

# Anti-trans bills purport to address “fairness” in sports. But sports have never been fair.

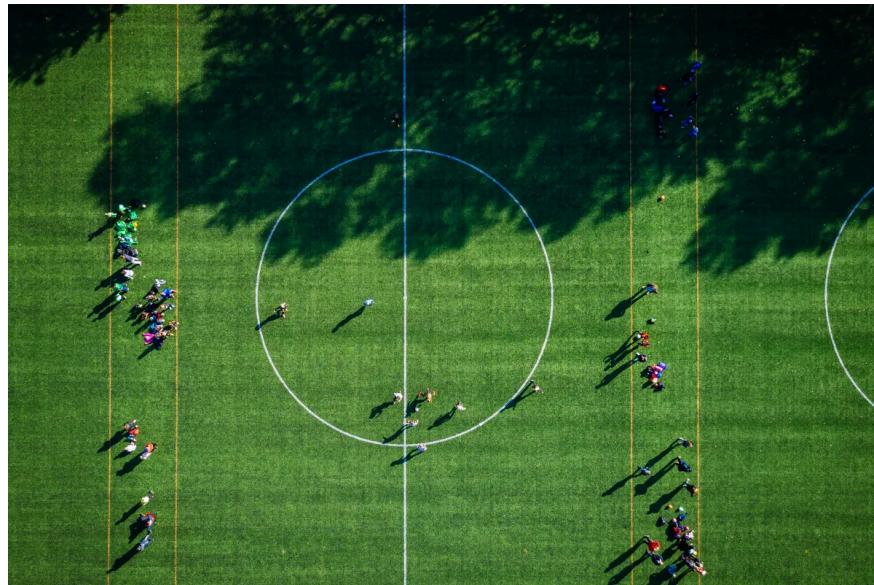
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## The playing field

Anti-trans bills purport to address “fairness” in sports. But sports have never been fair.



*Miemo Penttinen via Getty Images*

## The Highlight

BY Vox

In March, nearly three dozen people gathered around Republican Mississippi Gov. Tate Reeves as he signed the state’s newest legislation. When he [announced](#), “Senate Bill 2536, the Mississippi Fairness Act, is now law,” the crowd — which [included](#) Republican state Sen. Angela Burks Hill, the bill’s sponsor; Lt. Gov. Delbert Hosemann; and state House Speaker Pro Tem Jason White — applauded and cheered.

The law will bar trans students attending public schools in the state from participating in sports according to their gender identity and mandate that they do so according only to their gender assigned at birth. This, [the vast majority](#) of Mississippi lawmakers believe, is "fairness." And they are not alone.

Serena Sonoma, a communications coordinator for GLAAD, describes 2021 as "a record year for anti-trans legislation" and for transgender discrimination. As of April 22, [144 anti-trans bills](#) had been filed in state legislatures across the United States, according to Chris Mosier of [transathlete.com](#). Of those, 69 target trans athletes, and many of those, like Mississippi's new law, would force children, in particular, to participate in sports according to the gender they are assigned at birth.

And some go further. A [Minnesota bill](#) would allow any trans girl or woman who tried out for or participated in girls' or women's sports to be charged with a misdemeanor. Another, in Florida, titled the "Fairness in Women's Sports Act," initially contained provisions that would [force](#) some children to undergo a "routine sports physical examination" to inspect their genitals, genetic makeup, and testosterone levels. Lawmakers have since [removed](#) the genital inspections; the bill passed in both chambers and [awaits](#) the governor's signature.

One Florida lawmaker, state Rep. Traci Koster (R), [defended](#) the bill on behalf of her 6-year-old daughter, saying, "I cannot help but to stand in support of this bill to ensure her an equal playing field."

After a wave of so-called "[bathroom bills](#)" a few years ago failed in state legislatures and the courts, anti-trans advocates have turned "fairness" into a talking point and made trans athletes their target. They were also responding, in part, to President Joe Biden's executive order [stating](#) that all students, including transgender students, "should be able to learn without worrying about whether they will be denied access to the restroom, the locker room, or school sports."

But advocates of these bills [say](#) that without these bans on trans participation in girls' and women's sports, trans girls and women (and, in a more sinister contention, cis boys and men claiming to be trans girls and women) will dominate girls' and women's sports, effectively destroying the sports it as we know them.

Before signing the Mississippi bill, Reeves said allowing trans girls and women to compete in sports presents "an unfair challenge to biological girls who wish to join sports teams," adding that without Biden's order, "we wouldn't be here

today." Days later, the governor of Arkansas similarly [evoked equity](#) when he signed his state's recent anti-trans law, saying, "This will help promote and maintain fairness in women's sporting events." Last year, when Idaho passed what's believed to be the first bill of this kind, also (and perhaps not coincidentally) named the "Fairness in Women's Sports Act," a state representative [told](#) HBO's *Real Sports*, it's "completely unfair ... to have opportunities taken away from our girls by biological male athletes."

Katrina Karkazis, a cultural anthropologist, bioethicist, and co-author of [\*Testosterone: An Unauthorized Biography\*](#), says this argument is part of "a resurgence of biologically determinist ideas," or, at the least, biology being "the most important aspect to consider across a range of things" when it comes to determining what is "fair" in sports.

There is little, if any, evidence, however, that trans girl and woman athletes are a problem in need of a solution. When it contacted two dozen lawmakers sponsoring school sporting ban legislation to name examples of transgender athletes competing on girls' teams, [the Associated Press](#) found "only a few times it's been an issue among the hundreds of thousands of American teenagers who play high school sports." And the National Collegiate Athletic Association, the International Olympic Committee, and other amateur and professional sports leagues have [long had policies](#) that allow trans athletes to compete according to their gender identity.

What sports need at this moment is a move away from thinking of "fairness" strictly in biological terms. And it is precisely in the realm of girls' and women's sports that we can and should reconsider our thinking entirely.

There are two competing notions in sports that make the fairness debate so troublesome. First is the idea put forth by lawmakers pushing anti-trans bills, namely that the point of sports is the outcome — who wins and who loses. They aren't alone in caring about trophies and acclaim. Winning is a fundamental part of sports. Fans want to watch the best athletes perform, and athletes love to say that a victory is sweeter when you have beaten the best.

The second notion is everything leading up to the competition. Study after study has shown that participating in sports [can lead to](#) better physical and mental health and higher self-esteem, and helps people develop leadership and

teamwork skills. That's why sports are built into educational curriculums, and why the medical establishment encourages physical activity, no matter someone's age.



*Getty Images*

A tension exists, then, between whether sports are about the journey or the outcome, about participation or winning, about a societal good or an individual achievement. "Fairness" exists somewhere in between.

This mirrors the tension between the hypothetical loss of a sporting opportunity for a cis girl or woman athlete to a trans girl or woman athlete and the very real risks trans people face in their daily lives. According to a recent [Center for American Progress report](#), transgender youth are more likely to experience depression, suicidal ideation, bullying, harassment, violence, and rejection from their peers than their cisgender classmates. Trans-affirming policies, including those around inclusion in sports, mitigate those factors.

Karissa Niehoff, executive director of the organization overseeing high school sports in Connecticut, a state with a trans-inclusive policy, put it this way [to ESPN in 2018](#): "We don't look at [fairness] in terms of winning and losing. It's more about opportunity and access. We want to be fair there first." That matters specifically for trans students, she noted, because "it's not easy to be a high school kid to begin with — growing up is tough. To be a transgender adolescent is an extra challenge. This is about life, not winning and losing in sports."

The idea, however, that something as fundamental as fairness could be in flux contradicts everything we've come to expect from the familiar, comforting, and rigid rhythms of sports. Everyone agrees to the same set of rules. Organizers schedule tournaments and leagues for the same time every year (or every two or four years), and they keep statistics to gauge who's best and to measure improvement. These things become a reason to hold to tradition or bask in nostalgia, as if what has come before must always be.

Still, even in sports, fairness is defined within a particular cultural moment, and it is constantly being reworked. "There was a point where fairness meant not including women at all," Karkazis says. "There was a point where fairness meant don't include people with disabilities, don't include Black people." Today, as legislation intended to exclude players from sports based on their gender again springs up across the country, it seems anything but fair.

To understand how anti-trans sports bills can affect athletes, consider the high-profile cases of [Terry Miller and Andraya Yearwood](#), two Black trans girls who were competing on girls' high school track teams in Connecticut, a state, like more than two dozen others, with a trans-inclusive policy around sports.

In 2020, the Alliance Defending Freedom — a conservative religious organization that has often [worked](#) against transgender rights, including a push for "bathroom bills" — [filed a federal lawsuit](#) on behalf of three cisgender female high school students who had competed against Miller and Yearwood. A federal judge recently [dismissed](#) the lawsuit, noting that since Yearwood and Miller have graduated, the plaintiffs cannot identify any trans girls competing against them. But the battle was a painful one for the girls nonetheless.

"I've faced retaliation from people in my state for the past four years," Yearwood [told](#) ESPN in 2018. "It's just tiring to go through one punch after another. I feel like I have to play my sport and then fight for the right to stay there."

Miller and Yearwood were easy targets because the hate directed at them stemmed from larger discrimination against Black transgender women, says Sonoma. People who live at the intersections of systemically oppressed groups are often the most vulnerable to prejudice and discrimination. "It's far easier to attack Black trans women than it is other groups," Sonoma says.

But, ultimately, these new bills and laws are using sports as a means to an end. "The overall goal is to simply erase transgender women," Sonoma says. When their fearmongering over bathrooms failed, anti-trans advocates and

conservative lawmakers turned to sports to meet this goal because, she says, both are obsessed with bodies.

"Sports is known as this heavily masculine thing, even though it's not," Sonoma says. "It's very physically, bodily obsessed and so rigidly gendered." Because of this, she argues, sports are an effective way "to propagate lies about trans people, because obsession over trans bodies is one of the biggest ways that we get discriminated against."

In March 2019, I [interviewed](#) journalist Katie Barnes for a feminist sports podcast I co-host called *Burn It All Down*. I asked them why there is so much focus on trans girls and women in sports. "Culturally speaking, we have an unofficial hierarchy that we use to talk about athletes," Barnes said. "It's as follows: You have male elite athletes at the top, followed by average male athletes, followed by below-average male athletes, and then elite female athletes. So, there's this assumption that any person who is assigned male at birth will be able to outperform athletically any person who is assigned female at birth."

The reason that transgender boys and men are an afterthought, Barnes said, is "because the idea that someone who is assigned female at birth could compete with someone who is assigned male at birth on an elite level is just seen as ludicrous."

It also matters that most of our modern sports institutions — [the Olympics](#); [FIFA](#), the governing body for world soccer; the NCAA, which oversees most collegiate sports in the US; [Little League](#), you name it — were created specifically to exclude girls and women. (To, in fact, exclude most athletes.)

The founders and administrators of these organizations, exploiting stereotypes about the fragility of women's bodies, and in some cases, using just plain old misogyny, often banned or seriously curtailed women's involvement for many decades. That you find anyone other than white, cisgender, heterosexual men without disabilities playing sports within these institutions today is because marginalized athletes and their advocates have demanded that they be allowed and fought hard for their inclusion.



More than 100 people rally at the capitol in Boise, Idaho, in support of transgender students and athletes in March 2020. The state banned trans girls from girls' sports teams last year; an appeals court will soon rule on whether the ban is constitutional.

*Katherine Jones/Idaho Statesman/TNS via Getty Images*

The most obvious example of this fight is the passage in 1972 of Title IX, the [federal statute](#) barring any educational institution in the US that receives federal funding from discriminating based on sex, including in sports. In 1975, the New York Times [reported](#) that Title IX left the National Collegiate Athletic Association's members "confused, scared, and talking constantly" because "they are afraid that the answer [to Title IX] may be to cut their men's budgets in half, diminishing the emphasis on men's athletics." The NCAA fought Title IX, including filing a [lawsuit](#) in 1976 against the US Department of Health, Education, and Welfare. That lawsuit was dismissed.

But once people acknowledged that these institutions were discriminatory to their very core, those institutions were not scrapped and redesigned to provide fair access, or fair allocation of resources, or even a fair number of athletic opportunities to those previously excluded groups. Instead, girls and women (along with athletes of color, athletes with disabilities, LGBTQ+ athletes, and others) have been shoehorned into existing structures that were built to exclude them and that resisted their inclusion as long as they could.

Today, many continue to resist their inclusion in subtle but sometimes overt ways. The recent examples of major disparities between the men's and women's NCAA [basketball](#) and [baseball/softball](#) tournaments and [the global push](#) to end pay inequity in women's soccer show that there is still [a long way to go](#) to reach

parity between men's and women's sports. This is also true for athletes who exist outside of that gender binary or who challenge it in any way, including transgender, [nonbinary](#), and [intersex](#) athletes.

Searching for fairness in sporting institutions that have never been fair is a frustrating endeavor. Girl's and women's sports are often treated as nothing more than a drain on resources. People who control most organized sports — at all levels, all around the world — depend on this idea of scarcity to keep girls and women grateful for the little they do get and fighting over whatever else they might be offered.

The result, according to Barnes, is that "you have a marginalized group, meaning women in general, cisgender women within sport, lashing out at a further marginalized group, meaning transgender women." Cis women fighting trans women does not lead to more funding or more resources for girls' and women's sports. Instead, it draws attention away from systemic inequity, leaving institutions intact and untroubled. The only effect is narrowing who gets to participate.

The three high school athletes in Connecticut whose lawsuit targeted Miller and Yearwood are a good example of this dynamic, as is the famed champion tennis player Martina Navratilova. In 2019, she [wrote](#) a piece comparing trans athletes participating in women's sports to "cheating." Florida state Rep. Traci Koster quoted Navratilova while defending her state's anti-trans bill.

Brenda Elsey, a professor of history at Hofstra University and co-author of [\*Futbolera: A History of Women and Sports in Latin America\*](#) (and, disclosure, one of my co-hosts on *Burn It All Down*), says the hoarding of resources for boys' and men's sports and denying them to girls and women creates fears "among people who have dedicated their whole lives to building a women's sports organization or carving out space for women."

But, she adds, "Even if you think your sport is going to go down the toilet by being inclusive, you have to do it anyway because that's the moral imperative." Otherwise, she says, "you're just reproducing patriarchy. You're just reproducing what left you out in the first place."

It is within women's sports, though, that it's possible to find a new way to imagine sports that is bigger and more inclusive, and that has the potential to dismantle the systems as they've existed for a long time.

One of my favorite pieces of writing on what women's sports can and should be is by Jen Doyle, a professor of English at the University of California Riverside. On her blog, Sport Spectacle, in 2016, she [wrote](#) about the runner Caster Semenya and all the ways that we police the bodies of any athlete who does not easily slot into the gender binary demanded by sports.

Semenya, a South African middle-distance runner and the reigning two-time gold medalist in the women's 800-meter race, underwent medical testing years ago that she believed was to test for doping. But those results have since been used [to bar her](#) from competing in any event between the 400m and the mile; currently, she is not allowed to run at this summer's Olympics in the very race she has won twice before.



Middle-distance runner Caster Semenya, far right at the 2016 Rio Olympics, has been banned from competing in the very races in which she has received Olympic gold medals.  
*Ian MacNicol/Getty Images*

The International Association of Athletics Federations (IAAF) drew up [regulations](#) that punish women with an XY chromosome and higher levels of natural (not synthetic) testosterone in their bodies, and many believe the IAAF regulations directly [targeted](#) Semenya. She has [fought](#) the regulations for years and has had to [pivot](#) to long-distance running to try to make it to Tokyo this summer.

In her piece, Doyle argues that women's sports do not need to be protected because of their fragility, because women's sports are, in fact, incredibly resilient. They have "survived being actively suppressed by men with arbitrary regulations and outright bans (limiting, for example, women's tennis matches to

three sets instead of five; barring women from marathons, virtually outlawing women's soccer)," she writes. We should stop fearing the end of women's sports because as long as there have been sports, women have played them.

And so, Doyle argues, we must stop imaging women's sports as "a defensive structure from which men are excluded so that women might flourish." They are so much more than that. Their potential is so much greater. "Because men have been so committed to the 'end of women's sports' for so long, women's sports thrives in the zone of destruction," she writes.

We should not expect men's sports to trouble gender. That is the job of women's sports. "Men's sports (with a few exceptions that prove the rule) reinforce ideologies of gender difference," Doyle writes. "Women's sports destroy them."

Let's not participate, then, in shrinking the possibilities of women's sports. They are where, as Doyle says, we can dismantle what has made sports so exclusive and unfair in the first place. They have the best potential for fairness. We should embrace that rather than fear it.

The history of organized sports over the past 100 years, from youth programs to the professional level, is one of an opening up. It turns out, sports have an infinite capacity to expand. "The idea that there would be more by excluding people," Elsey says, is "insidious." What we know instead is that "there's less by excluding people. There's less creativity. There's less talent. There's less camaraderie and there's less solidarity when you do that."

In fact, Elsey says the aspiration to fairness is one of the beautiful things about sports. The alternative is not palatable to her. "The worst thing, I think, that can happen to humanity is giving up on [fairness] altogether, even though we know it's impossible, we know it's difficult, and we know it rarely happens," she says. "Sports are so popular and beloved and engaging because of the aspiration that things are going to be fair in sports, even more so than it's possible to make them in 'real life.' It's always going to be aspirational. It has to stay aspirational for anybody to care about it. That's one of the main reasons that people love it."

The social function of "sports, just like literature or theater or dance or any of the arts, is in part about being able to imagine a different place, a better place," she argues.



*Nicolò Campo/LightRocket via Getty Images*

For Katrina Karkazis, when thinking of trans kids specifically, she knows we must continue to aspire to fairness because what we have now is not good enough. "I don't know always what is fair, but damn," she says, "I certainly feel like I know what isn't fair. What isn't fair is excluding people. What isn't fair is sports making kids undergo medical interventions to participate. What isn't fair is inspecting kids' genitals. None of that is fair."

Plenty of people agree. In December, more than 200 athletes, including legendary tennis player Billie Jean King, WNBA superstar Candace Parker, and NWSL up-and-comer Tziarra King, [joined an amicus brief](#) that affirms a lower court ruling against Idaho's anti-trans sports law. In March, more than 500 student-athletes signed a [letter](#) urging the NCAA to publicly refuse to host championships in states with bans against trans athletes; the NCAA released a [statement](#) hinting at that possibility. [Megan Rapinoe](#), the soccer star; [Cheryl Reeve](#), the general manager and head coach of the WNBA's Minnesota Lynx; and R.K. Russell, a free agent in the NFL, all [penned](#) pieces arguing that sports should be more inclusive, not less.

In fact, most people don't want these laws. An NPR/PBS NewsHour/Marist poll in April [found](#) that "just 29% of Republicans said they 'support a bill that prohibits transgender student athletes from joining sports teams that match their gender identity.' Moreover, there was no significant party divide: Similar shares of Republicans, Democrats and independents also said they oppose the bills."

Maybe they see the unfairness. For Serena Sonoma, what is fair today is clear-cut: "Let trans kids play sports that align with their gender. All these kids want to do is extracurricular activities with their friends, and the only fair way to do that is to let them play while having the agency to be who they are."

"It's just that simple to me," Sonoma says. "Let kids be kids."

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