No. 24-2020

IN THE

Supreme Court of the United States

A.J.T.,

Petitioner,

v.

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

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fourteenth Circuit

---

BRIEF FOR RESPONDENTS

Team 24
Counsel for Respondents

QUESTIONS PRESENTED

1. Whether a state law separating school sports teams based on biological sex, passed to advance the state's goal of maintaining safety and competitive integrity, violates the Equal Protection Clause.
2. Whether a state law requiring student athletes to participate on sports teams consistent with their biological sex violates Title IX.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Regulations

Constitutional Provisions

OPINIONS AND ORDER

The opinion and order of the United States Court of Appeals for the Fourteenth Circuit is reproduced at R. 2-16. The opinion and order of the United States District Court for the Eastern District of North Greene is published at *A.J.T. v. State of North Greene Bd. of Educ.*, No. 23-1023, 2023 WL 56789 (E.D. N. Greene 2023).

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Fourteenth Amendment's Equal Protection Clause, prohibiting states from "deny[ing] to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

STATEMENT OF THE CASE

1. North Greene's "Save Women's Sports Act."

To address "inherent differences between biological males and biological females," the North Greene legislature crafted a policy "to provide equal athletic opportunities for female athletes and to protect the physical safety of female athletes when competing." R. at 3-4. The resulting "Save Women's Sports Act" ("the Act") was enacted in 2023. R. at 3.

This law requires schools to separate sports teams by biological sex, without reference to a student's gender identity. R. at 4. The Act creates a two-step process for schools when separating athletic teams. First, schools must designate each team as "males, men, or boys; females, women, or girls; or coed or mixed." N.G. Code § 22-3-16(a). Classification as "males" or "females" encompasses only those "individual[s] whose biological sex determined at birth" are male and female, respectively. N.G. Code § 22-3-16(a)(2)-(3). Second, schools determine whether (1) selection for a team is "based on competitive skill" or (2) "the activity involved is a contact sport." N.G. Code § 22-3-16(b). The sports teams that are both (1) designated for females and (2) determined to be a contact sport or based on competitive skill may include only biologically female participants. N.G. Code § 22-3-16(b).

The Act does not address gender identity and specifically notes that gender identity and sex are distinct concepts. N.G. Code § 22-3-16(c).

2. A.J.T.'s Claim.

A.J.T. is an eleven-year-old transgender female[1] student at a North Greene middle school. R. at 3. A.J.T. sought to participate on the middle school girls' volleyball and cross-country

[1] Consistent with the Fourteenth Circuit's opinion this brief uses the terms cisgender girl, female, or woman to refer to individuals whose gender identity is consistent with their sex assigned at birth. Contrarily, the term transgender female refers to a person whose identifies with the female gender and was assigned male at birth.

teams at her school, however both teams are classified as "female" under the Act. R. at 3. Accordingly, the school informed A.J.T. she was not permitted to participate on the girls' teams as a biological male. R. at 3. A.J.T., by and through her mother, subsequently sued North Greene's Board of Education and the North Greene State Superintendent, asserting that the Act violated the Equal Protection Clause of the Fourteenth Amendment and Title IX. R. at 4-5. A.J.T. seeks declaratory judgment and an injunction preventing Defendants from enforcing the law against her. R. at 5.

3. Proceedings Below.

Following A.J.T.'s initial suit, the District Court granted the State of North Greene's motion to intervene. R. at 4. A.J.T. subsequently amended her complaint to add the State of North Greene and North Greene's Attorney General as parties. R. at 4-5. Collectively, defendants filed a motion for summary judgment on the grounds that the Act violated neither the Equal Protection Clause nor Title IX. R. at 5. The District Court granted the Defendant's motion for summary judgment, finding no violation of the Equal Protection Clause or Title IX. R. at 5.

Following this, A.J.T. appealed to the Fourteenth Circuit, which affirmed the District Court's grant of summary judgment. R. at 5. The Fourteenth Circuit held that the Act does not violate the Equal Protection Clause because the law treats similarly situated students the same. R. at 7-8. Additionally, the court held that, because North Greene had a legitimate interest in protecting female athletes' safety and competitive integrity, and the Act's definition of "sex" was substantially related to these interests, the Act withstood equal protection analysis. R. at 6, 8-10. Further, the Fourteenth Circuit held there was no violation of Title IX because transgender girls are not excluded from school athletics, and the sex-separation in the Act is consistent with Title IX's regulations. R. at 11.

SUMMARY OF THE ARGUMENT

Policymaking requires line drawing. In their role as drafters and enactors of policy, state legislatures are afforded a certain level of judicially-recognized discretion to draw distinctions necessary to effectuate the law. *See e.g.*, *Reed v. Reed*, 404 U.S. 71, 75 (1971) (noting that this Court "has consistently recognized that the Fourteenth Amendment does not deny to States the power to treat different classes of persons in different ways"); *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921, 995 (N.D. Cal. 2010) ("The guarantee of equal protection coexists, of course, with the reality that most legislation must classify for some purpose or another."). Here, North Greene developed and passed a law that balances the interests of its citizens. This law is not an instance of discriminatory classification or arbitrary line drawing, but rather reflects a legislature's careful consideration of the conflicting concerns of students, athletes, the transgender community, and North Greene constituents. This Court should affirm the Fourteenth Circuit's judgment and hold the North Greene's Save Women's Sports Act does not violate the Equal Protection Clause or Title IX.

I. North Greene's Save Women's Sports Act is consistent with the Equal Protection Clause of the Fourteenth Amendment. **I.A.** The Act does not implicate the Equal Protection Clause because the Save Women's Sports Act does not treat similarly situated individuals differently. Because Plaintiff is biologically male, and the Act treats all biological males alike, Plaintiff's equal protection clause challenge necessarily fails.

I.B. Even if transgender females and biological females are similarly situated, the North Greene law nonetheless survives equal protection review. The Act's sex-based classification advances two substantial state interests—ensuring safety and competitive integrity in women's sports—and is directly and substantially related to these state interests. Scientifically and legally-recognized differences in the physiologies of biological men and women justify North Greene's

sex-based distinction in school sports teams, preventing inherent physical advantage from depriving female athletes of safe and fair competition.

II. North Greene's sex-based classification of school sports teams does not violate Title IX. Because the ordinary meaning and subsequent judicial interpretations of "sex" do not include gender identity, and Title IX's implementing regulations explicitly allow sex-separated sports teams, the sex-based classification of the Act is not discriminatory. Further, transgender student athletes suffer no harm from North Greene's law. Therefore, the Act does not violate Title IX.

ARGUMENT

I. THE NORTH GREENE LAW DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE.

The Equal Protection Clause of the Fourteenth Amendment provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV. At its core, the Equal Protection Clause is "essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). Consequently, if a challenged statute treats similarly situated parties equally, the Equal Protection Clause is not implicated. *B.P.J. v. W. Va. State Bd. of Educ.*, 98 F.4th 542, 559 (4th Cir. 2024) ("The essence of an equal protection claim is that at least one person has been treated differently from another without sufficient justification.") (citing *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000)).

Even a statute that treats similarly situated individuals differently may survive judicial scrutiny. *United States v. Virginia*, 518 U.S. 515, 531 (1996) (noting that the government may take gender-based action so long as it provides justification). This Court has long recognized that legislatures have legitimate interests that may necessitate line-drawing. *E.g.*, *F.C.C. v. Beach Comms., Inc.*, 508 U.S. 307, 315 (1993); *U.S. R.R. Ret. Bd. v. Fritz*, 449 U.S. 166, 179 (1980)

(recognizing that "the legislature must necessarily engage in a process of line-drawing."); *Weber v. Aetna Cas. & Sur. Co.*, 406 U.S. 164, 185 (1972) (Rehnquist, J., dissenting) ("All legislation involves classification and line drawing of one kind or another.").

One such classification that, though scrutinized, has been historically upheld is sex. *See Virginia*, 518 U.S. at 533 (stating "[p]hysical differences between men and women, however, are enduring," and noting that sex-based classifications are circumstantially appropriate). Laws classifying based on sex pass constitutional muster where the classification used "is substantially related to a sufficiently important governmental interest." *Cleburne*, 473 U.S. at 441.[2]

The North Greene law does not implicate the Equal Protection Clause because it treats all biological males the same. Because A.J.T. is similarly situated to other biological males, and the Act treats all biological males alike, A.J.T. fails to state an equal protection claim. Even if transgender women were similarly situated to cisgender women in athletics, the Act satisfies equal protection analysis. Firstly, North Greene's law advances two sufficient state interests in protecting the safety of female student athletes and maintaining competitive integrity. Secondly, the sex-based distinction used in the Act is directly related to advancing these state interests, justifying North Greene's use of a sex-based classification under the Equal Protection Clause.

[2] This Court's precedent suggests that review of a state law using a gender-based classification requires intermediate scrutiny. *See e.g.*, *Virginia*, 518 U.S. at 532-33; *M. v. Superior Court*, 450 U.S. 464, 468-69 (1981); *Reed*, 404 U.S. at 76; *Craig v. Boren*, 429 U.S. 190, 197 (1976); *F.S. Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920). Consequently, Respondents proceed applying intermediate scrutiny review to the North Greene law. However, if the Court deems rational basis review appropriate, which it has for instances of alleged LGBTQ discrimination, the North Greene statute also clears that hurdle easily. *See Romer v. Evans*, 517 U.S. 620, 632-33 (1996). Rational basis review requires only that the government show that the challenged statute "rationally furthers a legitimate state interest." *Nordlinger v. Hahn*, 505 U.S. 1, 11 (1992). Because rational basis review requires a lower standard of proof, a law that survives intermediate scrutiny also survives rational basis review.

A. Male Athletes Are Not Similarly Situated to Female Athletes.

The Act does not implicate the Equal Protection Clause because it does not treat similarly situated parties differently. To state an equal protection claim, A.J.T. must show that a person to whom she is similarly situated has received different treatment than her. *See Nordlinger*, 505 U.S. at 10 (stating that the Equal Protection Clause prevents "governmental decisionmakers from treating differently person who are in all relevant aspects alike."). Persons are "similarly situated" when "they are alike in all relevant respects." *Startzell v. City of Phila.*, 533 F.3d 183, 203 (3d Cir. 2008). A.J.T., however, cannot make this requisite showing because in athletics, the "relevant respect" or characteristic is biological sex, and the Act treats members of the same biological sex equally. *See* R. at 4.

Sex is the relevant characteristic here for two reasons. First, "[t]he proper classification for purposes of equal protection analysis is not an exact science, but scouting must always begin with the statutory classification itself." *Califano v. Boles*, 443 U.S. 282, 293-94 (1979). Here, the Act explicitly classifies based on biological sex. R. at 4. Second, because safety and competitive integrity are the goals of the statute, athletic performance differences between the sexes are a key concern. Because sex is determinative of athletic performance, it is the relevant characteristic by which to evaluate this equal protection claim. Here, since sex is the relevant characteristic, and because A.J.T. is a biological male, so long as she is treated similarly to other biological males, the Act satisfies the Equal Protection Clause. North Greene's law treats all biological males the same and all biological females the same. *See* N.G. Code § 22-3-15(a)-16(b). Therefore, similarly situated individuals are treated equally and the Equal Protection Clause is not implicated.

Physiologically, biological males and females are different. A recent peer reviewed study noted that on average, women have 50% to 60% of men's arm strength, 60% to 80% of men's leg strength, and an average muscle mass that is twelve kilograms less than age-matched men at any given weight. David J. Handelsman et. al., *Circulating Testosterone as the Hormonal Basis of Sex Differences in Athletic Performance*, 39 Endocr. Rev. 803, 803-29 (2018). Because, as reflected in this study, men are larger and have more muscle mass than women, the male physiology produces "an obvious performance enhancing effect[.]" *Id.*

With this, the physical differences between the sexes are more apparent in athletics than in almost any other setting. *See Pre-Puberty, Children Show Marked Differences in Performance*, Women's Sports Policy Working Group (Jan. 1, 2024), available at: https://bit.ly/3BbldlK. In athletics, "the performance gap between males and females . . . often amounts to 10-50% depending on sport." Emma N. Hilton & Tommy R. Lundberg, *Transgender Women in the Female Category of Sport: Perspectives on Testosterone Suppression and Performance Advantage*, Sports Med., 199, 199 (2021). Put simply, because of size and muscular disparities between the sexes, athletic performance is tied directly to sex.

The physical and performance disparities between the sexes persist at every age and show clear athletic performance advantages for males, even before puberty For example, in a review of 85,000 children, researchers found that nine-year-old males were 9.8% faster at short sprints, 16.6% faster in a one-mile race, could jump 9.5% further from a standing position, could complete 33% more push-ups in 30 seconds, and had a 13.8% stronger grip than 9-year-old females. Mark J. Catley & Grant R. Tomkinson, *Normative health-related fitness values for children: analysis of 85347 test results on 9-17-year-old Australians since 1985*, 47 Brit. J.

Sports Med. 98, 98-108 (2013). Parties so starkly different cannot be similarly situated when evaluating safety and athletic opportunities.

Consequently, scientific evidence reflects that in athletics, males and females are not similarly situated. This Court recognizes that there are some "real differences" between males and females that may permit legislatures to treat them differently. *Virginia*, 518 U.S. at 533. Such differences exist prominently in athletics, and this distinction informs the Act. These differences are important and should be considered when legislating because "fail[ing] to acknowledge even our most basic biological differences . . . risks making the guarantee of equal protection superficial, and so disserving it." *Nguyen v. INS*, 533 U.S. 53, 73 (2001). As a result, the Save Women's Sports Act treats similarly situated parties the same and therefore does not violate the Equal Protection Clause.

B. Even if Equal Protection Analysis Applies, the North Greene Law Satisfies Intermediate Scrutiny.

While Plaintiff fails to state an equal protection claim because she is not similarly situated to biologically female athletes, the Save Women's Sports Act passes constitutional muster even if equal protection analysis is broached. The Equal Protection Clause is not a blanket ban on classification by state legislators. *Royster Guano Co.*, 253 U.S. at 415 ("It is unnecessary to say that the 'equal protection of the laws' required by the Fourteenth Amendment does not prevent the States from resorting to classification for the purposes of legislation."). "Numerous and familiar decisions of this [C]ourt" establish that states may legislatively classify persons in their jurisdiction. *Id.*; *see e.g.*, *Reed*, 404 U.S. at 75.

A state law satisfies equal protection review under intermediate scrutiny where: (1) the law "serves important governmental objectives" and (2) "the discriminatory means employed are substantially related to the achievement of those objectives." *Virginia*, 518 U.S. at 524 (quoting

Miss. Univ. for Women v. Hogan, 458 U.S. 718, 724 (1982)). Because North Greene's Save Women's Sports Act was passed to ensure safety and fair competition for female athletes, and the sex-based classification used in the law directly serves these goals, the Act is constitutional under the Equal Protection Clause.

1. Protecting female student athletes and ensuring competitive integrity in student athletics are sufficient state interests.

North Greene passed the Save Women's Sports Act "to provide equal athletic opportunities for female athletes and to protect the physical safety of female athletes when competing." R. at 3-4. These goals—maintaining safety and fair competition for female student athletes—are universally considered sufficient state interests under the Equal Protection Clause. *See O'Connor v. Bd. of Educ. of Sch. Dist. 23*, 449 U.S. 1301, 1302 (1980) (Stevens, J., in chambers) ("[T]here can be little question about the validity of [a sex-based classification for sports teams] in most of its normal applications."); *D.N. v. DeSantis*, 701 F. Supp. 3d 1244, 1254 (S.D. Fla. 2023) ("[W]e find that promoting women's equality in athletics is an important governmental interest. This interest is well established."); Lawfulness of the Sports and Spaces Act, Op. Att'y Gen. 24-001 (2024) (noting that judicial precedent "affirm[s] that protecting female athletic opportunity is an important government interest"); *Petrie v. Ill. High Sch. Ass'n*, 394 N.E.2d 855, 862 (Ill. App. Ct. 1979).

Even courts that have declined to uphold a law classifying student sports teams by sex, recognize that safety and fairness in female athletics are sufficient state interests. *E.g.*, *Hecox v. Little*, 79 F.4th 1009, 1038 (9th Cir. 2023) (reaffirming the court's previous holdings that "furthering women's equality and promoting fairness in female athletic teams is an important state interest"); *B.P.J.*, 98 F.4th at 559 (noting the state "has an interest in preventing 'athletic opportunities for women' from being 'diminished' by substantial displacement") (quoting *Clark*

v. Ariz. Interscholastic Ass'n, 695 F.2d 1126, 1131 (9th Cir. 1982)).

Further, neither Plaintiff nor the lower courts suggest that the interest advanced by the Act is insufficient: "Plaintiff does not contest that the state's interest in providing equal athletic opportunity to females is an important one." R. at 8-9 ("It cannot be disputed that ensuring equal opportunities for females is a sufficiently important government interest."). Thus, the question before the Court is whether the sex-based classification within the Act is related to the state interests identified.

2. The North Greene law's classification by "biological sex" is substantially related to advancing the state's interests.

Courts vary in framing the standard by which to determine if a sufficient nexus exists between a sex-based classification and the state interest advanced by the statute. *See e.g.*, *Reed*, 404 U.S. at 76 (finding that a classification needs to bear a "fair and substantial relationship to the object of the legislation"); *Craig*, 429 U.S. at 197 ("To withstand constitutional challenge [the classification] must be substantially related to the achievement of those objectives."); *Miss. Univ. for Women*, 458 U.S. at 728 (describing the "direct, substantial relationship" needed "between objective and means" of a law). Generally, this prong of equal protection analysis asks whether the policy at issue "has a close and substantial bearing" on the government interest being advanced by the statute. *Nguyen*, 533 U.S. at 70. This is not to say that the Equal Protection Clause requires a "perfect fit between means and ends"—the state does not need to show that the law at issue will achieve the stated goal; merely that the sex-based classification relates to the ends the law serves. *Adams ex rel. Kasper v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791, 801 (11th Cir. 2022). Here, where separating athletes by sex is necessary to maintain safety and fair competition in female athletics, the sex-based classification used in the Act is directly related to the interests the law advances.

a. Compensating one sex for a disadvantage suffered.

A sex-based classification is "justified if it intentionally and directly assists members of the sex that is disproportionately burdened." *Miss. Univ. for Women*, 458 U.S. at 728. "[A]n otherwise discriminatory classification" is permitted "only if members of the gender benefited by the classification actually suffer a disadvantage related to the classification." *Id.* This Court marked a minimum standard for this type of compensatory relation in *Mississippi University for Women* and declined to uphold a state university policy excluding men from nursing school admissions. *Id.* at 730. There, the state interest being served—compensating women for past discrimination—was sufficient under the first prong of equal protection analysis. *See id.* Despite this, the school's policy was unrelated to the goal of remedying past discrimination against women in nursing because there was no current discrimination for the policy to address: "women earned 94 percent of the nursing baccalaureate degrees conferred in Mississippi and 98.6 percent of the degrees earned nationwide." *Id.* at 729. Thus, a policy blocking males from attending nursing school had no relation to the state's interest because the policy did nothing to actually serve the state's interest. *See id.*

In the case of the Save Women's Sports Act, however, the legislative goals advanced are inextricably linked to the classification of student athletes by biological sex. "[I]t is neither myth nor outdated stereotype that there are inherent differences between those born male and those born female and that those born male, including transgender women and girls, have physiological advantages in many sports." *Adams*, 57 F.4th at 820 (Lagoa, J., specially concurring). The Act reflects the scientifically-proven notion that sex is a "determinant of athletic performance." *ACSM Releases Expert Consensus Statement: The Biological Basis of Sex Differences in Athletic Performance*, Am. Coll. of Sports Med. (Sept. 29, 2023), available at: https://bit.ly/3B08wKC. This disparity extends to even pre-pubescent students where before

entering puberty, males have testosterone-based physical advantages. *See supra* part I.A. Before and after puberty, boys outperform girls of the same age in muscular strength, endurance, speed, aerobic fitness, ball throwing, and kicking distance. *See supra* part I.A.

This plethora of evidence starkly distinguishes the North Greene law from the policy in *Mississippi University for Women* that lacked relation to the goal it purportedly advanced. *See Miss. Univ. for Women*, 458 U.S. at 728. There, the sex-based classification was essentially non-operational with respect to the state's interest: there was no way for the policy to aid in remedying past gender discrimination in nursing when the *vast* majority of nursing degrees were already earned by women. *Id.* at 729. Here, however, classifying athletes based on sex allows North Greene to address current, scientifically and legally-recognized physiological differences that favor biological men over biological women in athletic performance. To serve the state's interest—preventing unfair advantage in athletics—the Act necessarily must separate athletes based on the characteristic that gives some an inherent advantage over others: sex.

b. Temporal limitation on non-physical state interests.

This question of relation has been broached in a context similar to student athletics: school bathrooms. *See generally*, *Adams*, 57 F.4th 791; *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586 (4th Cir. 2020); *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034 (7th Cir. 2017). Circuit courts disagree when assessing whether policies that separate school bathrooms by sex are related to the state interest advanced by such policies. Like in *Mississippi University for Women*, courts in the "bathroom cases" determined whether there is a sufficient relationship between means and ends by asking: does the sex-based classification actually do anything to further the policy's goal? *See Miss. Univ. for Women*, 458 U.S. at 728.

For both sides of the debate, the answer to this question turns on *when* the state interest at

play—maintaining student privacy in the bathroom—needs protecting. *Compare Whitaker*, 858 F.3d at 1052 (finding that, because the bodily privacy of cisgender boys using the boys restrooms did not increase when a transgender student was banned from those restrooms, a policy mandating sex-separate bathrooms does nothing to safeguard student privacy and is consequently insufficiently related to this interest) *with Adams*, 57 F.4th at 806 (finding that because "sex-specific privacy interests for all students . . . attach once the doorways to those bathrooms swing open [and] are not confined to the individual stalls in those bathrooms," sex-based classification immediately preserves the level of privacy in a school bathroom and directly relates to the interest served).

Unlike the interest in the bathroom cases, however, the state interests served by the North Greene law are of a wholly different *kind* and do not require the same temporal analysis. In the bathroom cases, the interest being protected is one with limited scope: protecting student privacy *in the school bathroom*. *E.g.*, *Adams*, 57 F.4th at 803; *Whitaker*, 858 F.3d at 1052. While disagreeing in outcome, the bathroom cases agree that the court must determine when the presence of a student of the opposite sex creates a privacy issue in order to assess if a sex-based policy serves the goal of protecting student privacy. *See Whitaker*, 858 F.3d at 1052; *Grimm*, 972 F.3d at 613. After all, a sex-based policy to maintain student privacy is only effective, and thus serving of its state interest, when the presence of a student of the opposite sex poses a privacy risk. The interest served in the athletic context, however, is protecting against physical risk and the physical advantage afforded to one sex over the other. *E.g.*, *D.N.*, 701 F. Supp. 3d at 1254; *Petrie*, 394 N.E.2d at 862; *Hecox*, 79 F.4th at 1038. In athletics, there is no one, specific, point at which the state interest "attaches" and a policy is needed to serve that interest. While one court in the bathroom context found that the physical presence of a student of the opposite sex "provides

no more of a risk to other students privacy rights than the presence of an overly curious student of the same biological sex," *Whitaker*, 858 F.3d at 1052, the opposite is true as to the risk posed to female athletes in student sports. Where, by nature of the proven physical advantages experienced by males, the presence of a male athlete in female athletic competition *does* pose an automatic risk to physical safety and fair competition, the need for sex-separated sports teams does not have such a temporal limitation.

c. Using sex-based classification to address physical differences in the sexes.

The legitimacy of using a sex-based classification to address physical differences in the sexes has already been established by this Court and should be reaffirmed here. In *Nguyen*, this Court considered a federal statute that governs children born outside of the U.S. to unmarried parents, where one parent is a U.S. citizen and one is not. 533 U.S. at 56. With this statute, the government aimed to (1) secure proof of a biological parent-child relationship and (2) allow the child and citizen parent the opportunity to develop a relationship. *Id.* at 62, 64-65. The statute set out requirements for a child to obtain citizenship, imposing additional requirements when the citizen parent is the child's father, rather than the mother. *Id.* at 56, 59-60.

Focusing the analysis on the physical disparities between men and women in the context of birth, the Court found a sufficient tie between the statute's sex classification and the interests the statute serves. *Id.* at 68. At the birth of the child, the presence and identity of the mother is known with a level of certainty that is unachievable with respect to the father because of physical differences in the sexes (i.e. "[A] mother must be present at the birth but the father need not be."). *Id.* at 73. Where the sufficient government interests at hand focused on proof of parentage, the Court found that the sex-based distinction served these interests because it "addresse[d] an undeniable difference in the circumstances" of males and female during birth. *Id.* at 68.

The interests that the North Green law advances are based on similar inescapable differences in the physiologies of men and women. Like in the birthing context, physical differences between women and men in athletic competition cannot be ignored. The competitive advantage afforded to men by genetics deprives sporting events of fair competition and poses a safety risk to female athletes who may be well-equipped to compete with their female peers but are unable to do so against men. *Supra* part I.A.; *see O'Connor*, 449 U.S. at 1307 (Stevens, J., in chambers) ("Without a gender-based classification in competitive contact sports, there would be a substantial risk that boys would dominate the girls programs and deny them an equal opportunity to compete in interscholastic events."). The question at issue in both settings is not a matter of cerebral differences or perceived disparities, but rather asks how the physical makeup of an individual contributes to the specific context in which they are participating. In *Nguyen*, the Court found that "[t]he difference between men and women in relation to the birth process is a real one, and the principle of equal protection does not forbid Congress to address the problem at hand in a manner specific to each gender." *Nguyen*, 533 U.S. at 73. Similarly, here, the difference in physical attributes needed and used by athletes in competition is a product of "our most basic biological differences." *See id.* Accordingly, North Greene is entitled to the same legislative discretion to address physical differences by classifying athletes by sex.

The Save Women's Sports Act advances two important governmental objectives: maintaining safety and fostering competition for female student athletic teams. Because a direct tie exists between the sex-based classification and the advancement of these sufficient state interests, the Act satisfies equal protection analysis.

II. THE NORTH GREENE LAW DOES NOT VIOLATE TITLE IX.

Title IX was passed as part of the Education Amendments of 1972 and provides that "no person in the United States shall, on the basis of sex, be excluded from participation in, be denied

the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a). The purpose of Title IX is to prevent recipients of federal funds from using those funds discriminatorily. *See Williams v. Sch. Dist. of Bethlehem*, 998 F.2d 168, 171 (3d Cir. 1993). Title IX also aims to remedy past discrimination in female athletics. *See id.* at 175; *see also Cohen v. Brown Univ.*, 991 F.2d 888, 892 (1st Cir. 1993); *see also* 44 Fed. Reg. 71,413, 71,419 (Dec. 11, 1979).

To prove a Title IX claim, Plaintiff must show: (1) she was discriminated against on the basis of sex in an educational program; (2) the educational program was receiving federal funds; and (3) the discrimination caused the plaintiff harm.[3] *See Cannon v. Univ. of Chic.*, 441 U.S. 677, 680 (1979); *Peltier v. Charter Day Sch., Inc.*, 37 F.4th 104, 129 (4th Cir. 2022). Here, Plaintiff cannot prove that the North Greene Law discriminates on the basis of sex or that she suffered harm. Therefore, the Title IX claim fails as a matter of law.

First, Plaintiff cannot prove she was discriminated against because classifying school sports teams by sex is not discriminatory. The term "sex" does not include gender identity, and the implementing regulations of Title IX explicitly allow for sex-separated athletics. Second, Plaintiff and other transgender female students are not harmed by the North Greene law because they are provided sufficient alternatives.

A. Classifying School Sports Teams by Biological Sex is Not Discriminatory.

Title IX was passed to afford equal opportunities to female students when, historically, male students were offered more opportunities, specifically in athletics. *Williams*, 998 F.2d at 175. The Act separates student athletes based on their biological sex. N.G. Code § 22-3-15(a)(1). This is not discriminatory under Title IX because the ordinary meaning of "sex" when Title IX

[3] North Greene does not dispute that Plaintiff's school receives federal funds.

was passed and subsequent judicial interpretations all indicate the term meant biological sex. Additionally, Title IX's implementing regulations specifically allow schools to decide whether to separate sports by sex. Therefore, the North Greene law does not discriminate on the basis of sex.

1. The ordinary meaning of "sex" when Title IX was passed did not encompass gender identity.

Plaintiff asserts that the North Greene law discriminates against transgender female students on the basis of sex; however, Plaintiff is really asserting that the Act discriminates on the basis of gender identity. R. at 3. Gender identity refers to "a person's deeply held core sense of self in relation to gender." *See PFLAG*, *PFLAG National Glossary of Terms* (September 2024), http://pflag.org/glossary. On the other hand, sex refers to, "anatomical, physiological, genetic, or physical attributes that determine if a person is male, female, or intersex." *See id.*

As used in Title IX's prohibition on discrimination, "sex" refers to an individual's biological sex, not their gender identity. *See* 20 U.S.C. § 1681(a). Title IX allows separation on the basis of sex when it is used to further the goal of equal opportunity among the sexes. *See* 34 C.F.R. § 106.33. The North Greene law properly separates school sports consistent with Title IX. N.G. Code § 2203-16(c). Plaintiff's assertion that gender identity is included in sex is not consistent with the meaning of sex as used in Title IX or subsequent judicial interpretations.

a. Ordinary meaning.

When interpreting a statute, the starting point is always the text. *Ross v. Blake*, 578 U.S. 632, 638 (2016). Because neither Title IX nor its regulations define sex, this Court must use its traditional tools of statutory interpretation to determine how the relevant term sex is defined. 20 U.S.C. § 1681(a). Statutory terms should be defined "consistent with their ordinary meaning at the time Congress enacted the statute." *Wis. Cent. Ltd. v. United States*, 585 U.S. 274, 277 (2018) (citing *Perrin v. United States*, 444 U.S. 37, 42 (1979)). Further, courts must read statutes in the

context of the entire statutory scheme and to be consistent with Congress' purpose. *Holloway v. United States*, 526 U.S. 1, 7 (1999).

Tenants of statutory interpretation indicate that one way to determine the ordinary meaning of a statutory term is to consider dictionary definitions from the time of enactment. *Bostock v. Clayton Cnty.*, 590 U.S. 644, 655 (2020). Dictionaries from the time of Title IX's enactment in 1972 indicate that "sex," referred to biological sex. *See, e.g.*, *Sex, American Heritage Dictionary of the English Language* (1976) (defining "sex" as the property or quality by which organisms are classified according to their reproductive functions); *Sex, Female, Male, Oxford English Dictionary* (re-issue ed. 1978) (defining "sex" as either of the two divisions of organic beings distinguished as male and female respectively," "female" "as belonging to the sex which bears offspring" and "male" as of or belonging to the sex which begets offspring, or performs the fecundating function of generation).

Modern dictionaries also define "sex" as biological sex. *See e.g.*, *Sex, Merriam-Webster's Dictionary,* merriam-webster.com/dictionary/sex (last visited Sept. 5, 2024) (defining "sex" as either of the two major forms of individuals that occur in many species and that are distinguished respectively as female or male especially on basis of their reproductive organs and structures); *Sex, Black's Law Dictionary* (12th ed. 2024) (defining "sex" as the sum of the peculiarities of structure and function that distinguish a male from a female organism").

The dictionary definitions, modern and from the time of Title IX's enactment, reveal "sex" in Title IX refers exclusively to biological sex, not gender identity. Considering the purpose of Title IX confirms that sex does not include gender identity. Title IX was passed to ensure that female students were offered equal athletic opportunities to male students when, historically, women were offered fewer athletic opportunities. 44 Fed. Reg. at 71,419. The

dictionary definitions of sex considered in conjunction with Title IX's purpose reveal that Title IX referred exclusively to biological sex and affording biological males and females the same opportunities.

b. Judicial interpretations of "sex."

This Court also looks to other courts' interpretations of statutory terms to determine a term's meaning. *See Bostock*, 590 U.S. at 723-724. When applying Title IX, courts focus on the unequal treatment in educational settings between males and females, specifically the historical lack of equal athletic opportunities for females. *See e.g.*, *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 171 (2005); *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 633 (1999); *NCAA v. Smith*, 525 U.S. 459, 462 (1999).

The Sixth and the Eleventh Circuits have interpreted sex as only referring to biological sex. *Adams*, 57 F.4th at 812 (holding that the dictionary definitions and context of Title IX indicate that sex refers to biological sex, not gender identity); *Tennessee v. Cardona*, No. 24-5588, 2024 U.S. App. LEXIS 17600, at *7 (6th Cir. July 17, 2024) (declining to grant a stay on a Rule that includes gender identity in the definition of "sex" because the definition of "sex" likely referred to biological sex and did not include gender identity).

Contrarily, in *B.P.J. v. West Virginia State Board of Education*, the Fourth Circuit evaluated a law similar to the North Greene law that prevented a biological male who was taking puberty blocking medication from participating on female sports teams, ultimately holding that the law violated Title IX. 98 F.4th at 562. In *B.P.J.*, the plaintiff had been taking puberty blocking medication for years prior to bringing her claim. *Id.* This was necessary for the Fourth Circuit to consider when deciding the case and the potential implications it would have on Title IX. *See id.*

Unlike in *B.P.J.*, Plaintiff has considered taking puberty blocking medication but is not currently using those medications. R. at 3; *B.P.J.*, 98 F.4th at 560. This Court must consider the impact that allowing all biological males, regardless of their medical status and treatment, to compete on female teams would have on Title IX. If successful, Plaintiff's claim would allow biological males who have completed puberty and identify as female to compete on female sports teams. *See* R. at 3. This would displace female athletes from the opportunity of fair competition, one of the critical goals of Title IX. 44 Fed. Reg. at 71,419.

Moreover, as the Fourteenth Circuit correctly identified, there is great debate over the extent to which puberty blocking medications after puberty can reduce athletic advantages for transgender females. R. at 10. The North Greene legislature had the opportunity to address puberty blocking medications and chose not to. Instead, it legislated within Title IX's pre-defined bounds. If puberty blocking medication and its potential implications on Title IX must be considered, it is an issue for the legislature to address, not this Court. *See e.g.*, *Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 89 (2017); *Garland v. Cargill*, 602 U.S. 406, 429 (2024); *B.P.J.*, 98 F.4th at 560.

Plaintiff also asserts the law is discriminatory because it applies to transgender females wishing to play on female teams, but not transgender males seeking to participate on male teams, and therefore violates Title IX. This assertion ignores the purpose and context of Title IX that this Court must consider. *See Holloway*, 526 U.S. at 7. The North Greene law is tailored to apply to female sports team to enact the purpose of Title IX: ensuring equal athletic opportunities for women. *See Cohen*, 991 F.2d at 892; 44 Fed. Reg. at 71,419. The separation of the sexes in school sports is intended to prevent domination by males that would deny female students equal athletic opportunities. *O'Connor*, 449 U.S. at 1307 (Stevens, J., in chambers).

The North Greene law considers the inherent physical advantages that male athletes have over female athletes. Biological males have a much higher likelihood of defeating female athletes in competitions than female athletes defeating males. *See supra* part I.A; *see also ACSM Releases Expert Consensus Statement: The Biological Basis of Sex Differences in Athletic Performance*, Am. Coll. of Sports Med. (Sept. 29, 2023), https://bit.ly/3B08wKC. Therefore, the same is true for the physiological capabilities of transgender students: a transgender female has a much higher likelihood of depriving biological females of equal competition. A transgender male, as a biological female, has a substantially lower chance of depriving a biological male of fair athletic competition. *See Williams*, 998 F.2d at 175. The Act addresses these concerns and continues to advance Title IX by ensuring no biological men participate on female sports teams.

Finally, in 2021, the Department of Education, the agency responsible for implementing Title IX, issued a Notice of Interpretation that "clarified" that the meaning of sex in Title IX included gender identity. 86 Fed. Reg. 32,637, 32,638 (June 22, 2021). States have challenged the authority of the Department to make such a fundamental change to the statutory scheme of Title IX. The Fifth, Sixth, and Eleventh Circuits have refused to issue stays of injunctions, finding that the Department likely exceeded its authority by attempting to change the definition of sex discrimination in Title IX. *Louisiana v. Dep't of Educ.*, No. 24-30399, 2024 U.S. App. LEXIS 17886, at *8-9 (5th Cir. July, 17, 2024) (denying stay because the Department failed to show it would succeed on the merits of the challenge); *Cardona*, 2024 U.S. App. LEXIS 17600, at *8-9 (denying stay request because Title IX's definition of sex discrimination does not include gender identity); *Alabama v. United States Sec'y of Educ.*, No. 24-12444, 2024 U.S. App. LEXIS 21358, at *10-11 (11th Cir. Aug. 22, 2024) (denying stay request because Title IX's definition of sex discrimination does not include discrimination on the basis of gender identity). Ultimately,

these circuits have held that changing the definition of sex discrimination is a change that Congress should make, not the Department of Education.

c. *Bostock*'s interpretation of sex discrimination does not apply to Title IX.

Plaintiff argues that this Court should adopt the Department of Education's interpretation of Title IX's meaning of sex discrimination. R. at 12 n.10. Plaintiff's reasoning cannot stand because this Court expressly limited *Bostock*'s definition of sex to apply only in the employment context. *Bostock*, 590 U.S. at 681 ("*Under Title VII*, too, we do not purport to address bathrooms, locker rooms, or anything else of the kind. The *only* question before us is whether an employer who fires someone simply for being homosexual or transgender has . . . discriminated against that individual 'because of such individual's sex.'") (emphasis supplied). Furthermore, Plaintiff's approach ignores the unique environments that Titles VII and IX govern.

In *Bostock*, this Court considered whether discrimination against transgender and homosexual employees was sex discrimination under Title VII. *See id. Bostock* involved several employers' decisions to fire employees based solely on their sexual orientations or gender identities. *Id.* at 643. This Court held that discriminating against an *employee* solely based on her gender identity or sexual preference is impermissible under Title VII. *Id.* at 683.

The law is a context-dependent endeavor. What may be appropriate in one context may be wholly inapplicable in another. *Yates v. United States*, 574 U.S. 528, 537 (2015) ("In law as in life, however, the same words, placed in different contexts, sometimes mean different things."). Courts must bear in mind that "schools are unlike the adult workplace." *Davis*, 526 U.S. at 675 (Kennedy, J., dissenting) (noting that "schools are not workplaces and children are not adults"). This is especially true here because Title IX is "a vastly different statute" than Title VII. *Jackson*, 544 U.S. at 168. Accordingly, Titles VII and IX should be considered in their independent

contexts. *See Eknes-Tucker v. Governor of Alabama*, 80 F.4th 1205, 1228-29 (11th Cir. 2023) ("*Bostock* relied exclusively on the specific text of Title VII" and "bears minimal relevance" to cases involving "a different law… and a different factual context."). While Title VII focuses on employment, where immutable characteristics such as sex are often inconsequential, *see Bostock*, 590 U.S. at 660, Title IX addresses discrimination in schools, where sex is frequently a serious and consequential consideration, *see Meriwether v. Hartop*, 992 F.3d 492, 510 n.4 (6th Cir. 2021).

Because the statutes were written to address different environments, "Title VII's definition of discrimination, together with the employment-specific defenses that come with it, do not neatly map onto other areas of discrimination." *Cardona*, 2024 U.S. App. LEXIS 17600, at *7. Several circuits, including the Fourteenth Circuit below, have noted this distinction and declined to apply *Bostock* to Title IX. *See id.* (refusing to apply *Bostock*'s definition of sex discrimination because "Title VII's definition of sex discrimination under *Bostock* simply does not mean the same thing for other anti-discrimination mandates, whether under the Equal Protection Clause, Title VII, or Title IX."); *see also Adams*, 57 F.4th at 811 (refusing to apply *Bostock* to a Title IX claim in the school bathroom context); *see also* R. at 12 (declining to extend *Bostock*'s reasoning to Title IX). This Court should consider the unique contexts that Title VII and Title IX operate in and similarly decline to read gender identity into the definition of sex.

2. Title IX's implementing regulations explicitly permit sex-separated sports teams.

Title IX's implementing regulations specifically authorize schools to separate sports teams based on sex. 34 C.F.R. § 106.41(b); 34 C.F.R. § 106.33. Therefore, it is unsupportable to find that North Greene's law that separates student athletics by sex violates Title IX, when Title IX's own regulations allow for sex-separated athletics. *Id.*

34 C.F.R. § 106.41(b) provides, "a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill." Further, 34 C.F.R. § 106.33 provides that schools may provide separate facilities on the basis of sex. These regulations evidence that sex-separation is (and has been) appropriate since Title IX was implemented. Schools are only required to provide equal educational opportunities for each sex, including in athletics. 44 Fed. Reg. at 71,415.

Circuit courts have considered these regulations in the context of whether schools may require sex-separation in school bathrooms. This Court should adopt the reasoning of the Eleventh Circuit in *Adams v. Sch. Bd. of St. Johns Cnty*. There, the court determined that a policy requiring transgender students to use facilities, such as bathrooms, consistent with their biological sex or a gender-neutral alternative did not violate Title IX because the implementing regulations expressly provide for sex-based carve outs. 57 F.4th at 814.

Other courts have held that the Title IX regulations permitting sex-separation allow schools to choose whether to separate sports or facilities. 34 C.F.R. § 106.33; *Doe v. Boyerton Area Sch. Dist.*, 897 F.3d 518, 533 (3d Cir. 2018) (sex-separated facilities are permitted but not required); *A.C. v. Metro. Sch. Dist. of Martinsville*, 75 F.4th 760, 770 (7th Cir. 2023) (Title IX's allowance of sex-separated facilities is a permissive exception) (citing *Whitaker*, 858 F.3d at 1047); *Parents for Privacy v. Barr*, 949 F.3d 1210, 1227 (9th Cir. 2020) (same). These cases demonstrate that Title IX allows schools to choose whether sex-separation is appropriate, as long as it continues to advance the goal of providing equal opportunities to both sexes.

Since its enactment, Title IX has afforded schools the flexibility to compose their athletic programs as each school sees fit as long as the school provides equal educational opportunities. *Williams*, 998 F.2d at 171; *Yellow Springs Exempted Village Sch. Dist. Bd. of Educ. v. Ohio High*

Sch. Athletic Ass'n, 647 F.2d 651, 656 (6th Cir. 1981). Schools have used this flexibility to ensure that the opportunities offered for each sex are based on factors such as interest and budgetary restraints. *See Cohen*, 991 F.2d at 895 (holding Title IX does not mandate struct numerical equality between the gender balance of athletic programs); *Mansourian v. Regents of the Univ. of Cal.*, 602 F.3d 957, 973 (9th Cir. 2010) (holding Title IX requires evidence of continuing progress toward the mandate of gender quality, which can be accomplished in a variety of ways).

The North Greene statute strives to achieve equal educational opportunities for males and females. The statute also recognizes that schools must balance the interests of many students to provide the best educational experience for each of them. The law provides that schools should determine whether each team should be classified as male, female, or coed. When a state statute alligns with federal implementing regulations, there is a strong presumption that it is not violating a federal law. *O'Connor*, 449 U.S. at 1307 (Stevens, J., in chambers). The North Greene law separates school sports by sex as allowed by the Title IX regulations; therefore, there is no violation of Title IX.

The statutory and regulatory structure of Title IX and its implementing regulations confirm that sex separation is needed in school athletics. If, as Plaintiff urges, this Court extends *Bostock*'s definition of sex discrimination to Title IX, it will leave Title IX unimplementable. "[R]eading 'sex' to include 'gender identity' . . . would result in situations where an entity would be prohibited from installing or enforcing the otherwise permissible sex-based carve-outs when the carve-outs come into conflict with a transgender person's gender identity." *Adams*, 57 F.4th at 814; *see also infra* part II.A.2. Plaintiff's reading would render Title IX toothless because it

would "swallow the carve-outs and render them meaningless because . . . any policy separating by 'sex' would provide a 'but-for cause of . . . discrimination.'" *Adams*, 57 F.4th at 814 n.7.

B. The North Greene Law Does Not Harm Transgender Student Athletes.

To prove a Title IX claim, the Plaintiff must also show that she has suffered harm from discriminatory treatment. 20 U.S.C. § 1681(a); *Cannon*, 441 U.S. at 680. The North Greene law does not harm transgender students because there are sufficient alternatives for them. They may compete on teams consistent with their biological sex, on coed and mixed teams, or on teams not based on competitive skill. N.G. Code § 22-3-16(a).

The North Greene law includes a two-step process to determine whether an individual can participate on a female sports team. First, athletic teams must be designated as male, female, or coed and mixed. N.G. Code § 22-3-16(a). Second, once the team is designated, the statute bars males from participating on female teams when the selection is based on competitive skill or the activity is a contact sport. N.G. Code § 22-3-16(b)-(c).

As an initial matter, the North Greene law does not bar transgender students from participating in school athletics. Any student may participate on any team that is consistent with their biological sex. While this may not be an athlete's first choice, the North Greene law does not categorically prevent transgender students from school sponsored athletics.

Even if transgender students are not comfortable participating on teams consistent with their biological sex, the law provides additional alternatives. First, transgender students can compete on "coed or mixed" teams. N.G. Code § 22-3-16(a). The statute specifically allows schools to designate sports in this manner, which would provide effected students with the ability to participate. Second, transgender students can participate on teams where selection is not based on competitive skill. N.G. Code § 22-3-16(c). Moreover, like the Title IX regulations, the North

Greene statute allows all students to participate in coed and non-contact sports, regardless of their sex. *See* 34 C.F.R. § 106.41(b); *see also O'Connor*, 449 U.S. at 1307 (Stevens, J., in chambers) (stating that compliance with relevant regulations "indicate[s] a strong probability that the gender-based classification can be adequately justified.") These alternatives ensure transgender students are not harmed by the law or deprived of the chance to participate in athletics.

In the cases most analogous to the present — school bathroom policies regarding sex-separation and gender identity — the harms, identified by the courts relied on a lack of alternatives and physical harm suffered. *A.C.*, 75 F.4th at 772 (holding a transgender student forced to use the restroom consistent with their biological sex was harmed because their medical condition was worsened); *Grimm*, 972 F.3d at 617 (holding a transgender male student who was required to use the female bathroom suffered harm after he developed severe urinary tract infections and mental health challenges); *Whitaker*, 858 F.3d at 1042 (holding a transgender male student forced to use distant gender neutral bathrooms or a female bathroom was harmed when his medical conditions, syncope and migraines, were worsened because the school's policy caused him to avoid the restroom).

These cases are distinguishable because transgender students are offered sufficient alternatives for athletic competition by the North Greene law. *See* N.G. Code § 22-3-16(a)-(c). Additionally, the Plaintiff here does not assert that she suffered any physical harm by being required to participate on teams consistent with her biological sex. Therefore, the harm present in the cases addressing bathroom policies is not present this case. *See A.C.*, 75 F.4th at 772; *see also Grimm*, 972 F.3d at 617; *see also Whitaker*, 858 F.3d at 1042.

Similarly, some courts have found that the mental and emotional harms suffered by students are sufficient to prove a legally cognizable harm. *B.P.J.*, 98 F.4th at 563; *Grimm*, 972 F.3d at 617-618; *Doe*, 897 F.3d at 530. However, the potential for mental health anguish causing harm when considering medical conditions and distant bathrooms is distinct from sports teams. In the other cases, students were not offered sufficient alternatives that provided for convenient and necessary bathroom usage during the school day. *Grimm*, 972 F.3d at 617. Here, however, there are sufficient alternatives offered in students being able to participate on teams consistent with their biological sex, teams not based on competitive skill, coed teams, or in non-contact sports. N.G. Code § 22-3-16(a)-(c). Moreover, every student will need to use the restroom at school at some point; however, not every student will or has to participate on a sports team or an alternative team. *See Grimm*, 972 F.3d at 617. Therefore, the emotional harms that have sustained a finding of a Title IX violation are different than what is alleged in the athletic context.

Moreover, Plaintiff asserts that transgender female students will suffer emotional harm by not being permitted to participate on athletic teams consistent with their gender identity. Ultimately, trading the potential harm to transgender students for that suffered by cisgender females who will lose the opportunity of equal athletic competition does not provide a solution that balances the interests of both groups. *Soule v. Conn. Ass'n of Sch., Inc.*, 90 F.4th 34, 46 (2d Cir. 2023) (holding that plaintiffs, cisgender females, who were displaced in athletic competition because of a policy allowing biological males to participate on female teams established an injury in fact for standing purposes).

Transgender students have not been harmed by the North Greene law. The statute does not deprive transgender students from participating on sports teams consistent with their

biological sex. Additionally, sufficient alternatives of coed or mixed teams are available to students that allow them opportunities to participate. Therefore, transgender students are not harmed by North Greene's law and Title IX has not been violated.

CONCLUSION

For the foregoing reasons, Respondents request that the Court affirm the judgment of the Fourteenth Circuit.

Respectfully submitted,

Team 24
Counsel for Respondents