No. 24-2020

In The

SUPREME COURT OF THE UNITED STATES

October Term 2024

A.J.T.,

Petitioner,

v.

STATE OF NORTH GREENE,

Respondent.

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

BRIEF FOR PETITIONER

Team 22
Counsel for Petitioner

QUESTION PRESENTED

1. Whether Senate Bill 2750 survives intermediate scrutiny when its interest is based on animus towards the transgender population, when its means are inherently discriminatory, and reach contradictory results.

2. Whether Senate Bill 2750 violates Title IX by excluding Petitioner, a transgender athlete, on the basis of gender, and if so, whether Petitioner's suffering of dignitary and mental distress is considered harm.

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STATEMENT OF THE CASE

Petitioner is an eleven-year-old girl who was denied from competing on the girls' volleyball and cross-country teams because she is transgender. (R. at 3). Her denial stems from Senate Bill 2750, referred to as the "Save Women's Sports Act", which Respondent passed to ban transgender athletes from competing on the sports team that aligns with their gender identity. *Id.* Senate Bill 2750 reduces one's gender identity to only their "reproductive biology and genetics at birth. (R. at 4).

Petitioner filed suit on the grounds that Senate Bill 2750 violates the Equal Protection Clause under the Fourteenth Amendment and Title IX. *Id.* She sought declaratory relief confirming such violations and an injunction preventing Respondents from discriminating against her. (R. at 5). Respondent filed a motion for summary judgment, which the District Court granted, opining that Senate Bill 2750 survives intermediate scrutiny because protecting female athletes and ensuring them equal athletic opportunity is an important government interest achieved by focusing solely on biological sex. (R. at 6). Additionally, because the District Court opined that Senate Bill 2750 didn't discriminate on the basis of sex, it granted Respondent's summary judgment motion regarding the Title IX claim. *Id.*

After the District Court opined that ignoring a transgender individual's gender identity and focusing only on their biological sex is not facially discriminatory, the Fourteenth Circuit agreed with the District Court. (R. at 8). The Fourteenth Circuit relies on stereotypes and "principle[s]" that males outperform females athletically because of their physical differences. (R. at 9). Relying on these stereotypes, the court upheld Senate Bill 2750, proposing that the testosterone levels of transgender women would increase the risk of injury and unfairness. *Id.* The court did, however, state in its ruling that transgender athletes fair no differently than regular athletes. (R. at 8). To

illustrate this risk, the court referenced an isolated incident where a biological male spiked a ball in the face of a female athlete at a high school volleyball game. (R. at 10). The court did, however, state in its ruling that transgender athletes fair no differently than regular athletes. (R. at 8).

Senate Bill 2750 forces transgender athletes to compete on teams that don't align with their gender identity. The Fourteenth Circuit, agreeing with the District Court's opinion, interpreted Senate Bill 2750 to not be a Title IX violation because it doesn't entirely exclude transgender athletes from school sports. (R. at 11).

SUMMARY OF THE ARGUMENT

Senate Bill 2750 discriminates on the basis of sex and is unconstitutional because it fails under the first and second prongs of intermediate scrutiny. While the purported objectives of Senate Bill 2750 are to protect women's safety and equality in sports, its true intent—to exclude the transgender population—is rooted in animus, which is not a permitted important government interest. Even the purported objectives of Senate Bill 2750 are not important government interests because they rely on stereotypes and generalizations that are impermissible under this Court's precedent.

Even if Senate Bill 2750 served an important government interest, it would still be struck down under the second prong of intermediate scrutiny. The means by which Senate Bill 2750 seeks to achieve an important government objective are unreasonable because they are more discriminatory than necessary despite less discriminatory alternatives. By employing such discriminatory means, Senate Bill 2750 compromises the integrity of competition because it results in the disqualification of otherwise qualified athletes. Additionally, the means Senate Bill 2750 uses to ensure women's safety has adverse effects on the very community it seeks to protect.

Along with the violation of the Equal Protection Clause, Senate Bill 2750 also violates Title IX. While Title IX doesn't include a definition of "sex", it derives its definition from Titles VI and VII under a statutory construction analysis built upon this Court's precedent. Additionally, Petitioner has a valid claim under Title IX because Senate Bill 2750's exclusionary effect on her causes emotional and dignitary distress, which are harms that case law supports as sufficient for Title IX claims.

ARGUMENT

I. This Court should reverse the Fourteenth Circuit's decision because Senate Bill 2750 fails both prongs of intermediate scrutiny because it is based in animus and the means are not substantially related to an important government interest.

This Court should reverse the Fourteenth Circuit's decision because Senate Bill 2750 violates the Equal Protection Clause. The Fourteenth Amendment provides that no State shall "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S CONST. amend XIV. This Court has found that giving mandatory preferences to members of either sex over members of the other, merely to accomplish the elimination of hearings on the merits, is to make the very kind of arbitrary legislative choice forbidden by the Equal Protection Clause. *Reed v. Reed,* 404 U.S. 71 (1971). Because sex is an immutable characteristic determined solely by accident of birth, it is subject to stricter scrutiny. *Frontiero v. Richarson*, 411 U.S. 677 (1973). As such, the Court has ruled that gender-based classifications require an exceedingly persuasive justification to survive constitutional scrutiny. *J.E.B. v. Alabama ex rel. T.B.,* 511 U.S. 127 (1994).

To survive intermediate scrutiny, the Defendant must show that (1) there is an important government interest and (2) the means are substantially related to achieving those objectives. *U.S. v. Virginia,* 518 U.S. 515 (1996). Senate Bill 2750 (SB 2750) fails the first prong because providing women with equal athletic opportunity and protecting the physical safety of female athletes are government interests rooted in animus against a politically unpopular community, and therefore, not important government interests. But even if the Court were to find them as important government interests, SB 2750 still fails the second prong because a blanket ban prohibiting transgender athletes from competing on teams that align with their gender identity isn't substantially related to achieving these objectives. Therefore, this Court should reverse the Fourteenth Circuit's decision because SB 2750 fails both prongs of intermediate scrutiny.

A. Senate Bill 2750 does not represent an important government interest because the interest is based on animus and inherently discriminatory.

Senate Bill 2750 is a statute based on animus and discrimination, and as such, it cannot serve an important government interest. *Romer v. Evans*, 517 U.S. 620 (1996). In *Romer*, the Court stated that when a statute is "inexplicable by anything but animus toward the class it affects, it lacks a rational relationship to a legitimate government purpose*". Id*. Senate Bill 2750 discriminates against and contains animus towards a politically unpopular class, the transgender community. The statute is very clear that it is focused on sex and gender identity. It includes a provision stating that "[c]lassifications based on gender identity serve no legitimate relationship to the State of North Greene's interest in promoting equal athletic opportunities." (R. at 4.) The provision is evidence of animus towards transgender people because its inclusion only makes sense if the statute contemplated gender identity and the transgender population. It is clear that SB 2750 contemplates and intends for discrimination based on gender identity. Additionally, SB 2750 is rooted in "old fashioned" notions of the abilities of women and men, and such stereotypes cannot serve an important government interest. A statute that contains animus towards a politically unpopular class is not a legitimate government interest and, therefore, cannot be an important government interest.

1. Senate Bill 2750 does not fall within the permitted scope of important government interests because it is based on animus against a politically unpopular minority group.

Senate Bill 2750's notions of promoting female equality and safety in sports are government interests rooted in animus. The statute facially discriminates on transgender status and cannot be justified in any other way. A statute that creates intentional and arbitrary distinctions between classes of people for a bare desire to harm a politically unpopular group is unconstitutional. *City of Cleburne, Tex. v. Cleburne Living Center*, 473 U.S. 432 (1985). It is

unconstitutional to discriminate against a party based on animus, and the basis of a statute cannot be a desire to harm a politically unpopular group. *See id.*

Senate Bill 2750 discriminates against only transgender athletes by preventing them from competing on the team with which they identify, citing inaccurate safety risks and equality problems that do not exist. The Respondent's interests in promoting female equality and safety in sports are rooted in archaic misunderstandings of the abilities of women and men, which cannot serve as important government interests. (R. at 8). For these reasons, SB 2750 does not serve an important government interest because animus and loose-fitting generalities cannot be the basis for government discrimination. Any action discriminating on the basis of gender must demonstrate an "exceedingly persuasive justification" for that action. *Virginia,* 518 U.S. 515 (1996). In *Virginia*, the Virginia Military Institute (VMI) had a military training program renowned for its intensity. *Id.* at 520. Women applied but were rejected because VMI felt that "some aspects of the [school's] distinctive method would be altered. *Id.* at 524. The United States sued Virginia, alleging that it violated the Equal Protection Clause by disallowing women to enroll in the Institute. *Id* at 520. The Court ruled in favor of the United States and stated in its opinion that generalizations about "the way women are" or the capacities of women were not exceedingly persuasive to justify gender-based discrimination *Id* at 550, 557. Sex based classifications may not be used to create or perpetuate legal, social, or economic gender-based inferiority, as those are not exceedingly persuasive justifications. *Id.* at 534.

Senate Bill 2750 does not align with the precedent established in *Virginia*, which made it clear that classifications cannot be used to create legal, social, or economic inferiority. *Id.* at 534. In the case before the Court, Respondent is using classifications to instill legal and social inferiority in both transgender and cisgender female athletes. It establishes social inferiority in cisgender

women by stating that they cannot compete on the same level as transgender women, and it establishes legal inferiority in transgender women by disallowing them the same opportunities afforded to those with whom they identify. (R. At 4.) The Fourteenth Circuit found that, to preserve athletic opportunity for females, it is necessary to exclude transgender women from being on sports teams that align with their gender identity. (R. at 8–9.) Like the Virginia Military Institute, the Fourteenth Circuit relies on a generalization of the capabilities of women by opining that competing against "biological boys" will potentially result in unfair competition. (R. at 9.)

Animus exists when state governments force transgender individuals to conform to the gender listed on their birth certificate, rendering the action itself unconstitutional. *Grimm v. Gloucester Cnty. Sch. Bd*., 972 F.3d 586 (4th Cir. 2020). Plaintiff was a transgender male high school student. *Id.* at 598. After transitioning, he used the male restroom without incident for 7 months. *Id*. Defendant passed a policy requiring transgender individuals to use the restroom that aligns with their sex at birth, citing safety concerns and a need for privacy. *Id.* at 599. Plaintiff filed suit alleging that the policy violated the Equal Protection Clause of the Fourteenth Amendment by forcing him to use the women's restroom. *Id.* at 600. The Fourth Circuit found the policy to be a violation of the Fourteenth Amendment and stated that being transgender is not a social choice, but something natural and immutable. *Id.* at 612–13. The Defendant's concerns of safety and privacy were insufficient because there was no evidence that Plaintiff's use of the male bathrooms caused the bathrooms to become unsafe. *Id.* at 614. The Fourth Circuit also stated the intent of the policy was to punish transgender students rather than ensure the safety and privacy of all students. *Id*.

Transgender women and cisgender women can share the same facilities without posing a safety risk to women. *Evancho v. Pine-Richland School District,* 237 F. Supp. 3d 267 (W.D. Penn. 2017).

In *Evancho*, Plaintiffs were transgender individuals who were identified and regarded as their transitioned gender by peers, school faculty, and family. *Id.* at 273, 275. Defendant passed a resolution forcing students to use the restroom that aligns with their biological sex. *Id.* at 273. Plaintiffs sued, alleging that the resolution was discriminatory and a violation of the Equal Protection Clause of the Fourteenth Amendment. *Id.* Defendants argued that the resolution prevented malicious actors from blatantly invading the bodily privacy of those using the restrooms. *Id.* at 278. The District Court held that the resolution was unconstitutional because there was no evidence linking transgender individuals to any safety risks and was instead based on animosity towards a minority community. *Id.* at 289–90.

Senate Bill 2750 is based on animus against a politically unpopular minority. The Fourteenth Circuit posits that SB 2750 does not discriminate on the basis of transgender status. (R. at 8.) However, SB 2750 explicitly and entirely disregards one's gender identity and forces transgender individuals to conform to their sex assigned at birth. (R. at 4). Additionally, the name of SB 2750—the "Save Women's Sports Act"—implies that it is intended to apply only to transgender athletes, and more specifically, transgender women. (R. at 3.) It's named in such a way that implies that the mere inclusion of transgender individuals poses a threat to cisgender women. The Act specifically calls out gender identity in a provision saying that "gender identity is separate and distinct from biological sex" (R. at 4.) In doing so, the Act makes clear that its intent is to affect the transgender population. If gender identity wasn't being contemplated at the time of drafting, the inclusion of the gender identity clause would be redundant and useless.

Being transgender is not a choice. It is part an individual's identity that they cannot "choose" or "turn off". There is no legitimate reason for SB 2750 to discriminate against this population, as all given reasons are based on animus. Even safety is not the risk that the Fourteenth Circuit purports it to be. As seen in *Evancho,* the inclusion of transgender women and cisgender women in the same facilities does not pose a safety risk to cisgender women. The Court in *Evancho* correctly points out that facilities will not be any more unsafe just because transgender people are present in them. The assumption that transgender women pose a safety risk to cisgender women just because of their transgender status is evidence of animus. Sex is an immutable characteristic determined solely by accident of birth and has no relation to the ability to perform or contribute to society. *Frontiero*, 411 U.S. at 677. The practical reality of SB 2750 is that it will force transgender athletes out of all sports. Transgender athletes cannot compete on the team they identify with, which could lead them to not compete altogether. It will force the transgender population into a gray area where there is no sport or community in which they feel a sense of belonging. Transgender people are individuals who are trying to tie their gender identity to their physical identity. Transgender women do not endanger cisgender women, and to assume so without evidence is animus against this politically unpopular class.

The Court should reverse the Fourteenth Circuit's decision and adhere to the precedent it established in *City of Cleburne* because a statute that creates arbitrary distinctions as to harm a politically unpopular class is unconstitutional. *City of Cleburne*, 473 U.S. at 446.

2. Senate Bill 2750 relies on antiquated stereotypes of the intrinsic strength, athleticism, and athletic abilities of women.

Senate Bill 2750 fails to serve an important government interest because it relies on unfounded stereotypes of women's capabilities. If a statutory objective is to exclude members of

one gender because they are presumed to be innately inferior, the objective itself is illegitimate. *Mississippi University for Women v. Hogan,* 458 U.S. 718 (1982).

The Equal Protection Clause cannot be invalidated by statistically measured, but loose-fitting, generalities of populations based on sex. *Craig v. Boren,* 429 U.S. 190 (1976). In *Craig*, an Oklahoma statute prohibited the sale of 3.2% beer to men under the age of twenty-one and women under the age of eighteen, creating different classifications based on sex. *Id.* at 192. The Plaintiff, a licenser of beer, sued alleging that the sex-based classification violated the Fourteenth Amendment. *Id.* at 192. In response, Defendant argued that this sex-based discrimination served a public health and safety interest because, statistically, men between the ages of 18-20 were arrested at a higher rate than females of the same age for alcohol related crimes. *Id.* The statistics also demonstrated that men in this range were more likely to be involved in a traffic accident. *Id.* at 200. Although the statistics were accurate, the Court ruled in favor of the Plaintiff, stating that broad generalizations about gender cannot be used to justify gender-based discrimination. *Id.* at 209.

Assuming a stereotyped view of the abilities and capabilities of women as the basis for an important government interest cannot withstand intermediate scrutiny. *Hogan,* 458 U.S. 718 (1982). In *Hogan*, Defendant was a state-supported, female-only college that offered a nursing program exclusively to female students. *Id.* at 719. Plaintiff was a male student who applied to the nursing program but was denied admission solely because of his sex. *Id.* Plaintiff sued, alleging that denying him admission based solely on his sex was a violation of the Equal Protection Clause. *Id.* Defendant argued that providing an all-female education was an important government interest because it would provide the best nursing education and opportunities. *Id.* at 727. The Court,

finding for Plaintiff, stated that denying men admission to an educational program because the career field is best suited for women cannot represent an important government interest. *Id.* at 730.

Senate Bill 2750 employs the exact type of stereotyping found in *Hogan*. This Court, in the previous cases, found stereotyping to be an invalid basis for establishing an important government interest. The Fourteenth Circuits posits that males tend to outperform females in sports, and that safety risks are created when introducing men into women's sports because of physical differences. (R. at 9–10.) Like the Defendant in *Hogan*, Respondent discriminates against transgender women based on stereotypes of cisgender women's capabilities. Senate Bill 2750 relies on the stereotype that cisgender women will be unable to compete with transgender women, despite the Fourteenth Circuit saying that "transgender athletes fair no differently than any other athlete." (R. at 8.) The Fourteenth Circuit also assumes that its generalities are commonly understood, saying that their beliefs are "not an overbroad generalization, but rather a general principle that realistically reflects the average physical difference between sexes". (R. at 9.) This is, in fact, an overbroad generalization, as recent sports developments have shown women capable of performing on par with men. This discrimination based on loose generalities is the exact situation present in *Craig*. The usage of stereotypes and loose-fitting generalities cannot be the basis for a statute. Therefore, SB 2750 cannot withstand intermediate scrutiny because it is based on antiquated beliefs on the capabilities of women.

A statute based on stereotypes about sex or gender cannot be an important government interest. *Free the Nipple v. City of Fort Collins*, 216 F. Supp. 3d 1258 (D. Colo. 2016). Defendants passed a city ordinance forbidding females from knowingly exposing their breasts in public. *Id.* at 1259. The ordinance was intended to protect women's value and prevent assaults. *Id.* at 1261. Plaintiffs challenged the ordinance, alleging that it violated the Equal Protection Clause of the

Fourteenth Amendment because it was based on stereotypes that sexualized the female body, while the same parts of the male body were not regarded as sexual. *Id.* at 1260. The court found the ordinance to failed to serve an important government interest because it relied on stereotypes about the female body, thereby failing intermediate scrutiny and violating the Equal Protection Clause. *Id.* at 1266. As shown in *Collins,* the usage of stereotypes cannot be the foundation of an important government interest.

The Fourteenth Circuit's decision is inconsistent with the precedent established by this Court in *Hogan*, that stereotypes of the abilities and capabilities of a sex or gender cannot be the basis of an important government interest. Therefore, the Court should reverse the Fourteenth Circuit's decision and find that SB 2750 fails intermediate scrutiny.

B. Even if the Court finds that SB 2750 represents an important government interest, the means employed are not substantially related to achieving the government's interests because they are unreasonably discriminatory and have contradictory results.

Forcing transgender athletes to compete on a team with which they do not identify is not substantially related to the goals of protecting women's equality or safety in sports. For a statute to survive the second prong of intermediate scrutiny, the discriminatory means employed must be substantially related to achieving the government's objective. *Virginia* at 525. Senate Bill 2750 fails the second prong of intermediate scrutiny because it employs unreasonably discriminatory methods to meet the government's objective despite the existence of non-discriminatory alternatives. Further, it also fails the second prong because it harms the very community it seeks to protect by preventing qualified athletes from competing and causing mental and physical harm to those excluded.

1. Senate Bill 2750 unreasonably discriminates against transgender athletes because it ignores the existence of non-discriminatory alternatives and hurts the integrity of athletic competition.

An unfair discriminatory purpose may be inferred from the totality of the relevant facts, such as if the law bears heavier on one population than another. *Washington v. Davis,* 426 U.S. 229 (1976). Senate Bill 2750 completely disregards non-discriminatory alternatives, such as weight classes, puberty blockers, and testosterone treatment, that would achieve the government's purported objective and allow transgender athletes to compete on the team they identify with. More nuanced and scientifically based alternatives exist in sports that allow transgender athletes to play in them. Senate Bill 2750 refuses to put forth the effort and engage with any of alternative methods and instead chooses to go for a heavily discriminatory blanket ban. The existence of alternative methods that are more inclusive speaks to how SB 2750 is not substantially related to an important government interest.

Respondent's choice to employ a highly discriminatory blanket ban on transgender athletes and its refusal to use alternative solutions that are more equitable and nuanced to address fairness in sports proves that the implicit intent of SB 2750 is to exclude transgender athletes from competing. As a result, the means of SB 2750 are not substantially related to the government interest. The existence of alternative methods shows that classifications on the basis of sex are not necessary to achieve the desired goal. *Clark, By and Through Clark v. Arizona Interscholastic Ass'n.*, 695 F.2d 1126 (9th Cir. 1982).

The existence of reasonable, non-discriminatory alternatives makes the chosen discriminatory method less likely be substantially related to an important government interest. *Hecox v. Little,* 104 F.4th 1061 (9th Cir. 2024). In *Hecox*, Idaho passed a law that functioned as a blanket ban against the participation of transgender athletes in women's sports. *Id.* at 1068. Prior to its enactment, transgender women could play in women's sports if they underwent one year of hormone treatment. *Id.* at 1070. Plaintiff, a transgender woman, sued Defendant, the Governor of

Idaho, because the law discriminated against her. *Id.* at 1072. Defendant argued the purpose of the law was to ensure fairness in sports. *Id.* at 1068. The Court found that the act was discriminatory and not substantially related to the means, because in prior competition, there was no evidence of unfairness, and the law disregarded medical knowledge and equitable solutions that would have prevented discrimination. *Id.* at 1070, 77, 83.

Respondent could have employed alternative methods that would have allowed Petitioner to compete on the girls' team. Puberty blockers and testosterone treatment exist to give transgender athletes the ability to align their gender identity with their physical identity. These same methods could allow transgender athletes to similarly situate themselves to females who were born as female. Transgender athletes are allowed to compete in the Olympics if they transitioned before age 12 and didn't undergo male puberty.[1]Additionally, the NCAA has a similar rule where a transgender woman only needs one year of testosterone suseppression treatment to qualify for participation in women's sports. *Id.* These alternatives would allow Petitioner to compete on a team that aligns with her gender identity. *Ronald S. Katz, Robert W. Luckinbill,* CHANGING SEX/GENDER ROLES AND SPORT, 28 Stan. L. & Pol'y Rev, 215. In these other sports, Petitioner would be allowed to freely participate in the sport that makes her feel the most recognized and feel the greatest sense of belonging.

The Fourteenth Circuit acknowledges that taking puberty blockers would help mitigate some of the risks addressed by SB 2750. (R. at 10.) Embedded in this acknowledgement is the fact that there exist alternative methods of ensuring fair and safe competition that does not exclude or

[1] IOC Consensus Meeting on Sex Reassignment and Hyperandrogenism, International Olympic Committee (Nov. 2015), https://stillmed.olympic.org/Documents/Commissions_PDFfiles/Medical_commission/2015-11_ioc_consensus_meeting_on_sex_reassignment_and_hyperandrogenism-en.pdf

discriminate against transgender athletes. Regardless, the Fourteenth Circuit chose to uphold the exclusion of Petitioner and all other transgender athletes.

The Petitioner is a prepubescent eleven-year-old girl who is considering puberty blockers. (R. at 3.) The choice of puberty blockers is not an easy one since it comes with emotional, health, monetary, and social costs. If Petitioner decides to make the choice to take puberty blockers, then she would be allowed to play under the less discriminatory NCAA and Olympic standards. Instead, the Fourteenth Circuit has decided to uphold a far more discriminatory methodology to "protect the fairness of women's sports" and "protect women's safety."

Since SB 2750 employed more discriminatory methods despite the existence of less discriminatory alternatives, it is less likely that the employed methods are substantially related to achieving an important government interest. Senate Bill 2750's purported objective is to ensure the safety of female athletes. However, the risk of safety is not increased or compromised by allowing Petitioner to compete on the girls' team.

Safety is a non-issue when it comes to women's noncontact sports, as physical contact is not a risk in noncontact sports. *L.E. by Esquivel v. Lee,* F.Supp.3d (M.D. Tenn. 2024). Plaintiff is a transgender boy. *Id.* at 2. He played golf on the women's team but felt uncomfortable. *Id.* at 5. He was, however, eligible to play on the men's team. *Id.* Defendant passed a law forcing athletes to participate as the gender listed on their birth certificates, citing safety in sports as the reason. *Id.* at 2. Because of the Defendant's actions, Plaintiff could no longer play on the men's golf team, despite being very passionate about the sport. *Id.* at 5. Plaintiff sued Defendant alleging the statute was unconstitutional. *Id.* at 6. The Court ruled for Plaintiff and found the law to be unconstitutional because, golf is a non-contact sport with no risk of harming another player. *Id.* at 18.

Transgender women who have not experienced male puberty do not pose a risk of unsafe or unfair competition to other girls. *Doe v. Horne,* 683 F.Supp.3d 950 (D. Ariz. 2023). In *Doe*, Plaintiffs were two transgender girls who had not yet undergone male puberty. *Id.* at 955. Plaintiffs had been very active in sports growing up. *Id.* at 959. Defendant passed a law called "Save Women's Sports Act" designed to ban transgender women from sports to stop transgender girls from competing against and allegedly having an unfair athletic advantage over cisgender girls. *Id.* at 973. The Plaintiffs sued alleging the Act violated their Equal Protection rights under the Fourteenth Amendment. *Id.* at 955. The Court ruled for Plaintiffs and found no risks of unsafe or unfair competition by allowing transgender girls, who have not undergone puberty, to compete on sports teams aligning with their gender identity. *Id.* at 968. The Court further stated that the potential for unfairness only exists when testosterone is factored in, and transgender girls who haven't experienced puberty have no more biological advantage than cisgender girls. *Id.* at 968.

In the case now before the Court, the Fourteenth Circuit ruled that transgender girls pose a safety risk to cisgender girls. (R. at 10.) They referenced an incident in North Carolina, in which a transgender woman spiked a volleyball towards a female and caused injury. (R. at 10). However, this is not indicative of the reality of transgender athletes competing in noncontact sports. In *L.E.,* the District Court found that in noncontact sports, such as golf, transgender athletes pose no safety risks to cisgender female athletes. *L.E., 2024 WL 1349031.* Like the Plaintiff in *L.E.*, Petitioner wants to compete in noncontact sports, specifically volleyball and cross country. (R. at 3.) Volleyball and cross country are noncontact sports because the athletes do not necessarily have to come into bodily contact with each other during the game[2]. Because these are noncontact sports, transgender women do not pose a safety risk to cisgender female athletes. While the Fourteenth

[2] https://www.oxfordreference.com/display/10.1093/oi/authority.20110803095634525

Circuit cites the North Carolina incident, concussions are just as likely to occur in competition with only cisgender athletes. According to The National Library of Medicine, the concussion rate in volleyball is 4.43 per 10,000 AEs, higher than men's basketball, which is actually a contact sport. In both men's and women's NCAA volleyball, concussions accounted for almost 20% of time-loss injury[3]. *Id.* Every sport, whether contact or noncontact has a risk of injury, but preventing a transgender individual from competing on a team that aligns with their gender identity will not eliminate this risk. In volleyball, there's always a risk of injurious contact which will not be resolved by discriminating against transgender people.

The Fourteenth Circuit also opined that athletes who have undergone puberty poses an issue of safety and athletic fairness. (R. at 10.) The District Court in *Doe,* however, found that puberty blockers eliminate this problem entirely. *Doe,* 683 F.Supp.3d at 968. The Petitioner is considering her options with puberty blockers, but because she hasn't experienced puberty, she is similarly situated to her peers and poses no additional safety risks than a cisgender girl. (R. at 3.) The assumption made in SB 2750, that Petitioner's transgender status poses a safety risk to cisgender women, is unreasonably discriminatory and is not substantially related to an important government interest. It is for these reasons that the Court should find that the discriminatory means are not substantially related to accomplishing a government interest.

2. Senate Bill 2750 causes harm to the North Greene community.

The purported intent of SB 2750 is to protect female safety in athletics, but it comes at the excessive cost of isolating and ostracizing an already vulnerable community. The harms of discriminating against transgender people on the basis of sex outweigh the government interest of public safety. *Flack v. Wis. Dept. of Health Serv.*, 328 F.Supp.3d 931 (W.D. Wisc. 2018).

[3] https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10234904/

Discriminating against transgender athletes does not ensure the safety of cisgender female athletes. It only humiliates, isolates, and harms transgender athletes. The harmful effects of SB 2750 far outweigh the benefits discriminating against transgender athletes.

There is a greater public interest in protecting and caring for our transgender population than discriminating against them. *Id.* In *Flack*, the Plaintiff was a resident of Wisconsin attempting to get Medicaid coverage for medically necessary gender-affirming surgery. *Id.* at 934. Plaintiff had letters of support from his primary care doctor, therapist, endocrinologist, and surgeon saying that Plaintiff met the standard and need for surgery. *Id.* at 938. The Defendant, the State of Wisconsin, denied the coverage, saying that Medicaid did not cover "transsexual surgery." *Id.* at 939. Defendant argued that the surgery went against public health interests by allowing a surgery that has "little medical value". *Id.* at 936. The Court disagreed and reasoned that, by discriminating against transgender individuals who demonstrate a need for medical assistance, Defendant was doing more harm to the community than good. *Id.* at 953.

Discriminating against transgender individuals on the basis of sex can lead to grave consequences like depression, self-harm, and even suicide. *Fowler v. Stitt,* 104 F.4th 770 (10th Cir. 2024). Plaintiff was a transgender woman who transitioned at age 46 and was attempting to align her body and gender identity through professional health care. *Id.* at 778. She later wanted to change her birth certificate to reflect her identity. *Id.* at 778. The Defendant, the Governor of Oklahoma, issued an Executive Order prohibiting individuals from changing their sex on their birth certificate, stating that people are born either male or female. *Id.* at 777. Plaintiff sued in response, claiming the Executive Order violated the Equal Protection Clause. *Id.* at 780. The Tenth Circuit found that the Executive Order does not serve an important government interest because it was "inexplicably anything but animus towards transgender people," and, therefore, it was deemed

unconstitutional. *Id.* at 788. Additionally, the court found that such discriminatory acts, such as denying people the opportunity to change their gender on their birth certificate, leads to an increased risk of mental instability in the transgender community. *Id.* at 776. Subsequently, the Tenth Circuit ruled that the justification of public morality is not a proper justification for inflicting such grievous harms against transgender people. *Id.* at 787.

The Fourteenth Circuit cites the safety of women as an important government interest. (R. at 10.) They posit this as a good enough justification to warrant discriminating against transgender athletes. (R. at 10.) The courts in *Fowler* and *Flack* disagree. The transgender population experiences a higher rate of mental health issues, suicide, and social isolation. Catherine Jean Archibald, *TRANSGENDER AND INTERSEX SPORTS RIGHTS,* 26 Va. J. Soc. Pol'y & L. 246, 270 (2019). The real safety risk is created by ostracizing and separating an already vulnerable community from the rest of society. If the safety of women is an important government interest, then the safety of transgender women should be as well. Instead, SB 2750 disregards this interest by discriminating against a vulnerable community.

Like the Plaintiff in *Flack,* who needed gender-affirming surgery to feel a sense of belonging, Petitioner seeks a sense of belonging by competing in the women's athletics community, which she had as a member of the girl's cheer team. (R. at 3.) But the position of both SB 2750 and the Fourteenth Circuit is that such a community should not involve transgender women. This exclusion will adversely affect the transgender community. The Court has an opportunity to ensure the public safety of the transgender community. It is for this reason that the Court should find that the means employed by SB 2750 are not substantially related to achieving an important government interest.

Senate Bill 2750 does not represent an important government interest, nor are the means enacted substantially related to those objectives. Any statute that is based on animus towards a politically unpopular class lacks a rational relationship to a legitimate government purpose. Senate Bill 2750, which prohibits transgender women from competing on sports teams that align with their gender identity, is not an important government interest because it was created to discriminate against the transgender population. Senate Bill 2750 relies on antiquated stereotypes about women and their capabilities, concluding that cisgender women cannot compete on the same level as transgender women.

Even if Senate Bill 2750 served an important government interest, the means enacted by the statute are not substantially related to achieving the objective. A blanket ban prohibiting transgender athletes from competing on sports teams that align with their gender identity is unfairly prejudicial and discriminates. Under the statute, they are the only population prohibited from competing on sports teams that align with their gender identity. Furthermore, there are non-discriminatory alternatives to a blanket ban that still allow for equitable and fair competition. By employing the most discriminatory method, SB 2750, on its face, fails to serve an important government interest. It is rather a vehicle by which Respondent seeks to discriminate against transgender individuals. Senate Bill 2750 promotes harm against transgender individuals by isolating them and denying them the ability to authentically participate in the athletic community. Because SB 2750 does not serve an important government interest and because its means are not substantially related, the Court should reverse the Fourteenth Circuit's ruling.

II. This court should reverse the Fourteenth Circuit's decision because Senate Bill 2750 impermissibly discriminates because any decision made based on gender identity is a decision based on sex, and preventing one from joining a team consistent with their gender identity is harm.

Title IX states that "[n]o person . . . 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). To prove a Title IX violation occurred, Petitioner must show: (1) she was excluded from an educational program "on the basis of sex," (2) the educational program received federal financial assistance, and (3) the improper discrimination caused her harm. *Grimm v. Gloucester Cnty. School Board*, 972 F.3d at 616. It is undisputed that the Petitioner's school was a recipient of federal funds.

Petitioner was excluded from competing on a team that aligns with her gender identity, which falls within exclusion on the basis of sex when analyzing the statutory construction and interpretation of Title IX. Additionally, SB 2750 is similar to other statutes that various courts have ruled caused harm to the discriminated party. Therefore, excluding Petitioner from competing on teams that align with her gender identity causes harm that is sufficient to survive a motion for summary judgment. Using the arguments contained herein, the Court should reverse the Fourteenth Circuit's decision and remand the case to the District Court for further proceedings.

A. Title IX ultimately adopts its definition of discrimination "on the basis of sex" from Title VII, which includes discrimination based on gender identity.

There are two ways in which Title VII's definition of sex applies to Title IX: through the interpretation of Title VI or through the similarities Titles IX and VII share in their purpose.

When Title IX was created, it was modeled after Title VI, and therefore, it guides our interpretation of claims under Title IX. *See Jennings v. Univ. of N.C.*, 482 F.3d 686, 695 (4th Cir. 2007); *cf. Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 258, (2009) ("Congress modeled Title IX after Title VI . . . and passed Title IX with the explicit understanding that it would be interpreted as Title VI was." (citation omitted)).

Because Title IX was modeled after Title VI, its definition of sex is incorporated into Title IX. Title VI, however, derives its definition of sex from Title VII. While Titles VI and VII are different, "[a] standard principle of statutory construction provides that identical words and phrases within the same statute should normally be given the same meaning." *Powerex Corp. v. Reliant Energy Services, Inc.*, 551 U.S. 224, 232 (2007). Titles VI and VII are in the same statute, and they both contain the term sex. Accordingly, the same meaning should be given to the term sex. Therefore, because Title IX is modeled after Title VI, and the meaning of sex is the same in Title VI and Title VII, the meaning of sex is the same in Title IX. This principle of statutory interpretation exists to ensure uniformity in our legal system. Retaining consistency among definitions ensures a consistent application and development of the law.

Title VII's interpretation of sex includes discrimination based on one's gender identity. *Bostock v. Clayton County, Georgia*, 590 U.S. 644, 653 (2020). *Bostock* consists of three separate claims that share the same identical facts: an employer fired an employee shortly after learning that the employee was homosexual or transgender. *Id.* Upon review, the Court held that "discrimination based on homosexuality or transgender status *necessarily entails discrimination based on sex*." *Id.* at 669 (emphasis added). Therefore, discrimination based on gender falls under Title IX's definition of discrimination based on sex.

Senate Bill 2750 disallows transgender girls from playing on girls' teams but does not do so for transgender boys. This distinction between transgender girls and cisgender girls is based upon an individual's sex, as the statue provides no other means by which the individuals are distinguishable. To "assign which team an individual will play on," there must be an inquiry into what sex a student possessed at birth. (R. at 11). This "assignment" of students onto teams is a

pretextual means by which the school seeks to hide its discrimination of students based upon their sex. Therefore, SB 2750 discriminates on the basis sex and violates Title IX.

Even if this Court does not find that Title IX includes discrimination based on gender through incorporation of Title VII, it still may use Title VII's definition of sex because of the principle of *in pari materia*. This principle recognizes that similar statues should be interpreted similarly unless legislative history or purpose suggests otherwise. *Doe v. Cooper*, 842 F.3d 833, 844 (C.A.4 (N.C.), 2016). The purpose of Title IX is to "combat 'the continuation of corrosive and unjustified discrimination . . . in the American educational system,'" whereas the purpose of Title VII is to broadly prevent discrimination on the basis of sex. See generally, *Bostock v. Clayton Cnty., Ga.*, 590 U.S. 644, 1747 (2020); J. Brad Reich, A (NOT SO) SIMPLE QUESTION: DOES TITLE IX ENCOMPASS "GENDER"?; 51 J. Marshall L. Rev. 225, 233. Even though Title IX creates specific "carve-outs" which may be made based upon an individual's sex, the carve-outs do not distinguish the purposes of Titles IX and VII.

Any carve-outs under Title IX are still subject to its general prohibition against discrimination based on sex. *Peltier v. Charter Day School, Inc.*, 37 F.4th 104, 113 (C.A.4 (N.C.), 2022). In *Peltier*, Defendant, a charter school, established separate dress codes for its male and female students to maintain order and foster "traditional regard" between students. The school's policy was "a code of conduct where women [were] . . . regarded as a fragile vessel that men are supposed to take care of and honor." *Id.* The Plaintiffs, who are the parents of the students, sued Defendant alleging the dress code violated Title IX, stating that the "[dress code] is a sex-based classification rooted in gender stereotypes that discriminates against [students] based on their gender." *Id.* at 114. The Fourth Circuit held that the legislative intent was for sex-specific dress codes to be subject to the general prohibition against discrimination in Title IX. *Id.* at 129.

Where Title IX allows for sex-separated teams or facilities, the implementation of such cannot be inherently discriminatory. *Grimm*, 972 F.3d at 618. In *Grimm*, Plaintiff, a high school student, was prohibited from using bathrooms consistent with his gender identity. 972 F.3d at 589-590. Plaintiff underwent a form of gender reassignment surgery, obtained identification from the DMV, and received a new birth certificate, both of which listed his gender as male. *Id.* at 601. However, Plaintiff was still prohibited from using the male bathroom. *Id.* Plaintiff sued, alleging that the school board's policy violated Title IX. (R. at 5). The Fourth Circuit, ruling for the Plaintiff, stated the claim did not challenge Defendant's ability to mandate sex-separated bathrooms, but rather challenged "the Board's discriminatory exclusion of [Plaintiff] from the sex-separated restroom matching his gender identity." *Id.* at 618. The Fourth Circuit held that the failure to allow Plaintiff access to the proper bathroom violated Title IX. *Id.* Additionally, the Fourth Circuit stated that, even where Title IX allows sex-separate facilities, the enforcement of the facilities "cannot override the statutory prohibition against discrimination on the basis of sex." *Id.* The court further stated that Defendant could not rely on "its own discriminatory notions of what 'sex' means." *Id.*

Like the Defendant in *Peltier*, Respondent permissibly requires athletic teams to be separated based on sex. 34 C.F.R. § 106.41(b). Also like in *Peltier*, Petitioner does contend that the creation of sex-separate teams violates Title IX; Petitioner instead contends that Respondent is enforcing its requirement in a manner that discriminates on the basis of sex and violates Title IX, like the Plaintiff in *Grimm*. Like the school board's policy in *Grimm*, SB 2750 discriminates against transgender individuals on the basis of sex, but it differs from *Grimm* because it pertains to competition on sports teams as opposed to the use of restrooms. *Id.* at 618. Like the Defendant in *Grimm*, Respondent relies on its own definitions that recognize one's sex as the genetics and reproductive biology assigned to an individual at birth. (R. at 4). Respondent's notions of sex are

inaccurate and underinclusive because, "[i]n actuality, human chromosomes may create multiple sexes." J. Brad Reich, A (NOT SO) SIMPLE QUESTION: DOES TITLE IX ENCOMPASS "GENDER"?; 51 J. Marshall L. Rev. 225, 227. For example, possible chromosomal parings include: XXY, XYY, XXXY, X, and many others. *Id.* These chromosomal pairings serve as an example that the definition of sex is much broader than Respondent contends. Conduct that intentionally disregards gender identity in favor of discriminatory definitions created by the implementing institution cannot be allowed to stand under Title IX. See *Grimm,* 972 F.3d at 620. Similarly, because Title IX "protects the rights of 'individuals, not groups,'" Senate Bill 2750 is inherently discriminatory against Petitioner. *Peltier*, 37 F.4th 104 (C.A.4 (N.C.), 2022) (quoting *Bostock v. Clayton Cnty., Ga.*, 590 U.S. 644, 657-58 (2020).

In *B.P.J. by Jackson v. West Virginia State Board of Education*, the state passed an act that allowed only transgender males to compete on women's sports teams and barred transgender girls from competing on girls' teams. 98 F.4th 542, 550 (C.A.4 (W.Va.), 2024). The act defined males as "an individual whose biological sex determined at birth is male." *Id.* A transgender girl brought a Title IX challenge to the act asserting that it discriminated against her right to participate on the basis of sex. *Id.* The court held that the act discriminated based on sex by unilaterally preventing only transgender girls from competing on teams consistent with their gender identity. *Id.* at 563. The court found that this categorization prevented transgender girls from being similarly situated to cisgender girls because of their biological sex. *Id.*

Senate Bill 2750 mirrors the West Virginia Statue. The statue does not allow Petitioner to compete on the girls' teams but instead forces her to play on the men's team or not at all. (R. at 11). This categorical assignment, based on Respondent's own notions of sex, is implicitly discriminatory. Senate Bill 2750 assigns what team an individual may participate on based on their

biological sex alone "regardless of whether any given girl possesses any inherent athletic advantages based on being transgender." *B.P.J.*, 98 F.4th 542, 563 (C.A.4 (W.Va.), 2024). Biological sex alone is not a sufficient reason under Title IX to separate the sports teams of different sexes. Title IX requires that selection for the teams is based on "competitive skill or the activity involved is a contact sport." 34 C.F.R. § 106.41(b). Because SB 2750 relies on its notions of sex and uses only these notions to assign individuals to athletic teams, it impermissibly and inherently discriminates on the basis of sex. *See id.* at § 106.41(a).

Since Titles IX, VI, and VII all share the same definition of sex, it is clear that SB 2750 violates Title IX by discriminating on the basis of sex.

B. Various courts have found that statutes similar to Senate Bill 2750 cause harm under Title IX.

In order to prove a Title IX claim, Petitioner must show that the discrimination caused her harm. "In the Title IX context, discrimination 'mean[s] treating [an] individual worse than others who are similarly situated.'" *Grimm* at 972 F.3d at 618. (quoting *Bostock v. Clayton Cnty., Ga.*, 590 U.S. 644, 657-58 (2020).

The contention that "transgender girls are not similarly situated to biological girls" not only violates the prohibition Title IX has against discrimination based on sex, but it harms the individual by denying them the ability to participate on a team consistent with their gender identity. (R. at 15). Discrimination based on transgender status or gender identity causes emotional and dignitary harm and may also subject transgender individuals to the safety risks Title IX seeks to protect against. (See generally R. at 15–16). In *B.P.J.*, court analyzed if an act that prevented only transgender girls from competing on teams consistent with their gender identity violated Title IX. 98 F.4th at 563. In discussing the harm suffered the court noted that the act discriminated "on a

categorical basis" and without regard for if any individual possessed any inherent athletic advantage. *Id.*

The court noted that emotional harm caused by the stigma of being separated from your peers was a recognized form of harm under Title IX. *Id.* at 563-64. It was recognized that the student had been living as a girl for over five years, taking puberty blocking medication, and changed her name and birth certificate. *Id.* The court further recognized that because of these efforts the student no longer possessed the same levels of testosterone as biological males, which would subject her to the physical risks the act was concerned about students facing. *Id.* at 564. The student was similarly situated to other girls because she no longer possessed the hormonal properties of a biological male. *Id.* The opportunity for her to compete on the men's team was not a choice at all, instead the act disregarded her identity and banned her from sports entirely. *Id.* The court found the above reasons constituted harm under Title IX. *Id.* at 565.

Much like the West Virginia student in *B.P.J.*, Petitioner has been living as a girl since elementary school. (R. at 3.) Unlike the student in *B.P.J.*, Petitioner has not begun puberty blocking treatments but has been consulting with the appropriate medical professionals. *Id.* The Petitioner is similarly situated to other students but is denied the opportunity to compete consistent with her gender identity. The court in *B.P.J.* did not hold that all sex-separate teams were in violation of Title IX or that transgender girls must be allowed to participate without an inquiry into the possible competitive advantage they may possess. The court only held that the broad categorical discrimination violates Title IX because it harms students in its application. *B.P.J.*, 98 F.4th at 565.

This categorical discrimination imposes harm by subjecting transgender girls to segregation from teams consistent with their gender identity. Petitioner was subject to this same broad discrimination that the West Virginia student was, without an inquiry into any competitive

advantage that she may possess. This treatment forces transgender girls to live contrary to their own identity. The social harm caused by the denial of any opportunity to compete on one's desired sports team is abundantly clear. "It requires no feat of imagination to appreciate '[t]he stigma of being' unable to participate on a team with one's friends and peers." *Id.* (quoting *Grimm*, 972 F.3d at 617–18).

Both SB 2750's prevention of Petitioner from joining the team matching her identity and the contention that she may still compete in sports creates emotional and dignitary harm. The option to participate on the team that matches her gender at birth does not present a choice at all because it "would directly contradict the treatment protocols for gender dysphoria." *Id*.

B.P.J. recognizes the failure to inquire into any competitive advantage, in favor of assigning teams based on sex alone, is a violation of Title IX. 98 F.4th at 563. Petitioner previously competed on the girls' cheerleading team in elementary school without incident. (R. at 3). Petitioner is approaching the average age in which boys begin puberty. *Id.* Senate Bill 2750, however, makes no inquiry into the competitive advantages that may exist, much like the West Virginia act. *Id.* at N.2. This practice of alienating transgender students based on biological sex alone is not an accepted practice. The NCAA implements a sport-by-sport analysis where a transgender woman is tested for appropriate testosterone levels.[4] These polices do not place the focus on the biological sex of the individual but instead on any inherit advantages that an individual may have that would place the other competitors in jeopardy. (Sharon R. López, Andrea C. Farney, Thomas W. Ude Jr., *TRANSGENDER STUDENTS AND ATHLETES ACCESSING EDUCATIONAL OPPORTUNITIES, SCHOOL FACILITIES AND SPORTS TEAMS: TRENDS IN EQUAL*

[4] NCAA, *Transgender Student-Athlete Participation Policy* (01/19/2022, updated for clarity on 04/17/2023), Transgender Student-Athlete Eligibility Review Procedures - NCAA.org. See also NCAA Transgender Student-Athlete Participation Policy: Clarification and Next Steps, Sept. 20, 2022, Power-Point Presentation (ncaaorg.s3.amazonaws.com).

PROTECTION AND TITLE IX, 95 Pa. B.A. Q. 158, 168). This process of shifting the focus of the regulation aligns with the policy of Title IX. Title IX originally sought to right previously limited opportunities for women and protect them from harm when competing against other sexes. This method of determining the eligibility of each athlete protects the opportunities and safety of all women and removes the harmful stigma of being excluded based on sex. Separating individuals based only upon their sex is not only a violation of Title IX, but a separation of individuals with a complete disregard for their well-being. The innate inability to choose which team to participate on is harm.

Excluding an individual from facilities consistent with their gender identity causes harm. In *Doe by and through Doe v. Boyertown Area School District*, anonymous students brought a challenge to the school's policy which allowed students to use locker rooms and bathrooms consistent with their gender identity. 897 F.3d 518, 523 (C.A.3 (Pa.), 2018). These students claimed that this policy was "sexual harassment" and harmed both sexes equally. *Id.* at 534. They sought an injunction against the school policy that allowed this conduct. *Id.* The court noted that treating both sexes equally does not violate Title IX because "that is simply not the law." *Id.* It instead recognized that whenever transgender individuals are denied use of facilities consistent with their gender identity, it may "have detrimental effects on the physical and mental health, safety, and well-being of transgender individuals."[5] These exclusionary polices increase the risk of adverse outcomes for transgender individuals. 897 F.3d at 18. The court held that the students did not have a claim under Title IX. *Doe*, 897 F.3d at 534.

Doe illustrates the harm transgender students can suffer when their gender identity is not recognized. Petitioner was denied the ability to participate on a team consistent with her gender

[5] Br. for Amici Curiae American Academy of Pediatrics, American Medical Association, et al., 17.

identity; the harm it caused her is clear. (R. at 11). Petitioner being denied access to a sports team consistent with her gender identity is equally as harmful as being denied access to sex separated facilities. The harmful effects of denying one the ability to live consistent with their gender identity persists regardless of the specific type of opportunity that they are denied. The discriminatory practice of assigning school sports team on sex alone will bring about the same harms described in *Doe*. Further, it also forces Petitioner to live and participate as a sex she has not identified with since she was in elementary school. (R. at 3). This is contrary to the view of family, friends, and school administration who have viewed Petitioner as a girl for years. This is the true harm suffered, the inability to accept Petitioner's identity will force her to live two lives.

The discrimination that Petitioner suffered caused her harm by creating a stigma surrounding her conduct, causing emotional and dignitary distress.

CONCLUSION

Senate Bill 2750 discriminates on the basis of sex and is unconstitutional because it fails under the first and second prongs of intermediate scrutiny. Even if Senate Bill 2750 served an important government interest, it would still be struck down under the second prong of intermediate scrutiny because the means are more discriminatory than necessary and are not substantially related to an important government interest.

Senate Bill 2750 also violates Title IX. It discriminates on the basis of sex because Title IX's definition of sex includes gender identity. Petitioner has shown harm because Senate Bill 2750's causes emotional and dignitary distress. For the following reasons we ask you to reverse the Fourteenth Circuit's holding and remand this case for further proceedings.

Signed: **Team 22**
Counsel for Petition