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

BRIEF FOR THE RESPONDENT

TEAM 28

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QUESTION PRESENTED

I. Whether North Green's Act, which designates what sports students can participate in based on their biological sex is permitted under Title IX when the Act as applied to the Petitioner, did not exclude her from participating in team sports based on sex, since she was allowed to participate in the sport that aligns with her biological sex, and discrimination "on the basis of sex" under Title IX refers to biological sex?

II. Whether North Greene's Act, which defines a transgender women as a biological man for the purpose of assigning sports competitors to teams based upon their biological sex, violates the Equal Protection Clause of the Fourteenth Amendment when (1) the statute's definition results in transgender woman and biological men being treated identically under the Statute, even though the Equal Protection's clause does not require this outcome, and (2) the Statute is substantially related to the State's goal of ensuing access to safety and equal opportunity in women's athletics given that biological men are physically stronger than biological woman and success in athletics generally depends on an individual's physicality?

OPINIONS BELOW

The Fourteenth Circuit's opinion in *A.J.T. v. North Greene Bd. Of Educ.*, 2024 WL 98765 (14th Cir. 2024). The Eastern District of North Greene's opinion is *A.J.T. v. North Greene Bd. Of Educ.*, 2023 WL 56789 (E.D. N. Greene 2023).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution states:

"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."

Title IX of the Education Amendments of 1972 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 . . ." 20 USCS § 1681.

Section 22-3-16(a) of the North Greene Code states:

"[i]nterscholastic, 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."[1]

Section 22-3-16(b) of the North Greene Code states:

"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 in based upon competitive skill or the activity involved is a contact sport."[2]

Section 22-3-16(c) of the North Greene Code states:

"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."

[1] The record does not contain N. G. Code § 22-3-16(a) in its entirety, this is what is available in the record. Record 4.

Section 22-3-15(a)(1)-(3) of the North Greene Code states:

(1) “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.
(2) “Female” means an individual whose biological sex determined at birth is female. As used in this section, “women” or “girls” refers to biological females.
(3) “Male” means an individual whose biological sex determined at birth is male. As used in this section, “men” or “boys” refers to biological males.

STATEMENT OF THE CASE

In April of 2023, both Houses of the North Green legislature approved Senate Bill 2750, referred to as the "Save Women's Sports Act" ("Act"). Record 3. The Bill was signed into law on May 1, 2023, and it was codified as North Greene Code § 22-3-4, entitled "Limiting participation in sport events to the biological sex of the athlete at birth." Record 3. The objective of the Act is to provide equal athletic opportunities for female athletes and to protect the physical safety of female athletes when competing. Record 4.

The Petitioner, A.J.T., is transgender girl who was born as a biological male but began identifying as a girl from an early age. Record 3. Petitioner uses a name commonly associated with girls, and lives as a girl in both public and private. Record 3. Throughout elementary school, Petitioner was part of her school's all-girls cheerleading team. Record 3. As of the commencement of this lawsuit, Petitioner was eleven years old and had not begun puberty or puberty-delaying treatment. Record 3. Petitioner was also preparing to begin seventh grade and wanted to join the school's volleyball and cross-country teams. Record 3. This litigation ensued after Petitioner was not allowed to participate in the school's girls' volleyball and cross-country teams because of the recently enacted Act. Record 3.

Petitioner sued the State of North Greene Board of Education, State Superintendent Floyd Lawson, the State and the Attorney General Barney Fife. [3] Petitioner sought a declaratory judgment that the Act violates Title IX and the Equal Protection Clause of the Fourteenth Amendment and an injunction preventing the enforcement of the Act against her. The State opposed the injunction and moved for summary judgment on Petitioner's claims which the District

[3] In general, all defendants will be referred to collectively as "Defendants" but references to "the State Board of Education," "the Board," "the State," or "the government" should be understood to also refer to all Defendants unless otherwise specifically noted.

Court granted. Petitioner subsequently appealed the decision. The Fourteenth Circuit Court of Appeals subsequently issued an opinion where the court affirmed the District Court's decision and held that the Act did not violate the United States Constitution or Title IX.

SUMMARY OF THE ARGUMENT

The school board renews its argument that the North Green Save Women's Sports Act is permitted under Title IX and the Equal Protection Clause.

Title IX mandates that, subject to certain exceptions: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance . . . ." 20 U.S.C. § 1681(a). Discrimination means treating an individual worse than others who are similarly situated. *Grimm v. Gloucester County School Board*, 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)).

Congress enacted Title IX as part of the Education Amendments of 1972 and "patterned after" the Civil Rights Act of 1964. *Cannon v. Univ. of Chi*., 441 U.S. 677, 694-96 (1979). Then in 1974, Congress directed the Department of Education ("DOE") to implement Title IX through regulations, allowing schools to provide separate teams for men and women if one team could not accommodate both sexes. *See Louisiana v. U.S. Dep't of Educ*., No. 3:24-CV-00563, 2024 U.S. Dist. LEXIS 105645 at *9 (W.D. La., 2024).

In April 2024, the DOE amended these regulations, and on August 1, 2024, the new "Final Rule" took effect, expanding the definition of sex discrimination in Title IX to include sex stereotypes, sex characteristics, pregnancy, sexual orientation, and gender identity, considering this Court's decision in *Bostock*. 89 FR 33474; 34 C.F.R. § 106.10. *See Bostock v. Clayton Cty.*, 590 U.S. 644, 659- 62 (2020).

First, the Final Rule's interpretation of discrimination "on the basis of sex" applying *Bostock* to Title IX is incorrect because the term "sex" in Title IX unambiguously refers to biological sex and not gender identity, and Bostock applied to Title VII and not Title IX. Additionally, the meaning of the word "sex" is not ambiguous in Title IX because the ordinary meaning of the word, at the time Congress enacted Title IX referred to biological sex and not gender identity. *Alabama v. United States Sec'y of Educ.*, No. 24-12444, 2024 U.S. App. LEXIS 21358 at *11 (11th Cir. 2024). Further, Title IX's purpose and overall statutory scheme, which was to protect women from sex discrimination because they were women – their biological sex-demonstrates the term "sex" in Title IX referred to biological sex. *See Louisiana*, 2024 U.S. Dist. LEXIS 105645, *8.

Second, the DOE exceeding its statutory authority in enacting the Final Rule because it is arbitrary and capricious, and not in accordance with the law. Under the Administrative Procedures Act courts "hold unlawful and set aside agency action" that is "arbitrary and capricious, an abuse of discretion, . . . otherwise not in accordance with law," or "in excess of statutory . . . authority, or limitations, or short of statutory right." 5 U.S.C. §§ 706(2)(A), (C).

The Final Rule contradicts Title IX's intended purpose and the protections Title IX was created to implement. Title IX was enacted to protect women in educational spaces that were originally dominated by men. See *Texas v. United States*, No. 2:24-CV-86-Z, 2024 U.S. Dist. LEXIS 121812, *22 (N.D. Tex. 2024) (quoting *Motor Veh. Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co*., 463 U.S. 29, 43 (1983)). However, the Final Rule and its new interpretation of discrimination "on the basis of sex" allows biological men to enter those spaces initially created to protect biological women on the disguise of gender identity. Because the Final Rule contradicts

Title IX's overall purpose, it cannot be deemed in accordance with the law and within the bounds of the DOE's statutory authority.

Ultimately, the Final Rule's interpretation of "discrimination on the basis of sex," to include gender identity, contradicts the ordinary meaning of the word "sex" when Title IX was enacted, broadens the statute's scope beyond its intended purpose, and is arbitrary and capricious, with the DOE overstepping its authority by redefining "sex" beyond congressional intent. Therefore, the Court should rule that Title IX's protection against discrimination refers specifically to biological sex. If this Court finds that Title IX solely prohibits discrimination on the basis of biological sex and not gender identity, then accordingly this Court should find that the Petitioner was not excluded from any educational programs or activities on the basis of sex because she was allowed to participate in the sport corresponding to her biological sex. Further, this Court should find that the Petitioner did not experience any improper discrimination or harm because the Petitioner was not treated worse than other biological males, and still had the opportunity to participate in any team within for biological males. Thus, the Court should uphold the Save the Women's Sports Act as consistent with Title IX.

As applied, the Save Women's Sport's Act does not violate the 14th Amendment's Equal Protection Clause because the statute does not discriminate on its face against transgender women, and to the extent Petitioner claims the statute is in fact discriminatory, or disparately impacts transgender woman, such a result is constitutional because the Act's statutory classification of transgender women as biological is substantially related to the State's important interest of ensuring access to equal opportunity for biological women in sports. Although the 14th Amendment's Equal Protection Clause does indeed proscribe States from denying to its citizens

equal protection under the law, states are not forbidden from creating statutory classifications amongst persons. *Pers. Adm'r of Mass. v. Feeney*, 442 U.S. 256, 274 (1979).

On its face, the Save Women's Sports Act factually defines biological sex as one's sex as identified at birth the statute fails to identify transgender woman at all beyond noting the fact that gender identity is not synonymous with one's sex, and moreover, transgender women and biological men fair the same under the statute in that they are both allowed to either play on a team with biological males, or a coed team. Record 4. From this, the Court should conclude the Act does not discriminate on its face against transgender women. Record 4. That the statute allows biological women to play on men's teams and not the reverse does not offend the Equal Protection Clause which does not guarantee equality of outcome. *See Tuan Anh Nguyen v. INS*, 533 U.S. 53, 70 (2001). However, even if this Court finds the statute to be facially discriminatory, this Court has long noted the existence of the physical difference between men and women. *United States v. Virginia*, 518 U.S. 515, 533 (1996); and other courts, *By & Through Clark v. Ariz. Interscholastic Ass'n*, 695 F.2d 1126, 1131 (9th Cir. 1982);, as well as Congress in enacting Title IX, *Neal v. Bd. of Trs*., 198 F.3d 763, 767 (9th Cir. 1999). have also noted that providing women in equal, safe opportunity is an important government interest. Merely because statute does not accomplish object fairness does not make it violative of the Equal Protection Clause, *see Tuan Anh Nguyen*, 533 U.S. at 70, and ultimately because the Act's classification of transgender women as biological men rest not on archaic stereotypes, *Miss. Univ. for Women v. Hogan*, 458 U.S. 718, 725 (1982); but rather the recognized physical difference between men and women and the impact of this difference in the physical realm of sports, the Act's classification is substantially related to the State's importance interest of ensuring equal opportunity for biological women in sports. Finally, to address Petitioner's argument of disparate impact, the definition of "biological sex" works not

as a facially neutral proxy to discriminate, but rather as a recognition of the innate physical difference men and women possess, a purpose this Court has long recognized as not inherently discriminatory, see *Tuan Anh Nguy*en, 533 U.S. at 73; to the extent statute is not animated by discriminatory animus, the Equal Protection Clause excuses a statutes disparate impact.

Ultimately, because the Save Women's Sport's Act does not violate the 14th Amendment's Equal Protection Clause for the aforementioned reasons, this Court should affirm the lower Court's finding that the State of North Greene's Save Women's Sports Act does not violate the U.S. Constitution.

ARGUMENT

THIS COURT SHOULD AFFIRM THE FOURTEENTH CIRCUIT'S DECISION BECAUSE THE NORTH GREEN SAVE THE WOMEN'S SPORTS ACT IS PERMITTED UNDER TITLE IX AND THE EQUAL PROTECTION CLAUSE

I. This Court should Hold that the North Green Save Women's Sports Act Is Permitted Under Title IX Because It Does Not Exclude Petitioner From Any Educational Program "On The Basis of Sex" and Does not Improperly Discriminate Against Petitioner Resulting in Harm.

Title IX provides 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 prove that she was (1) excluded from 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 harm." *Grimm*, 972 F. 3d at 616 (citing *Preston*, 31 F.3d at 206. It is undisputed that the school which the Petitioner attended at the time of this suit received federal funding and was subject to Title IX. Thus, the issues before this court are: (1) whether the Act excluded the Petitioner from participating in an educational program on the basis of sex and (2) whether the improper discrimination caused her harm is the issue before this Court.

"Title IX was passed as part of the Education Amendments of 1972 and "patterned after" the Civil Rights Act of 1964." *Cannon,* 441 U.S. 694-96. In 1974, Congress enacted legislation instructing the Department of Education ("DOE") to promulgate regulations to implement Title IX. *See Louisiana,* 2024 U.S. Dist. LEXIS 105645 at *9. The DOE created these regulations, and since their enactment they have allowed a school "to provide separate teams for 'men and women' where the provisions of only one team would 'not accommodate the interests and abilities of both sexes.''' 34 C.F.R. 106.41(c)(1). More recently in April of 2024, the DOE amended these longstanding regulations, and on August 1st, 2024, new regulations, referred to as "The Final Rule" took effect in the United States. 89 FR 33474. Directly affecting the issues before this Court, one of the new amendments of the regulations states; "[d]iscrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation or gender identity." 34 C.F.R. §106.10.

The DOE incorrectly enacted 34 C.F.R. § 106.10. The DOE's definition of "on the basis of sex" contradicts the ordinary meaning of the word "sex" in Title IX, ignores Congress's intent and purpose at the time of Title IX's enactment, and the DOE exceeded its authority in defining "on the basis of sex." As a result, several states have sought injunctions against the DOE from enforcing the new amendments, and the injunctions have been granted. *See Louisiana*, 2024 U.S. Dist. LEXIS 17886 at 9*; *Alabama*, 2024 U.S. App. LEXIS 21358 at 11*; *Tennessee v. Dep't of Educ.,* 104 F.4th 577, 614 (6th Cir. 2024) *Texas*, 2024 U.S. Dist. LEXIS 121812 at 22*. These courts have correctly interpreted the language "on the basis of sex" to mean "biological sex" coinciding with the words ordinary meaning, congressional intent, and Title IX's purpose. *See Adams by and through Kasper v. School Board of St. Johns County*, 57 F. 4th 791, 812 (2022).

First, this Court should hold that under Title IX discrimination "on the basis of sex" refers to on the basis of *biological* sex, like the Fifth, Six, and Eleventh Circuits have held. Under this definition, the Act does not violate Title IX because the school is allowed to have separate team sports based on biological sex. Second, this Court should hold that the Petitioner was not improperly discriminated against because she was still allowed to participate in the sport of her choosing that corresponds with her biological sex. Therefore, this court should affirm the lower court's decision because the North Green Save Women's Sports Act Does Not Violate Title IX.

A. The Ordinary Meaning of "sex", and The Intent and Purpose of Congress in Passing Title IX, Demonstrates That Congress Intended "Sex" to be Defined as Biological Sex and not as The DOE Defined it in 34 C.F.R. § 106.10.

The ordinary meaning of the term "sex" and overall legislative scheme behind Title IX demonstrate that Congress intended discrimination "on the basis of sex" to refer to the biological sex, contrary the DOD's interpretation in 34 C.F.R. § 106.10.

[The] "first step in interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case." The inquiry must cease if the statutory language is unambiguous and "the statutory scheme is coherent and consistent." *United States v. Ron Pair Enterprises, Inc.,* 489 U.S. 235, 240 (1989)); *see also Connecticut Nat. Bank v. Germain,* 503 U.S. 249, 253-54 (1992). If the statutory text is ambiguous, the courts examine it through other canons of statutory construction by looking at the structure and purpose of the statute as reflected in its legislative history. *Catskill Mountains Chapter of Trout Unlimited, Inc. v. Env't. Prot. Agency,* 846 F. 3d 492, 512 (2nd Cir. 2017).

1. <u>The term "sex" in Title IX is not ambiguous and explicitly refers to biological sex.</u>

The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole. *Estate of Cowart v. Nicklos Drilling Co*., 505 U.S. 469, 477 (1992); *McCarthy*

v. Bronson, 500 U.S. 136, 139 (1991). To determine whether a term is ambiguous, courts look at the ordinary mean of the word at the time a statute was enacted. *See Perrin v. United States*, 444 U.S. 37, 42 (1979). One of the methods of determining the ordinary meaning of a word "is by looking at dictionaries in existence around the time of enactment." *United States v. Chinchilla*, 987 F.3d 1303, 1308 (11th Cir. 2021).

In 1971 Webster's Third New International Dictionary defined "sex" as:

> "the sum of the morphological, physiological, and behavioral peculiarities of living beings that subserves biparental reproduction with its concomitant genetic segregation and recombination which underlie most evolutionary change, that in its typical dichotomous occurrence is usu[ally] genetically controlled and associated with special sex chromosomes, and that is typically manifested as maleness and femaleness . . . ."

Webster's Third New International Dictionary 2081 (1971); Sex, Webster's Third New International Dictionary 2081 (1966). In 1973, Random House noted that "sex" referred to "either the male or female division of a species, esp. as differentiated with reference to the reproductive functions." The Random House College Dictionary 1206 (rev. ed. 1973.); *See also* Sex, Female, Male, Oxford English Dictionary (re-issue ed. 1978) (defining "sex" as "[e]ither of the two divisions of organic beings distinguished as male and female respectively," "female" as "[b]elonging to the sex which bears offspring," and "male" as "[o]f or belonging to the sex which begets offspring, or performs the fecundating function of generation").

An overwhelming amount of dictionary definitions at the time Title IX was enacted defined the term "sex" to refer to biological sex. All these definitions highlight the physiological differences between men and women, without discussion of sexual orientation or gender identity. The definition attributed to "sex" by the DOE contradicts the ordinary meaning of the term "sex" at the time Congress enacted Title IX. The meaning of "sex" that Congress understood at this time was biological gender and not gender identity. See Sex, American College Dictionary 1109 (1970).

The DOE did not need to interpret the term "sex" in Title IX, because its definition at the time the statute was enacted was clear. *See Ron Pair Enterprises. Inc*., 489 U.S. at 240 (1989). This Court should hold that the term "sex" in Tile IX is not ambiguous, and that discrimination "on the basis of sex" refers to biological sex because doing otherwise, contradicts the statutory scheme of Title IX.

Statutes are to be read as a whole, because the meaning of a statutory term also depends on the overall context and purpose of the statute. *See King v. St. Vincent's Hosp*., 502 U.S. 215, 221 (1991); *Southwest Airlines Co. v. Saxton*, 596 U.S. 450, 455, (2022).

In *Louisiana v. United States Department of Education*, the district court enjoined the DOE from enforcing the Final Rule, including the new definition of discrimination on the basis of sex which includes gender identity. *See* 2024 U.S. Dist. LEXIS 105645 *9 (W.D. La. June 13, 2024). The court found that the final rule contradicted Title IX's statutory scheme in several ways. *Id*. More specifically, the court ruled the final rule's requirements regarding access to restrooms, locker rooms, and athletics based on gender identity contravened Title IX's statutory scheme, which authorizes schools to maintain separate living facilities based on biological sex.

To reach its holding, the court in Louisiana considered that the text of Title IX demonstrates that Title IX was intended to prevent biological women from being discriminated against in education in favor of biological men. *Id.* at *8. The court also pointed out that "Title IX lists several exemptions which use the language 'one sex' or 'both sexes' showing that the statute was referring to biological men and biological women, not gender identity, sexual orientation, sex stereotypes, or sex characteristics." *Id*. The court reasoned that the Final Rule would render meaningless all of these exemptions set forth in Title IX, that have traditionally allowed separation between the sexes. *Id*. at *29-30. Lastly, the court considered that Congress previously recognized the importance of

the 1975 Title IX regulations, which added the application of Title IX to women's sports. *Id.* The court found that because these 1975 regulations clearly dealt with protecting biological women in sports, Congress's recognition show that they intended sex discrimination to mean discrimination of someone based upon his or her biological sex. *Id.* at *28-29; *See also Texas* 2024 U.S. Dist. LEXIS 121812 at 21* (Texas also sought an injunction against the enforcement of the Final Rule, and the district court held that based on the overall statutory context of Title IX, which allows for sex-separate activities such as sororities and fraternities, discrimination on the basis of sex, referred to biological sex and not gender identity.); *see also Alabama,* 2024 U.S. App. LEXIS 21358, at *11 (The court granted an injunction against the enforcement of the Final Rule and further stated "[gi]ven our holding in Adams that 'sex' in Title IX 'unambiguously' refers to 'biological sex' and not 'gender identity,' it is certainly highly likely that the Department's new regulation defining discrimination 'on the basis of sex' to include 'gender identity' is contrary to law.) *But see Grimm* 972 F.3d at 616; (applying this Court's decision in *Bostock,* 590 U.S. at 653; and holding that this Court's interpretation of discrimination "because of sex" under Title VII, which included gender identity, also applied to discrimination "based on sex" under Title IX.)

Based on the ordinary meaning of the term "sex" at the time Title IX was enacted, and the overall statutory scheme of Title IX, this Court should hold that discrimination "on the basis of sex" is not ambiguous and refers to biological sex. As the courts in the Eleventh Circuit, Louisiana and Texas have held, the Final Rule's definition of discrimination "on the basis of sex" is contrary to the rules of statutory interpretation. *See Alabama*, 2024 U.S. App. LEXIS 21358 at *11; *Louisiana*, 2024 U.S. Dist. LEXIS 105645 at *8.; *Texas,* 2024 U.S. Dist. LEXIS 121812 at *22.

Additionally, the decision in Bostock regarding discrimination "because of sex" under Title VII does not apply to Title IX, as Bostock dealt exclusively with employment discrimination under

Title VII, not educational settings under Title IX. *See Bostock,* 590 U.S. at 653. The court in *Louisiana* further clarified that the purposes of Title VII and Title IX are fundamentally different, and a statute's purpose is key to interpreting its terms. *Louisiana*, 2024 U.S. Dist. LEXIS 105645 at *30. While Title VII aims to prevent employment discrimination, Title IX was specifically designed to protect biological women from discrimination in education. *Id*. Furthermore, Title IX includes clear statutory and regulatory exceptions allowing for sex-based distinctions, such as separate living quarters, which further demonstrates that "sex" under Title IX refers to biological sex. *See Alabama,* 2024 U.S. App. LEXIS 21358 at *11; Louisiana, 2024 U.S. Dist. LEXIS 105645, *8; *Texas,* U.S. Dist. LEXIS 121812.

In conclusion, the Final Rule and the interpretation of "discrimination because of sex" in Bostock, which includes gender identity, are incompatible with the ordinary meaning of "sex" when Title IX was enacted and the overall statutory scheme of Title IX. Therefore, this Court should therefore hold that under Title IX, discrimination on the basis of sex refers specifically to discrimination based on biological sex.

2. <u>The Department of Education exceeded its statutory authority in enacting the Final Rule altering the definition of discrimination "based on sex" under Title IX.</u>

The interpretation of discrimination "on the basis of sex" in the recently enacted regulations was an unlawful agency action by the DOE because the Final Rule contradicts the purpose of Title IX.

The Administrative Procedures Act generally requires courts to "hold unlawful and set aside agency action" that is "arbitrary and capricious, an abuse of discretion, . . . otherwise not in accordance with law," or "in excess of statutory . . . authority, or limitations, or short of statutory right." 5 U.S.C. §§ 706(2)(A),(C). Courts assess only whether the action was "based on a consideration of the relevant factors and whether there has been a clear error of judgment." *Citizens*

to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 416 (1971). Those factors include when an agency (1) has relied on factors Congress has not intended it to consider; (2) entirely failed to consider an important aspect of the regulatory problem; (3) justified its conduct counter to the evidence before it; or (4) reached a determination that "is so implausible . . . it could not be ascribed to a difference in view or . . . agency expertise." *Motor Vehicle Mfrs. Ass'n*, 463 U.S. at 43. Once a court determines that the contested agency action falls short of the APA's substantive or procedural requirements, it "shall" set aside the unlawful agency action. 5 U.S.C. § 706(2); *Data Mktg. P'ship, L.P. v. United States Dep't of Lab.*, 45 F.4th 846, 859 (5th Cir. 2022).

In *Texas v. United States*, the court issued an injunction preventing the DOE from enforcing the Final Rule and its new definition of discrimination "on the basis of sex." *Texas*, 2024 U.S. Dist. LEXIS 121812, *11. The court held that the Final Rule was arbitrary and capricious, noting that the interpretation was "so implausible . . . it could not be ascribed to a difference in view or . . . agency expertise." *Id.* at *22 (quoting *Motor Veh. Mfrs. Ass'n.*, 463 U.S. at 43). The court explained that Title IX was originally enacted to protect women in educational spaces that were historically dominated by men. *Id.* The Final Rule, however, would allow biological men to enter these Title IX-protected spaces, contradicting the statute's intended purpose. *Id.* Given this conflicting outcome, the court concluded that the interpretation of the Final Rule, which included gender identity as a protected category, was arbitrary and capricious, rendering the agency's action invalid. Therefore, because the Final Rule is arbitrary and capricious, and the DOE exceeded its lawful authority in defining discrimination "on the basis of sex", this Court should hold that under Title IX, discrimination "on the basis of sex" refers to biological sex.

In conclusion, the Final Rule's interpretation of "discrimination on the basis of sex," as expanded in *Bostock* to include gender identity, is fundamentally incompatible with both the

ordinary meaning of "sex" when Title IX was enacted and the overall statutory framework of Title IX. *See Bostock,* 590 U.S. at 653.Title IX was designed to address discrimination based on biological sex, and any attempt to broaden this definition undermines the statute's original purpose. Additionally, the Final Rule is arbitrary and capricious, and the DOE exceeded its lawful authority by redefining "sex" beyond congressional intent. Therefore, this Court should hold that, under Title IX, discrimination "on the basis of sex" refers specifically to biological sex.

B. The Petitioner Was Not Excluded From Participating In Team Sports Based on Her Sex, As She Was Allowed To Participate in The Sport That Aligned With Her Biological Sex and Even if This Court Finds That She was Excluded on the Basis of sex, She Was Not Improperly Discriminated Against Resulting in Harm.

Title IX provides that no person shall be excluded on the basis of sex from participating in an educational program or activity. 20 U.S.C. § 1681(a). Multiple courts around the country have held that "on the basis of sex" refers to biological gender and not gender identity. *See Alabama,*2024 U.S. App. LEXIS 21358, *11; *Louisiana*, 2024 U.S. Dist. LEXIS 105645, *8; *Texas,* U.S. Dist. LEXIS 121812, *21. Thus, under Title IX, someone one could only be discriminated on the basis of their *biological sex.*

The final prong a plaintiff must prove to succeed on a Title IX claim, is that the improper discrimination caused the plaintiff harm. *See* (*Grimm,* 972 F.3d at 616)(Holding that a school board's policy requiring a transgender male student to use bathrooms based on their biological or birth-assigned sex was invalid under Title IX because the plaintiff suffered harm such as feelings of stigma and isolation, which caused him to avoid using the restroom, leading to painful urinary tract infections, and stress triggered suicidal thoughts.)

In the present case, the Petitioner, is a biological male who identifies as a transgender female. Record 3. Without any medical intervention, which the Petitioner in this case has not received, they are still biologically male. *See* Record 3. The Petitioner was not excluded from

participating in the sport's team on the basis of sex because the Act merely just designated which team the Petitioner could participate on. *See* Record 4. The Petitioner was permitted to participate on the sports team that corresponded to their biological sex. Furthermore, under Title IX, discrimination "on the basis of sex" refers to biological sex and does not extend to gender identity. *See Alabama,* 2024 U.S. App. LEXIS 21358, *11.

Additionally, biological males are not similarly situated to biological females for purposes of athletics. *A.J.T. v. North Green Bd. Of Educ*., 2024 WL 98765 *11 (14th Cir. 2024). The argument that the Petitioner has suffered harm lacks merit, as the Petitioner, being a biological male, is eligible to try out for any team, provided they try out for boys' teams in the same manner as other biological males. *Id*. The Petitioner has failed to show any signs of harm unlike the Petitioner in the *Grimm* case did. Record 3; *see also* 972 F.3d at 616.

Ultimately, the Final Rule's interpretation of "discrimination on the basis of sex," as expanded in *Bostock* to include gender identity, is incompatible with the original meaning of "sex" as intended when Title IX was enacted, undermines the statute's purpose by broadening its scope beyond biological sex, and is arbitrary and capricious, with the DOE exceeding its lawful authority by redefining "sex" beyond congressional intent. Therefore, this Court should hold that discrimination under Title IX refers specifically to biological sex. Further, this Court should hold the Petitioner was not excluded from participating in any educational programs or activities on the basis of sex, and the Petitioner did not suffer any improper discrimination that caused them harm. Accordingly, this Court should hold that the Save the Women's Sports Act did not violate Title IX.

II. This Court Should Affirm the Fourteenth Circuit's Finding that the "Save Woman's Sports Act" does not Violate the Equal Protection Clause because the Act Serves the Important State Interest of Providing Safety and Equal Opportunity for Biological Woman in Sports and The Act's Classification of Transgender Woman as Biological Men is Substantially Related to this Important Interest.

Petitioner's facial challenge to the State of North Greene's "Save Women's Sport's Act" must fail because the statute does not facially discriminate against transgender women, *Pers. Adm'r of Mass. v. Feeney*, 442 U.S. 256, 271 (1979); *see also Atchison, T. & S. F. R. Co. v. Matthews*, 174 U.S. 96, 98 (1899), and to the extent that Petitioner argues it does; the Statute is not violative of the Fourteenth Amendment's Equal Protection Clause because the statute's classification of transgender women as biological men is substantially related to the important state interest of ensuring equal opportunity and safety in athletics for biological woman, *Clark v. Jeter*, 486 U.S. 456, 461 (1988), and is not administered with, nor motivated by, discriminatory animus. *Pers Adm'r of Mass*., 442 U.S. at 274; *Snowden v. Hughes*, 321 U.S. 1, 8 (1944).

A. The Act Is Not Facially Discriminatory Because It Treats Transgender Women and Biological Men Alike When Allowing Participation on Teams Matching Their Biological Sex or Coed Teams.

The Equal Protection Clause of the Fourteenth Amendment provides that "No state shall. . . deny to any person within its jurisdiction the equal protection of the laws." AMEND. XIV, U.S. Const. Regarding the Equal Protection Clause, this Court has noted, "The equal protection guarantee of the Fourteenth Amendment does not take from the States all power of classification." *Pers. Adm'r of Mass.*, 442 U.S. at 271; *see also Atchison*, 174 U.S. at 98.

First, the Court distinguishes if the statute is facing a "facial" or "as-applied" challenge, with the former posing a higher bar to those seeking to upend the State's statute. *See Citizens United v. FEC*, 558 U.S. 310, 331 (2010); *Moody v. NetChoice, LLC*, 144 S. Ct. 2383, 2397 (2024). Although this Court has noted that "classifying a lawsuit as facial or as applied does not speak at

all to the substantive rule of law necessary to establish a constitutional violation," *Bucklew v. Precythe,* 587 U.S. 119, 138 (2019), this Court has also noted that "[t]he distinction is both instructive and necessary, for it goes to the breadth of the remedy employed by the Court," *Citizens United*, 558 U.S. at 331, and establishes the degree to which the challenger must demonstrate the invalidity of the statute. *Bucklew*, 587 U.S. at 139. A facial challenge is "a claim that the law. . . at issue is unconstitutional in all its applications," *Bucklew*, 587 U.S. at 138. This Court has warned that it has made facial challenges "hard to win" because facial challenges (1) often rest on speculation regarding the law's coverage and future enforcement, and (2) threaten to circumvent the democratic process by "preventing duly enacted laws from being implemented in constitutional ways." *Moody*, 144 S. Ct. at 2397. Thus, in determining whether a law is facially invalid, this Court has noted that a plain text analysis of the statute is required because "we must be careful not to go beyond the statute's facial requirements and speculate about "hypothetical" or "imaginary" cases. *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450 (2008).

After determining that the law is being facially challenged, this Court takes into consideration whether the plaintiff is asserting a claim that the law is either: (1) facially discriminatory, or (2) facially neutral with a disparate impact or disparate administration *See Pers. Adm'r of Mass*. 442 U.S. at 274; *Green Genie, Inc. v. City of Detroit*, 63 F.4th 521, 527 (6th Cir. 2023) (*Snowden*, 321 U.S. at 8); *Clark*, 486 U.S. at 461. Firstly, when a law is facially discriminatory, there is no inquiry into the legislative purpose because express classifications are immediately suspect and trigger the courts review of the law in question under the appropriate level of scrutiny as mentioned previously. *See Clark*, 486 U.S. at 461. Secondly, a law which is facially neutral yet claimed to have a disparate impact "does not alone violate the Constitution;" rather, "a disparate impact on a group offends the Constitution when an otherwise neutral policy

is motivated by "purposeful discrimination." *Pers. Adm'r of Mass*., 442 U.S. at 274. The same is required of a law which is facially neutral yet alleged to be administered unequally. *Green Genie, Inc.*, 63 F.4th at 527 (citing) (*Snowden*, 321 U.S. at 8).

To demonstrate a statute is facially discriminatory, Petitioner must demonstrate that the statute by its terms distinguishes between individuals on protected grounds. *See generally Clark,* 486 U.S. at 461; *Shaw v. Reno*, 509 U.S. 630, 642 (1993). Here, The State's Save Women's Sport Act 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." Record 4. The Act further states, "[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." Record 4. Notably, the Act makes no classification regarding transgender women and instead merely makes a factual distinction between biological men and biological women, *See* Record 4. Transgender women and biological men are the same under the statute because both have either the option to play on either a team the coincides with their biological sex, or the option to play on a coed team comprised of both biological sexes. *See* Record 4. Although some courts in evaluating similar statues have found that statutes which allow biological woman on boys' teams but not the opposite, do in indeed facially discriminate, in those cases, the court often frames its analysis by considering biological woman and transgender woman as similarly situated. *See B. P. J. v. W. Va. State Bd. Of Educ.,* 550 F. Supp. 3d 347, 353-54 (S.D. W. Va. 2021)(noting that, because plaintiff, a transgender girl, lived outwardly as a girl for years, plaintiff was most similarly situated to a biological girl, and thus the statute discriminated on its face by preventing her from participating in several school sports team that aligned with her gender identity); *see generally Grimm v. Gloucester Cty. Sch. Bd.,* 972 F.3d 586, 610 (4th Cir.

2020)(finding that plaintiff, a transgender boy, was similarly situated to other boys but was excluding from using the boy's restroom facilities based upon his biological sex). This is incorrect when applied to sports because men are physically stronger than women, and athletics relies upon on individual's physicality; thus, based upon this factual premise, the individual most similarly situated to Petitioner is a biological male and the fact that her treatment is not identical to that of biological woman does not offend the Equal Protection Clause because, as this Court has noted, the Equal Protection Clause does not require equality of results. *See Tuan Anh Nguyen v. INS*, 533 U.S. 53, 70 (2001) ("None of our gender-based classification equal protection cases have required that the statute under consideration must be capable of achieving its ultimate objective in every instance."); *accord M. v. Superior Court*, 450 U.S. 464, 469 (1981) (noting the Court's historic pattern of upholding statutes which realistically reflect the fact that the sexes are not similarly situated in certain circumstances and that the Equal Protection Clause does not demand that a statute necessarily apply equally to all persons nor does it require things which are factually different be treated in law as the same).

Furthermore, although a facially neutral statute may nevertheless be unconstitutional due to the statute's disparate impact or administration, in either case, the challenger of the law is required to demonstrate that the statute's disparate impact or administration is being done with "purposeful discrimination." *Green Genie, Inc.*, 63 F.4th at 527 *(Snowden,* 321 U.S. at 8); *Clark*, 486 U.S. at 461. Although the lower court noted that, in passing this law, the State intended to prevent transgender girls from playing on biological girl's sport teams, Record 9, in that proceeding and as it does here, the State avers that this is necessary to promote its interest in preserving athletic opportunity for biological woman as biological men possess as significant athletic advantage. Such an intention does not represent discrimination done with animus but rather

a conscious understanding of the factual difference between the biology of men and women and this effect on sports, a physical activity by its nature. *Tuan Anh Nguyen*, 533 U.S. at 73("To fail to acknowledge even our most basic biological differences . . . risks making the guarantee of equal protection superficial, and so disserving it.")

B. The Act's Statutory Classification of Transgender Women as Biological Men is Substantially Related to Serving the Important State Interest of Securing Equal Opportunity and Safety for Women in Sports.

In determining whether a State's statutory classification violates the Equal Protection Clause, one method of analysis this Court employs the application of scrutiny. *Clark*, 486 U.S. at 461. The application of scrutiny is a determinative process wherein the Court decides whether a state's classification of persons under State law violates of the Equal Protection Clause by: (1) measuring the importance of the state interest served by the challenged classification and; (2) determining the degree to which the challenged classification relates to the established state interest. *See Id.*

In this process, this Court exacts three levels of scrutiny depending upon the type of classification, "rational basis review," "intermediate scrutiny," and "strict scrutiny." *See Clark*, 486 U.S. at 461. Classifications based on race, national origin, or affecting fundamental rights earn the Court's most exacting level of scrutiny, strict scrutiny, wherein the State's statutory classifications are constitutional only if the classifications are *narrowly* tailored to further a *compelling* governmental interest. *See Grutter v. Bollinger*, 539 U.S. 306, 311 (2003) (emphasis added). However, in cases involving classifications based upon biological sex, this Court has found the application of strict scrutiny unfit and in turn engages in a less exacting review of the State law under "intermediate scrutiny." *Clark*, 486 U.S. at 461. In applying "intermediate scrutiny" a state's law passes constitutional muster so long as the State can demonstrate that the statutory classification is substantially related to an important government interest. *Id.*

Turning back to the concept of intermediate scrutiny, which requires the statutory classification be substantially related to an important state interest, ensuring the availability of equal athletic opportunity for biological woman is an important government interest. *See Clark, By & Through Clark v. Ariz. Interscholastic Ass'n,* 695 F.2d 1126, 1131 (9th Cir. 1982) ("[T]he governmental interest claimed is redressing past discrimination against women in athletics and promoting equality of athletic opportunity between the sexes. There is no question that this is a legitimate and important governmental interest*."); Petrie v. Illinois High Sch. Ass'n*, 394 N.E.2d 855, 862 (Ill. App. Ct. 1979) ("We have no trouble in concluding that having a separate volleyball team and separate tournaments in that sport for girls . . . serves the achievement of the important governmental objective of maintaining, fostering and promoting athletic opportunities for girls.) In addition to these judicial opinions which recognize the importance of maintaining equal opportunity in women's sports, Congress has also recognized the importance of this goal in enacting Title IX. In commenting on the imposition of Title IX as it relates to athletics, the Nineth DCA in *Neal v. Board of Trustees* noted: "The drafters of these regulations [Title IX] recognized a situation that Congress well understood: Male athletes had been given an enormous head start in the race against their female counterparts for athletic resources, and Title IX would prompt universities to level the proverbial playing field." 198 F.3d 763, 767 (9th Cir. 1999).

Moreover, in addition to the judicial and legislative community, the athletic community has also recognized the importance of securing the equal opportunity of women's athletics against the participation of biological males. *See generally*, NAIA, SMALL COLLEGES ASSOCIATION, BANS TRANSGENDER ATHLETES FROM WOMEN'S SPORTS COMPETITIONS CBSSPORTS.COM, https://www.cbssports.com/general/news/naia-small-colleges-association-bans-transgender-athletes-from-womens-sports-competitions/ (last visited Sep 11, 2024) Recently, the National

Association of Intercollegiate Athletics ("NAIA") by unanimous vote promulgated a rule which banned transgender women from competing in its collegiate women's sports. *Id*. The NAIA president explained that the rule was enacted out the organizations responsibility to create fairness and competition, and that these interests aligned with the reasons Title IX was created. *Id*. Taken together, the judicial, legislative, and athletic community all recognized the importance of ensuring the availability of equality athletic opportunity for biological woman.

As it regards classifying transgender woman as biological males for the purpose of sports, this classification is substantially related to the government interest of ensuring the availability of safety and access to equal opportunity for biological woman in sports. Although this Court has recognized that "if the statutory objective is to exclude or 'protect' members of one gender because they are presumed to suffer from an inherent handicap or to be innately inferior, the objective itself is illegitimate," *Miss. Univ. for Women v. Hogan*, 458 U.S. 718, 725, 102 (1982); this Court has also noted that "the physical differences between men and women are enduring. . .," *United States v. Virginia*, 518 U.S. 515, 533 (1996); *see also Ballard v. United States,* 329 U.S. 187, 193 (1946)("The truth is that the two sexes are not fungible."); *Tuan Anh Nguyen*, 533 U.S. at 73("To fail to acknowledge even our most basic biological differences . . . risks making the guarantee of equal protection superficial, and so disserving it.") This idea espoused by the Court regarding the physical differences between the sexes underlines the necessity of, and relation between, classifying individuals by their biological sex in the realm of sports, an inherently physical activity.

Notably, the scientific community also recognizes these enduring differences. *See* Emma N. Hilton & Tommy R. Lundberg, *Transgender women in the female category of sport: Perspectives on testosterone suppression and performance advantage*, 51 SPORTS MEDICINE 199–214 (2020). Before puberty there is minimal difference in the physical athletic ability of male and

female athletes. *Id.* at 200. However, a difference exist, and this difference continues to grow in favor of biological men as an individual experiences' male puberty and the increase in circulating testosterone causes superior anthropometric, muscle mass, and strength parameters . *Id.* at 201, 209. Markedly, this performance advantage remains even when testosterone is suppressed in transgender women (biological men) because although decreasing the amount of circulating testosterone in a biological male to that of a biological female consistently decreased lean body mass after twelve months, this decrease was insufficient to overcome the initial gain provided by puberty. *Id.* at 209. It is here where the relation between preventing biological males from competing in women's sports reveals itself—biological males may retain their scientifically established biological advantage over women despite efforts to transition, *Id.;* because biological males may retain their natural advantage over woman, preventing their exclusion in women's sports is substantially related towards the goal of providing biological women access to equal athletic opportunity and safety.

Even if this Court were to determine the Save Women's Sport's Act facially discriminates against transgender women, such a finding does not offend the Equal Protection's Clause of the Fourteenth Amendment because the State's statutory classification of transgender women as biological men for the purpose of supports is substantially related to an important state interest. *Clark*, 486 U.S. at 461. It is generally undisputed in this case, and in others involving similar acts, that statutory classifications of transgender women as biological women are ones which concerns sex and thus triggers this Court's application of intermediate scrutiny. *See generally Hecox v. Little*, 104 F.4th 1061, 1079 (9th Cir. 2023) (holding intermediate scrutiny applies to a statute classifying transgender woman as biological men for the purpose of sports); *accord D.N. v. DeSantis*, 701 F. Supp. 3d 1244, 1253 (S.D. Fla. 2023); *Doe v. Horne*, 683 F. Supp. 3d 950, 971

(D. Ariz. 2023). Intermediate scrutiny allows a statutory classification to persist so long as the statutory classification is substantially related to an important state interest, and such is this case here. *See Clark*, 486 U.S. at 461. As applied to the case at bar, The State's statutory classification of transgender women as biological women passes constitutional muster because the classification is substantially related to the State's important interest of securing both the equal opportunity and safety of biological woman in sports.

Historically, courts have recognized the importance of providing biological women a environment where they may participate in athletics without being forced to overcome the natural, physical advantage men possess, an attribute centrally relevant in the realm of sports *See Clark, By & Through Clark*, 695 F.2d at 1131; *Petrie*, 394 N.E.2d at 862. The importance of this interest was also impressed upon the Drafters of Title IX in "promp[ting] universities to level the proverbial playing field," *Neal.,* 198 F.3d, at 767 and in turn, the athletic community effectuated this interest of equal opportunity. Similarly, the Save Women's Sports Act seeks to secure the equal opportunity of biological women in sports against the forced, unfair participation of biological men in women's sports. Record 4. Thus, it is on these grounds which this Court should hold that the State's interest in enacting the Save Women's Sports Act is an important one.

Regarding the State's interest in securing the safety of biological woman who chose to participate in the realm of sports against the participation of transgender women, one court has expressly found this interest unconvincing, however, the basis of these findings are refutable. In *Doe v. Horne,* that court assessed a similar statue to the one at bar, and ultimately concluded that the state's interest of safety was not legitimate because the statute allowed biological girls and transgender boys receiving testosterone enhancements to play on the boy's teams which "subject[ed] them to the risk of that association." 683 F. Supp. 3d at 963. Not only is this a tacit

recognition that there exists an inherent safety risk in allowing competitors of differing biological sexes to participate on the same team, but this holding also serves to remove the agency of biological women and transgender boys in choosing to take on this risk by participating in league where the biological odds are generally stacked against them. As compared to biological girls and transgender boys, biological men and transgender women are unfortunately the impetus of the risk recognized the court in *Doe.* and such a recognition highlights the importance of the State's interest in securing the safety of biological women in athletics against the competition of biological men.

Not only are the State's interests in ensuring both access to equal opportunivore and safety important, the Act's classification of transgender women as biological men is substantially related to these important interests. Although this Court has declined to accept a statutory classification enacted for the purpose of protecting members of one gender because they are "presumed to suffer from an inherent handicap," *Miss. Univ. for Women*, 458 U.S. at 725; here, there are no presumptions regarding gender, particularly discriminatory ones. Petitioner herself does not dispute the fact that biological men and women have inherent physical differences which favor men, rather her argument is that transgender girls can take puberty blockers and other hormone therapies to mitigate any biological advantage that they possess and thus the law makes an incantational distinction between transgender girls and biological girls. Record 10.

Despite some instances of differing opinions which are present in nearly every scientific field, scientific opinions which concern biology generally agree that biological men possess a natural, physical advantage over biological women. However, even if medical transition allowed a biological male to become the medical equivalent of a biological female, petitioners facial challenge, if successful, would allow biological males who elect only to socially transition to participate in women's sports with the full advantage conferred upon them by their biology. Such

a result would be in antithesis to the State's important interest of creating an environment wherein biological women have access to a safe, and equal opportunity to participate in athletics. The Equal Protection clause does not demand this outcome, *Tuan Anh Nguyen*, 533 U.S. at 73, and if petitioner were to succeed on her claim, it would result in the destruction of every biologically exclusive women's sports league, it would overrule decades of historic jurisprudence recognizing and securing the equal opportunity of women in sports against biological men, and it would deem unconstitutional duly enacted legislation across the Nation.

Ultimately, because the Save Women's Sport Act is not discriminatory by its term nor its purpose, and because the Save Women's Sport's Act statutory classification of transgender woman as biological men is substantially related to serving the important state interest of securing equal opportunity and safety for women in sports by classifying competitors by their biological sex, this Court should affirmed the lower court in finding that the State North Greene's Save Women's Sports Act does not violate the Equal Protection's Clause of the Fourteenth Amendment.

CONCLUSION

This Court should affirm the Fourteenth Circuit's decision and hold that the Save the Women's Sports Act is permitted under Title IX and the Equal Protection Clause. Here, "Save the Women's Sports Act" is permitted under Title IX because it does not exclude the Petitioner from an educational program "on the basis of sex, and even if this Court finds the Petitioner was excluded from an educational program "on the basis of sex", the Petitioner was not improperly discriminated against resulting in harm. The Save the Women's Sports Act is also permitted under the Equal Protection Clause because the Save Women's Sport Act is not discriminatory by its term nor its purpose, and because the Save Women's Sport's Act statutory classification of transgender woman as biological men is substantially related to serving the important state interest of securing

equal opportunity and safety for women in sports by classifying competitors by their biological sex.