

Case No. 24-2020

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IN THE  
**Supreme Court of the United States**

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A.J.T.,  
*Plaintiff–Petitioner,*

v.

STATE OF NORTH GREENE BOARD OF EDUCATION, *et al.*,  
Defendants–Respondents

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**On Writ of Certiorari  
To The United States Court of Appeals  
For The Fourteenth Circuit**

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**PETITIONER’S INITIAL BRIEF ON THE MERITS**

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Respectfully submitted,  
Team 27

*Counsel for Petitioner*

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## **QUESTIONS PRESENTED**

- 1) Whether the State of North Greene violated Title IX when it enacted a statute that discriminates based on gender identity, treats similarly situated students differently, and causes harm by limiting the sports teams the Petitioner may play on.
- 2) Whether the State of North Greene's Act violated the Equal Protection Clause of the Fourteenth Amendment by creating two facial classifications, both of which are unrelated to its alleged government interest.

**PARTIES TO THE PROCEEDING**

The Petitioner is A.J.T., a minor who brought this lawsuit by and through her mother.

The Respondents consist of 1) the State of North Greene Board of Education; 2) the North Greene State Superintendent, Floyd Lawson; 3) the State of North Greene; and 4) the State of North Greene Attorney General, Barney Fife. The Respondents shall be referred to collectively as "the State" throughout this Brief.

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## OPINIONS BELOW

The Fourteenth Circuit’s opinion ruling against A.J.T. is unpublished but can be found at *A.J.T. v. North Greene Bd. of Educ.*, 2024 WL 98765 (14th Cir. 2024). R. at 2-16. The District Court’s memorandum opinion ruling against A.J.T. is unpublished but can be found at *A.J.T. v. North Greene Bd. of Educ.*, 2023 WL 56789 (E.D. N. Greene 2023). R. at 5.

## CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

North Greene Code § 22-3-4, the Act at issue provides, in pertinent part:

Any public secondary school or a state institution of higher education, “shall be expressly designated as one of the following based on biological sex at birth: (A) Males, men, or boys; (B) Females, women, or girls; (C) Coed or mixed. 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.

Gender identity is separate and distinct from biological sex to the extent that an individual’s biological sex is not determinative or indicative of the individual’s gender identity. Classifications based on gender identity serve no legitimate relationship to the State of North Greene’s interest in promoting equal athletic opportunities for the female sex.

Title IX, 20 U.S.C. § 1681(a) states:

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 . . .

The Fourteenth Amendment states:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; *nor deny to any person within its jurisdiction the equal protection of the laws.*

(emphasis added).



## INTRODUCTION

This case is about whether A.J.T. is entitled to the Equal Protection under the law that federal law and the federal Constitution guarantee her.

A.J.T. is a transgender, seventh-grade girl who the State has prevented from competing in girls' athletics. This is despite A.J.T. having competed in girls' athletics throughout her childhood. The State of North Greene passed North Greene Code § 22-3-4 (the "Act"), which specifically targets transgender girls and prohibits them from competing on the sports teams corresponding with their gender identities. This Act violates Title IX and the Constitution's Equal Protection Clause.

The State's Act violates Title IX because it discriminates improperly based on gender identity. Gender identity is treated the same as sex under Title IX. Therefore, educational institutions must not discriminate based on gender identity. Furthermore, a statute cannot survive under Title IX, regardless of the State's reason for the statute, once that statute is found to cause a plaintiff harm through improper discrimination. Therefore, the State's Act violates Title IX.

Next, the State's Act violates the Equal Protection Clause of the Fourteenth Amendment. The Act facially creates two classifications, both based on gender identity. Furthermore, neither of those classifications survives intermediate scrutiny because they are not substantially related to an important government interest. Because of this, the State's Act is unconstitutional.

For these reasons, A.J.T. respectfully asks this Court to reverse the lower court and rule that the State has violated Title IX and the Equal Protection Clause by enacting this statute.

## STATEMENT

A.J.T. is a transgender youth who wishes to compete in middle school athletics. R. at 3. The State passed the "Limiting participation in sports to the biological sex of the athlete at Birth"

Act, which prohibited transgender girls and women from competing on girls' sports teams. R. at 4. Because A.J.T. wanted to compete on the middle school girls' volleyball and cross-country teams, A.J.T. filed this lawsuit against the State. R. at 4. A.J.T. now asks this Court to reverse the Fourteenth Circuit and reverse summary judgment for the defendants. R. at 17.

**I. A.J.T.'s Transition To A Transgender Girl And Participation In Girl's Athletics.**

When A.J.T. filed this lawsuit, she was eleven and about to enter seventh grade. R. at 3. A.J.T. was assigned the sex of a male at birth but has identified as a transgender girl from an early age. R. at 3. Although A.J.T. still dressed as a boy at school up to the third grade, A.J.T. had begun living as a girl at home then. R. at 3. Shortly after the third grade, A.J.T. started living as a girl in private and public life. R. at 3.

A.J.T. is a transgender girl. R. at 3. A.J.T. was diagnosed with gender dysphoria in 2022 and began going to counseling to address future medical options. R. at 3. As part of these discussions, A.J.T. was told about the possibility of starting treatments that would delay puberty. R. at 3. When this lawsuit was filed, A.J.T. had not started any of the proposed treatments because she had not yet started puberty. R. at 3. Furthermore, she has not felt compelled to start treatments because it is common for biological males to not start puberty until age 14. R. at 3.

A.J.T. participated in girls' athletics throughout elementary school. R. at 3. In fact, throughout elementary school, A.J.T. was a member of the school's cheerleading team. R. at 3. That team was an all-girl team, and there were never any adverse incidents regarding A.J.T. practicing and competing with the team. R. at 3.

A.J.T. sought to continue competing in athletics upon entering seventh grade. R. at 3. A.J.T. sought to join the school's girls' volleyball and cross-country teams. R. at 3. However, A.J.T. was told that joining these teams was impossible because of a recently enacted statute. R.

at 3. The school informed A.J.T. that the State's Act did not permit transgender girls from competing on girls' sports teams. R. at 3.

## **II. The North Greene Statute.**

In spring 2023, the North Greene legislature approved Senate Bill 2750. R. at 3. The North Greene governor signed that bill into law in May 2023 and prohibited transgender girls from competing on girls' sports teams. R. at 3.

The Act required that all sports teams sponsored by a public secondary school or institution of higher learning designate the team as one of three categories. R. at 4. The options for the categories were 1) males, men, or boys; 2) females, women, or girls; and 3) coed or mixed. R. at 4. The Act defined these terms as solely relating to the biological sex determined at birth. R. at 4. The Act also expressly stated, "[a]thletic teams or sports designed 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. R. at 4.

The State does not consider gender identity when determining who can compete on sports teams under the Act. R. at 4. In fact, the State's Act specifically states that gender identity is "separate and distinct from biological sex." R. at 4. Furthermore, the State has also stated that it does not consider gender identity to have any legitimate relationship to its interest in promoting equal athletic opportunities for females. R. at 4.

A.J.T. argued that the State's true objective in passing this Act was to exclude transgender girls and prevent them from playing on sports teams consistent with their gender identity. R. at 4. Contrary to that, the State claimed that the Act's purpose was to provide equal athletic opportunities for female athletes and protect their physical safety. R. at 4.

### **III. Procedural History.**

A.J.T. brought this suit seeking a declaratory judgment that the Act violated both Title IX and the Equal Protection Clause of the Fourteenth Amendment. R. at 5. A.J.T. also sought an injunction to prevent the enforcement of the Act against her. R. at 5.

In 2023, A.J.T., by and through her mother, filed this lawsuit against the State of North Greene Board of Education and Floyd Lawson, the state superintendent. R. at 4. The district court then granted the State of North Greene's motion to intervene in this lawsuit. R. at 4. A.J.T. then amended her complaint and sought a declaratory judgment against the State and its Attorney General, Barney Fife. R. at 4-5.

The district court granted summary judgment for the State on both issues. R. at 5. A.J.T. appealed to the Fourteenth Circuit, which affirmed the district court's ruling. R. at 12. Because the Act violates both Title IX and the Equal Protection Clause, A.J.T. sought certiorari review by this Court. R. at 17. This Court granted certiorari to review these two issues. R. at 17.

### **SUMMARY OF THE ARGUMENT**

This Court should reverse the court of appeals decision because the State's Act violates Title IX and the Equal Protection Clause of the Fourteenth Amendment.

The State's Act violates Title IX because it improperly discriminates "on the basis of sex," and has harmed A.J.T., which satisfies all the requirements to show a Title IX violation. Title IX of the Education Amendments of 1972 prohibits discrimination by education programs receiving federal funding "on the basis of sex." Here, the State violated Title IX because 1) courts have ruled that the prohibition on discrimination "on the basis of sex" applies to discrimination based on gender identity, 2) the Act treats similarly situated students and transgender students differently, and 3) the Act harmed A.J.T.. Thus, the Act violates Title IX.

First, the Act discriminates based on gender identity, which Title IX prohibits. This Court has ruled that discrimination based on gender identity is discrimination based on sex. This Court set forth this rule in a lawsuit involving a Title VII violation. However, that ruling has since been extended to Title IX lawsuits. The reason for this rule is that a party necessarily must consider someone's biological sex before determining that it will discriminate based on whether that person is transgender.

This ruling has been applied to Title IX by lower courts because the Title IX and Title VII are both designed to prevent sex discrimination. In this case, the State had to consider A.J.T.'s biological sex before it determined that she was a transgender girl and that it would exclude her because of that. Therefore, the Act discriminates "on the basis of sex."

Second, the Act discriminates improperly. Only "improper" discrimination is a violation of Title IX. Discrimination is improper if the result is that similarly situated individuals are treated differently. Here, the Act improperly discriminates by treating A.J.T. differently than two classes of students that she is part of, transgender students and the student body as a whole.

The Act improperly discriminates against transgender girls because it excludes them from sports teams that correspond with their gender identity while not doing the same for transgender boys. The Act specifically states that teams "designated for females, women, or girls shall not be open to students of the male sex . . . ." However, the Act does not state the same for transgender boys. Therefore, the Act treats similarly situated transgender students differently.

The Act also treats similarly situated students at A.J.T.'s school differently by allowing cisgender students to compete on teams that correspond with their gender identities while not allowing the same for transgender students. The Act creates both distinctions without any regard for whether transgender students *actually* have superior athletic abilities compared to other

would-be-teammates. Therefore, the Act improperly discriminates on the basis of sex.

Third, the Act has harmed A.J.T. by causing her emotional and dignitary harm. The emotional and dignitary harm that transgender individuals suffer because of these discriminatory policies is legally cognizable harm.

A.J.T. has been forced to choose between facing social exclusion or renouncing her gender identity that she has lived with for years. Even if A.J.T. were to compete on biological male sports teams, she would still suffer harm because she has lived as a transgender girl for years. The State is forcing her to choose between social exclusion or changing her way of life. Therefore, the third prong required to show a violation of Title IX is also present in this case, and A.J.T. has shown that the State has violated Title IX.

The State's Act also violates the Equal Protection Clause of the Fourteenth Amendment by 1) creating a facial classification between cisgender and transgender girls, 2) creating a facial distinction between transgender boys and girls, and 3) failing to show that either classification is substantially related to an important government interest. Therefore, the Act is unconstitutional.

First, the Act creates a facial classification between cisgender and transgender girls. The Act states that sports teams shall be organized as either A) males, men, or boys; B) females, women, or girls; or C) coed or mixed. The Act states that these classifications are to be based on biological sex at birth. This facial classification has the effect of excluding transgender girls from school athletics. While this facial classification is unconstitutional by itself, the State went further and created a second facially unconstitutional classification.

The Act created a second distinction between transgender girls and boys. The Act explicitly targets transgender girls and prohibits them from competing on teams designated for females, women, or girls. However, the Act does not state the same rule for transgender boys.

This has the effect of not prohibiting transgender boys from competing on teams that correspond with their gender identity while imposing that restriction on transgender girls. This is a second facial classification that does not withstand intermediate scrutiny.

Third, the Act is unconstitutional because neither classification can withstand intermediate scrutiny. To survive intermediate scrutiny, the State must show that its act is substantially related to an important government interest. The state has not shown that the Act is substantially related to either ensuring opportunities for or protecting female athletes.

Because A.J.T. has not yet gone through puberty, she has not gained any inherent advantage over other girls in athletics. Therefore, she is not taking opportunities from other girls. Additionally, although the State claims it is trying to protect biological women, this Court has stated that overboard generalizations cannot be used to "perpetuate historical patterns of discrimination." Therefore, the Act violates the Equal Protection Clause.

For these reasons, A.J.T. respectfully asks this Court to reverse the lower court and rule the State's Act violates Title IX and the Equal Protection Clause of the Fourteenth Amendment.

## ARGUMENT

### **I. The Lower Court Erred In Granting The State's Motion For Summary Judgment Because The State's Act Violates Title IX By Discriminating Based On Sex, Treating Similarly Situated Students Differently, And Harming A.J.T.**

This Court should reverse the lower court because the State violated Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a) (2024) when it passed the Act in this case. Title IX states that "[n]o person . . . shall on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance . . . ." 20 U.S.C. § 1681(a) (2024). "Title IX is a broadly written general prohibition on discrimination, followed by specific narrow exceptions to

that broad prohibition.” *Peltier v. Charter Day Sch., Inc.*, 37 F.4th 104, 128 (2022) (quoting *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 175 (2005)). Here, the State’s Act does not fall within any of Title IX’s specifically enumerated exceptions. Thus, it violates Title IX.

To show a violation of Title IX, the plaintiff must show “(1) that he was excluded from participation in an education 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 him harm. *Grimm v. Gloucester Cty. Sch. Bd.*, 972 F.3d 586, 616 (4th Cir. 2020) (citing *Preston v. Va. ex rel. New River Cmty. Coll.*, 31 F.3d 203, 206 (4th Cir. 1994)).

A.J.T. has established those elements. Therefore, this court should reverse the lower court and rule that the State’s Act violates Title IX.

**A. The State’s Act Violates Title IX Because It Discriminates "On The Basis Of Sex" By Discriminating Based On Gender Identity.**

The State's Act violates Title IX because it discriminates based on gender identity, which is a form of sex discrimination. This Court has expressly stated that discriminating based on transgender status "necessarily entails discrimination based on sex." *Bostock v. Clayton Cnty.*, 590 U.S. 644, 669 (2020). Here, the State’s discrimination based on gender identity is illegal.

This Court has ruled that discrimination based on transgender status is discrimination based on sex. *Bostock*, 590 U.S. at 662. In *Bostock*, this Court ruled on several cases that involved Title VII claims. *Id.* at 653-54. The cases all involved individuals who were fired from their jobs based on either their homosexuality or transgender status. *Id.* The issue that is most applicable to this case was that of a transgender woman who was fired from the funeral home she worked at after telling her employer that she was transgender. *Id.* at 654. She sued her employer for violating Title VII. *Id.* Ultimately, this Court agreed the employer violated Title VII and ruled discrimination based on transgender status is discrimination based on sex. *Id.* at 683.



This Court reasoned that one must use a sex-based analysis to discriminate based on someone's being transgender, which violated the statute. *Id.* at 667. This Court stated that sex still plays a part in the person's decision to discriminate because it is a necessary but-for portion of the analysis. *Id.* at 661. A person cannot conclude that she is going to discriminate against a transgender individual without the initial causal step of determining what that person's gender at birth was. *Id.* Because that is the first necessary step in the process, discrimination because of transgender status necessarily involves sex-based discrimination, which violates Title VII. *Id.*

Similarly, the Fourth Circuit has applied this Court's reasoning to rule that Title IX's prohibition on discrimination "on the basis of sex" also prohibits discrimination based on gender identity. *Grimm v. Gloucester Cty. Sch. Bd.*, 972 F.3d 586, 616 (4th Cir. 2020). There, Grimm was a transgender boy who, *inter alia*, sought to use the boy's bathroom in his high school. *Id.* at 593. During his sophomore year in high school, the school board instituted a policy that limited the use of public restrooms in the school to those that corresponded to students' biological sex. *Id.* at 599. Because of this policy and the resulting harm, Grimm sued the school board for violating Title IX and the Equal Protection Clause of the Fourteenth Amendment. *Id.* at 601.

The Fourth Circuit concluded that Title IX prohibited the same type of discrimination as Title VII because Title IX was modeled on other Education Amendments. *Id.* at 616. That court used the same reasoning this Court used in *Bostock*; the State could not single out transgender individuals without referencing that person's biological sex. *Id.* Because the State had to reference Grimm's biological sex in its policy specifically, the State was necessarily engaged in sex-based discrimination. *Id.* Therefore, the State excluded Grimm "on the basis of sex." *Id.*

Like those cases, the State has instituted a policy that discriminates based on sex in this case. Like *Bostock*, A.J.T. would not have been discriminated against but for her biological sex.

The State needed to look at A.J.T.'s biological sex before it determined that she could not participate on the school's girls' cross-country and volleyball teams because she was transgender. Without concluding A.J.T. was born a biological male, the State never could have concluded she is a transgender girl. Therefore, the State discriminated based on A.J.T.'s sex.

Like the Fourth Circuit ruled in *Grimm*, Title IX prohibits this type of sex-based discrimination. Despite what the lower court in this case ruled, a reading of Title IX should be guided by a reading of the other amendments to that Act. Because Title IX should not be read separately from Title VII, this Court should adopt the Fourth Circuit's reasoning and rule that Title IX prohibits the type of sex-based discrimination present in this case.

**B. The State's Act Violates Title IX Because It Treats Similarly Situated Students Differently By Prohibiting Transgender Girls From Participating On Specific Teams While Not Doing The Same For Transgender Boys.**

This Court should reverse the lower court because the State's gender-identity-based discrimination is improper and a violation of Title IX. Although the State may properly make some sex-based classifications, discrimination under Title IX occurs when the plaintiff is individually treated "worse than those who are similarly situated." *B.P.J. v. W. Va. State Bd. of Educ.*, 98 F.4th 542, 563 (4th Cir. 2024) (internal citations omitted). Furthermore, the plaintiff must show the "improper discrimination caused [her] harm." *Id.* Unlike an Equal Protection violation, "no showing of a substantial relationship to an important government interest can save an institution's discriminatory policy." *Id.* (citing *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 309 (2023) (Gorsuch, J., concurring)). Here, the State has violated Title IX by treating A.J.T. worse than similarly situated individuals.

The Fourth Circuit has ruled that a state law that was almost exactly the same as the Act at issue here violated Title IX because it treated transgender boys worse than transgender girls.

*B.P.J.*, 98 F.4th at 563. In that case, B.P.J. was an eighth-grade transgender girl who sued the state of West Virginia for violating the Equal Protection Clause of the Fourteenth Amendment and Title IX when it passed a law prohibiting transgender girls from specific sports teams. *Id.* at 551. Like the statute at issue in this case, West Virginia’s “Save Women’s Sports Act” required

All public high school and college sports teams be ‘expressly designated’ as males, men, or boys; females, women, or girls; or coed or mixed and that the designations be based on biological sex. . . . The Act next instructs that athletic teams or sports teams 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.

*Id.* at 551. (internal quotations omitted and cleaned up). The sole effect of the law was to prevent transgender girls from playing on girls’ sports teams. *Id.* at 550.

The plaintiff in that case was a thirteen-year-old transgender girl who was taking puberty-blocking medication and had identified as transgender since the third grade. *Id.* B.P.J. sued the State one month after the law was enacted because she wanted to participate on her school's girls' sports teams. *Id.* After B.P.J. initiated the lawsuit, she participated in her school’s girls’ cross country and track teams under injunctions issued by the district court. *Id.*

On appeal, the Fourth Circuit ruled that B.P.J. had met the requirements of showing that West Virginia had violated Title IX by enacting the statute. *Id.* at 565. The court did state that Title IX does not require all schools to allow transgender girls to compete on girls’ sports teams, regardless of whether they have gone through puberty. *Id.* However, B.P.J. had suffered the harm required to show West Virginia had violated Title IX. *Id.*

First, the State had discriminated “on the basis of sex” under Title IX because discrimination based on gender identity meets that element. *Id.* at 563 (internal citations omitted). Second, the court ruled that B.P.J. was treated differently than similarly situated individuals under the Act, which satisfied the test's second prong for violating Title IX. *Id.*

Because the Act only prohibited transgender girls, but not transgender boys, from competing on sports teams consistent with their gender identity, the school was treating similarly situated individuals differently. *Id.* Furthermore, the Act discriminated categorically and without regard to whether transgender girls *actually* had greater inherent athletic skills than other girls. *Id.* Because of this, Title IX's requirement of a showing of improper discrimination was met. *Id.*

Similarly, the Fourth Circuit has ruled that a state violates Title IX when it treats a transgender student differently than other students at the school. *Grimm*, 972 F.3d at 618. In that case, Grimm challenged the state policy prohibiting him from using the boys' bathroom at school. *Id.* at 593. The Fourth Circuit ruled that Grimm was treated worse than similarly situated students, and the state had violated Title IX. *Id.* at 618.

The court stated that “[i]n the Title IX context, discrimination ‘mean[s] treating that individual worse than others who are similarly situated.’” *Id.* (citing *Bostock*, 590 U.S. at 657). In that case, the group that was similarly situated to Grimm was the other students at the school. *Id.* Grimm was not challenging the overall policy of separate bathrooms. *Id.* Instead, Grimm was challenging the fact that other students could use sex-separated bathrooms that corresponded with their gender. *Id.* However, Grimm was the only student who could not use the bathroom that conformed to his gender identity. *Id.* Because of this, the state had engaged in improper discrimination under Title IX by treating Grimm worse than similarly situated individuals. *Id.*

*B.P.J.* is directly on point with this case. Like that case, North Greene's statute treats A.J.T. worse than similarly situated individuals. A.J.T. is a transgender girl who has identified as a transgender girl since the third grade. Also, like that case, the statute in this case was enacted for the sole purpose of prohibiting transgender girls from competing on girls' sports teams.

Like the statute that West Virginia enacted, the State's Act specifically targets

transgender girls and prohibits them from playing on girls' sports teams. That is the first improper form of discrimination here because transgender girls and boys are similarly situated, and only one of those groups is being discriminated against by this statute. Furthermore, the State's reasons for enacting this Act do not matter. As that court stated, one difference between a Title IX violation and an Equal Protection violation is that no government interest can be used to defend a violation once that violation is shown. Therefore, A.J.T. is individually treated worse than similarly situated transgender students, and that discrimination is improper.

Furthermore, A.J.T. is treated worse than similarly situated students at her school. Like *Grimm*, other students at her school may participate on teams corresponding to their gender identities. However, A.J.T. cannot play on sports teams corresponding to her gender identity. Because a Title IX violation focuses on the harm done to an individual, not a group, the State is improperly discriminating against A.J.T. by treating her worse than similarly situated students.

Although the lower court ruled that the discrimination in this case was permissible because Title IX allows discrimination in contact sports, neither sport at issue here is a contact sport. *See* 41 C.F.R. § 101-4.450(b) (2024) (“For the purposes of these Title IX regulations, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.”). The major activities of volleyball and running do not involve bodily contact. Therefore, this exception does not apply.

For these reasons, the State’s statute not only discriminates based on sex, but it does so improperly in A.J.T.'s case. Therefore, the first two prongs of a Title IX violation are present.

**C. A.J.T. Has Suffered Harm From This Act; Therefore, All The Elements Required To Show A Violation Of Title IX Are Present, And The Lower Court Should Have Denied The State's Motion For Summary Judgment.**

The Act has harmed A.J.T. because it has caused her emotional and dignitary harm by

causing her to live with the State's discrimination, in contravention to how she has lived since the third grade. The third element required to prove a violation of Title IX is that the State's improper discrimination caused the plaintiff harm. *B.P.J.*, 98 F.4th at 563. The Fourth Circuit has recognized that the emotional and dignitary harm that transgender individuals suffer through discriminatory policies, like the Act in this case, is legally cognizable. *Grimm*, 972 F.3d at 618. Because A.J.T. has suffered emotional and dignitary harm and will continue to suffer that harm if the Act is allowed to stand, A.J.T. has shown the third element of a Title IX violation.

In *Grimm*, the Fourth Circuit recognized that the emotional and dignitary harms that a transgender individual must suffer because of discriminatory policies like the one at issue here are legally cognizable. *Id.* at 618. In that case, because of the school's policy prohibiting Grimm from using the boy's bathroom at school, Grimm was forced to walk through the school to the nurse's office to use that bathroom. *Id.* at 598. This caused Grimm to be late to classes because of the extra distance. *Id.* Furthermore, Grimm endured bullying because of the bathroom policy. *Id.* at 600. Grimm stated that it was "alienating," "humiliating," and detracted from his schoolwork to be treated that way. *Id.*

The Fourth Circuit ruled that those harms were legally cognizable to show a Title IX violation. *Id.* at 618. The court stated, "The stigma of being forced to use a separate restroom is likewise sufficient to constitute harm under Title IX, as it 'invite[s] more scrutiny and attention' from other students, 'very publicly brand[ing] all transgender students with a scarlet 'T.'" *Id.* at 617-18 (citing *Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 530 (3d Cir. 2018)). The court pointed out that treatment sent a clear message to others: the transgender student was not welcome in certain areas. *Id.* at 618. Therefore, the court determined Grimm had been harmed.

Similarly, the Fourth Circuit addressed that harm in the context of exclusion sports and

came to the same conclusion. *B.P.J.*, 98 F.4th at 563. There, a transgender girl wanted to compete on the girls' track and cross-country teams. *Id.* at 551. However, a school policy prevented her from doing so. *Id.* When the Court assessed whether B.P.J. had been harmed, the court found that she had suffered legally cognizable harm. *Id.* at 563.

First, the court stated that West Virginia's Act caused harm to B.P.J. by forbidding her from competing on the girls' sports teams and experiencing the competitions many other students experience. *Id.* Second, the court stated that the policy went beyond simply initially harming B.P.J. and required her to assume additional harm to compete in school sports. *Id.*

B.P.J. had been publicly living as a girl for five years at the time of the case. *Id.* She was also taking puberty blockers and was recognized as a girl at school. *Id.* Beyond that, the State had issued her a new birth certificate that identified her as a female. *Id.* Furthermore, making the change would not have put her on the same playing field as biological males because of the puberty blockers she had been taking. *Id.* A decision adverse to B.P.J. would have forced her to completely change how she lived for half of her life. *Id.* Therefore, the Act did harm B.P.J. *Id.*

Like *Grimm*, A.J.T. would continue to suffer emotional and dignitary harm if the State's Act is allowed to stand. A.J.T. would suffer the emotional harm of no longer being able to compete in athletic activities, which she has done throughout elementary school. She would also suffer the emotional harm of knowing that she can live as a girl at home but not be recognized as one in public. As the court stated in *Grimm*, she would know she was unwelcome in certain areas and would be humiliated and embarrassed.

Similarly, like *B.P.J.*, A.J.T. has lived as a girl since the third grade. Like the transgender girl in that case, A.J.T. has lived as a girl for four years. A.J.T. is also socially accepted as a girl. However, unlike that case, A.J.T. has already competed in girls' athletics throughout her life.

Being unable to do so now would further the emotional and dignitary harm the Act caused her.

Although the plaintiff in *B.P.J.* was already taking puberty blockers and A.J.T. is not, this does not change the analysis of the harm done to her. She will continue to suffer legally cognizable emotional and dignitary harm if the State's Act is allowed to stand and prevent her participation in girls' volleyball and cross country.

To summarize, the State's Act violates Title IX. A.J.T. has shown all three elements of a Title IX violation. First, A.J.T. has shown that the Act discriminates based on sex. A.J.T. has also shown that discrimination is improper. Second, the State is operating an educational institution that receives federal financial assistance. Third, A.J.T. has suffered legally cognizable harm. For these reasons, this Court should rule that the State's Act violates Title IX.

**II. This Court Should Reverse The Lower Court Because The State's Act Facially Violates The Equal Protection Clause Of The United States Constitution And Is Not Substantially Related To An Important Government Interest.**

The State's Act facially violates the Equal Protection Clause by creating two separate classifications based on transgender status, neither of which survives intermediate scrutiny. Neither classification survives intermediate scrutiny because neither is substantially related to the State's asserted interests of providing equal athletic opportunities for and protecting the physical safety of female athletes. Therefore, this Court should rule the State's Act is unconstitutional.

The Fourteenth Amendment to the Constitution states that "No state shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. The Equal Protection Clause requires states to treat all similarly situated individuals the same under the law. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985) (citing *Plyler v. Doe*, 457 U.S. 202, 216 (1982)). Furthermore, the Equal Protection Clause prevents states from passing legislation that gives different treatment to "different classes on the basis of criteria wholly unrelated to the objective of that statute." *Reed v. Reed*, 404 U.S. 71, 76 (1971).



Claims based on sex classifications are subject to the intermediate scrutiny test. *United States v. Virginia*, 518 U.S. 515, 531 (1996). This requires the government to show that an act that creates a gender-based classification is “substantially related to a sufficiently important government interest.” *City of Cleburne*, 473 U.S. at 441.

Here, the State’s Act violates the Equal Protection Clause because it creates gender-based classifications and these classifications are not substantially related to an important government interest. Therefore, this Court should rule that the State’s Act is unconstitutional.

**A. The State’s Act Violates The Equal Protection Clause Because It Creates A Facial Classification Between Cisgender And Transgender Girls.**

The State’s Act created a facial classification because it treats cisgender and transgender girls differently by expressly designating categories based on an individual’s biological sex at birth. The Equal Protection Clause forms the basis of a constitutional challenge when at least one person has been treated differently without sufficient justification. *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000). The Act states

Interscholastic, intercollegiate, intramural, or club athletic teams or sports that are sponsored by any public secondary school or a state institution of higher education, shall be expressly designated as one of the following based on biological sex at birth: (A) Males, men, or boys; (B) Females, women, or girls; or (C) Coed or mixed.

N.G. Code § 22-3-16(a). (cleaned up). The language of the statute expressly treats transgender girls differently from cisgender girls by creating categories based on sex.

Furthermore, none of the created categories apply to transgender girls. This has the effect of barring transgender girls from participating on any sports team.

Equating the term “women” to only fall within the definition of those who are biologically born as a female discriminates against transgender women. Transgender women are women, although the language of the State’s Act prevents them from competing as women.

The National Institutes of Health (NIH) defines sex as a “multidimensional biological construct based on anatomy, physiology, genetics and hormones.” National Institutes of Health, Office of Research on Women’s Health, Sex & Gender, <https://orwh.od.nih.gov/sex-gender#:~:text=For%20example%2C%20a%20person%20with,%2C%20act%2C%20or%20express%20themselves> (last visited Sep. 7, 2024). The NIH defines gender as a “multidimensional construct that encompassed gender identity and expression as well as social expectations about status, characteristics, and behavior as they are associated with certain sexes.” *Id.* It provides an example that explains “a person with typical *female* (sex term) traits may or may not be a *woman* (gender identity).” *Id.*

In the State’s Act, the words “female” and “women” are used to mean the same thing. This has the effect of categorically discriminating against transgender women, who classify themselves as women and are women.

In a case extremely similar to this one, the Fourth Circuit ruled that a district court erred when it granted summary judgment to the West Virginia Board of Education on an equal protection claim brought by a 13-year-old transgender girl. *B.P.J.*, 98 F.4th at 565. There, the girl was prevented from participating on her school’s cross country and track teams because of a school board policy prohibiting transgender girls from competing on girls’ sports teams. *Id.* at 550. The Fourth Circuit found that the State’s Act treated transgender girls and cisgender girls differently without supporting any important government interest in doing so. *Id.* at 556.

The Act stated that a person’s sex is defined only by their “reproductive biology and genetics at birth.” *Id.* This excluded transgender girls from the definition of female. *Id.* Thus, the act excluded transgender girls from participating in girls' sports teams. *Id.*

The Fourth Circuit ruled that there was a genuine dispute of material fact as to whether the Act, which created discriminatory classifications, was substantially related to the State's interest. *Id.* at 561. Therefore, summary judgment for the State was not proper. *Id.*

Similarly, the Ninth Circuit recently ruled that a district court did not abuse its discretion by preliminarily enjoining the Idaho Fairness in Women's Sports Act. *Hecox v. Little*, 2024 U.S. App. LEXIS 13929, at \*10 (9th Cir. Aug. 27, 2023). There, the district court ruled that Idaho's Act likely violated the Equal Protection Clause because it categorically banned transgender women from competing on female sports teams. *Id.* On appeal, the Ninth Circuit affirmed. *Id.*

In *Hecox*, the Idaho legislature passed a statute requiring that all interscholastic, intercollegiate, intramural, or club athletic teams were to be organized based on biological sex. *Id.* at \*17. The three categories created by the Act were 1) Males, men or boys; 2) Females, women, or girls; 3) Coed or mixed. *Id.* The Act also established an intrusive sex verification process if the sex of an athlete was disputed. *Id.* at \*19.

The Act's constitutionality was challenged by transgender woman, Lindsay Hecox, who wanted to try out for the BSU women's track and cross-country teams, and by a cisgender woman referred to as Jane Doe. *Id.* at \*18. Jane Doe was worried that her gender would be disputed due to her masculine presentation. *Id.* at \*18.

The court ruled that the "plain language of § 33-620 ban[ned] transgender women from biologically female teams" because the Act divided the sports teams into categories based on biological sex. *Id.* at \*16. The court explained that the method for verifying an athlete's biological sex, under the Act, was restricted to looking at their reproductive anatomy, genetic makeup, or endogenously produced testosterone. *Id.* at \*26. Most affirming medical care for transgender females will not alter the characteristics looked at in the three verification methods, which effectively bans transgender females from female sports. *Id.* Because of this, the court concluded that the Act's "definition of 'biological sex' was likely an oversimplification of the complicated biological reality of sex and gender. *Id.* at \*29.

Here, the State's Act is almost identical to the statute passed by other states in *B.P.J.* and *Hecox*. Like those statutes, the State's Act, in this case, divides sports teams into categories based on a person's biological sex at birth. Although the State's Act does not impose a sex verification process, the statute is similar in the fact that it provides a series of definitions that state that an individual's "biological sex" means an individual's physical form as a male or female based solely on the individual's reproductive biology and genetics at birth. However, as the court stated in *Hecox*, gender-affirming medical care for transgender females is unlikely to alter the actual biological sex that a person was born with. Therefore, the North Greene Act categorically bans transgender women from competing on women's sports teams.

**B. The State's Act Violates The Equal Protection Clause Because It Creates A Rule That Facially Differentiates Between The Limits Placed On Transgender Men And Women.**

The State's Act violates the Equal Protection Clause because it treats transgender women differently from transgender men. The Equal Protection Clause requires that all similarly situated persons be treated equally. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). The State's Act states, "Athletic teams or sports designed 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). No provision says the converse, which would be that sports designated for males shall not be open to students of the female sex. Because of this, only transgender women are barred from competing on the team that aligns with their gender identity, while transgender males are free to play on the team that aligns with their gender identity. Thus, similarly situated transgender individuals are being treated differently, which violates the Equal Protection Clause.

In a case very much like this one, a district court granted the plaintiff's motion for a preliminary injunction of Indiana Code § 20-33-13-4 based on a Title IX claim. *A.M. v.*

*Indianapolis Pub. Sch.*, 617 F. Supp. 3d 950, 970 (S.D. Ind. 2022). There, the plaintiff was a ten-year-old transgender girl who had been living as a girl in public and private since the age of four. *Id.* at 955. The year before the Indiana Code was implemented, the girl played on her school's girls' softball team. *Id.* After the act's passage, the school informed the girl's mother that she would no longer be allowed to play on the girls' softball team. *Id.* This was because the Indiana Code expressly limited participation on sports teams to enumerated categories that were based on an individual's biological sex at birth. *Id.* at 960.

The Indiana Act, in that case, stated, "A male, based on a student's biological sex at birth in accordance with the student's genetics and reproductive biology, may not participate on an athletic team or sport designated under this section as being a female, women's, or girls' athletic team or sport." *Id.* at 960. The court ruled that the transgender girl was likely to succeed on the merits of her Title IX claim because the policy discriminated against her based on her sex. *Id.* at 965. Significantly, the Court noted

[Indiana's Code] does not prohibit all transgender athletes from playing with the team of the sex with which they identify – it only prohibits transgender females from doing so. The singling out of transgender females is unequivocally discrimination based on sex, regardless of the policy argument as to why that choice was made.

*Id.* at 965.

Similarly, the Fourth Circuit found the West Virginia Save Women's Sports Act included multiple discriminatory classifications. *B.P.J.*, 98 F.4th at 551. One discriminatory classification stated, "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." *Id.* at 551. It also stated, "it shall not be construed to restrict the eligibility of any student to participate in any . . . teams or sports designated as 'males, men

or boys or designated as co-ed or mixed.” *Id.* (internal quotations omitted).

The Fourth Circuit explained that these provisions created a rule that people assigned as female at birth may play on any team, but people assigned male at birth may only play on male or co-ed teams. *Id.* at 557. In that case, these classifications prevented the plaintiff, a transgender girl, from participating in athletics that conformed to her gender identity. *Id.* at 557. The court determined that the classifications were subject to the intermediate scrutiny test because the classification was based on gender identity. *Id.*

Like those two cases, the State’s Act creates facial classifications based on gender identity. The two acts at issue in those cases included provisions that discriminated against transgender females but not transgender males. Similarly, here, the State has included a clause in its Act that explicitly limits the teams that a transgender girl may compete on. However, it does not impose the same limitation on transgender boys.

Although *A.M.* dealt with a Title IX claim, and an Equal Protection Clause claim is at issue here, it is still relevant to analyze this case with that of the case at hand. This is because the first step in both a Title IX claim and an Equal Protection Clause Claim is to determine if any discriminatory classifications had taken place.

Furthermore, the State’s Act treats transgender individuals differently. Unlike the act in *B.P.J.*, the State’s Act does not include a provision explicitly stating that no individual should be restricted from playing on a male sports team. However, it still treats transgender women differently in failing to include the converse of the provision stating “sports teams designated for females . . . shall not be open to students of the male sex . . .” The differing treatment of transgender females and transgender males violates the Equal Protection Clause by treating similarly situated transgender individuals differently. Because the State has not demonstrated this

classification substantially relates to an important government interest, it is unconstitutional.

**C. The State's Act Does Not Meet Intermediate Scrutiny Because The Facial Classifications It Creates Are Not Substantially Related To An Important Government Interest.**

The State's Act is not substantially related to an important government interest because 1) it does not ensure more athletic opportunities for cisgender women, it merely ensures transgender girls will be deprived of athletic opportunities and 2) it does ensure that cisgender women will not suffer athletic injuries. Thus, the State fails to live up to the constitutional muster of intermediate scrutiny, and this Court should rule the Act unconstitutional.

Gender-based classifications are subject to the intermediate scrutiny test. *United States v. Virginia*, 518 U.S. at 531. The intermediate scrutiny test requires that the governmental action serve an important objective and that the discriminatory means used are substantially related to achieving the stated purpose. *Saenz v. Roe*, 526 U.S. 489, 500 (1999). The government has the burden of showing an "exceedingly persuasive justification" for the discriminatory classification made. *Miss. Univ. for Women v. Hogan*, 458 U.S. 718, 724 (1982).

The Fourth Circuit has ruled that transgender girls do not have an inherent meaningful competitive advantage over cisgender girls. *B.P.J.*, 98 F.4th at 561. In *B.P.J.*, the Fourth Circuit found there was a genuine issue of material fact as to whether transgender individuals enjoy a meaningful competitive advantage over cisgender girls. *Id.* Because the act in that case involved gender discrimination, the Fourth Circuit applied the intermediate scrutiny test to determine that the state's act was not substantially related to an important government interest. *Id.* at 559.

The State claimed that the important government interest it was attempting to protect was the insurance of participant safety and competitive fairness. *Id.* The State claimed that its creation of gender-based categories to determine sports team eligibility was required to reach this

goal. *Id.* While the transgender girl in that case did not dispute that these were important government interests, she argued that excluding her from the cross country and track teams was not substantially related to either of these goals. *Id.*

The Court agreed with the girl. *Id.* at 561. The court stated that because the transgender girl was receiving hormone therapy, “[she] has never felt the effects of increased levels of circulating testosterone, the fact that those who do benefit from increased strength and speed provides no justification—much less a substantial one—for excluding B.P.J from the girls cross country and track teams.” *Id.* Therefore, excluding transgender girls from sports was not substantially related to protecting athletic opportunities for cisgender girls. *Id.*

As to whether transgender individuals who had not received hormone therapy and had not gone through puberty enjoy a competitive advantage over cisgender girls, the court found there was a genuine dispute of material fact. *Id.* This was because B.P.J. provided an expert report stating,

with respect to average athletic performance, girls and women who are transgender and do not go through . . . puberty are somewhat similarly situated to women with XY chromosomes who have complete androgen insensitivity syndrome—a group long . . . recognized to have no athletic advantage simply by virtue of having XY chromosomes.

*Id.* (internal quotations omitted).

Similarly, this Court has found that a college’s policy of only admitting male students based on a similar rationale violated the Equal Protection Clause. *United States v. Virginia*, 518 U.S. at 523. There, a female high school student alleged that Virginia Military Institute’s (“VMI”) policy of admitting only males was unconstitutional because it unfairly discriminated against women. *Id.* The district court ruled in favor of VMI, rejecting the United States’ challenge to the Equal Protection Clause. *Id.* at 523. The case was appealed, and this Court



determined the exclusion of women from VMI violated the Equal Protection Clause. *Id.* at 531.

Despite VMI's unique situation as the State's only single-sex public institution, this Court ruled the admissions policy was unconstitutional. *Id.* at 557 This was because the state failed to prove that the policy was substantially related to its interest in creating diversity in education. *Id.* at 534. Additionally, this Court ruled that the creation of a parallel women's institution did not provide women with equal opportunity. *Id.* at 557. Therefore, that was not a cure for constitutional violations. *Id.* at 557.

In its ruling, this Court stated, "Virginia has not shown that VMI was established, or has been maintained, with a view to diversifying, by its categorical exclusion of women, educational opportunities within the Commonwealth." *Id.* at 535. Seeing as how all other public colleges and universities in Virginia had moved away from single-sex education, VMI's argument that keeping the Institute as a single-sex institution would "further the state policy of diversity" was found to be unpersuasive. *Id.* at 539. In its analysis, this Court cited another stated, "equal protection principles, as applied to gender classifications, mean state actors may not rely on "overbroad" generalizations to make judgments about people that are likely to perpetuate historical patterns of discrimination.'" *Id.* at 541-42 (citing *Miss. Univ. for Women*, 458 U.S. at 725; *J.E.B. v. Ala. ex rel. T.B.*, 511 U.S. 127, 139, n.11 (1994)).

Like those two cases, the State has failed to show that its discriminatory policy is related to its asserted important governmental interests. The State's Act asserts that its important governmental interests are to provide equal athletic opportunities for female athletes and to protect the physical safety of female athletes when competing. However, the classifications do not help accomplish either of these goals. Therefore, the State's Act is unconstitutional.

First, the exclusion of transgender women would not have a substantial effect on

providing equal athletic opportunities for females. Transgender women represent only 0.6 percent of the general population. Because transgender women make up such a small portion of the population, it is unlikely that they will take away any significant portion of athletic opportunities from cisgender females. Therefore, the State's Act is not substantially related to the State's interest in providing equal athletic opportunities for cisgender females.

Next, there is no guarantee that the State's Act will ensure safety for biological females simply by excluding transgender girls. In the lower court's opinion, it stated that "[i]t is undisputed that after puberty biological males have advantages over biological females that significantly impact athletic performance." That reasoning is flawed.

Like the transgender girl in *B.P.J.*, A.J.T. has not started puberty. Therefore, she has not felt the effects of increased circulating testosterone. Although A.J.T. is not taking hormone therapy, she falls into the category of transgender women described in B.P.J.'s expert witness report, who are not recognized to have any athletic advantage. This shows that there is a genuine dispute as to whether A.J.T would *actually* have any competitive advantage over cisgender girls.

While A.J.T. is making a facial constitutional challenge, and not as applied only to her, the Act is still discriminatory towards a large group of transgender women without an exceedingly persuasive justification. The Act effectively discriminates against all other potential plaintiffs like A.J.T, such as transgender girls who have not gone through puberty or those who are taking hormone blockers. This category of transgender girls is similarly situated to cisgender girls, and treating the two differently is a violation of the Equal Protection Clause.

Second, there is no substantial proof that allowing transgender women to compete with cisgender women is cause for a safety concern. There are multiple reasons for this.

As a starting point, non-contact sports, such as cross country and track, do not elicit

safety concerns regarding the strength or size of the different competitors. Although the strength and size of competitors contribute to performance in these sports, the sports do not involve contact between participants. Therefore, there is no increased risk of injury in allowing transgender girls to compete with cisgender girls in these non-contact sports.

Next, even in contact sports, special equipment is used to protect the safety of the athletes. This can be seen across various sports. For instance, while field hockey is generally not considered a contact sport, players still wear mouthguards and shinpads to protect themselves.

Beyond the fact that protective equipment is generally worn by players in contact sports, the State cannot demonstrate a clear causal connection between all female sports injuries and transgender girls competing in girls' athletics. Even if an injury occurred in a contact sport, and this injury resulted from a transgender female's act, there is no way to prove that the same injury could not have been caused by a cisgender female. In other words, there is no way to show that but for the athlete being transgender the injury would not have occurred. Therefore, the State's Act does not further its asserted goal of increasing player safety.

Finally, like *United States v. Virginia*, the State relies on an overly broad generalization of the population of athletes to justify its Act. The lower court stated that it is a general principle that there are inherent physical differences between transgender girls and cisgender girls. The argument that transgender women have higher levels of testosterone fails to consider the large group of transgender females who have not gone through puberty or are taking hormone blockers and, therefore, do not have higher levels of testosterone. The court's "general principle" is nothing more than an unconstitutional overbroad generalization.

Plus, by conceding that some females can outperform males, as a general principle, the lower court admitted that the State relied on an overbroad generalization to justify its action. The

lack of evidence showing how the State's policy would promote safety and equal opportunities for females is akin to VMI's lack of evidence in showing how their policy promoted diversity.

To summarize, although the State has stated important government interests that it is trying to protect, it has failed to show that its Act is substantially related to those interests. The Act does not ensure that there will be more athletic opportunities for cisgender girls. It merely deprives athletic opportunities for transgender girls. Furthermore, the State's Act does not ensure that cisgender women will be better protected in athletic competitions. It simply ensures that transgender girls will not have the opportunity to compete in those athletic competitions. Because the State has not shown that the discriminatory classifications it created in its Act were substantially related to achieving its goals, the Act has failed the intermediate scrutiny test.

### **CONCLUSION**

In conclusion, the judgment of the court of appeals should be reversed because the State's Act violates Title IX and the Equal Protection Clause of the Fourteenth Amendment. The State's Act violates Title IX by improperly discriminating based on sex. The Act has also caused A.J.T. harm. Furthermore, the Act violates the Equal Protection Clause by creating two facial classifications, neither of which survive intermediate scrutiny. For all these reasons, A.J.T. respectfully asks this Court to reverse the lower court and rule the State's Act violates Title IX and is unconstitutional under the Equal Protection Clause.

Respectfully submitted,  
Team 27

*Counsel for Petitioner*

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