINESS JOURNAL (Nov. 13, 2023), <https://tinyurl.com/3c35seds>.

135. Girls gain self-esteem and role models by watching women competing in women's sports. Astrid Cooper, *ROLE MODELS Half of young girls inspired to take up sport after success of female athletes*, THE SUN (Mar. 21, 2024), <https://tinyurl.com/5fb3kp4x>.

136. Participation in women's sports provides significant and comprehensive long-term benefits to women athletes in physical health, mental health, academic achievement, body esteem, social skills, confidence, job performance, and numerous other areas.

137. Gallup recently studied the outcomes of NCAA college athletes from 1975 to 2019 and found the former athletes are more likely to be thriving in purpose, social, community and physical wellbeing, and their financial wellbeing compared to their non-athlete peers:

- NCAA student-athletes are significantly more likely to earn an advanced degree than non-student-athletes, with the disparity most pronounced among Black graduates;
- NCAA student-athletes are slightly more likely than their peers to have had a good job waiting for them upon their college graduation, with the disparity most pronounced among first-generation college students;
- NCAA student-athletes are especially likely, relative to their peers, to have benefitted from meaningful and enriching support experiences with professors and mentors in college;
- NCAA student-athletes are much more likely than their peers to have held a leadership position in a club or organization such as student government, a fraternity or sorority, or an athletic team;

- NCAA student-athletes are more likely to graduate college in four years or less and are half as likely to take more than five years to graduate than their peers; and,
- NCAA student-athletes are more likely to have donated financially to their alma mater in the last 12 months than their peers.

Gallup, *A Study of NCAA Student-Athletes: Undergraduate Experiences and Post-College Outcomes*, NCAA (June 24, 2020), <https://tinyurl.com/yc52dwa2>.

138. Studies show that female former athletes experience lower rates of depression and substance abuse, have higher self-esteem, and are less likely to get breast cancer later in life. Rebecca Kehm, et al., *Physical activity during adolescence and early adulthood and breast cancer risk before age 40 years*, *Cancer Epidemiol Biomarkers Prev.* (Oct. 15, 2024), <https://tinyurl.com/5yss8uwm>; see also Kimberly H. McManama, et al., *Psychological Resilience in Young Female Athletes*, *Int J Environ Res Public Health* (Aug. 17, 2021), <https://tinyurl.com/mwpcjdvv>.

139. Employers associate participation in student athletics with higher leadership ability, self-confidence, and self-respect compared to students that participated in non-athletic extracurricular activities.⁵

⁵ See e.g. Kevin Kniffin, et al., *Sports at Work: Anticipated and Persistent Correlates of Participation in High School Athletics*, *J. Leadership & Organizational Stud.* (June 16, 2014), <https://tinyurl.com/3pv46pwm>; see John M. Barron, et al., *The Effects of High School Athletic Participation on Education and Labor Market Outcomes*, *Rev. Econ. & Stat.* (Aug. 2000), <https://tinyurl.com/2jnvkvns>; see also Bradley T. Ewing, *Athletes and Work*, 59 *Econ. Letters* 1 (Apr. 1, 1998) (finding that former high school athletes are more likely to be in jobs associated with better labor market outcomes than their non-athlete peers), <https://tinyurl.com/9ezeunab>; Bradley T. Ewing, *The Labor Market Effects of High School Athletic Participation: Evidence from Wage and Fringe Benefit Differentials*, *J. Sports Econ.* (Jun. 2007) (finding that former high school athletes fare better in terms of both components of the compensation structure (i.e., wages and fringe benefits) than their nonathlete counterparts), <https://tinyurl.com/ye5yvwfu>.

140. A recent survey conducted by Ernst & Young found an “undeniable correlation between athletic and business success” including:

- 94% of women in the C-suite formerly played sports;
- 52% of C-suite women played sport at the university level, compared to 39% of women at other management levels;
- 77% of C-suite women think that women who played sport make good employees;
- 74% of executive women say a background in sport can help accelerate a woman’s career;
- 80% of *Fortune 500* women executives played sports in their earlier years; and
- Former student athletes earn an average of 7% higher annual wages than their non-athlete peers.

Why a female athlete should be your next leader, EY (Sept. 23, 2020), <https://tinyurl.com/yc7j5znk>.

141. Women’s sports are also empowering because of female’s historical exclusion from sporting events.

142. During the nineteenth century, and especially during the Victorian period, women were discouraged or excluded from sports because “science” and “medicine” purportedly showed that overexertion—whether mental or physical—could damage their fertility and femineity. See, e.g., Donald Walker, *Exercise for Ladies: Calculated to Preserve and Improve Beauty, and to Prevent and Correct Personal Defects, Inseparable from Constrained or Careless Habits: Founded on Physiological Principles* (1836).

143. It was thought at the time, for example, that horseback riding “produced an unnatural consolidation of the bones of the lower part of the body, ensuring a frightful impediment

of future function.” Kathleen E. McCrone, *Playing the Game: Sport and the Physical Emancipation of English Women 1870-1914* at p.9 (1988).

144. Women were similarly discouraged from bicycle riding, a device granting them significantly increased mobility, because scientists and doctors of the period thought that it could lead to overexertion, exhaustion, insomnia, heart palpitations, headaches, depression, and the development of “bicycle face.” Joseph Stromberg, “*Bicycle face*”: *A 19th-Century Health Problem Made Up to Scare Women Away from Biking*, VOX (Mar. 24, 2015) (describing “bicycle face” as “usually flushed, but sometimes pale, often with lips more or less drawn, and the beginning of dark shadows under the eyes, and always with an expression of weariness” and “characterized by a hard, clenched jaw and bulging eyes.”), <https://tinyurl.com/524ym7jf>.

145. When the Olympic Games were restarted in 1896, women were banned from participation. Jennifer Hargreaves, *Sporting Females: Critical Issues In the History And Sociology Of Women’s Sports* p. 219 (1994).

146. While every succeeding Olympic Games has allowed female participation, that participation was quite limited for several decades.

147. Nonetheless, a Greek woman, Stamata Revithi, reportedly walked six miles on foot to the games to enter the marathon race, only to be told that she could not compete due to her biological sex. *See generally* Athanasios Tarasouleas, *Stamata Revithi*, “*Alias Melpomeni*,” XXVI-17 Olympic Rev. 53 (1997).

148. Revithi told local newspapers that she intended to participate anyway, and Greek newspapers reported that a woman unofficially participated in, and completed, the marathon at the Olympics. *Id.* at 54-55; *see also* Karl Lennartz, *Two Women Ran the Marathon in 1896*, 2 Citius,

Altius, Fortius 11, 19-20 (1994) (adding additional details about the women who sought to run in the 1896 Olympic marathon race).

149. In the 1900 Olympics in Paris, France, women were permitted to participate, but limited to the sports of tennis, sailing, croquet, equestrianism, and golf.

150. Women's participation in the Olympic Games continued to grow over the next two decades leading to the sensational media coverage of their participation in 1928 Olympics medium and long-distance running events. Colleen English, "*Beyond Women's Powers of Endurance*": *The 1928 800-Meter and Women's Olympic Track and Field in the Context of the United States*, Sport History Review (2019), <https://tinyurl.com/jycdxjs8>.

151. Nine women ran in the 800m race at the Olympics, with all finishing the race and exhibiting normal fatigue consistent with competing in an athletic event. *See 1928 Fulton Virtual School: English Language Arts, Olympics Women's 800M Race*, YOUTUBE (Apr 28, 2022), <https://youtu.be/J7lgIxy5CjA?si=0UGaBGWUoBeB7MCe>.

152. Nonetheless, mainstream media reports surrounding the 800m race stoked public fear about the safety of female athletes.

153. John Tunis of the New York Evening Post wrote the most lurid and memorable account of the race: "below us on the cinder path were 11 wretched women, 5 of whom dropped out before the finish, while 5 collapsed after reaching the tape." "*Eleven Wretched Women*" *What really happened in the first Olympic women's 800m*, Runners World (May 14, 2012), <https://tinyurl.com/aj5xtrh3>.

154. The outrage generated by Tunis and his contemporaries account of the “11 wretched women” resulted in women being banned from running distances further than 200m in the Olympics and most national sporting events for the next 32 years for their “health.”

155. Indeed, it was widely believed that women were physically incapable of running a marathon until Kathrine Switzer ran the Boston Marathon in 1967. Katherine Switzer, *The Girl Who Started it All*, Runners World (Mar. 26, 2007), <https://tinyurl.com/3s8fwnaa>.

156. More generally, throughout the early and mid-twentieth century, women’s emerging participation in sports was questioned in public and in the media, with Scientific American publishing an article declaring that “feminine muscular development interferes with motherhood.” Donald Laird, *Why Aren’t More Women Athletes? Exceptions, Muscular Development Interferes with Motherhood, Women Tend to Shun Competition*, Scientific American 151, 142-143. (Mar. 1, 1936), <https://www.scientificamerican.com/article/why-arent-more-women-athletes/>.

157. This all changed with the passage of Title IX in 1972.

158. Prior to Title IX, girls and women largely lacked opportunities comparable to men to participate in sports at any level.

159. Title IX changed this imbalance by disallowing recipients of federal funds—like colleges and universities—from discriminating on the basis of sex. 20 U.S.C. § 1681(a). As part of the Title IX framework, sex is necessarily limited to the binary categories of male and female, both objective and fixed.⁶

⁶ See *Adams v. Sch. Bd. of St. Johns Cty.*, No. 18-13592, 2022 WL 18003879, at *15 (11th Cir. Dec. 30, 2022) (en banc) (“[R]eading in ambiguity to the term ‘sex’ ignores the overall statutory scheme and purpose of Title IX,

160. Participation of girls and women has skyrocketed since the implementation of Title IX.

161. “In the pre-Title IX era, 15% of college athletes were women. Today, 44% of the opportunities to play sports go to women. Since the introduction of Title IX, 3 million more high school girls and 200,000 more college women have opportunities to play sports each year.” Lisa Kaplowitz, *Title IX increased opportunities for women athletes, but there’s still work to do*, Rutgers Business Sch. (June 23, 2022), <https://tinyurl.com/4xts6cmc>.

162. As Title IX proves, providing funding and a separate space for women to compete has been essential to the growth and fostering of women’s sports, which has in turn caused seismic benefits to their physical and mental health and careers.

163. **Consumers purchase goods and services associated with NCAA women’s sports to celebrate the progress women have made in overcoming the historic obstacles to their participation in sporting events.**

164. Consumers oppose males competing in NCAA women’s sporting events because every male participant necessarily takes away a spot from a biological woman, thereby depriving them of the aforementioned opportunities.

ii. Fairness

along with the vast majority of dictionaries defining ‘sex’ based on biology and reproductive function.”); *see also Neese v. Becerra*, No. 2:21-cv-163-z, 2022 WL 1265925, at *12 (N.D. Tex. Apr. 26, 2022) (“Title IX presumes sexual dimorphism in section after section, requiring equal treatment for each ‘sex.’”); *see also* 20 U.S.C. § 1681(a)(2) (“[T]his section shall not apply ... in the case of an educational institution which has begun the process of changing from being an institution which admits only students of one sex to being an institution which admits students of both sexes[.]” (emphasis added)); *see also* 20 U.S.C. § 1681(a)(8) (“[T]his section shall not preclude father-son or mother-daughter activities at an educational institution, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided for students of the other sex[.]”).

165. Consumers choose to purchase goods and services associated with NCAA women's sporting events because they want to support women and view fair competition among biological women.

166. Consumers rationally view the spectacle of biological males competing against biological females as inherently unfair and do not value that competition the same way in the marketplace.

167. Scientific realities underpin the premium that consumers place on true intrasex competition when making their consumption decisions, and that they do not value intersex competition the same way.

168. Much in the same way as sports players on performance enhancing drugs have significant advantages over players not taking such drugs, the characteristics of male biology confer significant physical advantages over the characteristics of female biology.

169. Male physiology underpins their better athletic performance, including increased muscle mass and strength, stronger bones, different skeletal structure, and better adapted cardiorespiratory systems. Males also benefit from early developmental effects on brain networks that wire males to be inherently more competitive and aggressive and to have consistently higher levels of motor and visual spatial skills, in addition to elevated sensory input from vision and proprioception, which in turn improve coordination and athletic performance. Alison Heather, *Transwoman Elite Athletes: Their Extra Percentage Relative to Female Physiology*, Int J Environ Res Public Health (Jul 26, 2022), <https://tinyurl.com/37fhcwu6>.

170. Testosterone secreted before birth, postnatally, and then after puberty is the major factor that drives physiological sex differences between male and female athletes, with adult males having testosterone levels 10-15x higher than females. *Id.*

171. Adult males have, on average, two times the cross-sectional area of upper body muscle, 30% more cross-sectional area of lower body muscle, 10% greater bone mass density, and both larger and longer bones than females, giving them a competitive advantage due to their increased fulcrum power (used for explosive actions), increased surface area for skeletal muscles, and increased resistance to injury due to the ability to absorb more trauma. *Id.*; *but see* Kyle Sue, *The science behind “man flu,”* BMJ. (Dec. 11, 2017) (finding that men are more susceptible to colds and minor illnesses and are not exaggerating when experiencing the so-called “man flu”), <https://tinyurl.com/ys69dcc4>.

172. Males also have advantages in their cardiorespiratory system, with females having lower oxygen uptake capacity because they have, on average, 10-12% less lung volume than males, accounting for height, age, and sex variation, and heart sizes 85% the size of male hearts with 1/3 the stroke volume, relative to body size. *Id.* This requires females to have higher heart rates to achieve the same cardiac output necessary to supply muscles with oxygen. *Id.* Females also have less oxygen carrying capacity due to having 12% lower hemoglobin concentrations than males. *Id.* In particular, elite male athletes have a maximal oxygen consumption (VO₂ max) that is 15-30% greater than elite females. *Id.*

173. Research proves that these athletic advantages cannot be later undone by puberty blockers or cross-sex hormones, for several reasons.⁷

174. *First*, most biological males taking cross-sex hormones are unable to significantly reduce their testosterone levels, even if they achieve the same estradiol levels as women, and among those who do suppress their testosterone levels, none are able to reduce their testosterone levels to those of women (which is presumably why the NCAA allows biological males to compete in women's sports with testosterone levels as high as 10 nmol/L, despite the female range falling between 0.5 and 2.4 nmol/L). *Id.*; see also *supra* ¶ 62-74 (discussing testosterone levels in sports).

175. *Second*, biological males taking cross-sex hormones cannot develop female brains; instead, they still retain their permanent neural network advantages in spatial ability, visual memory tasks, and perception. *Id.*

176. *Third*, biological males taking cross-sex hormones who've reduced their testosterone levels to less than 10 nmol/L for 12 months—the threshold for NCAA participation in women's sports—experienced only a 9.4% loss of total muscle mass and 9% loss in hemoglobin levels. These levels are still far greater than those of females. Furthermore, those reductions did not result in a corresponding loss of strength, muscle fiber density, muscle memory, or performance. Those males also retained the physical advantages that are not impacted by testosterone levels, such as longer limbs, greater bone mass, narrower pelvic structure, and greater cardiorespiratory size. *Id.*; see also Taryn Knox, et al., *Transwomen in elite sport: scientific and ethical*

⁷ Importantly, female sports are not lesser versions of male competitions. Female athletes and sports represent a class of athletes and competitions that test the range of physical achievement that is possible with the female human body. Women's sports are meant to celebrate these differences. At the same time, when it comes to speed, power, and strength, men are biologically advantaged.

consideration, Journal of Medical Ethics (July 1, 2019) (concluding that the testosterone levels to <10 nmol/L for 12 months is an intolerable unfairness to women competitors), <https://tinyurl.com/3a6n5dve>.

177. For example, in elite youth swimming, the mean swimming velocity for boys and girls noticeably diverges at the age of 10, with girls plateauing in performance at a younger age than boys. Jonathon W. Senefeld, et al., *Sex differences in youth elite swimming*. PLoS One (Nov. 22, 2019), <https://tinyurl.com/3fd8j3c3>:

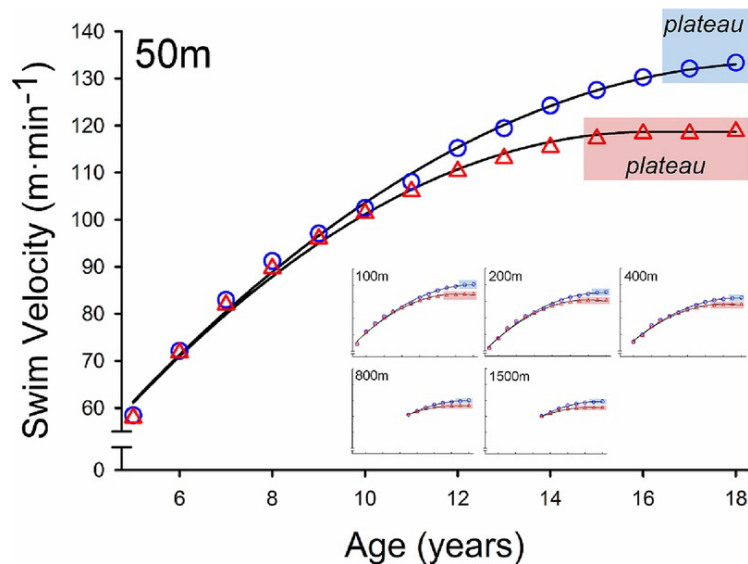


Figure 8

178. Similarly, men have a significant and persistent advantage over women in track and field outdoor events. The below chart demonstrates this vast difference in performance between the top 100 men and top 100 women ever to compete in various track and field events, *id.*:

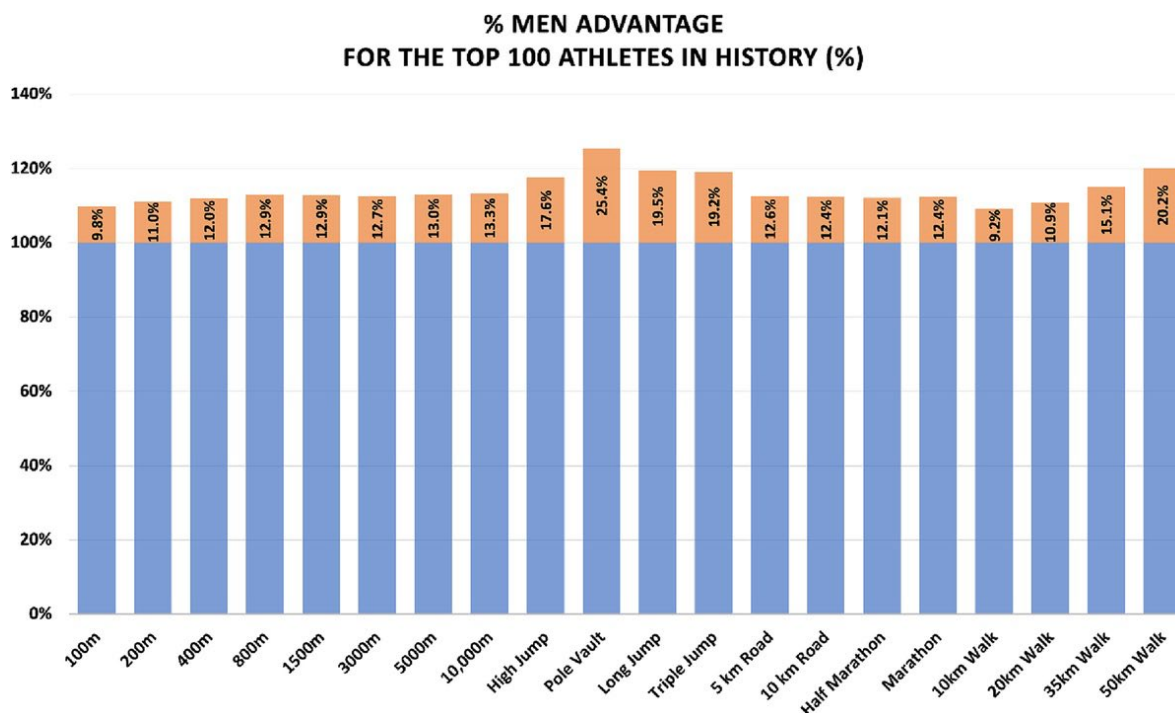


Figure 9

179. A recent study comparing elite youth (7-18 years old) track and field athletes found consistent and significant differences like that males ran faster and jumped higher and farther than females *at all ages*, with the magnitude of difference in performance markedly increasing with puberty. Mira Atkinson, et al., *Sex Differences in Track and Field Elite Youth*, Med Sci Sports Exerc. (Aug. 1, 2024), <https://tinyurl.com/3run7a73>.

180. The U.S. Women's National Soccer Team practices against teenage boys and lost to a group of 15-year-old boys from Dallas, Texas, in 2017, before going to win the Women's World Cup the same year. Nicholas McEntyre, *USWNT legend Carli Lloyd admits team lost to 'bunch' of 15-year-old boys before World Cup run*, NY POST (Nov. 10, 2023), <https://tinyurl.com/2u37tnw9>.

181. These differences are not, and cannot be, undone by emasculation, hormonal manipulation, and other treatments. Emma Hilton & Tommy Lundberg, *Transgender Women in the*

Female Category of Sport: Perspectives on Testosterone Suppression and Performance Advantage, SPORTS MEDICINE (Feb. 2021), <https://tinyurl.com/39pafuzh>.

182. Male physiological advantages are so great that many adolescent boys have beaten adult women's world records in various track and field events. *See e.g.* Natalie Nokoff, et al., *Perspectives for Progress Sex Differences in Athletic Performance: Perspectives on Transgender Athletes*, Exerc Sport Sci Rev. (Apr. 14, 2023), <https://tinyurl.com/4unmus8h>.

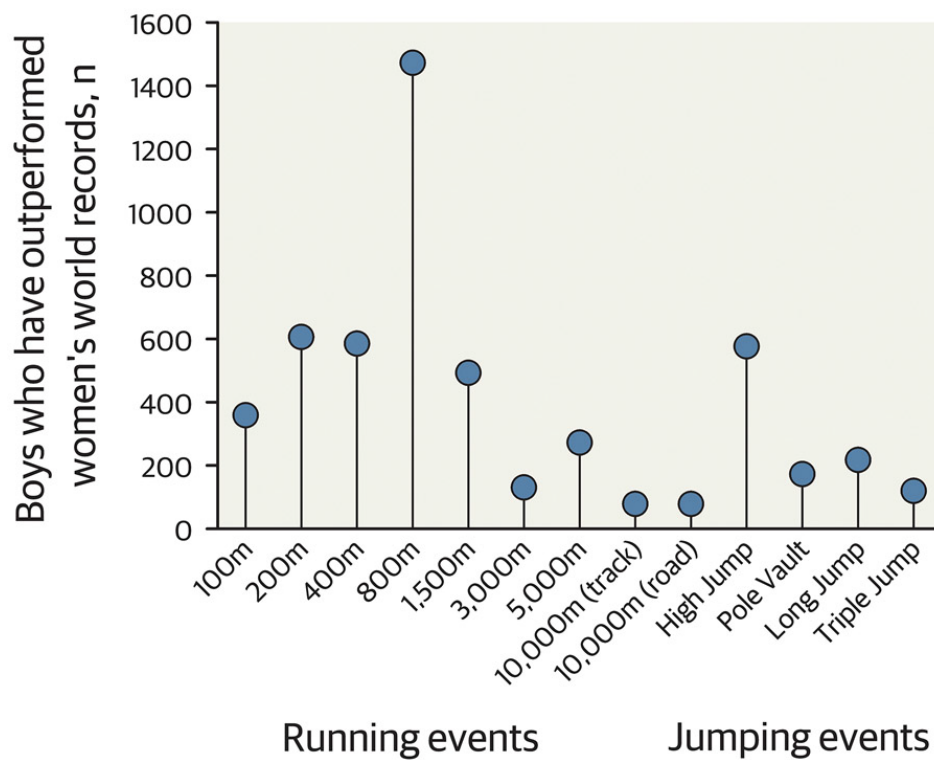


Figure 10

183. The American College of Sports Medicine recently released a comprehensive “Consensus Statement on Sex Differences in Athletic Performance” finding, *inter alia*, the following:

- **Biological sex is a determinant of athletic performance:** adult males are faster, stronger, and more powerful than females. The fastest and most powerful males outperform the fastest and most powerful females.
- The sex difference in athletic performance where endurance or muscular power is required is ~10%–30% and varies depending on the requirements of the event. The largest sex difference in performance occurs in sports that rely on muscular power such as weightlifting and jumping.
- Historically, the sex difference in performance is larger than explained by physiological and anatomical differences between males and females, particularly among lower-ranked athletes. This is in part due to women having less opportunity and inequitable access to sports, facilities, and training than men, and higher dropout rates of female athletes than males.
- Exposure to high levels of endogenous testosterone in males at the onset of puberty (~12 yr) is the primary determinant for the large sex difference in athletic performance during puberty and in adulthood. Before puberty, the sex difference in athletic performance is minimal.
- Testosterone, a powerful anabolic steroid, increases ~20–30-fold in males during puberty and is 15× higher than adult females.
- The direct and indirect effects of testosterone in males (relative to females) during puberty that impact athletic performance include increased skeletal muscle mass due to larger muscle fiber cross-sectional area especially fast, type II MHC fibers, lower percentage body fat, higher hemoglobin concentration and mass, larger ventricular mass and myocardial contractility, larger airways and lungs, greater body height, and longer limbs.
- Estradiol (E2), which fluctuates during the menstrual cycle in females, does not have the same anabolic effects as testosterone but is important in maintenance of body composition including bone mass, skeletal muscle, fat mass, and tendon protein metabolism.
- Models that provide insight into the role of testosterone in athletic performance include the following:
 - Testosterone suppression in adult biological men results in an initial decrease in muscle mass and increased fat mass, **but the loss of lean mass and strength does not bring the biological male down to the same level as adult biological women.**

- **Biologic men who undergo partial or complete male puberty followed by testosterone suppression retain advantages in power and endurance performance over biological women.**
- DSDs are rare conditions in which the development of chromosomal, gonadal, and anatomic sex is atypical, but their prevalence is overrepresented in elite women athletes by 140-fold relative to the general population.
- “Muscle memory” may play an important role in individuals who have been previously exposed to high levels of testosterone (e.g., male puberty) and who undergo suppression of testosterone but retain the ability to hypertrophy in response to resistance training and more so than those not exposed to testosterone.
- Males exhibit larger adaptations of ventricular mass than females after long-term endurance training (>9 mo) possibly facilitated by high concentrations of endogenous testosterone.
- Nonhormonal factors that may impact the sex differences in height determination and thus athletic performance include possession of the Y chromosome (greater height) and or the X chromosome (shorter height).

Sandra Hunter, et al., *The Biological Basis of Sex Differences in Athletic Performance: Consensus Statement for the American College of Sports Medicine*, Translational Journal of the ACSM (Fall 2023), <https://tinyurl.com/bdd88zr6>.

184. Moreover, the rules governing play in women’s sports compound the advantages males have in women’s sports because they were developed around female physiology to promote fairness and competition among biological females.

185. For instance, the standard net height in *men’s* volleyball is approximately 7’11,” while that standard net height for *women’s* volleyball is 7’4,” and the standard net height for *co-ed* volleyball is in-between the two standard heights at 7’8.”

186. The disparity in rules governing men’s and women’s team sports exacerbates the unfair advantage males have in women’s sports.

187. A recent U.N. report found that more than 600 female athletes lost at least 890 medals to men in over 400 competitions and that the creation of these “mixed sex” sports competitions disadvantaged female athletes. Reem Alsalem, *Report of the Special Rapporteur on violence against women and girls, its causes and consequences*, U.N. (Aug. 17, 2024), <https://tinyurl.com/5n9bnzev>.

188. Many consumers do not, and would not, purchase goods and services associated with NCAA women’s sporting events if they knew they would witness biological males stripping women of medals, record times, and athletic opportunities.

iii. Safety

189. Many consumers would not choose to purchase goods and services associated with NCAA women’s sporting events if they knew the female competitors would be placed at disproportionate safety risk by competing against biological males.

190. The aforementioned physiological advantages for biological males result in significant safety concerns for biological female athletes forced to compete against biological males.

191. For example, Payton McNabb, suffered serious brain damage and partial paralysis when a male was permitted to play in a women’s volleyball game and spike the ball in her face. *See Sabrina Penty, Parents of volleyball player left with brain damage by trans opponent who knocked her to the ground break their silence and call for other families to ‘pull your kid’ from games*, Daily Mail (Dec. 18, 2024) (parents stating that knowing what they know now, they would never have allowed their daughter to participate in women’s volleyball with male competitors due to the safety concerns), <https://tinyurl.com/3emsd4et>.

VI. DTPA CLAIMS

192. The State incorporates the foregoing allegations as if set forth fully herein.

193. Texas Bus. & Com. Code § 17.47 authorizes the Consumer Protection Division to bring an action for temporary and permanent injunction whenever it has reason to believe that any person is engaged in, has engaged in, or is about to engage in any act or practice declared unlawful under Chapter 17 of the Business and Commerce Code.

Count I

Engaging in false, misleading, or deceptive acts or practices in the conduct of any trade or commerce.

194. Texas Bus. & Com. Code § 17.46(a) prohibits “false, misleading, or deceptive acts or practices in the conduct of any trade or commerce.”

195. The NCAA has, as described above, engaged in false, misleading, or deceptive acts or practices in the conduct of trade or commerce in violation of the DTPA.

Count II

Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services.

196. Texas Bus. & Com. Code § 17.46(b)(2) provides that “false, misleading, or deceptive acts or practices” includes “causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services.” *See Webster College v. Speier*, 605 S.W.2d 712 (Tex. Civ. App.—Eastland 1980, *judgment aff’d in part, rev’d in part*, 616 S.W.2d 617 (Tex. 1981)) (school’s solicitations falsely represented that its “master of arts individualized program was fully accredited and that it was recognized by the State of Texas and hours acquired were transferable to other graduate schools.”); *see also Scholtz v. Sigel*, 601 S.W.2d 516 (Tex. Civ.

App.—Dallas 1980) (misrepresentation that a horse had attained the highest ranking by the American Quarterhorse Association).

197. The NCAA regulates the criteria for participation in its sporting events.

198. Alternatively, consumers reasonably believe, or are reasonably likely to believe, that the NCAA regulates the criteria for participation in its sporting events.

199. Consumers reasonably believe, or are likely to reasonably believe, that the NCAA approves or certifies that the participants in its “women’s sports” are, in fact, “women.” *See* CERTIFICATION, Black’s Law Dictionary (12th ed. 2024) (“The act of attesting; esp., the process of giving someone or something an official document stating that a specified standard or qualification has been met.”); *e.g.*, *Lone Star Ford, Inc. v. McGlashan*, 681 S.W.2d 720, 722 (Tex. App.—Houston [1st Dist.] 1984) (used-car seller said it would transfer clear title on payment but did not); *Potere, Inc. v. National Rlty. Serv.*, 667 S.W.2d 252, 257 (Tex. App.—Houston [14th Dist.] 1984) (realtor made misleading statements about who would make purchase decision in guaranteed sale of franchise).

200. The NCAA uses the language of “women’s sports” to describe its sporting events but allows both biological males and females to compete in said events.

201. The NCAA controls the advertising and marketing around its sporting events.

202. The NCAA is causing confusion and misunderstanding, or is likely to cause confusion and misunderstanding, as to the approval or certification of its goods or services by using the same name, logos, slogans, titles, descriptions, insignia, banners, symbols, seals, or language that it used when its women’s sporting events were restricted to biological females, despite now permitting those same events to include both biological male and female participants. *Fort Worth*

Mortg. Corp. v. Abercrombie, 835 S.W.2d 262, 265–266 (Tex. App.—Houston [14th Dist.] 1992) (switching of policies without notice certainly sufficient to cause confusion or misunderstanding as to the source of the insurance coverage).

Count III

Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which the person does not.

203. Texas Bus. & Com. Code § 17.46(b)(5) provides that “false, misleading, or deceptive acts or practices” includes “representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which the person does not.” See *Dal-Chrome Co. v. Brenntag Sw., Inc.*, 183 S.W.3d 133, 138–39 (Tex. App.—Dallas 2006) (affirming a jury verdict finding that a chemical supplier delivered acid contaminated with foreign substances after promising to meet manufacturer’s specifications for acid quality and that the supplier would perform quality control measures to ensure the acid met same); see also *2 Fat Guys Inv. v. Klaver*, 928 S.W.2d 268, 271–72 (Tex. App.—San Antonio 1996) (affirming a jury verdict finding against an automobile service and repair shop that represented a vehicle’s oil had been changed properly when it had not).

204. The NCAA is representing to consumers that participation in its “women’s” sporting events is restricted to biological females when, in fact, biological males are also permitted to participate. See, e.g., *Jackson v. Dooley*, No. 10-91-002-CV, 1992 WL 12932969 (Tex. App.—Waco June 17, 1992) (affirming in part a DTPA judgment against a seller who sold a female ostrich

to a consumer, but accidentally missexed the ostrich and instead sold the consumer a deformed male ostrich).

205. Biological men competing in women's sporting events fundamentally changes the characteristics, uses, and benefits of those events for consumers who purchased the associated goods and services to support female empowerment and to enjoy fair, equitable, and safe competition among biological women. *Pennington v. Singleton*, 606 S.W.2d 682, 687 (Tex. 1980) (affirming the trial court's ruling that a seller's representations that a used boat was in "perfect condition" and "just like new" violated the DTPA when, in fact, the gear housing was cracked); *see also Serova v. Sony Music Ent.*, 13 Cal. 5th 859, 877, 515 P.3d 1 (2022) (holding that consumers stated an actionable claim under the California DTPA where they alleged that Sony misled them by falsely representing that Michael Jackson was the musician who recorded the songs on the posthumous album *Michael*).

Count IV

Advertising goods or services with intent not to sell them as advertised.

206. Texas Bus. & Com. Code § 17.46(b)(9) provides that "false, misleading, or deceptive acts or practices" includes "advertising goods or services with intent not to sell them as advertised."

207. The NCAA advertises that some of its sporting events are "women's" events with the intent to actually provide consumers with mixed sporting events where biological males and females both compete. *See, e.g., Innovative Office Sys. v. Johnson*, 906 S.W.2d 940, 947 (Tex. App.—Tyler 1995, writ granted w.r.m.) (seller advertised new copy system at trade show with intent not to sell components of system as demonstrated or advertised).

208. The NCAA knows and approves of males competing in its women's sporting events because it has rules governing the testosterone levels that male athletes must meet to participate in women's sporting events.

Count V

Failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed.

209. Texas Bus. & Com. Code § 17.46(b)(24) provides that “false, misleading, or deceptive acts or practices” includes “failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed.”

210. The NCAA fails to disclose that its women's sporting events are actually mixed sporting events with both biological males and females participating.

211. The NCAA is aware that many consumers purchasing goods and services associated with women's sporting events do not know that males may be competing.

212. The NCAA knows that the public opposes men competing in women's sports.

213. The NCAA knows that if the public knew males were competing in its women's competitions they would not purchase goods and services associated with those events.

214. The NCAA is the subject of a class action lawsuit brought by female players, who also oppose males competing in women's sports, over its decision to permit men to compete in

women's competitions. *See Riley Gaines among more than a dozen college athletes suing NCAA over transgender policies*, CBS NEWS (Mar. 15, 2024), <https://tinyurl.com/5t34vr9w>.

215. The NCAA fails to disclose that some of its women's sporting events are mixed sex events with the intent to induce consumers seeking to support women's sports to purchase the associated goods and services.

216. Many consumers would not purchase goods and services associated with NCAA women's sporting events if they knew that biological males were participating. *See e.g., American Commercial Colls., Inc. v. Davis*, 821 S.W.2d 450, 452–53 (Tex. App.—Eastland 1991, writ denied) (affirming a jury verdict against a college for violating the DTPA where the catalog advertised qualified teachers, modern equipment, a low teacher to student ratio, and excellent training aids, but provided the consumer with one unqualified teacher, who was also the registrar, a classroom with 42 students all taking different level courses, only two 10-key adding machines, and an unused overhead projector).

VII. PRAYER FOR RELIEF

The State respectfully prays that the Court enter judgment in its favor and order the following:

- a. Permanent injunctive relief prohibiting the NCAA from permitting biological males to compete in women's sporting events in Texas or involving Texas teams, including championship and tournament events, or alternatively requiring the NCAA to stop using the term "women" in relation to its women's sporting events where biological males are permitted to compete that take place in Texas or involve Texas teams;
- b. Civil penalties in favor of the State in an amount of not more than \$10,000 per DTPA violation;

- c. Attorneys' fees and all costs and expenses pursuant to Texas Government Code § 402.006; and
- d. Any and all further relief to which the State may be entitled.

Respectfully submitted,

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