No. 24-2020

IN THE SUPREME COURT OF THE UNITED STATES

A.J.T.,

Petitioner,

v.

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

Respondents.

On Writ of Certiorari to
The United States Court of Appeals
for the Fourteenth Circuit
No. 23-1023

Brief for Petitioner

Team 25
Attorneys for Petitioner
September 13, 2024

ORAL ARGUMENT REQUESTED

QUESTION PRESENTED

I. Whether the appellate court erred when it failed to hold that a law violated Title IX when it prohibited only transgender girls from playing on the sports team aligning with their gender identities based on their biological sex?

II. Under the Equal Protection Clause, did the appellate court err in finding that states can discriminate against transgender girls according to their biological sex to prevent them from playing on their gender-affirming team?

STANDARD OF REVIEW

The granting or denying of a motion for summary judgment is reviewed de novo. *B&G Enters., Ltd. v. United States*, 220 F.3d 1318, 1322 (11th Cir. 2000).

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The United States District Court for the Eastern District of North Greene's memorandum opinion is unpublished but is available at *A.J.T. v. North Greene Bd. of Educ.*, 2023 WL 56789 (E.D. N. Greene 2023). The opinion of the United States Court of Appeals for the Fourteenth Circuit is also unreported but set out in the record on appeal on pages 2 through 16. *A.J.T. v. North Greene Bd. of Educ.*, 2024 WL 98765 (14th Cir. 2024). The Court's order granting certiorari appears on page 17 of the record.

STATEMENT OF THE CASE

This is a case about a young transgender girl fighting for her right to play sports after a state government passed a law that should be ruled unconstitutional for unjustifiably discriminating on the basis of sex.

When this suit was filed, A.J.T. was an eleven-year-old that had hopes to play on the seventh-grade girl's volleyball and cross-country teams when she entered the seventh grade. *A.J.T.*, 2024 WL at 3. A.J.T. started publicly living as a girl in third grade, by changing her name and participating in her elementary school's all-girl cheerleading team without incident. *Id.* She was diagnosed with gender dysphoria in 2022 and is working with her counselor to discuss the commencement of puberty delaying treatment. *Id.* The court has not yet learned of any subsequent change in A.J.T.'s treatment. *Id.* Going into seventh grade, about four years after her social transition, A.J.T. was informed by her school that she could not join the girl's volleyball and cross-country teams because she was transgender. *Id*. Her participation on the teams, her school informed her, would violate the North Greene Save Women's Sports Act ("the Act"), which was sought to prevent transgender females from competing with biological females. *Id*.

The Act, formally entitled "Limiting participation in sports events to the biological sex of the athlete at birth," mandated that sports teams at schools, "be expressly designated as one of the following based on biological sex at birth: (A) Males, men, or boys; (B) Females, women, or girls; or (C) Coed or mixed." *A.J.T.*, 2024 WL at 3–4. Furthermore, it requires that "[a]thletic teams or sports designated for females, women, or girls shall not be open to students of the male sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport." N.G. Code § 22-3-16(b); *A.J.T.*, 2024 WL at 4. No such provision is included in the statute that prevents females from participating on male teams. Because the Act defines sex as the "biological sex of the athlete at birth," and because the Act only prevents males from playing on female sports teams, the sole effect of the Act is to prevent transgender females from competing with biological females in athletic competitions. *See id*. This effect, the state argues, is to provide female athletes with equal athletic opportunities, and to protect their safety during athletic competitions. *A.J.T.*, 2024 WL at 3–4.

Having lost her right to play sports, A.J.T., through her mother, filed suit against the defendants, seeking a declaratory judgment that the Act violates Title IX and the Fourteenth Amendment's Equal Protection Clause and an injunction to prevent her prohibition from participating on the girls volleyball and cross-country teams. *Id.* at 4–5. In response, the defendants filed a motion for summary judgment, which the District Court granted. *Id.* at 5. On appeal, the Fourteenth Circuit affirmed the lower court's ruling. *Id*.

SUMMARY OF ARGUMENT

Both federal civil rights laws and the Constitution contain safeguards to prevent the cruel effects of institutional discrimination on the basis of sex. A.J.T., a young transgender girl, merits federal and Constitutional protection for her hope to play middle school sports, prevented by

North Greene's state law prohibiting transgender girls from playing on sports teams that align with their gender identity.

First, this Court should reverse the appellate court's finding that the Save Women's Sports Act ("the Act") did not violate Title IX. To succeed on a Title IX violation a plaintiff must show (1) they were excluded from participation in an educational program "on the basis of sex"; (2) that the educational institution was receiving federal financial assistance at the time; and (3) that improper discrimination caused the plaintiff harm. Here, A.J.T. was denied the ability to join the girls' volleyball and cross-country teams at her school because she was a transgender girl. This is blatant discrimination on the basis of sex because to verify the incongruity between biological sex and gender identity, one must verify biological sex, making sex a but-for cause of the discrimination. It is undisputed that her school was federally funded at the time of the discrimination. The discrimination was improper because it caused A.J.T. to be treated worse than the biological female students with whom she was similarly situated. Her fellow female peers were free to play on any sports team, including the girls team that matched their gender identity, but A.J.T. was forced to choose to play for the boys team, the coed team or quit sports altogether. This forced exclusion harmed A.J.T. 's dignity and emotional well-being, both legally cognizable harms under Title IX. It is irrelevant that the state had allegedly good reasons for said harmful discrimination under Title IX. Since all three elements are met, the Act prohibiting A.J.T. from competing on the girls' volleyball and cross-country teams violated Title IX.

Second, this Court should reverse the appellate court's finding that the Act did not violate the Equal Protection Clause. A law violates the Fourteenth Amendment's Equal Protection Clause when (1) it discriminates against similarly situated people, and (2) it's discrimination is not sufficiently connected to a legitimate government purpose. There is sufficient evidence to

demonstrate that the Save Women's Sports Act violates the Equal Protection Clause. First, because the act facially discriminates against transgender females and biological females, which are groups with individuals of comparable athletic capabilities, the Act discriminates against similarly situated groups. Second, because sex is an imprecise proxy for the main factors related to the state's interest in providing female athletes with equal athletic opportunities and protecting their safety during sporting competitions, the second element is met. Accordingly, because both elements are met, the Save Women's Sports Act violates the Equal Protection Clause.

Lastly, the court should find the Save Women's Sports Act violates Title IX and the Equal Protection because of a variety of important policy reasons. For example, were this law to stand, female athletes would be subject to a variety of invasive tests to verify their biological sex. In addition, permitting state legislatures to enact legislation such as this Act would shore up existing, discriminatory stigmas against women. Furthermore, abandoning transgender girls to this level of state discrimination contradicts the purpose of providing a safe space in separate sex-based sports teams. Most drastically, the language contained within the Act broadly generalizes categories and leaves no room for essential nuance, hardlining no exceptions for people who have undergone hormone therapy and pre-pubescent children. In short, policy implications prove the discriminatory practices the Act effectuates and demonstrate why Title IX and Equal Protection's provisions for relief for transgender girls should be maintained.

For these reasons, the Court should reverse the lower court's holding and remand the case for further proceedings.

ARGUMENT

This Court should reverse the appellate court's holdings and remand the case for further proceedings because the Act violates Title IX and the Equal Protection Clause. Among the most

prominent safeguards available to individuals discriminated against on the basis of sex in the educational sector are Title IX and the Equal Protection Clause. Congress created Title IX to avoid the use of federal resources to support discriminatory practices in the educational realm and provide individuals effective protection against sex-based discriminatory practices. *Cannon v. Univ. of Chicago*, 441 U.S. 677, 704 (1979). More specifically, Title IX states that "no 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).

More broadly, however, Congress has ensured by way of the Fourteenth Amendment's Equal Protection Clause that state institutions cannot draw unfair distinctions between individuals because of differences irrelevant to legitimate government interests. *See United States v. Virginia*, 518 U.S. 515, 524 (1996)*; see also Craig v. Boren*, 429 U.S. 190, 200 (1976).

The issues on appeal are limited to (1) "[w]hether Title IX prevents a state from consistently designating girls' and boys' sports teams based on biological sex determined at birth" and (2) "[w]hether the Equal Protection Clause prevents a state from offering separate boys' and girls' sports teams based on biological sex determined at birth."*A.J.T.*, 2024 WL at 17.

A de novo review of the law shows that although Title IX does not prevent a state from designating girls' and boys' sports teams based on gender, it does prevent them from restricting teams to gender assigned at birth. It also shows that although the Equal Protection Clause does not prevent a state from offering separate boys' and girls' sports teams, it does prevent the discrimination of sex determined at birth if it does not meet a legitimate government interest.

This court should reverse the appellate court's holding and remand the case for further proceedings.

I. THE SAVE WOMEN'S SPORTS ACT VIOLATES TITLE IX BECAUSE IT EXCLUDED A.J.T. FROM PARTICIPATING ON THE GIRLS VOLLEYBALL AND CROSS-COUNTRY TEAMS ON THE BASIS OF SEX, THE SCHOOL RECEIVED FEDERAL FINANCIAL ASSISTANCE, AND THE DISCRIMINATION WAS IMPROPER AND CAUSED HARM TO A.J.T.

Title IX states that "no 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 succeed on a Title IX claim a plaintiff must show that (1) they were excluded from participation in an educational program "on the basis of sex"; (2) that the educational institution was receiving federal financial assistance at the time; and (3) that improper discrimination caused the plaintiff harm. *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 616 (4th Cir. 2020), as amended (Aug. 28, 2020). The Defendants do not dispute that the school received federal financial assistance or that the sports teams are educational programs. The analysis below is limited to the following: (1) why A.J.T. being excluded from playing volleyball and cross country was exclusion on the basis of sex; and (2) why the school discriminating against transgender girls was improper and caused A.J.T. harm.

A. The Court should find that the Act excludes A.J.T. from school athletics on the basis of sex because the Act used sex as a but-for cause to exclude A.J.T. from joining the girls volleyball and cross country teams.

1. The Act used sex as a but-for cause to discriminate against transgender girls.

Courts assess exclusion on the basis of sex by determining whether sex was the "but-for" cause of the exclusion. *Bostock v. Clayton Cnty., Georgia*, 590 U.S. 644, 666–67 (2020). The Court first held that transgender discrimination qualifies as discrimination on the basis of sex in *Id*. at 669. *Bostock* was a conglomeration of cases where employees were fired for being gay or transgender and subsequently brought Title VII claims against the County. *Id*. at 633. *Bostock* is

relevant because Title IX was modeled after Titles VI and VII so the Court often uses their interpretations to guide Title IX analyses. *Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 258 (2009). In *Bostock*, the Court held that firing someone for being transgender qualifies as discrimination on the basis of sex. *Bostock*, 590 U.S. at 669. The Court reasoned that by discriminating against transgender people, employers are unavoidably looking to an individual's biological sex and discriminating because there is an incongruence between the individual's biological sex and gender identity. *Id*. But for the discrimination of the incongruence between the individual's biological sex and gender identity, the employee would not have been fired for being transgender. *Id*. at 665.

A policy can also meet this element if it forces exclusion on the basis of sex. *Grimm*, 972 F.3d at 599. For example, in *Grimm v. Gloucester County*, the Court held a school policy forced exclusion on the basis of sex by forcing students to use the bathrooms based on their biological sex. *Id*. at 617–18. This policy excluded Grimm, a transgender boy, from using the boy's restroom, despite very publicly presenting as male. *Id*. at 599. The policy itself stated that the school would provide male and female restrooms and locker rooms and " the use of said facilities shall be limited to the corresponding biological genders" *Id*. The Court held that since the school board could not exclude Grimm from the boy's restroom without verifying his biological sex to see if it did not match his gender identity as a male, his sex was a but-for cause of his exclusion. *Id*. at 616–17. Therefore, the exclusion from using the boy's restroom was on the basis of sex and violated Title IX. *Id*.

Here, the Act excluded A.J.T. from playing on the girls sports teams because she is a transgender girl. *A.J.T.*, 2024 WL at 3. As established in *Bostock*, excluding someone for being transgender is discriminating on the basis of sex. Like in *Bostock*, where transgender people were

fired because employers didn't like the incongruence between the individuals biological sex and gender identity, the school stopped A.J.T. from playing on her girls sports team because they didn't approve of the incongruence between her biological sex as male and her gender identity as female. But for the discrimination of the incongruence of being born a male and now currently identifying as female, she would be able to play girl's sports.

The Act itself forces exclusion on the basis of sex, just as the school policy forced exclusion on the basis of sex. The Act states that "athletic teams or sports designated for females, women, or girls shall not be open to students of the male sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport." N.G. Code § 22-3-16(b). The Act also contains a series of definitions. It defines "biological sex" as "an individual's physical form as a male or female based solely on the individual's reproductive biology and genetics at birth." N.G. Code § 22-3-15(a)(1). It defines "male" as "an individual whose biological sex determined at birth is male" and reiterates that any reference to men or boys refers to biological males. N.G. Code § 22-3-15(a)(3). This is similar to the restroom policy found in Grimm that limits facility use to "corresponding biological genders" regardless of gender identity. Grimm, as a biological female, was prohibited from using the male facilities despite publicly identifying as male because under the policy, he did not qualify as male. Here, A.J.T. is excluded from playing with her fellow female peers because the Act does not qualify her as female, despite publicly identifying as female. As stated above, in order to use the Act as a justification to exclude A.J.T. from the girls' sports teams, the school would have to consider her biological sex. A.J.T.'s sex is a but-for cause of her exclusion from playing sports, just as Grimm's sex was a but-for cause of his exclusion from the boys' restroom. So, the school is excluding her from playing sports on the basis of sex in violation of Title IX.

B. The Court should hold that the Act improperly discriminated against A.J.T. because she was treated worse than her peers with whom she was similarly situated.

Under Title IX, discrimination "mean[s] treating [an] individual worse than others who are similarly situated." *Grimm*, 972 F.3d at 618.

1. The Court should hold that A.J.T. was similarly situated to biological females.

An individual or group is similarly situated to another when they are "in all relevant respects alike." *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992). In *Grimm*, the Court held that Grimm "consistently and persistently identified as male" and was therefore similarly situated to biological males. *Grimm*, 972 F.3d at 619. From a young age, Grimm opted to wear boys' clothing and related to male characters. *Id*. at 598. His freshman year of highschool he changed his first name to Gavin, started using male pronouns and began hormone therapy. *Id*. at 598. His sophomore year, he spoke to the school and used the boys restrooms without incident for seven weeks straight, until the Board released the new policy. *Id*. at 598. Before his junior year he changed his state ID to reflect that he was male and before his senior year he underwent gender reassignment surgery and was issued a new birth certificate listing him as male. *Id*. at 601. The Court held that the overwhelming evidence showed that Grimm was similarly situated to biological males. *Id*. at 610.

Here, the Court should find that A.J.T. has also consistently and persistently identified as female, just as Grimm identified as male. *A.J.T.*, 2024 WL at 3. A.J.T has identified as a girl from a very young age and by the third grade, she was living as a girl at home, similar to how Grimm opted to wear boys' clothing before publicly identifying himself as male. *Id*. Soon after, she changed her name to one commonly associated with girls, just like Grimm changed his name to Gavin, a conventionally male name. *Id*. She began living in both public and private as a girl in

elementary school, this is sooner than Grimm who didn't publicly identify himself as male until high school. *Id*. A.J.T. joined, practiced with and competed with the all-girls cheerleading team in elementary school without incident before the Act was enacted, just as Gavin used the boy's restroom for seven weeks straight without incident before the policy. *Id*. A.J.T. is only eleven years old, so by nature of time alone she does not have a driver's license to change, and hasn't gone through any puberty that would require gender reassignment surgery, unlike Grimm who was in highschool and had an ID and gender reassignment surgery. *Id*. However, A.J.T. has shown commitment to identifying as female by talking to a counselor and discussing the possibility of starting puberty delaying treatments. *Id*.

2. A.J.T was treated worse than her similarly situated peers because they could play sports on teams aligning with their gender identity, and she could not.

An individual is treated worse than similarly situated individuals when they alone are denied benefits to opportunities corresponding with their gender identity, while others are permitted the benefits. *Grimm*, 972 F.3d at 618. In Grimm, the Court held that he was treated worse than his similarly situated peers because "he alone could not use the restroom corresponding with his gender." *Id*. at 618. Instead, he was forced to use either the girls restroom—despite identifying and presenting as male—or an inconveniently located single-stall option. *Id*. The Court decided that Grimm was treated worse than similarly situated individuals.

Here, A.J.T. is treated worse than her similarly situated peers because she alone can't play sports corresponding with her gender, just as Grimm alone couldn't use the restroom corresponding with his gender. Instead, under the Act, A.J.T. is forced to join the boys team, with whom she has never played; join a coed team with no guarantee that there is a coed team for her sports; or quit sports altogether. The application of the Act treats A.J.T. significantly worse than

her similarly situated biological females who identify as female who can play on any team they wish, including the girls team that corresponds with their gender.

C. The Court should find that not being able to play with her peers on the girls volleyball and cross country teams causes legally cognizable harm to A.J.T. both in terms of not being able to play and what would be required if she wanted to play sports again

1. The Act's application causes emotional and dignitary harm to A.J.T. because she won't be able to play on a team with her friends and peers.

Emotional and dignitary harm is legally cognizable under Title IX. *Grimm*, 972 F.3d at 618. B.J.P. is a transgender girl in West Virginia who had publicly lived as a girl for five years and a state law stopped her from playing on the cross country and track team for being biologically male. *B.P.J. v. W. Virginia State Bd. of Educ.*, 98 F.4th 542, 564 (4th Cir. 2024). B.P.J. had played girls sports for many years before the state enacted the law that prevented her from playing. *Id*. The Court held that it "requires no feat of imagination to appreciate the stigma" of not being able to play on a team with friends and peers. *Id*. at 563–64.

Here, A.J.T. has publicly lived as a girl for at least four years, starting in third grade when she was 8 or 9 until the start of this case going into seventh grade at the age of eleven. *A.J.T.*, 2024 WL at 3. The record shows that she was hopeful and enthusiastic about playing with her friends and peers in cross-country and volleyball. *Id*. She also has participated in girls sports, specifically cheerleading, before the Act was enacted, similar to B.P.J. who had played girls sports for years before the state law was enacted. *Id*. It is very likely that the stigma of not being able to play sports with the rest of her friends and peers will harm A.J.T. emotionally and socially.

2. Forcing A.J.T. to play on the boys or coed sports team would cause severe harm by unfairly forcing her to countermand her social transition, directly contradicting the treatment protocols for gender dysphoria and exposing her to increased scrutiny and attention.

A choice that forces an individual to act against their identity causes severe harm. *B.P.J.*, 98 F.4th at 564. As stated above, B.P.J. has been publicly living as a girl for more than five years, she has been recognized as a girl at school, on sports teams, to teachers, coaches, teammates and even opponents. *Id*. The Court held that forcing her to undo this social transition by playing on a boys team would cause emotional and dignitary harm. *Id*.

Any action that contradicts treatment protocols for gender dysphoria inherently causes emotional harm. *Grimm*, 972 F.3d at 598. Grimm was diagnosed with gender dysphoria, "a condition that is characterized by debilitating distress and anxiety resulting from the incongruence between an individual's gender identity and birth-assigned sex." *Id.* at 594 (internal quotation omitted). Grimm's counselor identified treatment for gender dysphoria to include presenting as his gender identity in his daily life, being considered and treated as male, and being allowed to use restrooms that correspond to his gender identity. *Id.* at 598. Having to use a separate bathroom or being forced to use the girls restroom directly contradicted gender dysphoria treatment. *Id*. Grimm's emotional harm was evidenced by the fact that he expressed that he felt alienated and stigmatized having to use separate bathrooms and that the long walk there felt like "a walk of shame." *Id*. at 617.

The Court also found that the enactment of the restroom policy "invited scrutiny and attention" from other students and their parents, going so far as to say the policy enactment branded "all transgender students with a scarlet T" *Id. at* 617–18. Grimm faced vicious attacks from adults in the community at the school board meetings and online, including name-calling and being compared to an animal. *Id*. at 599. As a result of his high school experience, Grimm

was hospitalized for suicidal ideation from "being in an environment where he felt unsafe, anxious, and disrespected." *Id*. at 600. The Court held that the improper discrimination harmed Grimm. *Id*. at 603.

Here, A.J.T. would be forced to deny her gender identity by not playing on the girls cross-country or volleyball team. A.J.T. has been publicly living as a girl since third grade and is now going into seventh grade, much like B.P.J. had been publicly living as a girl for over five years. *A.J.T.*, 2024 WL at 3. A.J.T has also been recognized as a girl at school by peers and teachers, and on her cheerleading team by teammates, opponents and coaches. *Id*. Being forced to play on the boys volleyball or cross country team would be forcing her to undo her social transition and likely result in emotional and dignitary harm. Even if A.J.T. joined a coed team, which is technically available to her under the Act, she would face emotional harm from not being able to play on the girls sports team as she had initially hoped.

Being forced to play on the boys volleyball or cross country team would contradict A.J.T.'s treatment plan for gender dysphoria resulting in damaging emotional harm. A.J.T. was diagnosed with gender dysphoria in 2022, which means she was suffering from debilitating distress and anxiety. *Id*. It is likely that treatment for her gender dysphoria include presenting as a girl in her daily life, being considered and treated as a girl by those who interact with her, and being able to play sports that correspond with her gender identity similar to the treatments found in *Grimm*. Being forced to play on the boys volleyball or cross country team is in direct contradiction with the above treatments. Regardless of whether A.J.T. is forced to present as male, she will still likely feel alienated and stigmatized as the only individual identifying as a girl on the boys team. If she chooses to join the coed team, she may still feel alienated and stigmatized because it was not a choice, she wanted to play for the girls teams.

The enactment of the Save Women's Sports Act will invite scrutiny and attention from other students and parents, effectively branding A.J.T. and other transgender girls "with a scarlet T" just as the restroom policy in *Grimm* invited scrutiny and attention. Unlike *Grimm*, it is not too late to stop A.J.T. from having a horrific high school experience. If the Act continues to exist it may cause irreparable harm to A.J.T. and create an environment where she feels unsafe, anxious, and disrespected just like Grimm did. A.J.T has faced and will continue to face harm because of the Act's improper discrimination against her status as a transgender girl.

D. Under Title IX it is irrelevant that the school is enforcing the Act to allegedly help female athletes, it just matters that A.J.T.'s exclusion meets the other elements listed above.

Unlike the Equal Protection analysis below, a Title IX claim does not require a justification inquiry, mere discrimination is enough. *B.P.J.*, 98 F.4th at 572. It does not matter if the state has an "exceedingly persuasive justification for its actions." *Id*. at 572. The justifications for the discriminatory law in *B.P.J.* were participant safety and competitive fairness. *Id*. at 559. The court held these justifications were irrelevant in the context of Title IX.

Here, North Greene Congress justified the Act by claiming an objective to give female athletes equal athletic opportunities and to protect their physical safety when competing. *A.J.T.*, 2024 WL at 3. This is irrelevant to succeed on a Title IX claim, just as participant safety and competitive safety were irrelevant to the Title IX claim in the *B.P.J.* case. A.J.T. has shown that enforcement of the Act excludes her on the basis of sex, treats her worse than her peers to whom she is similarly situated, and deprives her of any meaningful athletic opportunities. This is all that Title IX requires to show a violation.

In conclusion, because A.J.T was excluded from school sports on the basis of sex, and discriminating against her as a transgender girl is improper and caused her harm, the Save Women's Sports Act violates Title IX.

II. THE SAVE WOMEN'S SPORTS ACT VIOLATES THE FOURTEENTH AMENDMENT'S EQUAL PROTECTION CLAUSE BECAUSE IT DISCRIMINATES AGAINST SIMILARLY SITUATED PEOPLE AND IS NOT SUFFICIENTLY RELATED TO A LEGITIMATE GOVERNMENT INTEREST.

The Save Women's Sports Act violates the Fourteenth Amendment's Equal Protection Clause.

Under the Equal Protection Clause, a state cannot "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1, cl. 4. While applying this Clause to state legislation, the Supreme Court of the United States has held that laws must treat "similarly situated" people alike. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 339 (1985). State legislation can, however, "treat different classes of persons in different ways" if there is a sufficient connection between the discrimination and a "legitimate state interest." *Reed v. Reed*, 404 U.S. 71, 75 (1971)*; City of Cleburne*, 473 U.S. at 440. The required strength of this connection varies depending on the type of classification used, and classifications on sex must be "substantially related" to the state interest. *Virginia*, 518 U.S. at 524. Thus, when a law discriminates between similarly situated groups and the discrimination is not sufficiently related to a legitimate government interest, it violates the Equal Protection Clause. *City of Cleburne*, 473 U.S. at 432, 440; *Virginia*, 518 U.S. at 524.

A de novo review of this case will reveal that the Save Women's Sports Act discriminates against similarly situated individuals without a sufficient connection to a legitimate government interest. Accordingly, the Court should overturn the lower court's decision by finding that the Save Women's Sports Act violates the Equal Protection Clause of the Fourteenth Amendment.

A. The Save Women's Sports Act, on its face, provides different treatment to transgender females.

The Save Women's Sports Act discriminates against transgender females. A law discriminates against a group of people when the law, facially or as-applied, treats the group differently than another that is "similarly situated." *City of Cleburne*, 473 U.S. at 432. Here, the plaintiff only contends the Save Women's Sports Act discriminates against transgender women on its face. Because transgender females are similarly situated to biological females, and because the Save Women's Sports Act, on its face, treats these groups differently, the Act discriminates against transgender women.

1. Transgender females are similarly situated to biological females because both groups have individuals with comparable athletic abilities.

Transgender females are similarly situated to biological females. An individual or group is similarly situated to another when they are "in all relevant respects alike." *Nordlinger*, 505 U.S. 10.

For example, in *Caban v. Mohammad* the Supreme Court of the United States determined that male and females, despite different characteristics, were similarly situated regarding the adoption of their children. *Caban v. Mohammed*, 441 U.S. 380, 394 (1979) For context, a New York adoption law that gave unwed men and unwed women different rights regarding the adoption of their children. *Id*. at 381–82. When arguing the law didn't violate the Equal Protection Clause, the defendant asserted that unwed men and unwed women were not substantially similar because, as a class, women were better suited for the rearing of children. Citation. *Id*. at 389. The Court observed that, even if this were the case, unwed men and unwed women with children were still similarly situated because of the obvious possibility that unwed men could develop a comparable relationship with their child to the relationships between an unwed woman and her child. *Id*.

To illustrate further, in *Schlesinger v. Ballard* the court determined that male and females were not similarly situated for purposes of a law concerning the promotion of officers in the U.S. Navy because there was a universal restriction on a female naval officer's ability to receive promotions. *Schlesinger v. Ballard*, 419 U.S. 498, 508 (1975) Under the law in question, male naval officers were discharged from the United States Navy if they failed to get promoted to the next rank two times in a row. *Id*. at 499–500. Female naval officers, however, were only discharged if they did not get promoted to the next rank within thirteen years. *Id*. While explaining why male and female navy officers were not similarly situated for purposes of this law, the Court pointed to the disparity in opportunities that each sex had to promote. Because female officers were restricted from serving in combat or sea positions—experiences that helped male officers promote—female officers, without exception, could not promote as easily as male officers. *Id*. at 508. Accordingly, the Court held that male and female officers were not similarly situated to the law. *Id*.

Here, multiple facts establish that transgender females and biological females are similarly situated for sports. For example, there is an obvious possibility that biological females can outperform transgender females, and the holding in *Caban* therefore applies. In that case, the court determined that unwed males and unwed females were similarly situated for purposes of an adoption statute despite the argument that unwed females, as a class, were better suited to be caretakers for children. The court rejected this argument and concluded that, even if unwed females were better caretakers to children in general, because unwed males *could* become comparable caretakers, they should be similarly situated with unwed females. Likewise, despite any physiological disadvantage that biological females might have when compared to a transgender females, biological females *could*—and do—become comparable athletes to

transgender females. Thus, because there is the obvious possibility that biological females can compete with trangender females, both groups are still considered similarly situated.

This reasoning also distinguishes the case at hand from *Schlesinger*. In that case, male and female naval officers were not similarly situated regarding a law concerning the promotion of officers in the U.S. Navy because there were universal restrictions that provided female officers with fewer opportunities to be promoted to the next rank. No such universal restrictions are present in this case; while there are physiological differences between transgender females and biological females, these differences do not ensure that *all* biological females are disadvantaged to *all* transgender females. Thus, the holding in *Schlesinger* does not apply here. Accordingly, transgender females and biological females are similarly situated for sports.

2. The Save Women's Sports Act is facially discriminatory because it treats transgender females and biological females, two similarly situated groups, differently on its face.

The Save Women's Sports Act is facially discriminatory. A law is discriminatory on its face when its text alone prescribes the different treatment of similarly situated groups. *See Schlesinger*, 419 U.S. at 499–500.

For example, in *Caban v. Mohammad* the Supreme Court of the United States determined a New York adoption law was facially discriminatory. *See Caban*, 441 U.S. at 381. Under the law in question, unmarried women were expressly given the ability to stop the potential adoption of their natural children without cause; unmarried men, however, could not prevent the adoption of their children unless they had good cause. *Id*. at 385–87. Finding that an unmarried man and women with children were similarly situated, the Court found the statute was facially discriminatory because a plain reading of the statute exposed the disparity in parental rights between the sexes. *Id*. at 387.

Similarly, in *Orr v. Orr* the Supreme Court of the United States ruled that an Alabama alimony law facially discriminated against males. *See Orr v. Orr*, 440 U.S. 268, 270, 282–84 (1979). Instead of using gender neutral terms to require a divorcee to pay alimony, the statute in question explicitly placed the burden of alimony payments on male divorcees. *Id*. at 270. Because the male and female divorcees were held to be similarly situated, and because the statute explicitly used gendered language to impose an alimony burden on male divorcees, the Court determined the statute was facially discriminatory. *Id*. at 281–84.

Consistent with the cases above, the Save Women's Sports Act facially discriminates against transgender females. Like the New York adoption statute in *Caban* and the Alabama alimony statute in *Orr*, a plain reading of the Save Women's Sports Act exposes a disparity in rights between sexes because of its explicit gendered language. For example, the Save Women's Sports Act explicitly declares that "sports designated for females, women, or girls shall not be open to students of the male sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport." N.G. Code § 22-3-16(b). Because the statute uses biological definitions when defining "male" and "female," a plain reading of this clause unmistakably prohibits biological males and transgender females from playing on sports teams that are designated for females. A corresponding version of this clause that prohibits biological females and transgender males from playing on teams that are designated for males, however, is conspicuously missing. Thus, under the statute, a biological female can play for a team designated for males or females, while a transgender female can only play for teams designated for males. Accordingly, because transgender females and biological females are similarly situated, and because a plain reading of the Save Women's Sports Act prescribes a different treatment for each group, the Act is facially discriminatory.

Accordingly, because transgender females are similarly situated to biological females, and because the Save Women's Sports Act on its face prescribes a different treatment for these groups, the Act discriminates against transgender females.

B. The Save Women's Sports Act's discrimination against transgender females is not substantially related to a legitimate government purpose because sex is a poor proxy for the interest's objectives.

The discrimination prescribed by the Save Women's Sports Act's is not substantially related to the state's declared purposes of providing female athletes with equal athletic opportunities and protecting their physical safety during athletic competitions. To be substantially related to a government interest, there must be an "exceedingly persuasive" argument that the discrimination employed "closely serves to achieve" the government interest. *Virginia*, 518 U.S. at 524*; Craig*, 429 U.S. at 200.

For example, in *Craig v. Boren* the Supreme Court of the United States determined a law that discriminated on sex did not closely serve to achieve the stated government interest. *Id*. at 204. In that case, the plaintiff challenged the constitutionality of a law passed by the state of Oklahoma that allowed females between the ages of eighteen and twenty one to purchase alcohol when their male counterparts could not. *Id*. at 191–92. The state of Oklahoma presented evidence that young males were more likely to drink and drive, and argued the statute was substantially related to its objective of safe public transportation. *Id*. at 200–03. Despite this evidence, the Court held the law was not substantially related to the government's stated interest because gender was a poor proxy for the tendency to drink and drive, and the statute was therefore unlikely to resolve the issue. *Id*. at 204.

Contrarily, in *Schlesinger v. Ballard* the Supreme Court of the United States found that the use of sexual discrimination in a law regulating promotions in the United States Navy was substantially related to a legitimate government interest. *Schlesinger*, 419 U.S. at 508–510.

Under the law in question, male naval officers were discharged from the United States Navy if they failed to get promoted to the next rank two times in a row. *Id*. at 499–500. Female naval officers, however, were only discharged if they did not get promoted to the next rank within thirteen years, approximately two years longer than the average time it took for male officers to be discharged. *Id*. at 499–500, 505. Deciding that there was a legitimate government interest in providing women with equal opportunities to advance professionally, the Court determined the discrimination was substantially related to the government interest because it was apparent that giving female naval officers more time to promote would help them obtain equal professional opportunities in a profession that made it hard for them to promote. Id. at 508–10.

The framework established in these cases reveals that the Save Women's Sports Act is not substantially related to the state's purpose of providing female athletes with equal athletic opportunities and protecting their physical safety during athletic competitions. For example, in the case at hand, sex is a poor proxy for measuring the state's objectives. While competitors with greater speed or physical strength may affect the opportunities and safety of female athletes, these traits are not inherent to transgender females, especially when transgender females use puberty blockers or hormone therapy. Thus, biological sex is an imprecise proxy for measuring the true threats to the opportunities and safety of female athletes. Accordingly, the Court's holding in *Craig* applies.

In addition, the holding in *Schlesinger* does not apply because it is not apparent that the Save Women's Sports Act will increase the athletic opportunities and physical safety of female athletes. As explained above, competitors with greater speed or physical strength than biological females may affect the opportunities and safety of female athletes, but these traits are not inherent to transgender females. Thus, because the Save Women's Sports Act relies on a poor

proxy to achieve its stated interest, it is not apparent that the Save Women's Sports Act will achieve its purpose, and *Schlesinger* is irrelevant. Therefore the discrimination against transgender females is not substantially related to a legitimate government interest.

Accordingly, because the Save Women's Sports Act discriminates against transgender females, and because that discrimination is not substantially related to a legitimate government interest, the Save Women's Sports Act violates the Equal Protection Clause of the Fourteenth Amendment.

III. EXCLUDING YOUNG TRANSGENDER GIRLS FROM TITLE IX REGULATION AND EQUAL PROTECTION PRINCIPLES SUPPORTS DISCRIMINATORY PRACTICES AND REMOVES AVENUES FOR RELIEF.

Federally excluding young, transgender children from Title IX and Equal Protection inclusion categorically removes judicial petitioning rights and devastates significant government interests. To secure these rights and interests, Title IX has two principal objectives: "First, Congress wanted to avoid the use of federal resources to support discriminatory practices; second, it wanted to provide individual citizens effective protection against those practices." *Cannon*, 441 U.S. 704. Pursuing an approach that demolishes judicial sanctuary for transgender individuals across the board and institutes socially destructive policy undermines Congress' purposes. Policy implications here noted will demonstrate the fundamental, discriminatory practices North Greene's Act advances and will then advocate for Title IX and Equal Protection's avenue for relief for these little girls.

A. <u>The Save Women's Sports Act illegally and inappropriately imbeds discriminatory practices into federally funded sporting activities.</u>

North Greene's Save Women's Sports Act imbeds discrimination into federally funded sporting activities via (1) invasive implementations, (2) targeting women, (3) subverted social

principles, and (4) overly broad language. These practices signify the need to find for Petitioner and strike down this egregious act.

First, (1), implementation of North Greene's Act necessitates invasive examination because no other reasonable option presents itself. Birth certificate, passport, self-identification, and other less invasive methods fall short due to their changeability in nature. Consequently, states' only recourse for determining transgender status violates privacy, social propriety, and dignity. Anatomy examinations, genetic material submissions, and hormonal tests characterize these later options, options which North Greene's Act would need to lean on—even in the case of an eleven year old child.

Birth certificates, for instance, are unreasonable sources for transgender status evaluation because the sex they declare can be changed. The requirements for changing one's birth certificate sex ". . . are all over the map." *Gore v. Lee*, 107 F.4th 548, 553 (6th Cir. 2024). Twelve states allow certificate changes following gender-affirming surgery; fifteen states permit change after medical approval even without surgery; eleven states endorse changes based on self-identification alone. *Id.* Additionally, passports, immigration documents, consular reports, military service forms, driver's licenses, and even social security numbers can reflect one's self-identified gender. *Id.* at 558–559. The dependability of such documents for at-birth identification are thereby unfounded, and simply asking one's gender opposes the self-identification that the Act intends to defeat.

Conversely, Idaho exemplifies the discriminatory, invasive options states wield in their versions of the "Save Women's Sports Act." *Hecox v. Little*, 104 F.4th 1061 (9th Cir. 2024), as amended (June 14, 2024). There, the statute describes the state's only means available to challenge a person's (i.e., transgender woman's) participation in the sport as proving their

biological nature contrary to the associated gender division of the sport. *Id.* at 1071–72. The statutes framing, however, places the onus upon questioned individuals. *Id.* Accordingly, if challenged, one must prove their biological nature by (1) exposing personal reproductive anatomy, (2) invasively examining genetic makeup, or (3) obtrusively measuring hormonal balances. *Id.*

Regardless of age, such an invasive sex verification process offends the senses, particularly for the low-stakes sake of sport participation. Notably, courts have identified the appalling issues with these provisions: Idaho's act remains enjoined and awaits further review by this court. Without less intrusive means, states have no other way but Idaho-like violations of privacy, social propriety, and dignity.

Especially in the context of age, no parent rightfully wants to require an elementary school child to show reproductive organs, submit their genetic makeup, or test hormonal levels to simply play volleyball with their eleven year old friends. No dissatisfied student, imprudent coach, or majoritarian official should have access to these supremely private parts of a child's life. This breach of an individual's privacy in addition to the guaranteed administrative headaches, threats of exposure, and unnecessary challenges demonstrate the nightmarish results of North Greene's intrusive policy. Individuals should be free from these intrusions.

Next, (2), the Act flatly discriminates against women. The act shores up discriminatory barriers against women rather than protects them by the inequitable burdens placed upon women. As the legislation only requires women's sports to be "protected," a transgender man would not face the same restrictions.

As noted in B.P.J.'s case, the Virginia "Save Women's Sports" act, similarly worded to North Greene's Act, ". . . creates a rule that people whose sex was assigned at birth as female

may play on any team but people whose sex was assigned at birth as male may only play on male or co-ed teams." *B.P.J.*, 98 F.4th at 556. The court spelled out the discrimination: "Put another way, the Act would not have forbidden Gavin Grimm (a transgender boy) from playing on the boys teams at B.P.J.'s school but it does forbid B.P.J. (a transgender girl) from playing on the girls teams." *Id.*

While North Greene's legislation therefore purports to protect women's sports, it instead directly constructs another barrier around the activity by requiring women to overcome the burden of proving their at-birth, biological sex as female. Men face no inquisition of this kind into their biology. Inequitably requiring women to prove their biological sex while requiring nothing of the sort from men unfairly discriminates against women. Because of this facial discrimination, this court should reverse and support impartial treatment of A.J.T.

Third, (3), barring transgender individuals from playing a sport with their identifying gender contravenes the social principles for differentiating the sexes to begin with. Women's sports were institutionalized to help provide women with a protected sphere. Within their protected sphere, women can play sports without fear of men's influence. They can embrace the camaraderie of their gender without stigma or repercussion. It is this—or any—safe space on a sports team that North Greene's Act pushes out of reach for young, transgender girls.

"The stigma of" being forced to play on a team opposite one's friends, peers, and gender "very publicly brand[s] all transgender students with a scarlet 'T'." *Grimm*, 972 F.3d 618. As stated in the record, "Offering [transgender girls] a 'choice' between not participating in sports and participating only on boys' teams is no real choice at all. It would require Plaintiff to countermand the social transition that has occurred and to be reintroduced to teammates, coaches, and even opponents as a boy." *A.J.T.*, 2024 WL 16.

Denying transgender individuals the same expression and community flies in the face of gender differentiated sports. This stigma perpetuated by the Act contradicts the purpose of anti-discrimination policy provided by Title IX because it pushes transgender girls out from any form of camaraderie in educational sports. If a woman were to be forced to play for a men's team, she would have no female support from which to draw upon. Likewise, a transgender woman would be surrounded by the male accouterments without womanly support.

By denying a safe place with the similarly-situated female team, free from discrimination, transgender girls therefore face no social support from either a boys' team or a girls' team. To combat the isolation and calculated discrimination in the name of protection, transgender girls should be protected and permitted on girl teams.

Thus, as Title IX provides a protected environment for women to play sports, transgender women ought to be included in that determination. Otherwise, such an undermining policy defies the very purpose of sex-separated sports and should therefore be struck down.

Lastly, (4), the overly broad language of North Greene's Act necessitates revision because of its sweeping and overly-inclusive nature. A policy that uniformly restricts all sporting activities to women assigned female at birth because of post-pubescent biological differences from men ignores nuanced cases. If the intent of the policy is to truly promote biologically situated individuals in a common area, then the broad language of the Act ignores two prime exceptions: individuals who have undergone hormone therapy and pre-pubescent individuals.

Particularly in the context of providing a protected sphere for all women, the United States Supreme Court paid attention to politically unpopular groups in their *Bostock* decision. *Bostock*, 590 US at 677–78. "[A]pplying protective laws to groups that were politically unpopular at the time of the law's passage . . . often may be seen as unexpected." *Id*. The Court

continues by declaring that justice ought to be applied to all, "But to refuse enforcement [for] that . . . not only require[s] us to abandon our role as interpreters of statutes; it would tilt the scales of justice in favor of the strong or popular and neglect the promise that all persons are entitled to the benefit of the law's terms." *Id*. In short, protective laws ought to be applied to all applicable groups if justice is to prevail.

If the act's purpose concerned itself with different biological capabilities between males and females, then the transgender individual who undergoes hormone therapy—placing them in the same or essentially same biological outcome as their identified gender—ought to be an admitted exception to the policy. Further, children who have not yet experienced puberty and exhibit little to no substantial difference in biological sporting ability among their peers pose no threat to the Act's purpose. Consequently, prepubescent children should also be exempted.

Unfortunately, no such exemptions are made in North Greene's efforts. Instead, a blatant discriminatory policy founded on no sound biological precept form the extent of the Act. In response, this court should find for pre-pubescent A.J.T. and encourage states to comply with the non-discriminatory law against transgender girls.

In sum, not finding for the Petitioner in this case substantiates fundamental policy discrimination. Those policy issues include (1) invasive implementations, (2) targeting women, (3) subverted social principles, and (4) overly broad language. These issues signify the need to find for the Petitioner and eliminate these devastating effects.

B. Title IX and the right to Equal Protection should provide A.J.T. with an appropriate avenue for relief against her experienced discrimination.

Congress' secondary goal from Title IX was to ensure discriminated against individuals could receive effective protection. *Cannon*, 441 U.S. 704. That protection should be afforded via relief sought by courts.

Concerning privileges, Title IX exists to authorize private suits alleging discrimination on the basis of sex so that private plaintiffs can bring constitutional claims to challenge gender discrimination. *See Grimm*, 972 F.3d at 599. Equal Protection further protects individuals from a state attempting to "deny to *any person* within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1, cl. 4 (emphasis added).

If local educational institutions may be permitted to claim adherence to Title IX and uphold Equal Protection meanwhile prohibit little girls from playing sports because their gender identity does not match their biological sex, courts deny these little girls a federally granted avenue of relief. Consequently, courts should permit transgender individuals to bring forward these claims by disallowing discrimination on the basis of sex at birth for such activities.

Ultimately, policy implications prove the discriminatory practices North Greene's Act effectuates and demonstrate why Title IX and Equal Protection's provisions for relief for these little girls ought to be maintained. Denying young, transgender children from Title IX and Equal Protection inclusion categorically removes judicial protection and sabotages significant government interests. In order to support Congress' purposes of reducing discrimination and providing protection for the discriminated against, Title IX and Equal Protection should not be subject to gender differentiation at the time of birth.

CONCLUSION

The Court should reverse the lower court's ruling and remand this case for further proceedings.

Respectfully submitted,
Team 25
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