

Senate Education Committee

Ryan Meleedy 271-4151

SB 211, relative to biological sex in student athletics.

Hearing Date: March 4, 2025

Members of the Committee Present: Senators Ward, Sullivan, Abbas, Prentiss and Altschiller

Members of the Committee Absent : None

Bill Analysis: This bill requires school sports teams to be expressly designated as male, female, or coed, prohibits biologically male students from participating in female designated sports or entering female locker rooms, and creates a cause of action for athletes harmed as a result of violations of these requirements.

Sponsors:

Sen. Avard	Sen. Lang	Sen. Innis
Sen. Ward	Sen. Abbas	Sen. McGough
Sen. Sullivan	Sen. Rochefort	Sen. Gannon
Sen. Pearl	Sen. McConkey	Rep. Kofalt
Rep. Notter	Rep. Pauer	Rep. Sirois

Who supports the bill: 27 People signed in support of SB 211. To see the full list of sign-ins, please email the committee aide (ryan.meleedy@gc.nh.gov).

Who opposes the bill: 834 People signed in opposition of SB 211. To see the full list of sign-ins, please email the committee aide (ryan.meleedy@gc.nh.gov).

Who is neutral on the bill: No one signed in neutrality to this bill.

Summary of testimony presented in support:

Senator Avard

- Senator Avard introduced Senate Bill 211 as the bill's prime sponsor.
- He explained that the bill requires New Hampshire school sports teams to be designated as male, female, or coed, and established that biological men would be prohibited from playing sports designated for females and entering designated female locker rooms.
- Senator Avard established that the bill would create a legal cause of action for athletes harmed by violations of the bill's pre-established requirements

- He shared anecdotal testimony regarding his experience witnessing the significant difference between male and female athletes, specifically those playing lacrosse.
- Senator Avard explained that the physical advantage that biological males have over females is obvious and significant, and that the legislature should be protecting biological women from injury in light of this understanding.
- He further explained that this bill was purely a measure to set established guidelines to protect and provide security for women and their right to compete in school sports.
- He explained the coed provisions of the bill, clarifying that if a school preemptively designates a sport as coed prior to students signing up to participate, biological males and females would be permitted to play on the same team. He added that if a student signs up to play a coed sport, they are doing so at their own risk and would not be protected by the rest of the bill's provisions.
- He reiterated that the bill's intent is to preserve safety and privacy for female athletes, characterizing both as a major concern. He established that the bill creates a path for legal action for those who suffer at the hands of a violation.
- He expressed his distaste for perceived bullying efforts from certain individuals opposed to this bill and similar legislation.
- Senator Altschiller asked that if safety was the motivating concern behind SB211, why Senator Avard wouldn't offer alternative measures to make the sports safer themselves. Senator Avard said that by passing this bill, school sports would become safer.
- Senator Altschiller asked why neutral ways of addressing safety concerns in school sports, such as weight and height caps, aren't being prioritized over the measures enumerated by the bill. Senator Avard explained that there are plenty of evolving safety measures for sports that have been introduced over the years, but that these safety measures have been implemented for people playing against others of their own biological sex. He emphasized that safety measures, such as helmets, do nothing to address other problems that the bill seeks to reconcile, such as biological males using the same locker rooms as biological females.
- Senator Altschiller referenced the bill's language, which would allow for biological females to participate in sports designated for biological males. She questioned why the bill would be written this way if safety for biological females was the primary concern. Senator Avard expressed that he would be open to amending this language.
- Senator Altschiller asked how the purported issue of safety that Senator Avard raised is mitigated in coed sports. Senator Avard said that, by his understanding, colleges do not give out scholarships for coed sports, and there

- are no perceived locker room issues. He explained that student-athletes would be entering coed sports at their own risk and that the designation of male, female, and coed sports would be predetermined before students sign up to play.
- Senator Sullivan expressed that she supported the bill as written, explaining that she viewed it as normal and acceptable practice for exceptional female athletes to compete on male teams and that this was not the case with males joining female teams. She expressed appreciation for Senator Avard's willingness to propose this bill and asked whether he was aware that coed sports are designed differently from sports designated for the male and female sexes. Senator Avard established that he was unaware of this, but said that the idea behind the bill is that students will be signing up for sports while already knowing whether the sport is coed or not and that these designations are not to be infringed.
 - Senator Altschiller asked Senator Avard if this bill would ban any person who was born female from participating on a designated female sports team. Senator Avard explained that if you are born as a biological female, this bill would not prevent you from participating in designated female sports. Senator Altschiller questioned whether a person born female, who later transitioned and identifies as a male, would be excluded from female-designated sports teams. Senator Avard rejected the premise of Senator Altschiller's question, explaining that if you are born as a biological female, you are, therefore, a biological female, regardless of a person's current gender identity. He further explained that even if medical treatments and operations have been administered during a transition, that person remains the biological sex that they were born as.
 - Senator Altschiller asked if Senator Avard was asserting that transgender men and women were, in fact, not the genders that they present themselves as. Senator Avard asserted that if you are born a certain biological sex, you will remain that same biological sex, regardless of any medical treatments or other factors.
 - Senator Altschiller explained that the transgender community represents less than 0.5% of the United States population and questioned Senator Avard's protection of the personal feelings of the rest of the United States population rather than this small group of people. Senator Avard expressed that this was not an accurate characterization of his testimony, reiterating the bill's concept and intent.
 - Senator Prentiss asked Senator Avard if he knew how many transgender women are currently playing varsity sports in New Hampshire, to which Senator Avard expressed unawareness. Senator Prentiss asked how New Hampshire school districts have handled instances of transgender women playing school sports. Senator Avard said that he knew of schools, specifically in his district, that were

struggling with such instances, and that many of them lacked clarity on how to properly manage transgender women athletes without being sued.

- Senator Abbas asked for clarification of whether his understanding of the bill, designating sports by biological sex rather than gender identity, was correct. Senator Avard said this was accurate.
- Senator Sullivan expressed that 80% of Americans agree that biological males should not be able to play sports against biological females. She asked what would happen in a situation where one school allowed biological males on their team played against another school that does not allow it. Senator Avard said that this causes confusion and an unfair advantage for the team allowing biological males to play on a female team. He established that this bill creates a statewide standard to avoid these situations.

Ann Marie Banfield

- Ms. Banfield testified in support of Senate Bill 211.
- She explained that this bill differs from the one referenced in Mr. Haley's testimony because it addresses biological males being banned from using women's locker rooms.
- She described her experience working with Kearsarge parents through an instance where a biological male, a transgender woman, was playing soccer on a female team. She referenced how many of the girls on the team, along with their parents, voiced their opinions of opposition to the biological male participating on the team, and how they were punished for doing so. She further explained that some parents chose to remove their students from that school in response to the school's apparent disregard for their concerns.
- She expressed that this was contradictory to women's rights and the progress that women have made to have women's sports in schools.
- She explained that the locker room situation was maybe the largest point of contention. She said that telling girls that their opinions don't matter is demeaning to them and sets a precedent for not voicing their opinions in the future.
- Senator Sullivan referenced other school districts that have experienced similar instances to Kearsarge, explaining that many of the families who speak up are often bullied and face severe social consequences. She asked Ms. Banfield if she believed that this bill would largely end this occurrence. Ms. Banfield said she did believe that this bill would prevent such behaviors, and that the bill still allows every student to participate on sports teams.

Summary of testimony presented in opposition:

Michael Haley – GLAD Law

- Mr. Haley testified in opposition to the bill, explaining that it had already been proposed to the New Hampshire legislature in a separate instance. He established that the previous bill had already been ruled to violate Title IX and the equal protection clause of the United States Constitution by a federal court. He explained that it was a waste of the state legislature's time.
- He acknowledged and sympathized with concerns of fairness that the bill is intended to address.
- Senator Abbas inquired about the court opinion referenced by Mr. Haley in regard to the 14th amendment's equal protection clause. Mr. Haley explained that the equal protection clause establishes that when the government makes distinctions between people based on some form of protected class, the government must have a strong interest in doing so, and must narrowly tailor its means of achieving this distinction. Because this bill is a blanket ban, it is not narrowly tailored and, therefore, contradictory to the equal protection clause. He explained that a more narrowly tailored bill to address the concerns Senator Avard raised could meet the standard provided by the equal protection clause.
- Senator Prentiss brought up Mr. Haley's point about narrowly tailoring the bill. She asked for clarification on what this would look like if the bill were more narrowly tailored. Mr. Haley explained that there are a lot of nuances around this issue, describing different variations in school sports. He explained that, in consultation with stakeholders, the legislation would need to address the nuances of this issue more specifically than it currently does as written.
- Senator Sullivan asked if Mr. Haley was aware that in the case of *Tennessee v. Cardona*, a federal court ruled against the Biden Administration's attempt to change the meaning of 'sex' in the Title IX law. Mr. Haley explained that he was aware. However, he explained that it was a district court ruling and, therefore, not binding to the state of New Hampshire. He explained that many other district courts have found that Title IX *does* protect transgender students. He also explained that a Supreme Court ruling found that you cannot discriminate against someone's transgender status without knowing their sex and that this ruling was binding for all states.

Pasha Roberts – 603 Equality

- Mr. Roberts testified in opposition to Senate Bill 211.
- Mr. Roberts took issue with the bill's definition of biological sex as described in the bill, with its basis being the listed sex on a person's birth certificate.

- He explained that many people are born intersex, not distinctively male or female. He explained that there are 35 different variations that a baby can be born as intersex, so classifying someone's sex by their birth certificate is not sufficient for truly determining their biological sex.
- He further explained that biology is much more complex than the bill makes it out to be, and that the state would be better served by classifying student-athletes by their gender identity, rather than the biological sex listed on their birth certificate.
- Senator Prentiss asked what the level of opposition to transgender women's participation in female sports was at Kearsarge school board meetings, which Mr. Roberts said he attended consistently. Mr. Roberts explained that there was a fair amount of opposition at the meetings, some of which came from out-of-district or out-of-state people. He continued, stating that there were strong numbers of supporters for the transgender athlete at Kearsarge and that the characterization of widespread opposition at the meetings was inaccurate.
- Senator Sullivan asked if Mr. Roberts would be comfortable with a stipulation being added to the bill for intersex athletes to address the concerns that he raised. Mr. Roberts said he would not be comfortable with this, explaining that it would be impossible to field an intersex team or transgender team based on the current populations of students in these groups.

David Trumble

- Mr. Trumble testified in opposition to Senate Bill 211.
- Mr. Trumble expressed his belief that New Hampshire should support the value of inclusion for all people and that sports are important to student-athletes for many reasons outside of winning and losing.
- He explained that inclusion policies have carry-over effects in the lives of students once they are done playing sports, leading to a more inclusive and restful society in general.
- He explained that the bill, as written, portrays transgender people as predators.
- He cited an article that stated that transgender males in female sports had little to no effect on injury, winning outcomes, etc.
- He noted that only four transgender athletes were currently competing in New Hampshire school sports and that only ten transgender athletes were competing in collegiate sports in the United States (out of roughly 500,000).
- Mr. Trumble said that the bill would be better suited by limiting transgender involvement in sports until they've reached a certain threshold of hormone treatment. He established that this would come closer to the notion of 'narrowly tailored,' which was first brought up in Mr. Haley's testimony.

- He cited multiple studies that concluded transgender people do not have any tangible advantage on the playing field after meeting certain thresholds of hormone treatments.
- Senator Prentiss said her understanding of puberty blockers was that when they are administered, they halt the vast majority of physical development that could be seen as an unfair advantage in female sports, and she asked Mr. Trumble if this was also his understanding. Mr. Trumble said that though he was not a medical doctor, the studies he referenced seem to support the Senator's understanding.
- Senator Abbas asked if there was anything under current law that would prevent a biological male from competing in women's sports, even if they were not transgender. Mr. Trumble said that to sign up for women's sports, a biological male would have to identify as a woman. Senator Abbas further questioned whether it was currently only based on gender identity, rather than biological sex, to which Mr. Trumble responded that this had already been asked of the prime sponsor. He said that, in his view, it should be based on gender identity, but he acknowledged the nuance of the issue and that it should be further investigated to see whether it would be smart to require some threshold of hormone treatments to participate.
- Mr. Trumble said that we can either treat transgender people as human beings and provide them with the same rights as everyone else, or we can deny their existence. He described this bill as one of many legislative attempts to deny their existence, which he saw as morally wrong.
- Senator Abbas asked how schools would be able to enforce hormone treatments if that became a requirement for biological men to compete in female-designated sports. Mr. Trumble said that it would be easier to enforce than SB211 and that you would rely on parents to certify that the treatments have been administered.
- Senator Sullivan stated that many girls spend their upbringing making great sacrifices to be the best they can be in sports, and to hopefully gain a scholarship because of their athletic ability. She questioned how it would be fair for them to have to potentially lose scholarship opportunities because they must play against biological men. Mr. Trumble said he believed strongly in hard work, but that the wins and losses matter less than the personal growth that comes along with sports. He also explained that the small number of transgender athletes in the state likely has no impact on anyone's ability to obtain a scholarship.

Amelia Thompson

- Ms. Thompson Testified in opposition to Senate Bill 211.
- Ms. Thompson expressed her view that choosing to exclude only transgender women seemed extremely arbitrary to her.
- She explained that in her experience playing sports, the biggest unfair competitive advantage between athletes was typically certain athletes coming from wealthier families and having the means for expensive private lessons.
- Choosing one small potential advantage in sports to single out seemed very selective and deliberate to her and doesn't actually remove any of the more significant unfair advantages that exist in New Hampshire school sports.

Mackenzie West

- Ms. West testified in opposition to Senate Bill 211.
- She explained that it would be difficult to verify a student's biological sex when they enter college.
- She cited her own experience, explaining that her records were sealed by a court when she transitioned in the state of Vermont and that documentation of her biological sex would be extremely hard to verify if one were to attempt to find it on an administrative level. She said that this would most likely be the case for many other transgender athletes.
- She also explained that, at the collegiate level, there was not a noticeable difference between the athletic performances of transgender women and biological females and that with the current state of public hostility towards transgender people, it becomes increasingly more common for them to conceal their transgender identity.

Jennifer Smith

- Ms. Smith testified in opposition to Senate Bill 211.
- Ms. Smith explained that she had a unique perspective on the matter as a transgender woman and former physician.
- She acknowledged the physical advantage that the abundance of testosterone manifests, citing historical evidence of the soviet army's use of the hormone in World War II.
- She rhetorically asked *how much* of an advantage it provides, explaining that there is great overlap between the athletic abilities of males and females. She cited her personal experience playing collegiate tennis to support this.
- She addressed a potential scenario previously raised by Senator Sullivan about biological females losing scholarships to transgender women, explaining that there have been no NCAA scholarships given to transgender student-athletes to date.

- Senator Prentiss asked Ms. Smith to elaborate on the extent to which puberty blockers can level the physical advantages that biological males have over female athletes. Ms. Smith explained that there are conflicting studies on the matter and explained the nuances of studying the subject. She explained that free testosterone is not often measured independently in many studies and that more scientific research will be necessary in the near future. She explained that studies on muscular development were not extremely clear, but there is clear evidence that testosterone does not provide any significant advantage on skeletal development.
- Ms. Smith explained that her presence in female locker rooms has not caused any noticeable discomfort amongst biological females to her knowledge and explained that transgender women are not predators as they are often purported to be.
- Senator Abbas asked how much time someone would have to receive hormone treatments until they are viable to compete in women's sports. Ms. Smith explained that the legislature would be incapable of determining this but that independent organizations are capable of this and should pursue a determination on that very question. She expressed dissatisfaction with the legislature's desire to figure out the answer to this question.

Sarah Smith

- Ms. Smith testified in opposition to Senate Bill 211.
- She viewed the language of the bill to be overly broad and vague, explaining that the language discriminates against transgender people.
- She explained that the issue that the bill addresses is an important one to remedy, and that different legislation would be helpful in addressing the underlying issues in a more considerate and holistic fashion.
- She explained that there are many people who were assigned male at birth but had grown up as a woman, and that it wasn't right to require those people to play sports against men on the basis of their birth certificate.

Linds Jakhows – 603 Equality

- Linds Jakhows testified in opposition to the bill, explaining that, under New Hampshire law, gender identity is not to be used for any discriminatory purpose.
- They explained that the bill asserts that transgender women are a danger to others in sports, which she viewed as a harmful and misguided understanding.
- They cited a Times Magazine article explaining that conservative lawmakers seek to make transgender people non-existent. They elaborated, explaining that the conservatives turn to this issue to gain political favor with independent

swing voters, inferring that this bill and other similar ones were not proposed out of genuine concern or rooted in factual evidence.

- They explained that legislative efforts such as this bill have created a toxic culture, causing biological females to be accused of being transgender for being successful in sports.