No. 24-2020

IN THE SUPREME COURT OF THE UNITED STATES

A.J.T.,

Petitioner,

v.

STATE OF NORTH GREENE BOARD OF EDUCATION*, et al.*,

Respondents

BRIEF OF PETITIONER

Team Identification Number: 14

QUESTIONS PRESENTED

I. Whether North Greene's "Save Women's Sports Act" discriminates against A.J.T., a prepubescent transgender girl, in violation of Title IX.

II. Whether North Greene's "Save Women's Sports Act" discriminates against A.J.T., a prepubescent transgender girl, in violation of the Equal Protection Clause of the Fourteenth Amendment.

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CONSTITUTIONAL AND STATUTORY PROVISIONS

This case involves 20 U.S.C. § 1681(a), which provides in relevant part: "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."

This case also involves the Fourteenth Amendment to the United States Constitution, which provides in relevant part: "No State shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protections of the laws."

STATEMENT OF THE CASE

I. Factual History

A.J.T. always knew she was meant to be a girl. R. 3. By the time A.J.T. was in the third grade, she was living at home as a girl. R. 3. Shortly thereafter, she discovered her name and began living as a girl publicly. R. 3. During this time, she joined her elementary school's girls' cheerleading team where she practiced and competed without incident. R. 3.

In 2022, A.J.T. was diagnosed with gender dysphoria. R. 3. After her diagnosis, A.J.T. began counseling and discussing the possibility of starting puberty-delaying treatment. R. 3. Hormone treatments prevent endogenous puberty, thereby preventing any physiological changes caused by increased testosterone circulation. R. 3. As of the commencement of this lawsuit, A.J.T. had not started puberty-delaying treatment, nor had she started puberty. R. 3.

In starting seventh-grade, eleven-year-old A.J.T. wants to branch out and try new sports. R. 3. A.J.T. wants to compete in both girls' volleyball and cross-country. R. 3. However, due to North Greene's "Save Women's Sports Act," A.J.T. was informed that she could not join either team because she is a transgender girl. R. 3.

In response to A.J.T.'s attempt to play sports, the North Greene legislature introduced the "Save Women's Sports Act." R. 3. The Act was signed into law on May 1, 2023, and is codified as North Greene Code § 22-3-4, "Limiting participation in sports events to the biological sex of the athlete at birth." R. 3. The Act requires that "[i]nterscholastic, intercollegiate, intramural, or club athletic teams or sports that are sponsored by any public or secondary school . . ." "shall be expressly designated as one of the following based on biological sex at birth: (A) Males, men, or boys; (B) Females, women, or girls; or (C) Coed or mixed." N.G. Code § 22-3-16(a). "Biological sex" is defined as "an individual's physical form as a male or female based solely on the

individual's reproductive biology and genetics at birth." N.G. Code § 22-3-15(a)(1). This definition classifies gender identity as separate and apart from biological sex "to the extent that an individual's biological sex is not determinative or indicative of the individual's gender identity." N.G. Code § 22-3-16(c). The Act further defines "female" as "an individual whose biological sex determined at birth is female," and "male" as "an individual whose biological sex determined at birth is male." N.G. Code §§ 22-3-15(a)(2)-(3). Once this determination is made, "[a]thletic teams or sports designated for females, women, or girls shall not be open to students of the male sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport." N.G. Code § 22-3-16(b).

North Greene attempts to hide behind the ill-fitting and empty objectives of providing equal athletic opportunities and protecting the physical safety of female athletes. R. 4. North Greene further contends that "[c]lassifications based on gender identity serve no legitimate relationship to the State of North Greene's interest in promoting equal athletic opportunities for the female sex." N.G. Code § 22-3-16(c). However, these assertions are a pretext concealing North Greene's true objective: to exclude transgender girls from participating in sports consistent with their gender identity. R. 4. The "Save Women's Sports Act" does nothing to promote equal athletic opportunities for female athletes because it completely casts aside a part of the female community. Unfortunately, A.J.T. has been denied important developmental opportunities because of the Act. This is a far cry from the equality North Greene claims the Act promotes.

II. Procedural History

A.J.T., by and through her mother, filed suit against the State of North Greene Board of Education and State Superintendent Floyd Lawson. R. 4. The State of North Greene's motion to

intervene was subsequently granted. R. 4. A.J.T. then amended her complaint to name both the State of North Greene and Attorney General Barney Fife as defendants. R. 4.

A.J.T. sought a declaratory judgment that North Greene's "Save Women's Sports Act" violated Title IX and the Equal Protection Clause of the Fourteenth Amendment and an injunction preventing Defendants from enforcing the law against her. R. 5. Defendants opposed A.J.T.'s motion and moved for summary judgment. R. 5. The District Court subsequently granted Defendants' motion for summary judgment. R. 5.

On Appeal, the United States Court of Appeals for the Fourteenth Circuit affirmed the grant of summary judgment to Respondents. R. 6. The Fourteenth Circuit concluded that the Act did not violate Title IX because the Act did not discriminate on the basis of sex. R. 12. The Fourteenth Circuit also concluded that the Act did not violate the Equal Protection Clause because it survived intermediate scrutiny in that it did not, on its face, impermissibly treat transgender athletes differently than their peers. R. 8. In this analysis, they concluded that the Act effectuated an important government interest. R. 9-10. As such, the Fourteenth Circuit affirmed the judgment of the district court. R. 12.

III. Standard of Review

The grant of summary judgment to Respondents is reviewed de novo, meaning that this Court gives no deference to the lower court's decision and applies the same standard as the district court. *Whatley v. CNA Ins. Co.*, 189 F.3d 1310, 1313 (11th Cir. 1999). Summary judgment is only appropriate when "there is no genuine dispute as to *any* material fact." *Bostic v. Shafer*, 760 F.3d 352, 370 (4th Cir. 2014) (emphasis added). A genuine dispute is one in which "a reasonable jury could return a verdict for the nonmoving party." *Libertarian Party of Va. v. Judd*, 718 F.3d 308, 313 (4th Cir. 2013). A material fact is one that "might affect the outcome of the suit under

governing law." *Id.* In making this evaluation, this Court is "required to view the facts and all justifiable inferences arising therefrom in the light most favorable to the nonmoving party." *Id.* at 312.

SUMMARY OF THE ARGUMENT

I.

The "Save Women's Sports Act" announces North Greene's animus towards transgender children. This Court should reverse the grant of summary judgment to Respondents because there is a genuine dispute as to material facts. Chiefly, the "Save Women's Sports Act" is a direct violation of A.J.T.'s rights under Title IX. A.J.T. succeeds on her Title IX claim because she can prove that she was: (1) excluded from an educational program on the basis of sex; (2) the educational institution receives federal financial assistance; and (3) that the unlawful discrimination caused her harm.

This Court has already concluded that discrimination on the basis of transgender status is discrimination on the basis of sex. Using established statutory interpretation principles, the interpretation of Title IX mirrors that of Title VII. Thus, A.J.T. was discriminated against by North Greene on the basis of sex. The second requisite element of a Title IX claim is met and is not at issue here. Respondent, State of North Greene Board of Education, is a public-school board that receives federal assistance to operate. Finally, A.J.T. suffered harm because of North Greene's unlawful discrimination. The harm suffered by a plaintiff does not have to be physical. The harm can be emotional or dignitary in nature. A.J.T. has been denied the important developmental opportunity to play sports with her peers. A.J.T., as someone who suffers from gender dysphoria, is at a statistically higher risk of other harms, including self-mutilation and self-harm. The "Save Women's Sports Act" only enhances societal stigma against transgender children and sends a message of disdain to other marginalized communities.

II.

This is a case of first impression for this Court. However, interpreting the Equal Protection Clause of the Fourteenth Amendment is not. Throughout this nation's history, the Equal Protection Clause has protected marginalized communities. This Court should continue this tradition and protect A.J.T. and other transgender athletes.

Here, the State of North Greene is not protecting A.J.T. The "Save Women's Sports Act" is designed to purposefully discriminate against transgender children and violates the Equal Protection Clause. The Act is subject to intermediate scrutiny because the Act discriminates based on a quasi-suspect class. Additionally, the Act is facially discriminatory and fails intermediate scrutiny. However, even if the Court were to find the Act facially neutral, invidious discrimination exists such that the Act still fails intermediate scrutiny. Furthermore, North Greene's failure to acknowledge and affirm A.J.T.'s gender identity jeopardizes her physiological health.

North Greene's stated government interests of providing equal athletic opportunities for female athletes and protecting the physical safety of female athletes are not furthered by the Act. North Greene's chosen means of accomplishing these objectives are wholly unrelated to their intended purpose. Transgender individuals make up less than 0.6% of the United States' population. Additionally, cisgender female athletes endanger the safety of other cisgender female athletes, thereby making the act vastly underinclusive.

Barring transgender girls from competing on girls' sports teams neither provides equal athletic opportunities, nor protects their physical safety. Rather, North Greene's hostility toward A.J.T. exhibits purposeful discrimination which should not be tolerated by this Court.

ARGUMENT

This is a straightforward case of overt bigotry hidden in plain sight. What Respondents deem to be fair and reasonable, is what the law deems to be biased and discriminatory. A.J.T. is a girl and has been for years. She began using a name commonly associated with girls at a young age. She was a member of her elementary school's all-girl cheerleading team. As she reached these developmental milestones, being transgender was never an issue.

As she moved into the seventh grade, A.J.T. hoped to join the girls' volleyball and cross-country teams. Unfortunately, Respondents will not allow her to do this. Respondents will tell this Court that the justification for the Act is equality. The real justification, though, is to disguise their discomfort. Because A.J.T. is "different," Respondents seek to cast her out. Because A.J.T. does not fall into traditional societal norms, Respondents seek to ban her from participating in sports. Because A.J.T. is a transgender girl, Respondents see no issue with violating her rights under Title IX and the Equal Protection Clause.

The "Save Women's Sports Act" is a direct violation of Title IX. The State of North Greene Board of Education, who receives federal funds, is directly discriminating against A.J.T. on the basis of sex. As a result, A.J.T. has suffered immeasurable harm. Furthermore, the "Save Women's Sports Act" is a direct violation of the Equal Protection Clause. The Act facially discriminates against A.J.T., who as a transgender person, is considered to be a member of a quasi-protected class. The Act further violates the Equal Protection Clause by invoking and promoting invidious discrimination.

This heinous Act cannot stand because unlike what is alleged by Respondents, this Act and its implementation do nothing to further equality. It does the opposite. It ostracizes A.J.T. and

others like her, and it puts A.J.T. at risk of becoming another horrific statistic surrounding transgender children in this country.

I. NORTH GREENE'S "SAVE WOMEN'S SPORTS ACT" DISCRIMINATES AGAINST A.J.T. IN VIOLATION OF TITLE IX.

Title IX was a landmark decision for gender equality in the United States. Title IX states that "[n]o 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." 20 U.S.C. § 1681(a). The statute is designed to prohibit discrimination on the basis of sex by any education institution receiving federal assistance. Title IX protects individual's rights, not groups, and does not ask "whether the challenged policy treats [one sex] less favorably than [the other]." *Peltier v. Charter Day Sch., Inc.*, 37 F.4th 107, 130 (4th Cir. 2022) (quoting *Bostock v. Clayton Cnty.*, 590 U.S. 644, 658 (2020)). To succeed on a Title IX claim, a plaintiff must prove that they were: (1) excluded from an educational program on the basis of sex; (2) the educational institution received federal financial assistance at the time; and (3) that the unlawful discrimination caused harm. *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 616 (4th Cir. 2020). Once a plaintiff establishes that they have been discriminated against and suffered harm, no relation to an important government interest can save the discriminatory policy. *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 309 (2023). North Greene acted on the basis of sex, and that unlawful discrimination harmed A.J.T. As such, this Court should conclude that this case presents a genuine dispute as to material fact and reverse the grant of summary judgment to Respondents.

A.J.T. is a person under the law, and she has just as much of a right to bring a Title IX claim as any other student. The language of Title IX is broad by design. The statute states that "*[n]o person* shall, on the basis of sex . . ." 20 U.S.C. § 1681(a) (emphasis added). This Court previously

interpreted that language, using a textualist approach, to conclude that Title IX should be interpreted broadly. *North Haven Bd. of Educ. v. Bell*, 456 U.S. 512, 520 (1982); *Peltier*, 37 F.4th at 128. Congress could have chosen more specific language when constructing the statute; however, because they did not, "person" means anyone. A.J.T.'s gender identity is not an issue and should not become one to exclude her from bringing this Title IX claim. Congress says what it means and means what it says. If Congress wants to change the language of Title IX to exclude certain groups of people from bringing claims, Congress has the ability to do so. However, they have not yet acted, and until they do so, the broad reading of Title IX controls.

Respondents will attempt to claim that a justification for the "Save Women's Sports Act" is equality. This cannot be the case when the Act directly contradicts the original goal of Title IX. The statute expressly states that no *person* shall be discriminated against on the basis of sex. Respondents will never come out and say it, but they are clearly uncomfortable with the fact that A.J.T. is transgender because she does not fit their social norms. A.J.T., in the eyes of Title IX, is a "person." Respondents' lack of social acceptance should have no bearing on A.J.T.'s rights under the statute.

Respondents will also attempt to assert that Title IX's contact sports exception applies to the matter currently before the Court. It does not. Neither cross-country nor volleyball are listed within the recognized contact sports under Title IX. 41 CFR § 101-4.450(b). Any attempts by Respondents to hypothesize as to potential contacts in volleyball or cross-country, is an attempt to avoid focusing on the merits of their Title IX violation.

A. A.J.T. was discriminated against on the basis of sex.

North Greene's "Save Women's Sports Act" discriminates against A.J.T. on the basis of sex. The Act mandates that teams "designated for females, women, or girls shall not be open to

students of the male sex where selection for such team is based upon competitive skill or the activity involved is a contact sport." N.G. Code § 22-3-16(b). This designation is dependent upon the athlete's biological sex which is defined as the "individual's reproductive biology and genetics at birth." N.G. Code § 22-3-15(a)(1). As such, North Greene discriminates against A.J.T. on the basis of sex.

This Court has already held that discrimination based on transgender status is discrimination on the basis of sex. *Bostock*, 590 U.S. at 660. Although *Bostock* interpreted Title VII of the Civil Rights Act of 1964, its logic applies with equal force to Title IX claims. Both Title VII and Title IX address discrimination on the basis of sex; Title VII applies to employment discrimination and Title IX applies to school-sports discrimination. 42 U.S.C. § 2000(e); 20 U.S.C. § 1681(a). Congress created Title IX in Title VII's mold with the understanding that Title IX would be interpreted like Title VII. *Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 258 (2009); *Jennings v. Univ. of N.C.*, 482 F.3d 686, 695 (4th Cir. 2007). Furthermore, applying principles of statutory construction, statutes addressing the same subject matter should be read "as if they were one law." *Erlenbaugh v. United States*, 409 U.S. 239, 243 (1972).

As such, in both contexts, "it is impossible to discriminate against a person for being . . . transgender without discriminating against that individual based on sex." *Bostock*, 590 U.S. at 660. The discriminator's necessary referral to the individual's sex to determine incongruence between sex and gender makes sex a but-for cause of the discriminator's actions. *Id.* So long as a plaintiff's sex was a but-for cause of the discriminator's actions, that action is discrimination on the basis of sex. *Id.* at 672.

Here, North Greene could not exclude A.J.T. from participating in girls' sports without referencing her "biological sex," which the Act defines as "[her] reproductive biology and genetics

at birth." N.G. Code § 22-3-15(a)(1). As such, even though the Act's primary motivation was to exclude A.J.T. because she is transgender, her sex remains a but-for cause of the North Greene Legislature's actions. Thus, the Act excludes A.J.T. from girls' sports on the basis of sex.

B. A.J.T.'s school receives Federal financial assistance.

The second requisite element of a Title IX claim is met and is not at issue here. Respondents, State of North Greene Board of Education, are a public-school board that receives Federal assistance to operate. A.J.T. alleges that it is the State of North Greene Board of Education that is discriminating against her and causing her harm. As such, this Title IX element is met.

C. A.J.T. suffered harm because of North Greene's "Save Women's Sports Act."

Finally, A.J.T. suffered real and multiple harms because of Respondents' unlawful discrimination. The harm suffered by a plaintiff does not have to be physical. *Peltier*, 37 F.4th at 129. The harm can be emotional and dignitary in nature. *Id.* In *Peltier*, the court looked at testimony stating, "girls were not equal to boys" and that girls were not worth as much as boys. *Id.* at 114. Additionally, the court received evidence that girls' ability to participate in school activities was hampered. *Id*. For instance, a young girl that wore shorts to school was removed from class and sent to the principal's office for the rest of the day. *Id*. The plaintiffs were also prohibited from participating in activities like climbing and playing soccer unless they were wearing their unisex physical education uniforms. *Id*. These instances caused the plaintiffs significant social, emotional, and dignitary harm. *Id.* at 129. These instances, taken together, were considered sufficient by the Fourth Circuit to adequately show that the plaintiffs suffered harm. *Id*. at 131.

Similarly, in *Grimm*, the plaintiff was able to successfully prove that they were harmed under Title IX. 972 F.3d at 617. In *Grimm*, a transgender boy was prohibited by his school board

from using the boys' restroom. *Id*. at 593. The school board's policy based restroom usage on "biological gender," not gender identity. *Id*. As a result of this policy, Grimm dealt with urinary tract infections from bathroom avoidance and from suicidal thoughts that eventually led to his hospitalization. *Id*. at 617. Grimm was scared to attend school football games because he was worried about where he would use the restroom. *Id*. The Fourth Circuit noted that all of these facts were enough to show that Grimm was harmed under the school board's policy. *Id*.

Here, A.J.T. suffered harm similar to the plaintiffs in *Peltier* and *Grimm*. Being denied the opportunity to participate in sports because of the "Save Women's Sports Act" has deprived A.J.T. of the important developmental opportunities associated with school athletics. R. 16. As Justice Knotts noted in her dissent, A.J.T. has no real "choice" or alternative; she can either participate with the boys' teams, or she cannot participate at all. R. 16. For A.J.T., who survived great mental anguish to proudly live as a girl, being forced to play sports with boys forces her to be reintroduced as someone that she is not. R. 16. As such, the choice Respondents proudly put forth, is no choice at all.

Upholding the "Save Women's Sports Act" would only enhance the societal stigma against transgender individuals. In *Grimm*, the Fourth Circuit validated medical literature outlining the difficulties transgender individuals face living with gender dysphoria. 972 F.3d at 594. Transgender people are three times more likely than the general population to report or be diagnosed with a mental disorder. *Id.* Transgender people are nine times more likely than the general population to attempt suicide. *Id.* (citing SANDY E. JAMES ET AL., Nat'l Ctr. for Transgender Equal., *The Report of the 2015 U.S. Transgender Survey* 114 (Dec. 2016)). These statistics are even more startling when coupled with the knowledge that being transgender is not a psychiatric condition. *Grimm*, 972 F.3d at 594 (citing Am. Psychiatric Ass'n, *Position Statement on*

Discrimination Against Transgender and Gender Variant Individuals (2012)); *see also* Brief of Amicus Curiae the Trevor Project in Supp. of Pl., *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586 (4th Cir. 2020); *see also* Med. Ass'n & GLMA: Health Professionals Advancing LGBTQ Equality*, Issue Brief: Transgender Individuals' Access to Public Facilities* 2 (2018). Furthermore, transgender individuals' mental faculties and abilities are in no way hampered. *Id.*

Additionally, transgender individuals suffering from gender dysphoria are exposed to even more potential harms. *Grimm,* 972 F.3d at 595. These harms, which include substance abuse and self-mutilation, are only magnified for those going through puberty. *Id*. Endorsing North Greene's disdain for transgender individuals will only expose A.J.T. to further discrimination and unfair practices. *Id*.

Although these statistics are frightening, there is a known cure – sports. Playing sports has been shown to not only have positive physical impacts on children, but also significant positive mental benefits. Playing sports helps reduce stress, anxiety, depression, and suicidal inclinations. *Teen Sports & Mental Health: 10 Benefits and Overall Impact*, Newport Academy (2024), https://www.newportacademy.com/resources/mental-health/sports-and-mental-health/. Sports increase teamwork skills, improve confidence, and promote overall health and well-being. *Id*. Additionally, sports reduce the tendency to resort to drugs and other harmful substances and behaviors. *Id*. To deprive A.J.T. of these benefits would only put her at a higher risk of falling prey to the vicious cycles that run rampant in the transgender youth community. This Court has the chance to change that narrative.

By affirming the District Court's decision to uphold the "Save Women's Sports Act," the lower court only further exacerbated the stigma associated with being transgender. A.J.T. has had to deal with this stigma, and she is at risk of being exposed to further harm. It is bad enough that

A.J.T. is not being given a fair choice to participate on girls' sports teams. What would be worse is if A.J.T. were to fall victim to one of the aforementioned harms. The last thing we need as a country is for A.J.T., or any member of the transgender community, to fall victim to substance abuse, self-mutilation, or suicide. Upholding discriminatory acts like the "Save Women's Sports Act" puts A.J.T., and an entire community of people, at risk. The bigotry and disdain underlying policies like the "Save Women's Sports Act" must end with this Court's reversal of the lower court.

North Greene's "Save Women's Sports Act" violates Title IX. A.J.T. is being discriminated against on the basis of sex, by an educational institution receiving Federal funding. That discrimination has caused her harm. A.J.T. has suffered emotional, social, and dignitary harm because of the "Save Women's Sports Act." Not only has A.J.T. suffered these harms because of the discriminatory policies promulgated by the Act, but A.J.T., as someone who suffers from gender dysphoria, is statistically at a higher risk of exposure to other harms. As such, this Court should reverse the grant of summary judgment to Respondents because actual disputes as to material facts exist. This Court has the ability to protect a child that is just seeking to enjoy the opportunity afforded to her peers. By acknowledging North Greene's Title IX violation, this Court would send a message to A.J.T., and other transgender children throughout this Country, that they are valued, accepted, and encouraged to be their true self.

II. NORTH GREENE'S "SAVE WOMEN'S SPORTS ACT" VIOLATES THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT.

In this case, if the Court so chooses, it can avoid constitutional questions altogether. The fundamental principle of the Constitutional Avoidance Doctrine is that a court should interpret the Constitution only when it is a "strict necessity." *Rescue Army v. Mun. Ct. of L.A.*, 331 U.S. 549, 569 (1947). Here, the Court need not address any constitutional issue because there is "some other

ground upon which the case may be disposed." *Ashwander v. TVA*, 297 U.S. 288, 347 (1936) (Brandeis, J., concurring). The North Greene "Save Women's Sports Act" violates Title IX, thus, this Court can easily decide this case on Title IX grounds as opposed to Equal Protection grounds. Said differently, Title IX provides a sufficient ground for this court to reverse the grant of summary judgment to Respondents and remand this case for further litigation. However, if this Court chooses to address the constitutional question, it should conclude that North Greene's "Save Women's Sports Act" violates the Equal Protection Clause of the Fourteenth Amendment.

North Greene's "Save Women's Sports Act" violates the Equal Protection Clause of the Fourteenth Amendment. The Act is subject to intermediate scrutiny because the Act discriminates based on a quasi-suspect class. Additionally, the Act is facially discriminatory and fails intermediate scrutiny. However, even if the Court were to find the Act facially neutral, invidious discrimination exists such that the Act still fails intermediate scrutiny.

The Fourteenth Amendment to the United States Constitution states in relevant part: "No State shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protections of the laws." U.S. CONST. amend. XIV, § 1. Equal protection under the law is deeply rooted in America's history and tradition. This Court has consistently evolved with the times to protect the rights of marginalized individuals. *Loving v. Virginia* protected the freedom to marry a person of another race. 388 U.S. 1 (1967). *Romer v. Evans* protected the rights of homosexual and bisexual people. 517 U.S. 620 (1996). *Lawrence v. Texas* protected people's personal autonomy. 539 U.S. 558 (2003). *Obergefell v. Hodges* protected the rights of same-sex couples to marry. 576 U.S. 644 (2015). This Court has a clear and well-documented history of providing equal protection under the laws of the United States. This Court should build upon this

history by announcing to A.J.T. and transgender children across the country that they can play sports.

This Court should protect A.J.T. for the same reasons it chose to protect the plaintiffs in *Loving*, *Romer*, *Lawrence*, and *Obergefell.* A.J.T. has the right to be her true self; she has the right to be a girl and to live her life how she desires. Just because A.J.T. does not fit Respondents' social norms and ideals does not mean that her basic rights, freedoms, and protections under the law should be denied.

A. North Greene's "Save Women's Sports Act" is subject to intermediate scrutiny.

A law that disproportionately burdens a protected class may be grounds to bring a constitutional challenge. *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954). Said differently, state action is unconstitutional when it creates "arbitrary or irrational" distinctions between classes of people out of "a bare . . . desire to harm a politically unpopular group." *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 446-47 (1985).

When considering an equal protection claim, this Court must first determine what level of scrutiny applies and then decide whether the law or policy at issue survives such scrutiny. In deciding what level of scrutiny applies to the "Save Women's Sports Act," this Court must look to the basis of the distinction between the classes of persons. *See generally United States v. Carolene Products Co.*, 304 U.S. 144, 152 n.4 (1938). As a general principle, most classifications are upheld so long as they are "rationally related to a legitimate state." *Cleburne*, 473 U.S. at 440. However, classifications targeting quasi-suspect classes are "inherently suspect" and must be evaluated using intermediate scrutiny. *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 223-24 (1995).

This Court should join the growing number of courts and conclude that transgender individuals are members of a "quasi-suspect class." *Grimm*, 972 F.3d at 602. This is because

discrimination against transgender individuals satisfies the four factors of the test "used to determine whether a classification affects a suspect or quasi-suspect class." *Karnoski v. Trump*, 926 F.3d 1180, 1200 (9th Cir. 2019). "[T]ransgender people as a class have historically been subject to discrimination;" "they have a defining characteristic that frequently bears no relation to an ability to perform or contribute to society;" "they exhibit immutable or distinguishing characteristics that define them as a discrete group;" and "transgender people constitute a minority lacking political power." *Grimm*, 972 F.3d at 611.

However, even if this Court does not want to adopt the quasi-suspect classification of transgender individuals, the Act is still subject to intermediate scrutiny. As previously explained, discrimination on the basis of transgender status is discrimination on the basis of sex. *Bostock*, 590 U.S. at 660 As such, whether this court believes transgender status to be quasi-suspect or transgender status to be a sex classification, the Act is nonetheless subject to intermediate scrutiny. *United States v. Virginia*, 518 U.S. 515, 524 (1996); *Grimm*, 972 F.3d at 608.

B. North Greene's "Save Women's Sports Act" is facially discriminatory.

To demonstrate an act's facial unconstitutionality, "the challenger must establish that no set of circumstances exists under which the act would be valid." *United States v. Salerno*, 481 U.S. 739, 745 (1987). The North Greene "Save Women's Sports Act's" anti-transgender discrimination is plain from the statutory text. The Act categorically bans transgender girls from all female athletic teams. R. 14.

North Greene explicitly declares that "[c]lassifications based on gender identify serve no legitimate relationship" to promoting equal athletic opportunities for girls and restricts participation on girls' teams based on "biological sex at birth." N.G. Code §§ 22-3-16(c), 22-3-16(a). Further, the Act explicitly distinguishes between "gender identity" and "biological sex," and

defines "biological sex" in a way that treats the two concepts as "separate and distinct." N.G. Code § 22-3-16(c). This express separation necessarily targets only transgender students, who, unlike their cisgender peers, have a gender identity that is different than their sex assigned at birth. As a result, only transgender girls are barred from participating in sports consistent with their gender identity. R. 4. It is important to note that gender identity encompasses more than just a person's biological sex; it is who they are. Denying that link will only lead to physiological harm. Thus, the Act "on its face discriminates between cisgender athletes, who may compete on athletic teams consistent with their gender identity, and transgender [female] athletes, who may not compete on athletic teams consistent with their gender identity." *Hecox v. Little*, 479 F.Supp. 3d 930, 975 (D. Idaho 2020). Therefore, the Act is facially discriminatory, and there is no set of circumstances in which the Act is constitutional.

The Act's only function is to discriminate against A.J.T. and other transgender girls. While Respondents, and the lower court, assert that the Act treats transgender girls no differently than cisgender boys, this is plainly incorrect. R. 8. All other students in North Greene — cisgender girls, cisgender boys, and transgender boys — are all permitted to play on sports teams that best fit their gender identity. It is only because A.J.T. is a transgender girl that the Act treats her differently by excluding her from playing on girls' teams. If North Greene truly sought to treat A.J.T. no differently than other students, they would treat her like other girls, not a cisgender boy.

The lower court seemed to accept Respondents' argument that the Act does not discriminate based on transgender status because transgender status does not change "a person's biology or physical characteristics." R. 8. This argument seems to rest on the assertion that transgender girls may share the same physiological characteristics as cisgender boys. Regardless of accuracy, that assertion speaks only to whether treating transgender girls equally to cisgender boys for purposes

of school sports is justified, not whether the Act classifies based on transgender status in the first place. The "inescapable conclusion" still remains that the Act discriminates based on transgender status. *Hecox*, 479 F. Supp. 3d at 975.

Given the "Save Women's Sports Act's" express distinction between "gender identity" and "biological sex," any attempt to classify the Act's facial discrimination as mere disparate impact is null. N.G. Code § 22-3-16(c). The Act's only function is to treat transgender girls differently. "The proper focus of the constitutional inquiry is the group for whom the law is a restriction, not the group for whom the law is irrelevant." *City of L.A., Cal. v. Patel*, 576 U.S. 409, 418 (2015). Thus, the fact that the Act solely excludes transgender girls from girls' sports teams only confirms its facial discrimination against transgender girls. *United States v. Windsor*, 570 U.S. 744, 771 (2013). The foregoing illustrates that North Greene's "Save Women's Sports Act" is facially discriminatory and should be struck down by this Court.

C. North Greene's facially discriminatory "Save Women's Sports Act" fails intermediate scrutiny.

The Constitution allows different groups of people to be treated differently, if the basis for the law is "some ground . . . having a fair and substantial relation to the object of the legislation, so that all persons similarly situated shall be treated alike." *Reed v. Reed*, 404 U.S. 71, 76 (1971). Based on the discussion above, we know that the "Save Women's Sports Act" is subject to intermediate scrutiny. Thus, to survive intermediate scrutiny, an act's classification must be "substantially related to a sufficiently important government[] interest." *Cleburne*, 473 U.S. at 440-41. Said differently, North Greene must demonstrate that the Act furthers an important government interest by means that are substantially related to that interest. *Craig v. Boren*, 429 U.S. 190, 197 (1976). North Greene utterly fails to make this requisite showing. As such, the Act fails intermediate scrutiny and violates the Equal Protection Clause of the Fourteenth Amendment.

North Greene's "Save Women's Sports Act" announces the State's animus towards transgender children. The Act bars transgender girls from competing in sports because their biological sex does not align with their gender identity. R. 4. A.J.T. was subjected to transgender status discrimination, which is rooted in sex discrimination, because she was viewed as failing to conform to the sex stereotype endorsed by North Greene. A.J.T. is being punished because of her gender nonconformity, and in the process, North Greene inherently relies on sex stereotypes. *Glenn v. Brumby*, 663 F.3d 1312, 1319 (11th Cir. 2011) ("Ever since the Supreme Court began to apply heightened scrutiny to sex-based classifications, its consistent purpose has been to eliminate discrimination on the basis of gender stereotypes.")

Although the statute would also prohibit a biological boy who identifies as a biological boy from playing on the girls' sports teams, there is nothing in the record to suggest that this situation exists. Further, there is no evidence that a biological boy has ever attempted to play on a girls' team in North Greene. However, the record does indicate that the North Greene Assembly passed Senate Bill 2750 after A.J.T. competed with girls, without incident. R. 3. Now, this new legislation prohibits A.J.T.'s involvement. R.3. Based on the record, North Greene's "Save Women's Sports Act" has only ever affected a single individual — A.J.T.

North Greene states that the objectives of the Act are "to provide equal athletic opportunities for female athletes and to protect the physical safety of female athletes when competing." R. 4. However, "the government[] purpose cannot be wholly unrelated to the objective of [the] statute." *Reed*, 404 U.S. at 76. While Petitioner agrees that the asserted objectives are important government purposes, North Greene's actions do nothing to further them. North Greene's chosen means of accomplishing these objectives are wholly unrelated to their intended purpose. Transgender individuals make up less than 0.6% of the United States' population. Additionally, cisgender

female athletes endanger the safety of other cisgender female athletes, thereby making the act vastly underinclusive.

1. The transgender population makes up less than 0.6% of the United States' population.

Because she is a transgender girl, A.J.T. is already in the minority of her peers. R. 14. Further, she is being treated differently than cisgender girls. R. 3. A.J.T. simply wants to *continue* playing sports with girls by running cross-country and playing volleyball. R. 3. Positions for cisgender girls on the school's cross-country or volleyball teams would not be significantly diminished if A.J.T. was given the opportunity to continue playing. A.J.T. is just one person. By only taking one spot, other girls' positions are not limited. As such, it is inappropriate to say that letting A.J.T. participate in sports would be discrimination against all girls. This Court cannot justify discriminating against A.J.T. to remedy past discrimination against female athletes.

Although this Court has recognized some "real differences" between males and females that could legitimately form the basis for different treatment, those physiological differences should not solely dictate who can compete. R. 6-7 (citing *Virginia*, 518 U.S. at 533). Here, the "Save Women's Sports Act" only distinguishes between boys and girls based on "reproductive capabilities." R. 4. The Act states that "[g]ender identity is separate and distinct from biological sex," and that "[c]lassifications based on gender identity serve no legitimate relationship to the State of North Greene's interest in promoting equal athletic opportunities for the female sex." N.G. Code § 22-3-16(c). Although the North Greene General Assembly defines "biological sex," "gender identity" is left undefined. "Gender identity" is only referenced as "separate and distinct," so how is this Court to interpret its meaning? R.4. Gender identity is inextricably linked to North Greene's objectives of promotion and protection of female athletes. Under the Act, A.J.T must deny who she is as a person to play sports. If A.J.T. refuses to do that, then she does not play sports

at all. Thus, the Act does not further the State's objective of providing equal athletic opportunities for female athletes. The Act serves solely to discriminate against a minority section of the population — transgender female athletes.

Additionally, A.J.T. was diagnosed with gender dysphoria in 2022. R. 3. A.J.T. has socially transitioned and she lives her life fully as a girl. R.3. Emotional harm and social regression are likely if A.J.T. is forced to either play sports as a boy or not play at all. The Mayo Clinic notes that, "[p]eople who have gender dysphoria also often experience discrimination, resulting in stress. Adolescents and adults with gender dysphoria without gender-affirming treatment might be at risk of thinking about or attempting suicide." Mayo Clinic, *Gender dysphoria* (September 12, 2024), https://www.mayoclinic.org/diseases-conditions/gender-dysphoria/symptoms-causes/syc-20475255. Transgender children are already predisposed to too many societal dangers. This Court should not deny A.J.T. the known benefits of playing sports. Gender-affirming recognition, especially in school sports, is imperative to A.J.T.'s mental health.

2. Cisgender girls endanger the safety of other female athletes.

Many physiological differences exist amongst similarly aged cisgender girls. Various factors including height, weight, strength, diet, and training regimen can affect a girl's power and overall athletic prowess. The Act does not put limits on any of these physical factors for cisgender girls. Nor does it consider variance in athletic skill. Under the Act, a cisgender girl who is twice the size of another female competitor may legally compete. In the world of sports, this is likely to lead to other female athletes being injured.

Throughout history, this Court has relied on more than just legal citations to make decisions. *Muller v. Oregon*, 208 U.S. 412 (1908). In what is now referenced as the "Brandeis Brief," the *Muller* Court also considered scientific information and social science literature.

PHILIPPA STRUM, BRANDEIS AND AMERICA 122 (Nelson L. Dawson ed., 1989). Building upon this tradition, this Court should look to the social sciences for aid in deciding the issue currently before the Court. "It is a commonly held belief that androgenic hormones (especially testosterone) confer an athletic advantage in competitive sport. [As a result], transgender female individuals, because of high endogenous testosterone levels, are perceived to hold an advantage in sport (when testosterone has not been blocked to a cisgender female level)." BETHANY ALICE JONES ET AL., *Sport and Transgender People: A Systematic Review of the Literature Relating to Sport Participation and Competitive Sport Policies,* Sports Med. 47, 701–716. (2016). "However, there has been a paucity of research that has directly explored how androgenic hormone levels are associated with athletic competence in both cisgender and transgender populations." *Id*. This research concluded that:

> There is no direct or consistent research suggesting transgender female individuals (or male individuals) have an athletic advantage at any stage of their transition (e.g. cross-sex hormones, gender-confirming surgery) and, therefore, competitive sport policies that place restrictions on transgender people need to be considered and potentially revised.

Id. This research demonstrates that A.J.T. does not have a competitive advantage in sports with or without the use of hormones. R. 7.

A law is underinclusive when ""[a]ll who are included in the class are tainted with the mischief, but there are others also tainted whom the classification does not include." Joseph Tussman & Jacobus tenBroek, *The Equal Protection of the Laws*, 37 Cal. L. Rev. 341, 348 (1949). An under-inclusive law is a "prima facie violation of the equal protection requirement of reasonable classification." *Id.* ("Underinclusive classifications do not include all who are similarly situated with respect to a rule, and thereby burden less than would be logical to achieve the intended government end.")

Here, the record is silent as to A.J.T.'s height, weight, strength, diet, and training regimen. However, the record does indicate that at the commencement of this litigation, A.J.T. had not yet begun puberty. R. 7. Additionally, there is no evidence that A.J.T. has ever even touched a volleyball or ran in a cross-country meet. Just as all cisgender girls have different skill levels, so do transgender girls. Thus, the Act is vastly underinclusive because achieving North Greene's objective of athlete safety is not achieved by targeting only transgender girls. Furthermore, there is no evidence in the record that A.J.T. has injured another athlete.

The "Save Women's Sports Act" does nothing to further North Greene's objectives of providing equal athletic opportunities and protecting the physical safety of female athletes. Said differently, North Greene cannot demonstrate that the Act furthers an important government interest by means that are substantially related to that interest. As such, the "Save Women's Sports Act" fails intermediate scrutiny.

D. Even if this Court finds North Greene's "Save Women's Sports Act" facially neutral, the Act still fails intermediate scrutiny because invidious discrimination exists.

Even if this Court were to find the Act facially neutral, invidious discrimination exists such that the Act is still unconstitutional. When challenging a facially neutral statute on the ground that its effects are disproportionately adverse in violation of the Equal Protection Clause, this Court employs a two-prong test. *Pers. Adm'r of Mass. v. Feeney*, 442 U.S. 256, 257 (1979). First, the Court considers whether the classification is in fact neutral. *Id*. Second, the Court asks whether the classification's adverse effects reflect invidious discrimination. *Id*. Although Petitioner contends that the "Save Women's Sports Act" is facially discriminatory, even if this Court were to conclude otherwise, invidious discrimination exists rendering the Act unconstitutional.

Invidious discrimination is "used to describe the act of treating a class of persons unequally in a manner that is malicious, hostile, or damaging. It refers to discrimination that is motivated by

animus or ill will towards a particular group, rather than based on a legitimate, non-discriminatory reason." Cornell Law Institute, Wex Definitions, *Invidious discrimination* (September 12, 2024), https://www.law.cornell.edu/wex/invidious_discrimination. A finding of invidious discrimination requires a finding of both disparate impact and purposeful discrimination. Ann K. Wooster, Annotation, *Equal Protection and Due Process Clause Challenges Based on Sex Discrimination - Supreme Court Cases*, 178 A.L.R. Fed. 587 (2024). "The Fourteenth Amendment guarantees equal laws, not equal results." *Feeney,* 442 U.S. at 273; See also *Washington v. Davis,* 426 U.S. 229, 237 (1976); *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp*., 429 U.S. 252, 265 (1977). Although disparate impact provides an important starting point, "purposeful discrimination is the 'condition that offends the Constitution.'" *Feeney,* 442 U.S. at 274 (quoting *Swann v. Charlotte-Mecklenberg*, 402 U.S. 1, 16 (1971)). A "'discriminatory purpose' implies more than just intent as volition or intent as awareness of consequences; it implies that the decision maker selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group." *Feeney,* 442 U.S. at 258.

Here, the Act's disparate impact is obvious. The transgender population makes up less than 0.6% of the United States' population. R. 14. Additionally, the Act's purposeful discrimination is evident. The Act was passed in response to A.J.T. competing on a girls' cheerleading team. R.3. The Act's only purpose is to discriminate against transgender children. Where A.J.T.'s gender identity is not in line with her biological sex, she is barred from participating in girls' sports at her school. R. 3. Therefore, invidious discrimination exists which subjects the Act to intermediate scrutiny.

As previously discussed, the "Save Women's Sports Act" does nothing to further North Greene's objectives of providing equal athletic opportunities and protecting the physical safety of

female athletes. As such, the "Save Women's Sports Act" fails intermediate scrutiny regardless of whether this Court concludes that the Act is facially discriminatory or facially neutral.

Invidious discrimination prohibits equal protection under the law. A past wrong cannot be made right by promoting another wrong. North Greene's "Save Women's Sports Act" violates the Equal Protection Clause of the Fourteenth Amendment. The Act is subject to intermediate scrutiny because the Act discriminates based on a quasi-suspect class. The Act is facially discriminatory and fails intermediate scrutiny. However, even if this Court finds the Act facially neutral, invidious discrimination exists such that the Act still fails intermediate scrutiny. Transgender individuals represent only 0.6% of the United States' population. R. 14. Approximately 2 million Americans are looking to this Court for protection.

Singularly, any one of these arguments provides cause for this Court to find an equal protection violation. When taken in totality, the violation is unconscionable. Therefore, this Court should reverse the Fourteenth Circuit's ruling and deny Respondents' motion for summary judgment.

CONCLUSION

This Court should reverse the Fourteenth Circuit. North Greene's "Save Women's Sports Act" is an infringement on A.J.T.'s rights under both Title IX and the Equal Protection Clause of the Fourteenth Amendment. Under this Act, A.J.T. has been discriminated against on the basis of sex by a federal funding recipient, and she has suffered irreparable harm. Furthermore, A.J.T., as a member of a quasi-suspect class, has been denied equal protection under the law. The Act both facially discriminates against her and promotes invidious discrimination. This Court should reverse the Fourteenth Circuit to protect A.J.T.'s rights and to dissuade other states from disguising their prejudices in their laws.