



## FREQUENTLY ASKED QUESTIONS – ABOUT CURRENT LAW ON SEX AND SPORT

*WomensSportsPolicy.org*

### **Q31: Why do proponents of the Equality Act (EA) assert that the redefinition of sex won't affect girls' and women's sport?**

A31. Many of the EA's advocates argue that the proposed EA Act won't affect Title IX, without explaining why. Alternatively, others argue that, even if it does, Congress could restore separate sex sport after the EA's enactment, through specific legislation addressing sport. Restoring separate sex sport after the EA's enactment is highly unlikely as a matter of standard legal analysis, legislative history, and politics.

The EA is designed to amend the Civil Rights Act of 1964. The definitions in that statute have been and will continue to be the basis for interpreting or defining the same words as used in all other civil rights legislation. That is, Congress cannot re-define "sex" in the principal statute and not have that definition apply directly or indirectly to the use of that term in other legislation. In fact, many of the EA proponents intend precisely this—make the change to the definition in the principal legislation, and this will automatically change the definition in related legislation.

Moreover, as a matter of standard legal analysis, absent a legislative carve out for sport – i.e., an explicit acknowledgement of an exception – any newly enacted, categorical prohibition on discrimination between biological females and trans girls/women would be presumed to supersede any earlier legislation to the contrary, including Title IX.

The legislative history of the EA makes clear that its proponents intend for it to apply to sport with no conditions or exceptions and thus, to prohibit any distinctions between biological females and trans girls/women. At the House Judiciary Committee Hearings, both the witnesses and Democrats on the Committee insisted that trans girls/women be included in girls' and women's sport without any conditions because "trans girls are girls, trans women are women, period." And on the floor of the House, a bill was rejected by a vote of 181 to 228 that would have retained the longstanding exception in Title IX for separate sex sport based on biology. (Specifically, Congressman Steube proposed legislation providing that, "Nothing in this Act or any amendment made by this Act may be construed to diminish any protection under Title IX of the Education Amendments of 1972.") The Equality Act then passed the House by a vote of 236 to 173. This legislative history would be

instructive in the future were the question to arise whether Congress intended to permit or preclude distinctions on the basis of biological sex.

The natural experiment with state versions of the EA also make clear that an explicit exception is necessary to maintain sex segregated sports and spaces. In those contexts, trans advocates argue that under the state EAs, it is impermissible to separate or in any way differently to treat trans girls within girls' sport. They make these arguments even though state legislatures did not consider sports as they were enacting their EA legislation.