



**April 24, 2024**

**Input for SR VAWG's report on violence against women and girls in sport.**

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Introduction

The Women's Liberation Front (WoLF) is a nonpartisan, nonprofit organization that works to restore, protect, and advance the rights of women and girls. WoLF focuses on the human rights of women and girls ignored by mainstream feminist organizations, including the right to sex-segregated sports, bathrooms, and locker rooms, and the basic right to be free from male violence. We thank the Special Rapporteur for calling for input to the report to the UN General Assembly on violence against women and girls in sport.

Female athletes face the risk of violence from male coaches and doctors who have nearly unfettered access and power over them. The investigation of Larry Nassar, the team doctor to the U.S. National gymnastics team, found he had sexually assaulted over 265 gymnasts.<sup>1</sup> That investigation also found complaints of sexual assault against over fifty other coaches, and investigations of other sports have found “systemic” abuse.<sup>2</sup>

The call for input recognizes that the threat of violence to female athletes can come in an unexpected, insidious form. Initiatives billed as antidiscrimination measures to protect “gender identity” in fact make it impossible to protect female athletes from discrimination based on their sex. The call for input notes:

in some jurisdictions, sports traditionally reserved for female athletes, are now open to male athletes based on their gender identity and who identify as women and girls. This has had significant human rights implications for all women and girls, including their right to equality and non-discrimination. It also raised questions regarding fairness, in sports as well as the full participation in education, culture, and sports as well as society as a whole.

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<sup>1</sup> See Hauser, Christine and Astor, Maggie, [The Larry Nassar Case: What Happened and How the Fallout Is Spreading](#), *New York Times* (January 25, 2018).

<sup>2</sup> See Draper, Kevin [Report Details 'Systemic' Abuse of Players in Women's Soccer](#), *New York Times* (October 3, 2022).

This is precisely the threat posed by a new regulation<sup>3</sup> that upends historic civil rights law by protecting “gender identity” at the expense of women and girls, including female athletes. Because of this imminent threat to female sport in United States publicly funded educational institutions, we focus our comment on the specific danger of privileging gender identity over sex in athletic programs intended for women and girls—and putting males on the playing field and in the locker room with female athletes.<sup>4</sup>

### Single-Sex Sport Is Under Attack.

In the United States, whether a male can compete in female sport currently depends on the rules of the sport governing body, educational institution, or state or federal law. In the absence of a blanket ban, males have competed in female sports at all levels and across sport categories. William “Lia” Thomas’s domination of women’s swimming at the elite collegiate level is perhaps the most infamous example, but male participation has deprived female athletes of victories in high school track and field, elite cycling events, and professional mixed martial arts (MMA), among many other sport categories.<sup>5</sup> Major sporting bodies like the International Olympic Committee (IOC)<sup>6</sup> and the National College Athletic Association (NCAA)<sup>7</sup> have declined to protect women and girls by developing across-the-board policies to preserve female-only sports, leaving it to the individual sport governing bodies to decide policies within broad guidelines that tout “inclusion” as a central consideration. Many sports, including, incredibly, boxing,<sup>8</sup> have adopted policies that allow males to compete in female only categories.<sup>9</sup> An organization formed to keep track of males claiming victory in female sports has

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<sup>3</sup> See Final Rule: *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, document no. 2024-07915 (scheduled for publication on April 29, 2024); available for public inspection at [Federal Register :: Public Inspection: Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance](#).

<sup>4</sup> In our input, the word “sex” refers to the fundamental distinction between the two human sexual reproductive categories: Females, whose bodies are organized to support the production of ova and the creation of offspring through sexual reproduction; and Males, whose bodies are organized to support the production of sperm. The word “woman” refers to adult human females, and the word “girl” refers to minor human females. The word “men” refers to adult human males and the word “boy” refers to minor human males.

<sup>5</sup> Four female athletes have challenged the Connecticut athletic policy that allows boys to compete in female track and field. See Neumeister, Larry, [Court revives lawsuit over Connecticut rule allowing trans girls to compete in school sports](#), Associated Press (December 15, 2023). Links to news coverage of the victories of Austin Killips, the male cyclist who took first place in an elite female cycling event, Fallon Fox, the male MMA fighter who has knocked out female MMA fighters, and many other male athletes who have displaced female athletes in female sports appear at [www.SheWon.org](http://www.SheWon.org), a website that identifies male athletes who have taken podium spots across female sport categories and competitive levels.

<sup>6</sup> The IOC’s [“Framework on Fairness, Inclusion and Non-Discrimination on the Basis of Gender Identity and Sex Variations”](#) states that “athletes should not be deemed to have an unfair or disproportionate advantage due to their sex variations, physical appearance and/or transgender status.”

<sup>7</sup> See NCAA, [Transgender Student-Athlete Participation Policy](#) (updated April 17, 2023).

<sup>8</sup> The USA Boxing policy requires males seeking to compete in the female category to have undergone genital sex trait modification surgery, among other things, but allows males who have gone through male puberty to fight in female competitions. See [USA Boxing Transgender Policy](#) (August 25, 2022).

<sup>9</sup> See, generally, Kleigman, Julie, [Understanding the Different Rules and Policies for Transgender Athletes](#) SI.com (July 6, 2022). Some leagues exclude males with testosterone levels above 10 nanomoles/liter, a

identified over 900 instances in which males deprived female athletes of records, scholarships, or other opportunities, many of those involving female sport in the United States.

### Males in Female Sport Are a Danger to Women and Girls.

Male participation in female sport exposes women and girls to the possibility of economic, sexual, and physical harm, in addition to harms of conscience. Athletic competition provides female athletes with academic opportunities, scholarships, and cash prizes, which can be substantial in elite competitions. In 2023, UCI cycling announced that “[f]or the first time in Tour of the Gila’s 36-year history, UCI Women will receive equal pay.”<sup>10</sup> But because male cyclist Austin Killips collected the \$35,000 first place prize in the female category, no female athlete benefited. Another female athlete was displaced when the University of Washington offered one of only twelve Division 1 athletic scholarships reserved for female volleyball players to a male athlete.<sup>11</sup> Disadvantaged female athletes who rely on athletic scholarships and cash prizes face especially dire consequences, as male participation in their sports may deprive them of resources without which their athletic, academic, and professional goals are impossible.

By placing males in intimate spaces where female athletes are most vulnerable, male participation in female sport increases the vulnerability of female athletes to sexual violation and assault and threatens psychological harm. Women and girls who have experienced sexual assault may experience trauma at the prospect of undressing in front of males; for orthodox Jews and Muslims, doing so is a violation of their faith,<sup>12</sup> and could require that they withdraw from sport. That larger, stronger male bodies pose a risk of serious physical harm to female athletes has been borne out.<sup>13</sup> The woman who sustained a concussion, an orbital bone fracture, and a serious head wound before being knocked out by male MMA fighter Fallon Fox stated “I’ve never felt so overpowered ever in my life and I am an abnormally strong female in my own right[.]”<sup>14</sup>

### A New Regulation Threatens to End Female-Only Sport in Publicly Funded Schools.

In response to the attack on female sport by some male athletes, about half of all states have adopted laws to keep sports sex-segregated and some sport governing bodies have followed

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criteria that does nothing to protect female athletes from a range of male physical advantage. See Independent Council on Women’s Sports (ICONS), [Fast Facts](#) (demonstrating multiple physiological advantages males have over women).

<sup>10</sup> See Muench, Sarah, [Tour of the Gila to provide equal pay for UCI women - Tour of the Gila](#).

<sup>11</sup> See Slatz, Anna, [EXCLUSIVE: Transgender Athlete Makes Verbal Commitment To Seize One Of Just Twelve Women’s Volleyball D1 Scholarships At The University of Washington](#), Reduxx.info (December 13, 2023). Reportedly, the university rescinded the offer when it learned the intended recipient was male.

<sup>12</sup> See Jacobs, Ellie, [Could transgender rights infringe upon religious rights?](#), The Jewish Chronicle (October 18, 2018).

<sup>13</sup> See, e.g., Kool, Daniel, [Two Mass. schools in national spotlight after injuries allegedly involving transgender basketball player](#), The Boston Globe (February 26, 2024); McClure, Ashley, [After a Male Caused Her Partial Paralysis, Female Volleyball Player Payton McNabb Now Fights to Protect Women’s Sports](#), IWF.org.

<sup>14</sup> See [Fallon Fox](#), Wikipedia.

suit.<sup>15</sup> WoLF supports these actions and believes only clear laws and policies that keep female sport female-*only* are adequate to protect women and girls from the harms discussed in this input.<sup>16</sup> Unfortunately, some of these state laws have already been successfully challenged in court.<sup>17</sup>

On August 1, 2024, a regulation will take effect that is intended to eradicate sex segregation in publicly funded schools across-the-board, overriding laws and policies that preserve sex-based sport in those institutions. The rule, *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance* (“2024 Rule”)<sup>18</sup> would define sex discrimination to include discrimination based on “gender identity.” This corrupting of a law intended to protect sex-based rights to instead require publicly funded institutions to open female-only facilities and programs to males who claim a female “gender identity” would also extend the definition of harassment to calling such males by correct sex-based pronouns.<sup>19</sup> By ending female-only sport in publicly funded education, the 2024 Rule would:

- Deprive female athletes of scholarships, cash prizes, and sports-based academic opportunities;
- Expose female athletes to increased risk of psychological harm, sexual violation and assault by placing males in female changing rooms;
- Increase the risk of serious physical injury to female players; and
- Violate the conscience and free speech of female athletes who believe in the biological basis of sex.

WoLF is concerned that educational institutions, students, and the public are not prepared for the harmful effects the 2024 Rule will have on women and girls, particularly in female sport. We are grateful to the Special Rapporteur for providing this opportunity to draw attention to threats to female athletes in the United States and to the violence faced by female athletes in all its forms.

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<sup>15</sup> See Kliegman, Julie and Dougherty, Jessie, [NAIA bans all transgender women from women's sports](#), The Washington Post (April 8, 2024)

<sup>16</sup> Many sport governing bodies have adopted policies that allow some males to participate in female sports. For example, policies that set a testosterone threshold for male participation in female sport do not account for multiple male physical advantages and do nothing to mitigate the threat of economic, sexual, and physical violence to female athletes.

<sup>17</sup> See, e.g., *B.P.J v. West Virginia*, No. 23-1078 Doc: 187 (4th Cir. April 16, 2024). The U.S. Department of Justice joined as an amicus for the male who wished to compete as a female. By consistently dominating female track and field events, the male plaintiff displaced over 100 girls from victories. *Id.* at 49 (dissenting opinion).

<sup>18</sup> See *supra* n.3.

<sup>19</sup> The administration released a proposed regulation in 2023 that explicitly addresses sex-segregated athletic programs. See [Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Sex-Related Eligibility Criteria for Male and Female Teams](#), 88 Federal Register 22860 (April 13, 2023) (“2023 Proposal”). In a calculated political move, the administration has reportedly decided to hold the 2023 Proposal until after the election. But it is the 2024 Rule that inserts “gender identity” into sex discrimination, laying the foundation to prohibit single sex sports and sport facilities. See 2023 Proposal at 22868 (noting that the term “sex” for purposes of current rule allowing sex-segregated sport facilities has not been defined, implying it could include gender identity in provisions purporting to allow single sex sport.)