No. 24-2020

In the Supreme Court of the United States

A.J.T., PETITIONER

v.

STATE OF NORTH GREENE BOARD OF EDUCATION

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

BRIEF FOR THE RESPONDENT

TEAM NUMBER 2

QUESTIONS PRESENTED

1. Whether Title IX prevents a state from consistently designating girls' and boys' sports teams based on biological sex determined at birth.
2. Whether the Equal Protection Clause prevents a state from offering separate boys' and girls' sports teams based on biological sex determined at birth.

PARTIES TO THE PROCEEDINGS

Petitioner (plaintiff-appellant below) is A.J.T., a minor whose mother brought the suit on the minor's behalf.

Respondents (defendant-appellees below) are the State of North Greene Board of Education; the State of North Greene itself; Floyd Lawson, in his official capacity as North Greene State Superintendent; and Barney Fife, in his official capacity as the Attorney General for the State of North Greene.

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TO THE HONORABLE SUPREME COURT OF THE UNITED STATES

OPINIONS BELOW

Pages 1–16 of the record contain the opinion of the United States Court of Appeals for the Fourteenth Circuit. *A.J.T. v. North Greene Bd. of Educ*., 2024 WL 98765 (14th Cir. 2024). The Eastern District of North Greene's memorandum opinion remains unreported at *A.J.T. v. North Greene Bd. of Educ.*, 2023 WL 56789 (E.D. N. Greene 2023).

CONSTITUTIONAL PROVISIONS & STATUTES

Title IX states, in relevant part, 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).

In relevant part, the Equal Protection Clause provides that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

SUMMARY OF THE CASE

I. Statement of the Facts

The State of North Greene set out to save women's sports. Recognizing that biological men tend to run faster, jump higher, and hit harder than women, North Greene asked those men to compete only among themselves. *See* R. at 7. Separating sports in this way increases women's athletic opportunities by assuring every spot on a woman's team goes to a woman. *See id.* at 3.

North Greene achieved this goal through the Save Women's Sport Act ("the Act"). *Id.* That Act requires schools to designate sports teams as "male," "female," or "coed." N.C. Code § 22-3-16(a). It then prohibits "students of the male sex" from joining all-female sports teams when

"selection for such teams is based upon competitive skill or the activity involved is a contact sport." *Id.* at (b).

The Act clearly defines "male" and "female" as relating to "biological sex." *See* N.G. Code § 22-3-15(a)(1)–(3). "Biological sex" refers to "an individual's physical form . . . based solely on the individual's *reproductive biology and genetics at birth*." *Id.* at (a)(1) (emphasis added). Thus, under the Act, "females" have female biology at birth, and males have male. *Id.* at (a)(2)–(3) (explaining in the Act "female" synonymous with "women" and "girls," while "male" is used interchangeably with "men" and "boys"). The Act "has nothing to do with gender identity" because gender identity has "no legitimate relationship to the State of North Greene's interest in promoting equal athletic opportunities for the female sex." R. at 4; N.G. Code § 22-3-16(c).

When North Greene passed this law in 2023, Petitioner A.J.T. was eleven years old. R. at 3. At that time, A.J.T. sought to join "the girls' volleyball and cross-country teams" at school. *Id.* The school then prevented Petitioner from joining "because A.J.T. is a transgender girl." *Id.* In other words, Petitioner was "assigned . . . male at birth" but now lives "as a girl." *Id.* For years, A.J.T. lived as a girl, dressed as a girl, took a girl's name, and even joined a girls' cheerleading squad. *Id.* In light of all this, A.J.T. "was diagnosed with gender dysphoria in 2022." *Id.*

Despite this diagnosis, A.J.T. has yet to commence "puberty-blocking treatment." *Id.* Although Petitioner's experts alleges that such treatment would "prevent" male puberty's influx of testosterone, North Greene's expert recognizes "that often biological boys have a competitive advantage over biological girls even before puberty." R. at 3, 7.

II. Procedural History

Petitioner, "by and through the child's mother," filed this suit to permanently enjoin the Save Women's Sports Act. R. at 4. Petitioner alleged violations of Title IX and the Equal Protection Clause. *Id.* Subsequently, the defendants—the State of North Greene, the North Greene Board of

Education, Attorney General Barney Fife, and State Superintendent Floyd Lawson—moved for summary judgment. *Id.*

Both the district and appeals courts found for the defendants, and this Court then granted Petitioner's writ of certiorari. R. at 17.

SUMMARY OF THE ARGUMENT

This Court should clarify the ways in which the law protects female student-athletes.

Title IX protects them by allowing states like North Greene to separate scholastic sports by biological sex. Such separation assures girls every competitive opportunity that male athletes have. Title IX ignores any effect this separation has on male-to-female athletes because that statute bans discrimination on the basis of *biological sex*, not gender identity. Further, because male-to-female students are more alike to biological boys for purposes of sport, a law that treats them the same does not discriminate under Title IX. Finally, laws like North Greene's do not inherently stigmatize transgender students: they simply recognize real sex differences in a neutral way.

North Greene satisfies the Equal Protection Clause because the Act classifies students by sex to further an important government interest—women's opportunity and safety. Under this Court's precedent, the Equal Protection Clause only requires the government to treat similarly situated people alike. Transgender females are similarly situated to biological males because their athletic performance is the same and, therefore, pose the same danger to the physical safety of female athletes. The Save Women's Sports Act survives the application of intermediate scrutiny because it furthers North Greene's goals of ensuring equal athletic opportunities for females and protecting female athletes' safety. These important governmental interests are furthered through the separation of school sports teams by biological sex and preventing biological boys from participating on biological girls' teams.

Even if this Court were to find that the classification was instead based on gender identity and not biological sex, rational basis review would apply because gender identity is not a suspect class. Gender identity is not an immutable characteristic because it can change, and transgender people are a politically powerful minority.

ARGUMENT

The case sits before the Court on an appeal of summary judgment. R. at 5, 12. Courts grant summary judgment when "there is 'no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Dupree v. Younger*, 598 U.S. 729, 731 (2023) (quoting Fed. R. Civ. P. 56(a)). This Court construes all facts in the nonmovant's favor. *See Tolan v. Cotton*, 572 U.S. 650, 657 (2014) (internal citation omitted). Further, the Court considers all legal issues *de novo*. *Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 465 n.10 (1992).

Applying this standard, this Court should find as the two lower courts did: no factual disputes exist, and the law entitles North Greene to favorable judgment.

I. Title IX allows North Greene to promote women's opportunities by dividing scholastic sports between biological sexes.

Title IX permits North Greene to separate scholastic sports by biological sex. Such separation promotes the very objects of Title IX: increased opportunity and safety for an immutably disadvantaged sex. *Cf. Adams ex rel. Kasper v. Sch. Bd. of St. John's Cnty.*, 57 F.4th 791, 816–17 (11th Cir. 2022) (en banc). After all, separated sports assure biological women an equal number of athletic positions where biological men could outcompete them. *Id.* at 819 (Lagoa, J., specially concurring). Some, however, believe that these opportunities violate Title IX by robbing male-to-female students of the ability to compete as their preferred gender identity. *See B.P.J. ex rel. Jackson v. West Virginia State Bd. of Educ.*, 98 F.4th 542, 563 (4th Cir. 2024). Title IX's text and purpose make clear, though, that it prohibits discrimination on the basis of *biological*

sex, not gender identity. *Adams*, 57 F.4th at 816. Thus, because North Greene treats biological boys—even those who are transgender—similarly, its Act lawfully separates sports by sex.

Title IX protects students by prohibiting educational discrimination "on the basis of sex." 20 U.S.C. § 1681(a). To succeed on a Title IX claim, Petitioner A.J.T. must prove the following: An educational institution receiving federal assistance (A) discriminated on the basis of sex and (B) thereby caused Petitioner harm. *See Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 616 (4th Cir. 2020) (internal citation removed). Petitioner A.J.T. alleges that preventing transgender students from competing as their preferred gender amounts to sex discrimination and that such prevention causes emotional harm through stigma. *See* R. at 15–16.

Petitioner, however, can show neither sex discrimination nor harm. First, sex discrimination under Title IX means treating "similarly situated" students differently because of biological sex. *Bostock v. Clayton Cnty.*, 590 U.S. 644, 658 (2020) (internal citation omitted) (similarly situated); *Adams*, 57 F.4th at 818 (Lagoa, J., specially concurring) (biological sex). Thus, because biological sex is not gender identity, any distinctions based on gender identity do not amount to *sex* discrimination. North Greene further follows Title IX by treating biologically similar students—transgender females and biological males—similarly. Second, North Greene's law does not stigmatize transgender students. The law welcomes such students to participate in school sports and, in fact, assumes such students are as capable as their biological counterparts.

Because North Greene treats biologically similar people similarly and recognized the inherent abilities of transgender students, North Greene complies with Title IX. This Court, therefore, should uphold North Greene's law.

A. North Greene's sports program meets its Title IX obligation of sex equality.

North Greene's law treats the sexes as equally as Title IX requires. Title IX prevents federally funded educational institutions from discriminating against students "on the basis of sex."

20 U.S.C. § 1681(a). This obligation means that schools, when acting with biological sex in mind, must treat "similarly situated" students alike. *See* R. at 11 (citing *Grimm*, 972 F.3d at 618).

Here, North Greene meets its Title IX duty. First, the statute's use of "sex" requires that the discrimination occur on the basis of *biological sex*, not gender identity. Thus, any effect that the law has on the basis of *gender identity* does not amount to sex discrimination. Second, North Greene asks transgender students to compete with athletes of their same sex—that is, athletes situated similarly to them in biology and athletic ability.

For these reasons, Title IX supports North Greene's law.

1. "Sex" means "biological sex."

Title IX refers to biological sex when it prohibits "sex" discrimination. 18 U.S.C. § 1681(a). This Court faithfully applies legislative commands by construing statutory terms like "sex" with reference to "the public meaning" of the law "at the time of its enactment." *Bostock*, 590 U.S. at 654. Title IX's text, structure, and purpose all reveal the same original public meaning: "sex" means *biological sex*.

This revelation neatly resolves this case: because it contemplates only biological sex, Title IX does not prohibit treatment on the basis of a transgender student's *gender identity*. Therefore, Petitioner cannot prove sex discrimination from a claim of gender identity discrimination.

The above conclusion implies that biological sex and gender identity are distinct. This is because they are distinct. "Sex" refers to a person's reproductive biology, function, and genetics. *See Adams*, 57 F.4th at 812; N.G. Code § 22-3-15(a)(1). "Gender identity" refers to an "internal sense of being male, female[,] or something else, which *may or may not correspond to an individual's sex*." *A Glossary: Defining Transgender Terms*, 49 Monitor on Psych. 32 (2018). In other words, people have a biologically real sex *and* a feeling about that reality. That feeling,

however sincere and personal, does not perfectly correspond to its object. In this way, the immutable reality of biology remains distinct from gender.

As explained below, Title IX guards only against discrimination on immutable biology.

a. *Text*

Title IX's text supports the biological reading of the statute. Without much elaboration, Title IX simply prohibits educational discrimination "on the basis of sex." 20 U.S.C. § 1681(a). Courts clarify statutory terms by seeking their common usage at the time Congress used them. *See Taniguchi v. Kan Pac. Saipan, Ltd.*, 566 U.S. 560, 566–69 (2012) (using contemporaneous dictionaries to divine original meaning). Here, contemporary usage in dictionaries and federal regulations shows that, at the time of Title IX's passage, "sex" meant a person's reproductive biology and genetics.

When contemporary dictionaries agree on a meaning, courts often treat those definitions as dispositive of meaning. *See Adams*, 57 F.4th at 812. Such courts do not substitute a lexicographer's meaning for the public's; rather, these courts sensibly accept that surveying a wide variety of dictionaries introduces "objectivity and prevent[s] judges from selecting definition" on "personal preference." Phillip A. Rubin, *War of the Words: How Courts Can Use Dictionaries in Accordance with Textualist Principles*, 60 Duke L.J. 167, 194–95 (2010). In essence, when dictionaries—representing a wide variety of linguistic methodologies and political beliefs—agree, the public likely would as well.

This Court engaged in such analysis in *Taniguchi v. Kan Pacific Saipan, Ltd*. 566 U.S. at 566–67. There, this Court found that "interpreters," as used in 1978's Court Interpreters Act, includes only those who "orally" translate, not those who translate in writing. *Id.* at 562. In so holding, the Court relied "on dictionaries *in use when Congress enacted the Court Interpreters Act*." *Id.* at 566 (emphasis added). It found that, with *one* potential exception, contemporaneous

dictionaries "defined the words 'interpreter' and 'interpret' in terms of oral translation." *Id.* at 567. Such widespread acceptance signaled that "the ordinary or common meaning . . . does not include those who translate writings." *Id.* at 569.

The current case presents even stronger dictionary evidence than *Taniguchi*: *every* major dictionary contemporaneous with Title IX's 1972 enactment defines "sex" in terms of biology. The Eleventh Circuit ably compiled the sheer breadth of the dictionaries' linguistic agreement:

> Reputable dictionary definitions of "sex" from the time of Title IX's enactment show that when Congress prohibited discrimination on the basis of "sex" in education, it meant biological sex, i.e., discrimination between males and females. *See, e.g.*, *Sex, American Heritage Dictionary of the English Language* (1976) ("The property or quality by which organisms are classified according to their reproductive functions."); *Sex, American Heritage Dictionary of the English Language* (1979) (same); *Sex, Female, Male, Oxford English Dictionary* (re-issue ed. 1978) (defining "sex" as "[e]ither of the two divisions of organic beings distinguished as male and female respectively," "female" as "[b]elonging to the sex which bears offspring," and "male" as "[o]f or belonging to the sex which begets offspring, or performs the fecundating function of generation"); *Sex, Webster's New World Dictionary* (1972) ("[E]ither of the two divisions, male or female, into which persons, animals, or plants are divided, with reference to their reproductive functions."); *Sex, Female, Male, Webster's Seventh New Collegiate Dictionary* (1969) (defining "sex" as "either of two divisions of organisms distinguished respectively as male or female," "female" as "an individual that bears young or produces eggs as distinguished from one that begets young," and "male" as "of, relating to, or being the sex that begets young by performing the fertilizing function"); *Sex, Random House College Dictionary* (rev. ed. 1980) ("[E]ither the male or female division of a species, esp. as differentiated with reference to the reproductive functions.").

Adams, 57 F.4th at 812.

The one contemporaneous dictionary that *may* suggest otherwise, in fact, defines sex biologically. Some have wrongly found that the *American College Dictionary* defines sex without reference to biology as "the *character* of being either male or female." *Sex*, *American College Dictionary* (1970) (emphasis added); *see also Adams*, 57 F.4th at 812. However, that dictionary defines "female" as a person "of the *sex* which *conceives* and brings forth young" and "male" as a person "belonging to the *sex* which *begets young*." *Female*, *Male*, *American College Dictionary*

(1970) (emphases added). Thus, the fundamental components of the dictionary's definition of "sex" are *biological*. The overwhelming consensus of dictionaries, therefore, evinces that the ordinary understanding of sex was *biological*.

Further, contemporaneous federal regulations show that "sex" meant reproductive biology. A 1980 regulation permitted schools to separate toilet facilities "on the basis of sex," so long as the facilities were "comparable to such facilities provided for students of the other sex." 34 C.F.R. § 106.33. The reference to "the *other* sex" clearly implicates the biological binary necessary for sexual reproduction. *Id.* (emphasis added). The Department of Education, therefore, understood biology informed the meaning of "sex."

Although regulations do not merit mandatory deference on legal questions, this Court has confirmed that "the informed judgment of the Executive Branch—especially in the form of an interpretation issued simultaneously with the enactment of the statute—could be entitled to 'great weight.'" *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2259 (2024) (quoting *United States v. Am. Trucking Ass'ns*, 310 U.S. 534, 549 (1940)). This Court gives great weight to an agency's understanding by considering their timing, expertise, and "all those factors which give it the power to persuade." *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944).

In this case, 34 C.F.R. § 106.33 deserves some weight. The Department of Education ("the DOE") codified that rule in 1980—some thirty-six years before the first federal appeals court found that "sex" included gender identity. *See G.G. ex rel. Grimm v. Gloucester Cnty. Sch. Bd.*, 822 F.3d 709 (4th Cir. 2016), *vacated and remanded*, 580 U.S. 1168 (2017). Thus, the rule has a better sense of what "sex" meant to the enacting Congress than later observers. Further, the Department of Education specializes in preventing sex discrimination under Title IX; thus, few know Title IX better than the DOE does. *See Title IX and Sex Discrimination*, U.S. Dep't of Educ.,

https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html (last visited Sept. 13, 2024) (showing DOE's enforcement authority).

To clarify, North Greene does not cite 34 C.F.R. § 106.33 as a piece of mandatory authority. Rather, it cites § 106.33 to show that, relatively soon after enactment, the federal government uncontroversially relied on a biological meaning of sex. This reliance and its relative non-controversy demonstrate that the ordinary meaning of "sex" was biological.

For these reasons, "sex" in Title IX refers to a person's reproductive biology, function, and genetics. Petitioner's assertion of discrimination on gender identity, therefore, must fail.

b. *Structure*

Title IX's structure confirms the biological reading. Although Title IX bans "sex" discrimination in education, a carveout within the statute allows "educational institution[s] . . . [to] maintain[] separate living facilities for the different sexes." 20 U.S.C. §§ 1681(a), 1686. This Court's precedent permits interpreting a single word in a statute—like "sex"—in light of "the whole act," including its carveouts. *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 51 (1987).

Courts generally read statutes without rendering any particular passage of the whole act ineffectual. This Court, in fact, once wrote that it "must give effect to every word that Congress used in the statute" or else risk legislating. *Lowe v. SEC*, 472 U.S. 181, 207 n.53 (1985). Therefore, this Court avoids interpretations that render part of a legal text "meaningless." *United States v. Butler*, 297 U.S. 1, 65 (1936).

Here, the gender identity reading of "sex" would render Title IX's housing carveout "meaningless." *Adams*, 57 F.4th at 813. As the Eleventh Circuit notes, if "sex" encompasses biology *and* identity, then "transgender persons—who are members of the female and male sexes by birth—would be able to live in both living facilities associated with their biological sex and living facilities associated with their gender identity or transgender status." *Id.* The carveout, then,

would be a non sequitur: housing could not truly be *separate* if individuals can opt into housing on either side of the dividing line. *See id.*

Therefore, if every word of Title IX should retain meaning, "sex" must be biological.

c. *Purpose*

Title IX's fundamental purpose of female equality also counsels for the biological reading. Title IX prohibits maltreatment "on the basis of sex" in education. 20 U.S.C. § 1681(a). This Court has, from time to time, permitted purpose to guide its analysis of statutory terms like "sex." *See Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 285 (1998) (assuring judicial interpretation does not counter statutory "structure and purpose").

Title IX's basic purpose is to increase women's opportunities in educational settings. Early committee reports imply as much: the House Committee on Labor and Education highlighted examples in which schools limited women's opportunities to favor men. *See* H.R. Rep. No. 92-554, at 51 (1971). The Committee especially noted that "21,000 women students were turned down for college entrance in the State of Virginia while not one male was rejected." *Id.*

Courts have long recognized that Title IX's goal of increased opportunity applies in the scholastic sports settings. During an appeal to Brown University's decision to cut funding for certain women's sports, the First Circuit wrote, "Equal opportunity to participate lies at the core of Title IX's purpose." *Cohen v. Brown Univ.*, 991 F.2d 888, 897 (1st Cir. 1993). Further, the Second Circuit has found that "one sex" loses some of its opportunity when better benefits are "available to athletes of the *other* sex." *McCormick ex rel. McCormick v. Sch. Dist. of Mamaroneck*, 370 F.3d 275, 293 (2d Cir. 2004) (emphasis added).

Given that male-to-female students "have physiological advantages in many sports," their participation will result in a reduction of opportunities for biologically female athletes. *Adams*, 57 F.4th at 819 (Lagoa, J., specially concurring). Post-pubescent biological males tend to "jump (25%)

higher than females, throw (25%) further than females, run (11%) faster than females, and accelerate (20%) faster than females." Jennifer C. Braceras et. al, *Competition: Title IX, Male-Bodied Athletes, and the Threat to Women's Sports* 20 (2021) (citations removed). These advantages extend even to prepubescent boys: a 2012 study found that prepubescent "boys performed better in tests of aerobic fitness, strength, speed, and agility, while girls performed better in tests of balance and flexibility." *Id.* at 18. Thus, as biological boys compete for spots on women's teams, women will be outcompeted and lose opportunity—the very situation Title IX sought to avert.

Therefore, even allowing a young person like Petitioner would court the very concerns that Title IX sought to avert. Although Petitioner has yet to hit puberty and seeks to join noncontact sports, biological boys still retain important advantages that would reduce women's ability to compete against them.

For this reason, Title IX uses "sex" in a biological sense.

d. Bostock *does not apply to Title IX.*

Bostock v. Clayton County does not require this Court to find that Title IX's use of "sex" includes gender identity. 590 U.S. at 649. That case held that, for Title VII purposes, "it is impossible to discriminate against a person for being . . . transgender without discriminating against that individual based on sex." *Id.* at 660. However, *Bostock*'s reasoning is specific to Title VII, and this Court cannot transpose that reasoning onto Title IX.

Bostock, by its plain terms, limits its reasoning to the Title VII context. As the Court wrote, "[t]he question" in *Bostock* "isn't just what 'sex' meant, but what *Title VII* says about it." *Id.* at 656 (emphasis added). This framing acknowledges that *Bostock*'s prohibition on transgender discrimination arises from Title VII's specific meaning.

The Court found that Title VII bars *all* consideration of sex in employment. It expressly held that, if sex is just "*one* but-for cause" of an employment decision, "that is enough to trigger the law." *Id.* (emphasis added). The Court then reasoned that consideration of transgender identity inherently involves sex. *See id.* at 660. After all, an employer who does not tolerate transgender employees does so on a belief that the employee *has a sex* that the employee ignores. *Id.* Thus, even assuming Title VII means "sex" biologically, an employer who considers transgender status will always consider sex—even if the sex is unknown. *Id.* And, as stated, Title VII prohibits *all consideration of sex*.

Title IX, however, does not bar all consideration of sex in education. All courts agree—and Petitioner does not challenge—that Title IX permits schools to treat men and women differently so long as they do no "worse" to one person than to another similarly situated. *Grimm*, 972 F.3d at 618. Thus, educational institutions *can* make decisions with reference to sex. Those decisions, however, must not treat like groups differently.

Thus, the Court cannot avoid defining "sex" as it did in *Bostock*. If the statute lets educational institutions make decisions *on sex*, the statute clearly contemplates *a* meaning of "sex." To know if schools have complied with Title IX, the Court must divine that meaning. However, even if *Bostock* correctly held that treatment of transgender students will always implicate sex, the Court cannot end its analysis there. The Court must determine whether the treatment of transgender students, in fact, treats the "similarly situated" differently. *See id.*

For these reasons, *Bostock* does not determine this case or the meaning of Title IX. The Court should instead find meaning in Title IX's text, structure, and purpose—all of which confirm that "sex" means *biological* sex.

2. Discrimination means treating similar students differently.

North Greene's law comports with Title IX because it treats transgender athletes like similarly situated athletes. Title IX prevents certain educational institutions from subjecting anyone to sex "discrimination." 20 U.S.C. § 1681(a). Here, "discrimination 'means[s] treating [an] individual worse than others who are similarly situated." *Grimm*, 972 F.3d at 618 (quoting *Bostock*, 590 U.S. at 657). Here, male-to-female students and cisgender males *are* similarly situated in athletics because both share the same biology. Further, the Act treats the two equally because the law prevents both from the same behavior.

Courts find people "who are in all relevant respects alike" to be similarly situated. *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992) (citation omitted). Further, the people must resemble one another in respect to a particular *act.* For example, the Sixth Circuit once found two professors similarly situated for purposes of job promotion. *See Kovacevich v. Kent State Univ.*, 224 F.3d 806, 814 (6th Cir. 2000). The court tested a female professor's sex discrimination claim by examining whether a "similarly situated" male professor received a promotion. *Id.* at 814. The professors were similar with respect to hiring because both shared the same department, received similar performance reviews, and started at the same time. *Id.* The only difference between them was sex. *Id.* Thus, it appeared that performance and seniority—clearly relevant to job promotion—qualified *him*, but not her, for a promotion. *Id.* Sex, therefore, likely played a role in the hiring decision. *Id.*

In this case, male-to-female students are similarly situated to biological boys for purposes of athletics. Scholastic athletics operate on merit: the athlete who can run faster, jump higher, or hit harder makes the team while the weaker competitors wait on the sideline. *See* Michael Alford, *Competitive Culture You Can Measure*, Athletic Dir. U. https://athleticdirectoru.com/articles/competitive-culture-you-can-measure/ (last visited Sept. 13, 2024). Thus, merit and access to sport hinge on physical advantage. Male-to-female students and

biological boys share the same physical advantage over biological females. As the Fourteenth Circuit noted, biological boys—potentially even prepubescent biological boys—can run, jump, and throw at rates far exceeding women. R. at 7. And male-to-female students remain "biological males" with the same advantages. R. at 10.

Having shown that male-to-female athletes resemble biological males for sporting purposes, North Greene now shows that neither group is treated worse. They are not treated worse because they are not treated differently. North Greene's law asks both of them to refrain from using their advantages over women; further, it asks both to compete only against those that share their abilities.

For these reasons, North Greene treats male-to-female athletes the same as the biological boys similar to them.

B. North Greene's law caused no harm to Petitioner.

North Greene's decision to divide sports by sex did not harm Petitioner. To prove a Title IX claim, a plaintiff must show both sex discrimination and personal harm caused by such discrimination. *Grimm*, 972 F.3d at 616. Courts have found that "stigma" borne from segregation sufficiently harms a plaintiff. *Id.* at 617. Nothing in North Greene's law directly stigmatizes male-to-female students, and mere separation is insufficient to *prima facie* prove stigmatization.

North Greene does not directly stigmatize students like the Petitioner. The Save Women's Sports Act expressly notes that biological sex does not determine gender identity; it, in essence, affirms the feelings of transgender students. *See* N.G. Code § 22-3-16(c). Further, the Act openly welcomes transgender students to play sports—so long as they compete against the similarly situated. Thus, the Act does not exclude transgender students from sports, nor deny their valid gender identity. It, in short, does not stigmatize them.

Further, separation by law does not always amount to a dignitary harm. Petitioner, in fact, concedes as much. Petitioner does "not challenge the legality of having separate teams for boys and girls," but challenges only the requirement that biological boys play together. R. at 16. In accepting that Title IX allows separate teams, Petitioner implicitly accepts that some forms of male-female division do not automatically cause a harm.

For these reasons, North Greene has not caused a particular harm to Petitioner. This Court should therefore hold that North Greene has upheld Title IX.

II. The Fourteenth Circuit was correct in holding the North Greene Act does not violate the Equal Protection Clause because it is a pure sex classification and satisfies intermediate scrutiny.

A. Intermediate scrutiny applies because the Act is a pure biological sex classification.

The Act permissibly distinguishes between biological sex to ensure the safety of female athletes. *See Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992). "The Constitution does not require things which are different in fact or opinion to be treated in law as though they were the same." *Plyler v. Doe*, 457 U.S. 202, 216 (1982). It merely requires that "all persons similarly situated shall be treated alike." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985); *see also Nordlinger*, 505 U.S. at 10. Because the Act distinguishes between biological males and females, the relevant inquiry is whether biological men and women are treated alike.

This Court has held that there is a heightened level of scrutiny applied to governmental classifications of gender. *United States v. Virginia*, 518 U.S. 515, 532–33 (1996) (quoting *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718, 724 (1983)). This level of heightened scrutiny is referred to as "intermediate scrutiny," because it does not reach the level of strict scrutiny applied to classifications on race, national origin, alienage, and "fundamental rights" under the Due Process Clause. *Clark v. Jeter*, 486 U.S. 456, 461 (1988).

The North Greene Act creates a pure sex-based classification. On its face, the statute only classifies male and female athletes, requiring all athletes to participate on the teams corresponding to their biological sex. The Act says [sports] "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). "Athletic 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). There are infinite other classifications one might split children into: musical talent, favorite movies, skill in mathematics, intelligence, race, gender identity, or sexual orientation. But none of these are mentioned in this statute, including gender identity.

Transgender athletes are similarly situated to those of their biological sex for athletics. Without hormone treatment, transgender girls on average have the same physical capabilities as biological males. *See Adams ex rel. Kasper v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791, 819 (11th Cir. 2022) (Lagoa, J., specially concurring). The purpose of the Act is to eliminate the safety risk that comes with mixing male and female athletes. R. at 4. Tied to this purpose, a transgender girl is not similarly situated to a biological male. In creating a "middle ground" between strict scrutiny and rational basis, this Court left room for legislatures to regulate "real differences" between the sexes, including athletic performance and reproduction. *Nguyen v. I.N.S.*, 533 U.S. 53, 73 (2001) (holding that requiring additional steps for fathers, instead of mothers, to prove citizenship was permissible based on real differences between the sexes); *Clark ex rel. Clark v. Arizona Interscholastic Ass'n*, 695 F.2d 1126, 1131–32 (9th Cir. 1982) ("The situation here is one where there is clearly a substantial relationship between the exclusion of males from the team and the goal of redressing past discrimination and providing equal opportunities for women.").

To claim transgender girls are similarly situated to biological females would require comparison of mental states. In *Nordlinger v. Hahn*, this Court clarified that "[t]he Equal Protection Clause does not forbid classifications. It simply keeps governmental decisionmakers from treating differently persons who are in all relevant respects alike." 505 U.S. at 10 (citing *F.S. Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920)). The key language is "all relevant aspects." *Id.* In *Nordlinger*, California applied a different evaluation scheme for property tax on new properties than it did on old properties. *Id*. at 12. This Court held this was permissible because while the properties themselves were similarly situated, the relevant aspect to the law was the new ownership, which did not further the purpose of the act of preventing rapid turnover of homes. Here, the relevant aspect to the law is not the psychological feeling of the athletes, but their physiology that would impact the safety of the athletes.

In *Washington v. Davis*, this Court found that discriminatory impact alone cannot overcome facial validity. 426 U.S. 229, 245–47 (1976). "Proof of . . . discriminatory intent or purpose is required to show a violation of the Equal Protection Clause." *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.* 429 U.S. 252, 265 (1977). Therefore, even if this law impacts transgender athletes at a rate higher than cisgender athletes, this is insufficient. The dissenting opinion below argues that because only transgender girls are affected by the Act, there was a discriminatory purpose. R. at 13–14. Not only is discriminatory impact merely a factor, cisgender male athletes are prohibited from playing on the female teams the same as transgender girls.

The goal of the Act is to prevent biological males from playing sports with biological females. Transgender girls are similarly situated to biological males. The Act stops *all* biological males, regardless of gender identity, and therefore intermediate scrutiny based on gender classifications applies.

B. The Save Women's Sports Act survives intermediate scrutiny because it advances important governmental objectives, and the Act is substantially related to those objectives.

Government action is incompatible with the principle of equal protection "when a law or official policy denies to women, simply because they are women, full citizenship stature — equal opportunity to aspire, achieve, participate in and contribute to society based on their individual talents and capacities." *Virginia*, 518 U.S. at 515. The Save Women's Sports Act does not deny women the opportunity to aspire, achieve, or participate in sports; it empowers them to do so. Without the Act, biological girls face the risk that they will not receive a fair opportunity to participate and compete on the sports teams specifically created for them.

To survive an application of intermediate scrutiny, the Save Women's Sports Act must (1) advance an important governmental objective and (2) be substantially related to that objective. *Hogan*, 458 U.S. at 724. The Act satisfies both requirements because it advances the critical goals of providing equal athletic opportunities for females and protecting the physical safety of female athletes by preventing biological males from participating on biological females' sports teams. R. at 4. North Greene's justification for its classification in the Act must be "genuine" and cannot "rely on overbroad generalizations about the different talents, capacities, or preferences of males and females." *Virginia*, 518 U.S. at 533. Classifying school sports teams based on biological sex is a genuine classification and does not rely on any outdated stereotypes about males or females; it instead relies on real, biological differences. R. at 3–4. The same biological differences this Court stated we cannot "fail to acknowledge" because if we do, we "risk[] making the guarantee of equal protection superficial, and so disserving it." *Nguyen*, 533 U.S. at 73.

In *Nguyen v. I.N.S.*, this Court addressed a federal law that treated unmarried women and men differently when it came to allowing their child American citizenship. *See Nguyen*, 533 U.S. at 56–57. The law allowed a child born to an unmarried American woman abroad to automatically

gain citizenship, but if the child was born to an unmarried American man, the father had to take steps to prove his relationship before citizenship was granted to the child. *See id*. at 59–60. Nguyen argued that this policy denied fathers equal protection under the law—a sex-based classification. *See id*. at 58. Even though the law established different requirements based on the parent's gender, it withstood the test of intermediate scrutiny. *Id*. at 60–61.

This Court found that Congress imposed the differing requirements based on real, biological differences of each parent at birth, and that those differences *must* be acknowledged. *Id*. at 73. Congress wanted to ensure two important governmental objectives: (1) a biological parent-child relationship exists, and (2) the parent and child have a meaningful opportunity to develop a bond. *Id*. at 62, 64–65. Women *have* to be physically present at birth, so there is no question their relationship to the child exists. *See id*. at 54. However, biologically, men do not *have* to be present at the child's birth. *Id*. Men may not even know a child exists, especially if the child is born in a foreign country. *See id*. at 54. By requiring fathers to prove a relationship with their child before citizenship is granted, the federal law is substantially related to Congress's objectives. *See id*. at 64, 68.

Just like the law at issue in *Nguyen*, the North Greene Save Women's Sports Act acknowledges the biological differences between males and females. R. at 3. The reason it acknowledges these differences is not to exclude or discriminate against anyone—not females, males, or transgender individuals. The Act simply seeks to protect women in sports, which is an objectively important governmental interest.

1. North Greene has an interest in providing females equal athletic opportunities.

North Greene's first objective is to ensure females are provided equal athletic opportunities. R. at 4. To ensure equal opportunity, biological boys cannot be allowed to compete in biological

girls' sports. The Save Women's Sports Act specifically states that "[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). The question this Court must answer is if A.J.T.'s exclusion from athletic teams designated for biological girls is substantially related to ensuring equal opportunity for females in sports. Considering how significantly biological differences impact sports, this Court should find that it is substantially related. Although A.J.T. is a transgender girl, she was born a biological male and A.J.T.'s sex at birth causes her to be similarly situated to biological boys for the purpose of this Act. R. at 3.

In *B.P.J. ex rel. Jackson v. West Virginia State Bd. of Educ.*, a thirteen-year-old transgender girl was allowed to participate in her school's track and cross-country teams. 98 F.4th 542, 550 (4th Cir. 2024). B.P.J. "dominated" track meets and "consistently placed in the top fifteen participants in track-and-field events, and often placed in the top ten." *Id*. at 566 (Agee, J., concurring in part and dissenting in part). Her success caused over one hundred biological girls participating in these events to be displaced and denied equal athletic opportunity. *Id*. B.P.J. also earned a place in conference championships for two track-and-field events. *Id*. This opportunity is earned by placing in the top three competitors at their school. *Id*. Because B.P.J. qualified, she took the opportunity to compete for a conference championship away from two biological girls. *Id*. B.P.J.'s participation on the girl's track team blatantly proves why transgender girls competing with biological girls impedes the interest of equal opportunities for females in sports.

Allowing transgender girls like A.J.T. and B.P.J. on biological girls' teams may seem like a small impact at first, but the more it continues to happen, the number of displaced biological girls will "expand exponentially." *Id*. at 571. As spots on teams become more limited because of

biological male participation, biological girls may be prevented from participating on teams altogether, denying any athletic opportunity to females. When females are denied an equal opportunity at sports, they are missing out on the key skills learned from participating in sports.

Not only do sports impart the "value of fitness for lifelong . . . health and wellness," sports allow girls to learn the "socially valuable traits including teamwork, sportsmanship, and leadership, as well as individually valuable traits including goal setting, time management, perseverance, discipline, and grit." *Adams*, 57 F.4th at 820 (Lagoa, J., specially concurring) (quoting Doriane Lambelet Coleman et al., *Re-affirming the Value of the Sports Exception to Title IX's General Non-Discrimination Rule*, 27 Duke J. Gender L. Pol'y 69, 108 (2020)). One of North Greene's main objectives in pursuing this law is to ensure females are provided equal athletic opportunities. R. at 4. Classifying sports teams based on biological sex and preventing biological males from participating on biological girls' teams is substantially related to that interest. The Act does not purport to reach too far because it only prevents biological boys from participating on biological girls' teams. *Id*.

It is arguable that the Act should also prevent biological girls from participating on biological boys' teams. However, North Greene's interest in ensuring equal opportunity for females in sports is not accomplished by that scenario. *Id*. This would force the Act to be overbroad, causing the Act's effect to not fit North Greene's objectives. As it stands, biological boys do not face the same threat of biological girls taking away their ability to participate or have a competitive advantage on their sports teams. Even if biological girls attempted to try out or compete on boys' teams, studies have shown that "physical differences allow post-pubescent males to 'jump (25%) higher than females, throw (25%) further than females, run (11%) faster than females, and accelerate (20%) faster than females' on average." *See Adams* 57 F.4th at 820 (quoting

Jennifer C. Braceras et al., *Competition: Title IX, Male-Bodied Athletes, and the Threat to Women's Sports* 20 (2021) (footnotes omitted)). The reason North Greene has an interest in ensuring equal athletic opportunity for females is not the same for males. Biologically, they do not face the same threat of being replaced by females or having their opportunities taken from them.

2. North Greene also has an interest in protecting the physical safety of female athletes.

North Greene's second objective is to protect the physical safety of female athletes. R. at 4. Similar to its first objective, the state legislature has provided an important interest. The Save Women's Sports Act promotes this interest in a manner substantially related to protecting female athletes' safety by preventing biological males from participating on biological females' sports teams. *Id*. Female athletes deserve to participate in sports safely—whether those sports are contact or non-contact. Requiring female athletes to play contact sports with males poses obvious dangers, as the research above suggests post-pubescent males possess physical differences that allow them to jump higher, run faster, and throw further. *See Adams*, 57 F.4th at 820. These differences present physical danger to females.

Even in non-contact sports, such as volleyball, the "size and strength of volleyball competitors influences the speed and force with which the ball travels after being struck by a player." R. at 10. In 2022, a biological male competed in a high school volleyball game against biological females. *See* Valerie Richardson, *North Carolina on Verge of Transgender Sports Ban After Hearing From Injured Female Athlete*, Wash. Times (Apr. 21, 2023) https://www.washingtontimes.com/news/2023/apr/21/north-carolina-verge-transgender-sports-ban-after-/. One of the females received severe head and neck injuries when the biological male spiked a ball in her face. *Id.* This incident is an illustration of what may happen when biological females are forced to compete with biological males.

North Greene does not suggest that A.J.T. or other transgender girls will purposely harm or endanger biological females. However, the real differences in strength, size, and power between biological males and females must be considered when assessing the potential for danger in women's sports. These considerations are what make A.J.T. similar to biological boys in "all relevant aspects alike." *See Nordlinger,* 505 U.S. at 10 (citing *F.S. Royster*, 253 U.S. at 415). The Act does not exclude A.J.T. from playing sports, it just requires her to participate on the sports teams that either align with her biological sex at birth, or the co-ed sports teams. R. at 4. The Act treats all biological males the same for purposes of classifying sports team participation. A.J.T. is treated in the same manner as all biological males and transgender girls, while furthering North Greene's interest in protecting the physical safety of female athletes. *Id*.

Classifying sports teams based on biological sex and preventing biological boys from participating on biological girls' sports teams is the best way to protect the physical safety of female athletes. Creating a classification based on pre-puberty or post-puberty individuals, or individuals who undergo a certain amount of puberty-delaying treatment does not meet North Greene's interest because every individual begins puberty at different times, and transgender individuals may choose to undergo puberty-delaying treatment or not. R. at 3 n.2. North Greene's expert stated that biological boys "often have a competitive advantage over biological girls even before puberty." R. at 7.

While A.J.T. has not yet begun puberty herself, this does not mean she doesn't already have an advantage over biological girls. A.J.T. may begin puberty at any time, as she is currently eleven years old, and biological boys start puberty between the ages of nine and fourteen, with the average age beginning at twelve. R. at 3 n.2. A.J.T. may also choose to begin puberty-delaying treatments, or she may not. That decision is rightfully hers to make, but it should not impact her ability to

participate on biological girls' sports teams. Because transgender girls may all undergo puberty at a range of ages and may choose or not choose to receive puberty-delaying treatments is even more reason why biological girls' sports teams should be limited to just that: biological girls. It would be nearly impossible to set a standard that meets North Greene's interest in protecting female athletes' safety with such a wide variance in individual effects of puberty.

The Save Women's Sports Act survives an application of intermediate scrutiny because classifying school sports teams by biological sex and preventing transgender girls from participating on biological girls' sports teams is substantially related to ensuring equal athletic opportunity for females and protecting female athletes' safety.

C. Even if the Act classified on the basis of gender identity, then rational basis applies because gender identity is not a suspect classification.

Even if the Court were to find that the classification was based on gender identity, rational basis applies because gender identity is not a suspect classification. *Gore v. Lee*, 107 F.4th 548, 558–60 (6th Cir. 2024); *see Kadrmas v. Dickinson Pub. Schs.*, 487 U.S. 450, 457–58 (1988). "Unless a statute provokes 'strict judicial scrutiny' because it interferes with a 'fundamental right' or discriminates against a 'suspect class,' it will ordinarily survive an equal protection attack so long as the challenged classification is rationally related to a legitimate governmental purpose." *Kadrmas*, 487 U.S. at 457–58; *see also Nordlinger*, 505 U.S. at 11 ("In general, the Equal Protection Clause is satisfied so long as there is a plausible policy reason for the classification.").

The state promotes two rationales for the Act: provide equal athletic opportunities for female athletes and promote safety for female athletes. R. at 3–4. North Greene concedes that gender identity is not rationally related to the government's interest in providing equal athletic opportunities for female athletes. N.G. Code § 22-3-16(c). However, gender identity is rationally related to North Greene's interest in promoting safety. The data on the increased safety risk posed

by biological males is quite significant. *Adams*, 57 F.4th at 819–20 (Lagoa, J., specially concurring) ("[M]ales are able to lift 30% more than females of equivalent stature and mass, as well as punch with significantly greater force than females." (internal quotations and citations omitted)).

1. Gender identity is not a suspect class.

The classification of transgender athletes is not a suspect class, and therefore should be afforded rational basis. *Gore*, 107 F.4th at 558–60. Heightened scrutiny applies in only specific circumstances. *Students for Fair Admissions, Inc. v. President and Fellows of Harvard Coll.*, 600 U.S. 181, 214 (2023) (citing *Fisher v. Univ. of Tex. at Austin*, 579 U.S. 365, 381 (2016)); *Virginia*, 518 U.S. at 532–33; *Graham v. Richardson*, 403 U.S. 365, 371–72 (1971) ("But the Court's decisions have established that classifications based on alienage . . . are inherently suspect and subject to close judicial scrutiny."). Factors for determining suspect classification include whether the classification is based on an immutable characteristic, discreteness, whether the class is subject to discrimination, and whether the class is part of a politically powerless minority. *Bowen v. Gilliard*, 486 U.S. 587, 602 (1987) (quoting *Lyng v. Castillo*, 477 U.S. 635, 638 (1986)); *see also Grimm*, 972 F.3d at 610–11.

The Sixth and Tenth Circuits declined to extend suspect classification to transgender individuals. *Gore*, 107 F.4th at 558–60; *Brown v. Zavaras*, 63 F.3d 967, 971 (10th Cir. 1995) (relying on Ninth Circuit precedent that was overturned); *Druley v. Patton*, 601 F. App'x 632, 635 (10th Cir. 2015). The Fourth and Ninth Circuits have held that intermediate scrutiny applied to transgender classifications as a quasi-suspect class, while the Eleventh Circuit has merely held that in some circumstances transgender discrimination amounts to sex discrimination. *Grimm*, 972 F.3d at 610–13; *Karnoski v. Trump*, 926 F.3d 1180, 1200 (9th Cir. 2019); *Glenn v. Brumby*, 663 F.3d 1312, 1316 (11th Cir. 2011).

a. *Gender identity is not an immutable characteristic.*

Gender identity is based on a psychological state and is not immutable. In an Eleventh Circuit case, an expert who claimed that gender identity is "immutable" referred to "neurological sex" as a determining factor for gender identity. *Adams*, 57 F.4th at 836 (Lagoa, J. specially concurring). But the brain is ever evolving. Change is its very nature. *Neuroplasticity*, Psychology Today, https://www.psychologytoday.com/us/basics/neuroplasticity (last visited Sept. 13, 2024). When previously analyzing immutable characteristics, this Court has referred to chromosomes, the sex organs, race, and place of birth. *See Students for Fair Admissions*, 600 U.S. at 214 (citing *Fisher*, 579 U.S. at 381 (2016)); *Virginia*, 518 U.S. at 532–33; *Clark*, 486 U.S. at 461. Mental states can change in ways unlike biology. If a constant mental state was all that was required for an immutable characteristic to trigger heightened scrutiny, then this Court would have found mental disabilities to be a suspect class in *Cleburne*, 473 U.S. at 441–45.

The circuit courts are split over whether gender identity is something one is born with. *Compare Grimm*, 972 F.3d at 612–13, *with L.W. v. Skrmetti*, 83 F.4th 460, 487 (6th Cir. 2023), *cert. granted*, 144 S. Ct. 2679 (2024). For most of American history, the American Psychiatric Association considered gender identity a changeable characteristic, until it published the DSM-5 in 2013. American Psychiatric Association, https://www.psychiatry.org/psychiatrists/practice/dsm/about-dsm/history-of-the-dsm (last visited Sept. 13, 2024); *Grimm*, 972 F.3d at 611. The frequency of detransitioning shows that it is still a changeable characteristic. *Skrmetti*, 83 F.4th at 487. None of this diminishes the hardships that transgender individuals have faced in this country for decades. However, it cannot be said that these hardships are a result of a characteristic they were born with.

b. *Transgender people are a politically powerful minority.*

North Greene recognizes that transgender people have been subject to discrimination in his country. *Grimm*, 972 F.3d at 611. However, there are numerous examples of this Court denying suspect classification to historically unpopular or marginalized. *Cleburne*, 473 U.S. at 441–45 (holding mental disabilities were not a quasi-suspect class); *Massachusetts Bd. of Ret. v. Murgia*, 472 U.S. 307, 312–313 (1976) (holding a mandatory retirement age did not involve a suspect class); *Lyng v. Int'l Union, United Auto., Aerospace and Agr. Implement Workers of Am., UAW*, 485 U.S. 360, 362–370 (1988) declining to extend any more than rational basis to workers on strike); *Dep't of Ag. v. Moreno*, 413 U.S. 528, 534 (1973) (applying rational basis to food stamps distinction between "households of related person versus households containing one or more unrelated persons"); *New York City Transit Auth. v. Beazer*, 440 U.S. 568, 573, 592–93 (1979) (applying rational basis to law prohibiting employment of narcotic users). Suspect classification requires more than a history of unfavorable treatment.

Despite a history of discrimination, the transgender community is a politically powerful minority. In *Grimm*, the Sixth Circuit held that transgender individuals are a politically powerless minority because they make up less than 1% of the population and are underrepresented in government positions. 972 F.3d at 613. The test, however, is political power, not population. *See id.* Transgender people have consistently achieved political victories despite their population deficit. *Gore*, 107 F.4th at 558–59. Many states have permitted changes to sex on licenses and the federal government has allowed servicemen to change their sex, as well as allowed any citizen to obtain a passport with their gender identity. *Id.* at 559. One of the goals of the Democratic Party platform of 2020 is defending LGBTQ+ rights. Democratic National Committee, *2020 Democratic Party Platform* 42 (2020) ("We will work to . . . guarantee transgender students' access to facilities based on their gender identity."). This represents almost half of the partisan voters in this country.

Changing Partisan Coalitions in a Politically Divided Nation, Pew Research Center (April 9, 2024), https://www.pewresearch.org/politics/2024/04/09/the-partisanship-and-ideology-of-american-voters/. Some of the positions, such as "ensur[ing] that all transgender . . . people can procure official government identification documents that accurately reflect their gender identity", have been successful. *Id.*; *see Gore*, 107 F.4th at 558–59.

Transgender people do not meet this Court's requirements for suspect classification as they are a politically successful minority, and it is not an immutable characteristic. Therefore, if this Court were to find that the statute's classification was based on gender identity and not the textual "biological sex," it should apply rational basis.

2. Rational Basis is satisfied.

The Act is rationally related to the legitimate governmental purpose of protecting the safety of girls in athletics. Biological males can jump higher, throw further, punch harder, and run faster than biological females. *See Adams* 57 F.4th at 820 (quoting Jennifer C. Braceras et al., *Competition: Title IX, Male-Bodied Athletes, and the Threat to Women's Sports* 20 (2021) (footnotes omitted)). This poses a significant safety risk.

Rational basis does not require the "fit" to be perfect. *Gore*, 107 F.4th at 561. Far from it. "A State 'does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect.'" *Id.* (quoting *Murgia*, 427 U.S. at 316). "It only requires that some plausible reason supports the classification." *Id.* (internal quotation and citation omitted). More than a plausibility, female athletes have been physically injured due to competing against biological males. R. at 10 n.8. The law is more than rationally related to the legitimate purpose of protecting the safety of young female athletes.

CONCLUSION

For the foregoing reasons, this Court should affirm both lower judgments for North Greene. First, North Greene upholds Title IX because its Act treats biologically similar students the same. Second, the Save Women's Sports Act complies with the Fourteenth Amendment's Equal Protection Clause because, under the applicable intermediate scrutiny review, the Act separates sports based on biological sex to further the important government interest of protecting the safety of student athletes.