

No. 24-2020

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**In the Supreme Court of the United States**

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A.J.T., PETITIONERS

*v.*

STATE OF NORTH GREEN BOARD OF EDUCATION, ET AL., RESPONDENTS.

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*ON WRIT OF CERTIORARI TO THE  
UNITED STATES OF APPEALS FOR THE FOURTEENTH CIRCUIT*

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**BRIEF FOR PETITIONER**

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## QUESTIONS PRESENTED

- I. Under Title IX, which explicitly prohibits discrimination based on sex in public federally assisted schools, is North Greene's "Save Women's Sports Act" in violation when it bars only transgender females from competing on the school sports team of their identified gender?
  
- II. Under The Equal Protection Clause, which requires states to have an exceedingly persuasive justification for sex-based classification in legislation, does the Save Women's Sports Act substantially relate to an important state interest when it categorically restricts transgender girls from competing in certain biological-sex-based sports?

TABLE OF CONTENTS

QUESTIONS PRESENTED..... 1

TABLE OF AUTHORITIES ..... 4

OPINIONS BELOW..... 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED ..... 1

STATEMENT OF THE CASE..... 1

SUMMARY OF THE ARGUMENT ..... 3

ARGUMENT ..... 5

    I.    The Statute violates Title IX, which has long protected individuals from discriminatory practices, by barring participation on sports teams of a federally sponsored school based solely on the sex of the student..... 6

        A.    A.J.T. and other female transgender students are discriminatorily and intentionally barred from participating in the team of their gender identity, based exclusively on the “biological sex” of the student..... 7

**1.    A.J.T.’s similarly situated peers are all students wishing to be a part of an athletic team because one’s gender identity is no less consistent, persistent, and insistent than that of another’s.** ..... 7

**2.    In comparison to similarly situation persons, A.J.T. and other transgender girls are being discriminated against by the Statute due to their exclusion from participating in the school sports team matching their gender identity.**..... 10

        B.    There is no disputing that the Statue caused harm to A.J.T. on an individual basis because of the psychological and dignitary pain caused by excluding A.J.T. from playing on the team corresponding with her gender..... 12

    II.   The Save Women’s Sports Act violates the Equal Protection Clause because the statute’s categorical exclusion of transgender girls from girls’ sports is not substantially related to promoting equal athletic opportunities for or protecting the safety of biological females. .... 14

        A.    The statute’s definition of “biological females” does not substantially relate to preserving athletic opportunities for girls because allowing transgender girls to participate in girls’ sports would not automatically give them an unfair athletic advantag..... 15

        B.    The statute’s definition of “biological females” does not substantially relate to protecting the safety of cisgender girls in sports, because excluding transgender girls would have negligible effects on athlete safety..... 18

CONCLUSION..... 22

APPENDICES .....	23
APPENDIX A: Amendment XIV, Section 1 .....	23
APPENDIX B: Title IX, 20 U.S. Code § 1681(a).....	23
APPENDIX C: N.G. Code § 22-3-15(a)(1)-(3) .....	23

TABLE OF AUTHORITIES

**CASES**

*Adams v. Sch. Bd.*, 968 F.3d 1286 (11th Cir. 2020)..... 11, 12  
*B.P.J. v. W. Va. State Bd. of Educ.*, 98 F.4th 542 (4th Cir. 2024) ..... 7, 8, 9, 15  
*Cannon v. Univ. of Chicago*, 441 U.S. 677 (1979)..... 10  
*Celotex Corp. v. Catrett*, 477 U.S. 317 (1986) ..... 9  
*City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432 (1985)..... 7  
*Clark ex rel. Clark v. Arizona Interscholastic Ass'n*, 695 F.2d 1126 (9th Cir. 1982)..... 17, 18  
*Craig v. Boren*, 429 U.S. 190 (1976)..... 14  
*Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629 (1999)..... 6, 10, 11  
*Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518 (3d Cir. 2018)..... 12  
*Doe v. Horne*, 683 F. Supp. 3d 950 (D. Ariz. 2023)..... 15, 20, 21  
*Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586 (4th Cir. 2020)..... 6, 10, 11, 12  
*Hecox v. Little*, 104 F.4th 1061 (9th Cir. 2023)..... 7, 16, 17, 18  
*Ibarra v. United States*, 120 F.3d 472 (4th Cir.1997)..... 5  
*L.E. v. Lee*, No. 3:21-cv-00835, 2024 WL 1349031 at \*1 (M.D. Tenn. Mar. 29, 2024)..... 19  
*Miss. Univ. for Women v. Hogan*, 458 U.S. 718 (1982) ..... 14  
*Peltier v. Charter Day Sch., Inc.*, 37 F.4th 104 (4th Cir. 2022) ..... 7  
*Pers. Adm'r of Mass. v. Feeney*, 442 U.S. 256 (1979)..... 6, 14  
*Rideout v. Gardner*, 838 F.3d 65 (1st Cir. 2016)..... 19  
*Soule v. Conn. Ass'n of Sch.*, 57 F.4th 43 (2d Cir. 2022)..... 7  
*Tirrell v. Edelblut*, No. 24-cv-251-LM-TSM, 2024 WL 4132435 at \*1 (D. N.H. Sep. 10, 2024).  
..... 15, 19  
*United States v. Diebold, Inc.*, 369 U.S. 654 (1962)..... 6  
*United States v. Virginia*, 518 U.S. 515 (1996) ..... 14

**OTHER AUTHORITIES**

42 U.S. Code § 2000d..... 10  
87 Fed. Reg. 41 (July 12, 2022)..... 10  
Fed. R. Civ. P. 56..... 5  
Garima Garg, et al., *Gender Dysphoria*, National Center for Biotechnology Information (Jul. 11, 2023)..... 12  
Jonathan Allen, *New Study Estimates 1.6 million in U.S. Identify as Transgender*, Reuters (Jun. 10, 2022)..... 11  
Martin Luther King, Jr., Address at Second Annual Institute on Nonviolence and Social Change (Dec. 5, 1957)..... 11  
*NCAA RECRUITING FACTS*, National Collegiate Athletics Association (Aug., 2014) ..... 13  
Robin Respaut & Chad Terhune, *Putting Numbers on the Rise in Children Seeking Gender Care*, Reuters, Oct. 6, 2022..... 11, 12

## OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourteenth Circuit is unpublished but is reproduced in the Record on pages 2–16. The decision of the United States District Court for the Eastern District of North Green is also unpublished but is reported at 2023 WL 56789 (E.D. N. Greene 2023).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case calls into question the Fourteenth Amendment’s Equal Protection Clause. The full text of the amendment is reproduced in Appendix A. This case also implicates Title IX, prohibiting exclusions from participation based on sex. The relevant sections of this code are reproduced in Appendix B. Lastly, this case involves N.G. Code § 22-3-15(a)(1)-(3), a portion of North Greene’s “Save Women’s Sports Act” which prohibits participation in secondary school teams based on the biological sex of the student at birth. The relevant text of the statute is reproduced in Appendix C.

## STATEMENT OF THE CASE

Plaintiff-Petitioner A.J.T. was, at the initiation of this lawsuit, an eleven-year-old girl hoping to participate in school sports with her peers. R. 3. As A.J.T. prepared to start seventh grade, she sought to join her school’s girls’ volleyball and cross-country teams. *Id.* However, A.J.T.’s school informed her that she would be disallowed from joining both teams due to her sex. *Id.*

A.J.T. is transgender, and although she was assigned the sex of male at birth, has identified and lived as a girl since early childhood. *Id.* A.J.T. uses a female name, dresses and presents as a girl at school and at home, and has participated in elementary school sports, including cheering on her school’s all-girls cheerleading team. *Id.* A.J.T. was diagnosed with gender dysphoria in 2022 and receives treatment for the condition. *Id.* She has not started puberty yet, and is currently exploring, in consultation with her medical advisors, options for treatment that would align her body with her gender identity, including through puberty-blocking. *Id.*

In May 2023, the state of North Greene enacted North Greene Code § 22-3-4, called the “Save Women’s Sports Act” (the “Statute”), which prohibits transgender children from participating in sex-based sports teams consistent with their gender. R. 4. The Statute provides that all sports at public secondary schools or institutions of higher education must designate teams as: (1) for males; (2) for females; or (3) coed or mixed. N.G. Code § 22-3-16(a). Although the teams are designated by sex assigned at birth, the Statute *only* prohibits students assigned male at birth from participating in sports teams designated for females, when selection is based upon competitive skill or the activity is a contact sport. N.G. Code § 22-3-16(a) (emphasis added). North Greene claims the Statute’s goal is to ensure safety when competing and provide equal athletic opportunities for athletes assigned female at birth. R. 3.

Although A.J.T. had previously participated in girls’<sup>1</sup> sports, the new legislation barred her from continuing participation. R. 4. Following her exclusion from the girls’ volleyball and cross-

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<sup>1</sup> For purposes of clarity and adherence with socially accepted references to individuals whose gender identity differs from their sex assigned at birth, this brief uses the terms “transgender girls” to refer to individuals who identify as girls but qualify as “biological males” under the

country teams, A.J.T., by and through her mother, commenced this lawsuit for violations of the Equal Protection Clause and Title IX. *Id.* The State of North Greene moved to intervene, and thereafter, along with the State of North Greene Board of Education, State Superintendent Floyd Lawson, and Attorney General Barney Fife (collectively, “Defendants-Respondents” or “Defendants”) filed a motion for summary judgment, which the United States District Court for the Eastern District of North Greene granted. R. 4–5; *A.J.T. v. North Greene Bd. of Educ.*, 2023 WL 56789 (E.D. N. Greene 2023). On review, the United States Court of Appeals for the Fourteenth Circuit affirmed. R. 10. Petitioner A.J.T. now appeals. R. 17.

### SUMMARY OF THE ARGUMENT

This case calls into question the protections afforded to those discriminated against based on their sex assigned at birth under both Title IX and the Equal Protection Clause of the Fourteenth Amendment. Specifically, it addresses whether a state can prohibit only transgender girls from participating on the school’s sports team that matches their gender identity.

Granting summary judgment is improper when genuine issues of material fact exist. In the present case, the record shows less than a *de minimis* amount of fact regarding what, if any, competitive advantage transgender girls have over cisgender girls. The only evidence contained in the record to suggest this advantage is a review of overly-basic characteristics of post-pubescent cisgender boys and cisgender girls. Without more evidence on record, genuine disputes remain as

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Statute, and “cisgender” to identify people whose gender identity aligns with the sex they were assigned at birth. Additionally, the terms “girls” and “girls” as used in this brief is inclusive of both women over age 18 and girls under the age 18.



to if there is any true competitive advantage between transgender girls and cisgender girls both before and during.

Firstly, it is well established that Title IX protects exclusion from participation on federally funded school teams on the basis of sex. This right is the result of the decades-long fight for equality championed by the likes of Justice Ruth Bader Ginsburg and Martin Luther King, Jr. It has long been reasoned that we as a society value a communal culture, free from segregation. Just as if the Statute required African-American students to participate on a team that matches their race at birth, the resulting psychological and dignitary harm transgender girls experience as a result of this statute should not be one that a student must face in simply attending their public school.

In determining the existence of discrimination under Title IX, courts have looked to the individual experience of the plaintiff compared to those similarly situated to them. Here, the analysis of who is similarly situated to A.J.T. shows that it is any student who wishes to participate on a school sports team. Between cisgender girls and boys, and transgender girls and boys, only one class is on a categorical basis denied access to the team that matches their gender identity: transgender girls. With North Greene already having a long existing rule that cisgender males could not compete on the women's teams, something that does not oppose their gender identity, the only purpose the Statute can serve is to treat transgender girls differently than any other group of students, and bar them access to the team corresponding with their gender identity.

A.J.T. and fellow transgender girls are directly discriminated against when compared to similarly situated students by being barred from participating on the sports team that corresponds with their gender identity. This discrimination goes to the heart of Title IX and similar provisions, working to protect exclusion and segregation on the basis of sex.

Secondly, The Equal Protection Clause of the Fourteenth Amendment ensures that each and every citizen of the United States is granted equal protection of the laws. Intermediate scrutiny under the Equal Protection framework requires a classification be substantially related to an important government interest. North Greene's classification of sports by sex assigned at birth is not substantially related to an important government interest. While supporting equal opportunity for girls sports is certainly an important interest, excluding transgender girls does not promote equal opportunities for the genders, but rather creates a deeper divide. Further, because there is a genuine dispute of material fact whether transgender girls are significantly different in size, strength, and ability from cisgender girls, the classification is also not substantially related to protecting athlete safety, particularly when cisgender girls are still permitted to participate in sports teams designated for cisgender boys.

The United States has sought to protect its citizens from discriminatory laws like the Statute, necessarily barring participation on sports teams on the basis of sex. American society values inclusion and participation by all. The Constitution reflects these values, standing to shield all people from harmful and destructive laws. As such, the Statute is unconstitutional.

#### ARGUMENT

The Fourteenth Circuit improperly affirmed the District Court's grant of Defendant's Motion for Summary Judgment.

The standard of review is de novo. *See Ibarra v. United States*, 120 F.3d 472, 474 (4th Cir.1997) (holding that the appellate court's standard of review is de novo when reviewing a district court's grant of summary judgment). The court shall grant summary judgment only if the movant shows that there is no genuine dispute to any material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56. The court takes the evidence and justifiable

inferences “in the light most favorable to the party opposing the motion.” *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962). Courts have long held that when “[t]he materials before the District Court hav[e] . . . raised a genuine issue as to ultimate facts material to the [suit]” then granting summary judgment is improper. *Id.*

The issue before this Court is whether the Statute violates either the Fourteenth Amendment Equal Protection Clause or Title IX, therefore rendering it unconstitutional. Specifically, the Court must contemplate whether the Statute’s definitions of “biological sex,” “female,” and “male” act as a discriminatory vehicle to prohibit transgender females from participating on the school sports team reflecting their gender identity. The parties do not dispute that this Court has proper jurisdiction and that Plaintiff has standing to properly bring these claims. R. 4, 5.

**I. The Statute violates Title IX, which has long protected individuals from discriminatory practices, by barring participation on sports teams of a federally sponsored school based solely on the sex of the student.**

To succeed on a claim that a state statute is unconstitutional due to a violation of Title IX, a plaintiff must show: (1) they were excluded from an educational program on the basis of sex; (2) that the educational institution was receiving federal financial aid at the time; and (3) that improper discrimination caused harm. *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 616 (4th Cir. 2020). Liability under Title IX arises when “a school excludes persons from participation in, denies persons the benefits of, or subjects persons to discrimination under its programs or activities.” *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 640-41 (1999) (*internal quotations omitted*). This Court has previously opined that “legislature [that] seeks to advantage one group does not, as a matter of logic or of common sense, exclude the possibility that it also intends to disadvantage another.” *Pers. Adm'r of Mass. v. Feeney*, 442 U.S. 256, 282–83 (1979).

Due to our ever-changing legal landscape, courts continually face unaddressed new and unique legal questions. U.S. Circuit Courts have begun to review similar constitutional challenges involving statutes that mirror the North Greene’s. In this review, many circuits have struck blanket bans prohibiting transgender females from competing on female school sports teams on a variety of bases, including unconstitutionality. *See, e.g., Hecox v. Little*, 104 F.4th 1061, 1087 (9th Cir. 2023)(holding that Idaho’s “categorical ban” on transgender girls from competing on girls’ school teams was unconstitutional); *B.P.J. v. W. Va. State Bd. of Educ.*, 98 F.4th 542 (4th Cir. 2024) (determining that West Virginia’s law banning transgender females from the girl’s school sports teams was unconstitutional and violated Title IX); *Soule v. Conn. Ass’n of Schs.*, 57 F.4th 43 (2d Cir. 2022) (dismissing a challenge to a Connecticut state statute allowing students to participate on the sports team of their gender identity).

**A. A.J.T. and other female transgender students are discriminatorily and intentionally barred from participating in the team of their gender identity, based exclusively on the “biological sex” of the student.**

**1. A.J.T.’s similarly situated peers are all students wishing to be a part of an athletic team because one’s gender identity is no less consistent, persistent, and insistent than that of another’s.**

Similar to an Equal Protection claim, Title IX intends to act “essentially [as] a direction that all persons similarly situated should be treated alike.” *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). Title IX stands to protect “the rights of individuals, not groups, and does not ask whether the challenged policy treats [one sex] generally less favorably than [the other].” *Peltier v. Charter Day Sch., Inc.*, 37 F.4th 104, 130 (4th Cir. 2022) (*internal quotations omitted*).

In *B.J.P. v. W. Va. State Bd. of Educ.*, the plaintiff, a transgender girl in the eighth grade, brought an Equal Protection and Title IX claim against the state and board of education, seeking

injunctive relief. 98 F.4th 542 (4th Cir. 2024). The state had recently enacted a statute nearly identical to North Greene’s “Save Women’s Sports Act” and blocked the plaintiff from participating on the school’s women’s sports teams, namely cross country. *Id.* at 550. The state also had a long-standing law of gender-differentiated sports teams, similar to North Greene. *Id.*

The Fourth Circuit held that the state statute was unconstitutional and violated both Title IX and Equal Protection. *Id.* It reasoned that of all the similarly situated students, only one group was denied on a “categorical basis” the ability to play on the team corresponding with their gender: transgender girls. *Id.* at 563. It further reasoned that the statute treated transgender girls and cisgender girls differently “which is—literally—the definition of gender identity discrimination.” *Id.* at 556.

Just as in *B.J.P.*, where a state statute’s only effective application was to ban transgender girls from playing on the school’s women’s team, here, the Statute’s only real effect is to treat transgender girls worse than those similarly situated to them.

Just as in *B.J.P.*, where the plaintiff’s similar situated peers were fellow students wanting to be a member of an athletic team, here, those similarly situated to A.J.T. are all those wishing to play a competitive sport on the team that matches their gender identity. Under the Statute, the only group of students who is unable to try out for the team corresponding with their gender identity are transgender girls. Even transgender boys and cisgender girls can try out for either the female, male, or co-ed teams. R. 11. The record is very limited in the actual physical advantages transgender girls have when competing in secondary school women’s teams. It purports that a blanket ban on transgender girls is justified, making them the only group that is excluded on a “categorical basis” from the team corresponding with their gender identity. The only available data on the record is differences between post-pubescent cisgender boys and girls. R. 7. There is no

data on record to suggest that pre-pubescent cisgender males have an athletic advantage over cisgender females. The record further fails to indicate the significant athletic advantages a transgender girl would have over a cisgender girl. Unless more evidence is introduced into the record, those similarly situated to A.J.T. would have to be all those who wish to compete on an athletic team.

There remain genuine disputes over crucial material facts in this case, such as the exact competitive advantages each gender has over the other, and at which stage of puberty any advantages begin to show. R. 3,7. There is also no evidence in the record regarding those transgender girls and boys who go through puberty-delaying treatments. There is also a dispute regarding whether or not the Statute's use of "biological sex" and "sex at birth" accurately encompass the differences between the students. It would be improper to dismiss this suit at the summary judgment stage while these disputes remain. *See Celotex Corp. v. Catrett*, 477 U.S. 317 (1986) (holding that summary judgment is not proper if "there remain genuine disputes for trial.").

Students seek to feel included in a group that shares their worldviews. As evidenced by A.J.T., sometimes this can mean having a stronger connection to a gender different than one's sex. The purpose behind Title IX is that these similarly situated people would be treated alike in their pursuit of individuality, allowing for all opportunities to be open to those who seek them. This exclusion targeted solely at transgender girls is "literally the definition of gender identity discrimination" and serves no other purpose than to ostracize transgender girls. *B.J.P.*, 98 F.4th at 556. Transgender girls are the only group that on a "categorical basis" are denied the ability to participate as compared to those similarly situated students who wish to play on an athletic team matching their gender identity. *Id.* at 563.

**2. In comparison to similarly situation persons, A.J.T. and other transgender girls are being discriminated against by the Statute due to their exclusion from participating in the school sports team matching their gender identity.**

To violate Title IX, discriminatory behavior must be serious enough to have the “systemic effect of denying the victim equal access to an education program or activity.” *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. at 652. When reviewing Title IX claims involving transgender rights, courts have held that discrimination against a person for being transgender is discrimination based on sex “because the discriminator is necessarily referring to the individual's sex to determine incongruence between sex and gender, making sex a but-for cause for the discriminator's actions.” *Grimm*, 972 F.3d at 616. The U.S. Department of Education has proposed new Title IX regulations to include “discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and *gender identity*.” 87 Fed. Reg. 41, 390 (July 12, 2022) (*emphasis added*).

The principle that the federal government would not sponsor unconstitutionally discriminatory actions has become a bedrock of the U.S. legal structure. The purpose behind Title IX is deeply rooted in the American call for equality and the strive to be a land free of discrimination. Title VI of the Civil Rights Act of 1964 “prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance.” 42 U.S. Code § 2000d. Title IX, which “the drafters of ... explicitly assumed that it would be interpreted and applied as Title VI had been during the preceding eight years” was a continuation of the same ideals and principles behind the civil rights movement. *Cannon v. University of Chicago*, 441 U.S. 677, 696 (1979).

As this Court articulated in *Davis*, barring students from participation in a school’s programs or activities, like a competitive sports team, rises to the level of discrimination for Title

IX purposes. 526 U.S. at 641. The Fourth Circuit defines discrimination as “treating [an] individual worse than others who are similarly situated.” *Grimm*, 972 F.3d at 616. Under the relevant standards of discrimination, the Statute’s effect of barring transgender girls from participating on the school’s sports team that corresponds with their gender identity more than meets this burden. As discussed above, A.J.T. and other transgender girls are the only group unable to participate on the team according to their gender identity. Martin Luther King, Jr. highlighted that this type of segregation “not only makes for physical inconveniences, but it does something spiritually to an individual.” Martin Luther King, Jr., Address at Second Annual Institute on Nonviolence and Social Change (Dec. 5, 1957).

This form of categorical exclusion and separation goes to the heart of Title IX. Baseless discrimination against transgender girls in the form of exclusion no other student must endure exemplifies some of the various social issues that have plagued our society and stands as the reason behind Title IX. The social stigma and stressors already placed on transgender students like A.J.T. call attention to the necessity of protecting our youth, as recognized by courts, including the Eleventh Circuit. *See Adams v. Sch. Bd.*, 968 F.3d 1286 (11th Cir. 2020) (holding that Title IX was meant to protect a transgender student from “psychological and dignitary harm” caused by a school’s sex-based policy). The Eleventh Circuit in *Adams* articulates that policies like the Statute are a “policy of exclusion [that] constitutes discrimination” *Id.* at 1304. As of 2022, the transgender population aged thirteen to seventeen was roughly 300,100, or 1.43% of that age group. Jonathan Allen, *New Study Estimates 1.6 million in U.S. Identify as Transgender*, Reuters (Jun. 10, 2022). In 2021, about 42,000 children and teens across the United States received a diagnosis of gender dysphoria, nearly triple the number in 2017. Robin Respaut & Chad Terhune, *Putting Numbers on the Rise in Children Seeking Gender Care*, Reuters, Oct. 6, 2022. No less than



121,882 children ages 6 to 17 were diagnosed with gender dysphoria from 2017 through 2021. *Id.* This highlights the need to protect students against segregating discrimination that leads to adverse social and personal harm to discriminated parties, including transgender girls in school.

**B. There is no disputing that the Statue caused harm to A.J.T. on an individual basis because of the psychological and dignitary pain caused by excluding A.J.T. from playing on the team corresponding with her gender.**

When addressed with similar issues, courts have found that “there is no genuine issue of material fact [that] the ... policy harmed plaintiff.” *Grimm*, 972 F.3d at 617. Courts have opined that “attempts to force transgender people to live in accordance with the sex assigned to them at birth ... [have] caused significant harm.” *Adams*, 318 F. Supp. 3d at 1300. The Third Circuit held in *Doe v. Boyertown Area Sch. Dist.* that a rule that “would very publicly brand all transgender students with a scarlet T” is a harm that transgender students “should not have to endure that as the price of attending their public school.” 897 F.3d 518, 530 (3d Cir. 2018).

A.J.T. has already been diagnosed with and suffers from gender dysphoria. R. 3. The National Institutes of Health recognize that gender dysphoria can “lead to interpersonal conflicts, rejection from society, symptoms of depression and anxiety, substance use disorders, a negative sense of well-being and poor self-esteem, and an increased risk of self-harm and suicidality.” Garima Garg, et al., *Gender Dysphoria*, National Center for Biotechnology Information (Jul. 11, 2023). The possible symptoms of gender dysphoria speak to the deep level of personal anguish these transgender girls and boys experience when living in a world that only values traditional ideals of sex and gender. North Greene’s promotion of these aged ideals and values leaves A.J.T. and other transgender students in the harmful and destructive position of being forced to face the various symptoms of gender dysphoria, including an increased risk of self-harm. Forcing

transgender girls like A.J.T. to comply with the rigid societal rules based on the sex assigned to them at birth places a heavy and dangerous burden on these children.

For example, consider A.J.T.'s fellow members on the elementary all-girl cheerleading team. The psychological and dignitary harm A.J.T. must now face due to her inability to participate with her former teammates is the same an African-American student would face if they were forced, part way through their education, to switch from a team with no racial segregation to a team of only African-Americans. This type of social and individualized harm speaks to the principles behind provisions like Title IX and Title VII. Making fellow students, much less human beings, feel diminished and stigmatized over a segregating statute ostracizes that student and makes them feel unwelcome in their community and society. This is why the possible risks with gender dysphoria range from rejection from society to suicidal tendencies, a condition A.J.T. is clinically diagnosed with.

With the well-known, documented symptoms of gender dysphoria, a law like the Statute must not be deemed unconstitutional. Transgender kids represent less than 2% of the children's population and already face discrimination due to their minority status regularly. Couple this regular discrimination with a 2014 NCAA student athlete report that found that only 0.12% of student athletes play on a professional sports team. *NCAA RECRUITING FACTS*, National Collegiate Athletics Association (Aug., 2014). The importance of athletics in schools is to give students a platform to compete in a space they feel comfortable and welcome. A middle school cross country team is not meant to be the pinnacle of the competitive sport of long distance running, but rather to allow these kids the opportunity to discover their own beliefs and sense of self outside of dated societal pressures. Giving these students the opportunity to experience and learn valuable skills like leadership and sportsmanship is the paramount reason behind student athletics. Barring

A.J.T. and other transgender girls from playing on the women's teams is effectively a bar on the opportunity to learn these skills, discover their individuality, and having the ability to feel part of a team, as she did without incident on the all-girls cheerleading team.

**II. The Save Women's Sports Act violates the Equal Protection Clause because the statute's categorical exclusion of transgender girls from girls' sports is not substantially related to promoting equal athletic opportunities for or protecting the safety of biological females.**

The Equal Protection Clause of the Fourteenth Amendment requires that no state "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. Equal Protection challenges to classifications based on a quasi-suspect class, such as sex, are reviewed with intermediate scrutiny. *Craig v. Boren*, 429 U.S. 190, 197 (1976). To succeed on an Equal Protection Clause challenge of a sex-based classification, a plaintiff must show: (1) that there is a classification based on a protected trait; and (2) that there either is not an important government interest at stake, or that the classification is not substantially related to the government interest. *Id.*

When a state statute deals with gender-based stereotypes, such as physical differences between males and females, the level of review is heightened, and the state must show an "exceedingly persuasive justification" for the classification. *United States v. Virginia*, 518 U.S. 515, 534 (1996) (citing *Miss. Univ. for Women v. Hogan*, 458 U.S. 718, 724 (1982)). The Statute here is predicated on the stereotype that biological males have an athletic advantage over biological females. Therefore, Defendants must demonstrate an exceedingly persuasive justification for the classification. *Virginia*, 518 U.S. at 534.

Additionally, a classification must be either facially discriminatory or have both a discriminatory purpose and effect. *Feeney*, 442 U.S. at 256. Defendants contend that the statute is not discriminatory because it does not explicitly mention transgender girls. R. 8. However, the

Statute functions by categorically excluding transgender girls from competing in women’s sports, revealing its discriminatory effect. Further, prior to the enactment of the Statute, state legislation barred students who identified as male from participating in girls’ sports. R. 13–14. The Statute’s sole change was to expand the restriction to specifically prevent participation by transgender girls, which exemplifies the legislature’s discriminatory purpose. *Id.*

A. **The statute’s definition of “biological females” does not substantially relate to preserving athletic opportunities for girls because allowing transgender girls to participate in girls’ sports would not automatically give them an unfair athletic advantage.**

Providing equal opportunities for female athletes does not require, nor suggest, a sex-based classification such as the one at issue here. *Doe v. Horne*, 683 F. Supp. 3d 950, 950 (D. Ariz. 2023). Transgender girls do not automatically have a biologically-based athletic advantage over cisgender girls. *Id.*; *see also Tirrell v. Edelblut*, No. 24-cv-251-LM-TSM, 2024 WL 4132435 at \*1 (D. N.H. Sep. 10, 2024). Therefore, because there is a genuine dispute of material fact over whether transgender girls truly have an unfair athletic advantage over cisgender girls, summary judgment is inappropriate at this time. *B.P.J.*, 98 F.4th at 559.

In *Horne*, an Arizona statute barred all transgender girls, at all ages, from competing on girls’ sports teams. *Horne*, 683 F. Supp. 3d at 950. Arizona cited concerns over fairness and the competitor’s safety as the main drivers of the statute, which notably did not prevent biological females from competing in boys’ sports. *Id.* at 962. The District Court for the District of Arizona held that the statute violated the Equal Protection Clause, because it was overbroad and excluded all transgender girls regardless of whether they truly had an athletic advantage over their cisgender peers. *Id.* at 974.

The Statute mirrors the unconstitutional Arizona statute; it prevents transgender girls from participating in girls' sports while allowing cisgender girls to participate in boys' sports. Additionally, the Statute cites athletic fairness as a purpose. R. 4. However, just like the *Horne* statute, the Statute here is overbroad. There is no evidence that transgender girls who have not gone through puberty, whether due to age or medication, have any athletic advantage over cisgender girls. Therefore, the Statute is first overbroad because it excludes all transgender girls, even those without any potential athletic advantage, from participation in girls' sports, solely on the basis of their anatomy.

Further, the Statute is also underinclusive because it fails to take into account whether other attributes may give some athletes a competitive edge. Defendants noted concern over transgender girls' higher levels of circulating free testosterone, which is thought to allow biological males to out-compete biological females. R. 3, 7. However, studies have shown that up to one percent of biologically female athletes may also naturally have high testosterone levels. *See* Roger Pielke, Jr. et al., *Scientific Integrity and the IAAF Testosterone Regulations*, 19 *The International Sports Law Journal* 18, 25 (2019). Comparatively, transgender girls and women make up only about 0.06% of the world's population. R. 14. If the purpose of the Statute is to eliminate concerns about fairness due to advantages created by testosterone levels, it targets the wrong group.

Even if North Greene had tailored the Statute to classify on the basis of testosterone levels, that approach would be equally fraught. *See, e.g., Hecox*, 104 F.4th at 1087. In *Hecox*, an Idaho statute similarly prohibited transgender girls from competing on sports teams classified by biological sex, in the name of protecting both fairness in girls' sports and athlete safety. *Id.* at 1070.

The Ninth Circuit held the statute unconstitutional for violation of the Equal Protection Clause, because similar to North Greene, Idaho failed to present an exceedingly persuasive justification for the classification. *Id.* at 1087. Additionally, the Idaho statute required any athlete whose biological sex was questioned to go through a sex verification process, which included a test of endogenously produced testosterone levels. *Id.* at 1071. Endogenously produced testosterone levels, unlike circulating testosterone, are unaffected by gender-affirming treatments such as hormone therapy. *Id.* The Ninth Circuit emphasized this requirement as being “unconscionably invasive,” “objectively degrading and disturbing,” and loaded “with the potential to traumatize” athletes forced to undergo the process. *Id.* at 1085. Thus, the Ninth Circuit held that the statute was further unconstitutional because the ends did not at all fit the means. *Id.*

North Greene has not yet suggested athletes undergo such a process to verify their sex; however, the statute also does not lay out a procedure if an athlete’s biological sex is questioned. Moreover, without a way to verify whether a particular athlete has an athletic advantage, the Statute remains both under- and overinclusive, with ill-fitting means. The Statute, similar to the *Horne* and *Hecox* statutes, violates the Equal Protection Clause, regardless of any attempted tailoring.

The Fourteenth Circuit Court of Appeals incorrectly relied on a Ninth Circuit case to justify the constitutionality of restricting sports teams by sex to preserve equal athletic opportunities for girls. R. 8; *Clark ex rel. Clark v. Arizona Interscholastic Asso.*, 695 F.2d 1126 (9th Cir. 1982) (Clark I). In *Clark I* the Ninth Circuit upheld an Arizona policy that separated high school volleyball teams by gender, reasoning that girls have a “historical lack of opportunity in

interscholastic athletics,” whereas boys and men have historically had more access to athletic opportunities generally, with “ample opportunity for participation . . . .” *Clark*, 695 F.2d at 1126. Thus, restricting participation on the high school volleyball teams by gender would not be inappropriate, because the athletic options for cisgender boys would have remained constant, while girls would have had greater opportunities. *Id.* The Statute does not seek to ban only cisgender boys from girls’ sports to promote the equal opportunity of a historically discriminated-against group; it seeks to further limit the options for transgender girls, yet another group that has also faced significant discrimination. *See Hecox*, 104 F.4th at 1082. Therefore, *Clark I* is not analogous to this case, and the outcome should differ. Here, because North Greene fails to establish that transgender girls have an athletic advantage such that allowing them to compete on girls’ teams would be unfair, the statute’s definition of “biological females” does not substantially relate to promoting fairness in girls’ sports.

**B. The statute’s definition of “biological females” does not substantially relate to protecting the safety of cisgender girls in sports, because excluding transgender girls would have negligible effects on athlete safety.**

North Greene cannot show that excluding transgender girls from girls’ sports would have a legitimate impact on cisgender girls’ safety. Protecting the safety of all athletes in sports is certainly a legitimate and important government interest. Nearly 30 million children participate in organized sports each year, and an estimated 3.5 million children under the age of 14 will suffer some sports-related injury annually. *Sports Injury Statistics*, Stanford Medicine Children’s Health, <https://www.stanfordchildrens.org/en/topic/default%3Fid%3Dsports-injury-statistics-90-P02787#:~:text=More%20than%203.5%20million%20children,or%20participating%20in%20rec>

reational%20activities. However, these injuries are not linked to transgender girls participating with cisgender girls; rather, they are an inherent risk of contact sports. However, athlete safety is not generally recognized as a concern for non-contact sports. *L.E. v. Lee*, No. 3:21-cv-00835, 2024 WL 1349031 \*1, \*18 (M.D. Tenn. Mar. 29, 2024) (noting defendants’ concession that safety is not an issue in non-contact sports). Additionally, preventing transgender girls from accessing sports teams that match their gender identity will negatively impact overall athlete safety, directly contradicting North Greene’s stated interest.

“Even where a governmental interest is ‘compelling in the abstract,’ heightened scrutiny ‘is not satisfied by the assertion of abstract interests’ or ‘an unsubstantiated and hypothetical danger.’” *Tirrell*, 2024 WL 4132435 at \*14 (quoting *Rideout v. Gardner*, 838 F.3d 65, 72, 72 (1st Cir. 2016)). In *Tirrell*, New Hampshire enacted a law prohibiting transgender girls from participating in girls’ sports, citing, as North Greene does, fairness and safety concerns. *Id.* at \*3. Two transgender girls, who had played on girls’ sports teams without incident, sued the state for violation of the Equal Protection Clause. *Id.* at \*1. The United States District Court for the District of New Hampshire held that the law violated the Equal Protection Clause because it was not substantially related to promoting girls’ safety in sports. *Id.* at 14. Specifically, the court reasoned that although New Hampshire had referenced some news accounts of injuries purportedly due to transgender girls’ sports participation, the state had not convincingly provided evidence that transgender girls posed a safety issue to their peers, especially given the fact that the plaintiffs had played on teams without incident. *Id.*



Similar to New Hampshire, North Greene has not identified an instance in North Greene where a cisgender girl's safety was threatened or harmed. The Fourteenth Circuit referenced a North Carolina incident in which a cisgender girl was harmed by a transgender girl's spike in volleyball, but there is no guarantee that this injury was caused solely by the transgender girl's participation. R. 10. In fact, head and neck injuries, including concussions, are one of the most common injuries caused by participation in volleyball across all levels and genders. Warren K. Young et al., *Epidemiology of Common Injuries in the Volleyball Athlete*, 16 Current Reviews in Musculoskeletal Medicine 229, 229–30 (2023). Neither the Circuit Court nor Defendants have referenced or produced any evidence of a similar incident in North Greene. Further, A.J.T. has participated in girls' sports without incident. R. 3.

On the contrary, since the North Greene statute allows cisgender girls to play on boys' sports teams, it is not substantially related to protecting the safety of athletes. *Horne*, 683 F. Supp 3d at 963. If transgender girls pose such a substantial threat to cisgender girls, solely because they are biological males, cisgender boys would also pose the same threat. *See id.* But North Greene does not prohibit cisgender girls from playing on teams with cisgender boys. Therefore, the statute is again underinclusive, and the means of classifying sports by biological sex are not adequately tailored to the asserted purpose of protecting athlete safety.

Further, *excluding* transgender girls from girls' sports has the tendency to significantly harm athlete safety. Transgender youth continuously face threats of humiliation, bullying, and mistreatment on the basis of their gender. Laura Sares-Jaske et al., *Gendered Differences in Experiences of Bullying and Mental Health Among Transgender and Cisgender Youth*, 52 Journal

of Youth and Adolescence 1531, 1531 (2023). Gender dysphoria causes “significant and disabling distress” and if left unaddressed, can result in “severe anxiety and depression, suicidality, and other serious mental health issues.” *Horne*, 683 F. Supp. 3d at 986. Barring transgender girls from participating in a sports team that aligns with their gender identity could exacerbate those symptoms and cause extreme mental health damage. *Id.* at 974. Consequently, allowing North Greene’s statute to stand in its current state could lead to an increase in bullying and harassment of transgender girls, and contribute to increased rates of mental health concerns, self-harm, and suicide. These effects would significantly negatively affect athlete safety, working against North Greene’s asserted goal. Thus, because North Greene cannot show that transgender girls pose a threat to cisgender girls’ safety in athletics, the Statute allows cisgender girls to compete against “biological males” in other contexts, and excluding transgender girls from girls’ sports would harm overall athlete safety, the Statute’s definition of “biological females” does not substantially relate to North Greene’s stated objective to protect athlete safety.

## CONCLUSION

The United States Constitution has long protected against discrimination towards all citizens, particularly when targeted at a minority group such as transgender girls. A state statute that discriminates and segregates transgender girls, prohibiting participating on the school sports team that matches their gender identity creates harm that

For the reasons stated herein, the Petitioner respectfully requests that the Court reverse the judgment of the Fourteenth Circuit with respect to Issue I, the Title IX claim, and reverse the judgment of the Fourteenth Circuit with respect to Issue I, the Equal Protection Claim, and remand for further proceedings.

This the 13th day of September, 2024.

Respectfully submitted,

Team 1

*Attorneys for Plaintiff-Petitioner*

## APPENDICES

### **APPENDIX A: Amendment XIV, Section 1**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

### **APPENDIX B: Title IX, 20 U.S. Code § 1681(a)**

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance, except that:

### **APPENDIX C: N.G. Code § 22-3-15(a)(1)-(3)**

- (1) “Biological sex” means an individual’s physical form as a male or female based solely on the individual’s reproductive biology and genetics at birth.
- (2) “Female” means an individual whose biological sex determined at birth is female. As used in this section, “women” or “girls” refers to biological females.
- (3) “Male” means an individual whose biological sex determined at birth is male. As used in this section, “men” or “boys” refers to biological males.