



THE WHITE HOUSE
WASHINGTON

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FROM: Office of White House Counsel

TO: Interested Parties

ISSUE: Whether the Protecting College Sports Act (“PCSA”) would preempt state laws prohibiting men from participating in women’s sports (“men in women’s sports laws”)?

ANSWER: No, the PCSA would *not* preempt men in women’s sports laws. States may still legislate on the question of whether trans individuals should play on a men’s team or a women’s team. As with any major piece of legislation, there is litigation risk and the potential for a district court decision that does not follow the statutory text.

LAW: Section 113 lays out five (5) criteria for an individual to be eligible to participate in a Division I or Division II collegiate athletic program:

- (1) Be a student athlete;
- (2) Meet academic standards;
- (3) Not be a professional athlete;
- (4) Comply with established rules that restrict eligibility for violations of federal/state law; and
- (5) Play no more than a maximum of 5 years past age 24.

Section 121(a)(2)(c) seeks to preempt any state law that “governs, regulates, or invalidates policies or rules of an institution, a conference, or an intercollegiate athletic association that regulates . . . any provision described in section 113 relating to the eligibility of a student athlete to participate in intercollegiate athletics.”

ANALYSIS: The PCSA would not preempt state men in women’s sports laws because Section 121 of the bill expressly states that it only preempts, as it pertains to eligibility, provisions described in section 113. Section 113 does not describe men in women’s sports laws or anything related to sex-based discrimination.

Section 113 creates a baseline national standard for eligibility requirements for individuals to participate in Division I or Division II athletics. Importantly, section 113 does not differentiate between men and women's athletics, but rather leaves it up to States, and entities such as the NCAA, athletic conferences, and collegiate institutions to determine which sports an individual can participate in.

Undoubtedly, a man who identifies as a woman could meet the PCSA's baseline eligibility requirements to participate in Division I or Division II athletics, but the determination of which teams they should play on may be decided by State law and rules created by entities such as the NCAA, athletic conferences, and collegiate institutions.

The PCSA Only Preempts State Law Relating to an Individual's Eligibility Requirements in Section 113

Section 121 lays out the PCSA's relationship to State law. Specific to this issue, it prohibits States from having a law that "conflicts with any provision of this title that would prevent compliance with this title" or that "governs, regulates, or invalidates policies or rules of an institution, a conference, or an intercollegiate athletic association that regulates . . . any provision described in section 113 relating to the eligibility of a student athlete to participate in intercollegiate athletics." Section 121(a)(2)(c) would not preempt state men in women's sports laws because it explicitly limits preemption to those provisions in section 113.

Additionally, section 121(b) provides that certain categories of State law shall not be preempted (except to the limited extent they conflict with the narrow preemption of 121(a)). Section 121(b)'s preemption exclusion includes civil rights laws and laws that relate to student or campus safety, both of which arguably encompass men in women's sports laws. Lastly, Section 127 provides a Title IX savings clause, which states "[n]othing in this title or the amendments made by this title shall be construed to override, modify, or amend the applicability of title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq)."

CONCLUSION: The PCSA would not preempt state laws prohibiting men from participating in women's sports.