No. 24-2020

In The

Supreme Court of the United States

October Term 2024

A.J.T.,

Petitioner,

v.

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

Respondent.

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

BRIEF FOR RESPONDENT

Team 31
Counsel for Respondent
September 13, 2024

QUESTIONS PRESENTED

1. Does Senate Bill 2750 violate Title IX when it separates sports teams based on biological sex determined at birth rather than gender identity?

2. Does Senate Bill 2750 violate the Equal Protection Clause when it separates sports teams based on biological sex determined at birth for the purpose of promoting equal opportunities in both male and female athletics?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Constitutional Provisions

OPINION BELOW

The opinion of the United States Court of Appeals for the Fourteenth Circuit has been reported at *A.J.T. v. North Greene Bd. of Educ.*, 2024 WL 98765 (14th Cir. 2024) and reprinted in the Record on Appeal ("Record") at 2-16. The district court's order has been reprinted in the Record at 2-3.

CONSTITUTIONAL PROVISIONS

The Fourteenth Amendment to the United States Constitution

"No State shall make or enforce any law which shall [. . .] deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

STATEMENT OF THE CASE

I. STATEMENT OF FACTS.

Petitioner, A.J.T., is an eleven-year-old student who is going into the seventh grade. A.J.T. is a transgender girl who was born as a biological male. R. at 3. Although A.J.T. identified and dressed as a female, A.J.T. has not gone through any puberty-delaying treatment or gender reassignment surgery. *Id*. A.J.T. intended to join the girls' volleyball and cross-country teams. However, the State of North Greene, Respondent, prevented A.J.T. from doing so. *Id*.

In April 2023, the Respondent enacted Senate Bill 2750, also referred to as the "Save Women's Sports Act" ("Senate Bill 2750" or "Save Women's Sport's Act"). *Id*. It was later codified as North Greene Code § 22-3-4 and titled "'Limiting participation in sports events to the biological sex of the athlete at birth.'" *Id*. The statute requires that "'[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.'" R. at

4; N.G. Code § 22-3-16(a). North Greene's purpose for enacting this statute is to protect women by promoting safety and equal athletic opportunities. R. at 3, 4. North Greene maintains that the statute has nothing to do with gender identity because "'[g]ender 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.'" R. at 4; N.G. Code § 22-3-16(c). Therefore, A.J.T. is prohibited from joining the girls' volleyball and cross-country teams because the Petitioner's biological sex, determined at birth, is male. R. at 3.

II. PROCEDURAL HISTORY.

The Petitioner, A.J.T., by and through the child's mother, sued the State of North Greene Board of Education and State Superintendent Floyd Lawson. R. at 4. Through a motion to intervene, the State of North Greene, Respondent, joined the suit. *Id*. The suit was later amended to name the State of North Greene and Attorney General Barney Fife as defendants. R. at 4, 5. The Petitioner sought an injunction preventing Respondent from enforcing the Act and a declaratory judgment stating that Senate Bill 2750 violated both the Equal Protection Clause and Title IX. R. at 5. The Respondent opposed the claim for injunction and filed a motion for summary judgment, which was granted by the District Court. *Id.*

The Petitioner then appealed to the United States Court of Appeals for the Fourteenth Circuit. *Id*. The Court of Appeals affirmed the District Court, holding that "the Act's classification based on biological sex is [. . .] is substantially related to Defendants' interest in protecting the safety of female athletes." R. at 10, 12. The court also held that Senate Bill 2750 does not violate Title IX "[b]ecause [it] does not discriminate on the basis of sex." R. at 12. The Petitioner subsequently appealed the decision of the Court of Appeals, and this Court granted certiorari. R. at 17.

SUMMARY OF THE ARGUMENT

Senate Bill 2750 does not discriminate on the basis of sex and, therefore, does not violate Title IX. Title IX prohibits discrimination on the basis of sex. To show a violation of Title IX, a complainant must show that they were excluded from a federally financed education program on the basis of sex and that this discrimination caused the complainant harm. The petitioner has failed to make this showing. When Title IX was enacted, its purpose was to promote equal opportunities for women in schools and sports. It required schools to provide women with athletic programs that had the same quality as men's programs. Therefore, it allows schools to separate sports based on biological sex to further this purpose. The State of North Greene, in enacting Senate Bill 2750, has not improperly discriminated against A.J.T., nor has it caused harm. In fact, North Greene is furthering the purpose of Title IX by separating sports by biological sex and promoting fairness in women's sports. Accordingly, the State of North Greene has not violated Title IX.

Senate Bill 2750 survives heightened scrutiny because it is substantially related to the legitimate government objective of promoting equal opportunities for both male and female athletes. The Equal Protection Clause provides that all people are entitled to equal protection under the law. Specifically, it protects citizens from governmental abuse of power. When a law makes classifications based on sex, this Court applies intermediate scrutiny. For a law to survive intermediate scrutiny, it must be substantially related to a legitimate government objective. The complainant must also show that the law had a discriminatory intent. In the context of the Equal Protection Clause, the law must not provide different treatment to similarly situated persons. North Greene's Senate Bill 2750 survives intermediate scrutiny and does not treat similarly situated persons differently. This law does not treat A.J.T. differently than similarly situated persons because A.J.T., a biological male, is not similarly situated to biological females. Finally, Senate

Bill 2750 was not created with discriminatory intent; it was simply created to achieve equality in sports. Accordingly, the State of North Greene has not violated the Equal Protection Clause.

ARGUMENT

I. SENATE BILL 2750, WHICH DESIGNATES GIRLS' AND BOYS' SPORTS TEAMS BASED ON BIOLOGICAL SEX DETERMINED AT BIRTH, DOES NOT VIOLATE TITLE IX.

Women have fought to make history in the athletic arena and the law should protect their efforts rather than unravel the decade's worth of groundbreaking strides they have made. On June 23, 1972, President Richard Nixon signed The Education Amendments of 1972 into law. Erin Buzuvis, *On the Basis of Sex: Using Title IX to Protect Transgender Students from Discrimination in Education*, 28 WIS. J.L. GENDER & SOC'Y 219, 223 (2013). This law contained the monumental federal rights law, Title IX. *Id.* Title IX states that "[n]o 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). Among its many benefits, this groundbreaking statute created protections for students, providing equal educational opportunities. Dr. Kristena Gaylor, *Title IX 50 Years Later . . . Reflections From a Title IX Coordinator*, 41 Miss. C. L. Rev. 5, 6 (2023). These protections extend to student extracurricular activities such as athletics and physical education. *Id.* This legislation has guaranteed male and female students' freedom from sex-based discrimination.

Title IX creates a right of action that allows individuals to enforce the ban on intentional sex discrimination. *See Cannon v. University of Chicago*, 441 U.S. 677, 690-94 (1979). In order to succeed on a Title IX claim, a plaintiff must prove that they were (1) excluded from an educational program on the basis of sex; (2) that the educational system was receiving federal financial assistance at the time of the alleged discrimination; and (3) that "improper discrimination caused

[her] harm." *See 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)).

The State of North Greene is safeguarding the core purposes and protections of Title IX by enacting its Senate Bill 2750, which limits student athlete's participation in sports based on their biological sex. R. at 4; N.G. Code §22-3-4. Aside from the clear fact that the North Greene Board of Education receives federal funding, the Petitioner has failed to prove a claim under Title IX. R. at 3. First, A.J.T was not improperly excluded from an education program on the basis of sex. Further, A.J.T is not similarly situated to biologically female student athletes. Finally, rather than violating Title IX, the act furthers equal opportunities for both male and female athletes.

A. North Greene's Senate Bill 2750 Does Not Improperly Discriminate Against the Petitioner on the Basis of Sex.

North Greene Senate Bill 2750 does not improperly discriminate on the basis of sex because "sex," within the context of Title IX, refers to one's biological sex rather than gender identity. *Adams v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791, 811-14 (11th Cir. 2022). Title IX does not explicitly define the terms "sex," "women," or "men." Ray D. Hacke, *"Girls Will Be Boys, and Boys Will Be Girls": The Emergence of the Transgender Athlete and A Defensive Game Plan for High Schools That Want to Keep Their Playing Fields Level-for Athletes of Both Genders*, 25 Sports Law. J. 57, 76 (2021). The statute simply states that educational institutions that receive federal funding shall not discriminate "on the basis of sex." 20 U.S.C. § 1681(a). Since the drafters did not give a definition for the term, courts must examine the plain meaning of the word through legislative intent.

Further, "[i]n the Title IX context, discrimination 'mean[s] treating [an] individual worse than others who are similarly situated.'" *Grimm*, 972 F.3d at 618 (quoting *Bostock v. Clayton Cnty.*, Ga., 590 U.S. 644, 657-58 (2020)). Transgender females are not similarly situated to biological

females for the purposes of Title IX since the statute allows for schools to provide separate opportunities for biological males and females.

1. In the context of Title IX, the term "sex" refers to one's biological sex, not their gender identity.

As established by the fundamental rules of statutory interpretation and case law, the term "sex," within the context of Title IX, refers to one's biological sex. When a statute does not give the definition of a term, courts will construe the term in accordance with its natural, ordinary meaning. *See FDIC v. Meyer*, 510 U.S. 471, 476 (1994); Hacke, *supra*, at 153. A word's ordinary meaning is the meaning that a reasonable person would ascribe to the term. William N. Eskridge, Jr., *Interpreting Law: A Primer on How to Read Statutes and The Constitution* 33 (2016).

Today, the concepts of gender ideology, gender identity, and sexual orientation have caused a difference in opinion on how the term "sex" should be defined. In many cases, courts have turned to dictionary definitions as a neutral source to determine how a reasonable person would interpret a term. James J. Brudney & Lawrence Baum, *Oasis or Mirage: The Supreme Court's Thirst for Dictionaries in the Rehnquist and Roberts Eras*, 55 Wm. & Mary L. Rev. 483, 494–502 (2013). "Sex" is defined as "either of two major forms of individuals that occur in many species and that are distinguished respectively as female or male, especially on the basis of their reproductive organs and structures." *Sex*, MERRIAM-WEBSTER DICTIONARY (11th ed. 2024). This definition does not take into account gender identity; rather, it solely relies on biology to determine the meaning of "sex."

Courts also examine the legislative intent to interpret statutes. Legislative history and context guide courts in determining what Congress intended when enacting the statute. *Zuni Pub. Sch. Dist. No. 89 v. Dep't of Educ.*, 550 U.S. 81, 106 (2007). The Eleventh Circuit has applied this plain meaning to the term "sex" within the context of Title IX because it accurately reflects Congress's

intent to provide a safe harbor for schools under Title IX. *Adams v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th at 813 (11th Cir. 2022).

In *Adams v. Sch. Bd. of St. Johns Cnty.*, the School Board of St. Johns County separated its school bathrooms on the basis of biological sex. In addition to male and female bathrooms, the school provided a gender-neutral bathroom that was available to all students, including transgender students. *Adams*, 57 F.4th at 797-98. A transgender male student, Drew Adams, claimed that this violated the Equal Protection Clause and Title IX. *Id*. Adams underwent a mastectomy and began taking testosterone but had not yet undergone gender reassignment surgery. *Id.* The court held that, under Title IX, the school was not required to allow Adams to use the male bathroom. The court found that schools have a safe harbor under Title IX to separate students on the basis of biological sex, regardless of what their gender identity is. *Id.* at 814. The court reasoned that broadening the term "sex" to mean sexual orientation would defeat the purposes of Title IX and its safe harbors. *Id.*

Here, while Petitioner has brought this case in regard to athletics rather than bathrooms, it is very analogous to *Adams*. Like the student in *Adams*, the Petitioner is bringing this action for being excluded on the basis of sex, arguing that sex can be interpreted to mean gender identity. R. at 8 Since Congress did not define the term "sex" in Title IX, this Court must turn to the ordinary meaning of the term and consider the legislative intent behind the statute. The Eleventh Circuit determined that the purpose of Title IX was to allow separation between the two biological sexes in certain aspects of education. This Court should apply the rationale used in *Adams*, as it would align with the congressional intent behind the 1972 legislation by creating a safe harbor for schools to separate students on the basis of their biological sex. If this Court were to apply the term "sex" to include gender identity, this would ignore the plain meaning of the term.

2. The Petitioner, a transgender female, is not similarly situated to biological females.

"In the Title IX context, discrimination 'mean[s] treating [an] individual worse than others who are similarly situated.'" *Grimm*, 972 F.3d at 618 (quoting *Bostock v. Clayton Cnty.*, Ga., 590 U.S. 644, 657-58 (2020)). To be considered similarly situated, two classifications of people "need not be identical in every conceivable way"; they "must be 'directly comparable [. . .] in all material respects.'" *Coleman v. Donahoe*, 667 F.3d 835, 846 (7th Cir. 2012) (quoting *Patterson v. Ind. Newspapers, Inc.*, 589 F.3d 357, 365-66 (7th Cir. 2009)).

Males and females have many physical differences that set them apart. Elle Rogers, *The Two Sexes Are Not Fungible: The Constitutional Case Against Transgender Inclusive Sports*, 28 Tex. Rev. Law & Pol. 243, 263. Men have a natural athletic advantage in strength, speed, and endurance. *Id.* Females have half of males' upper body strength and only two-thirds of their lower body strength. *Id.* Studies have shown that even gender-affirming medical procedures do not eliminate this advantage. *Id.* These physical differences between men and women make them not similarly situated. *Michael M. v. Superior Ct.*, 450 U.S. 464, 476 (1981) (J. Stevens concurring). Accordingly, transgender females are not similarly situated to biological females, especially in the context of athletics. Here, A.J.T. is a biological male and has not taken any medical steps to affirm their gender identity, even though that would not be enough to make A.J.T. similarly situated to a biological female. The physical advantages that a biological male has over a female in athletics means that they are not identical in all material respects and cannot be directly comparable. Therefore, A.J.T is not similarly situated to biologically female athletes.

B. North Greene Senate Bill 2750 Furthers the Purpose of Title IX by Protecting Equal Opportunities for Both Male and Female Athletes.

Courts should not interpret a statute in a way that undermines its very purpose. Hacke, *supra*, at 148. Interpreting the term "sex" to mean gender identity, sexual orientation, gender ideology, or

anything other than one's biological sex assigned at birth is to undermine the statutory scheme and purpose of the statute. *Adams,* 57 F.4th at 814. It ignores the courts and dictionaries that define "sex" as referring to one's reproductive function and biological make up. *Id.* at 813.

In order to further the purpose of Title IX and its use of "sex" in the biological sense, it is important to understand the history of Title IX and the impact that it has had since it was signed into law in 1972. The fundamental purpose of Title IX is to promote sex equality. "[I]t is neither myth nor outdated stereotype that there are inherent differences between those born male and those born female and that those born male, including transgender women and girls, have physiological advantages in many sports." *Id*. at 819 (special concurrence; citing scientific literature). When Title IX was enacted over 50 years ago, it opened the door for women to have a more prominent place in American sports. Hacke, *supra*, at 144. It required schools and universities to provide women with athletic programs that were of the same quality as men's programs. Buzuvis, *supra*, at 226-27. Additionally, Title IX's specific purpose and protections differ from those of Title VII, and the same rationale should not be applied to cases in both contexts. *See generally*, *Bostock v. Clayton Cnty., Ga.*, 590 U.S. 644, 657 (2020).

Further clarification for Title IX was provided by the Office for Civil Rights ("OCR") in 1979 to provide guidance on how the statute applies within the context of athletics. Policy Interpretation, 44 Fed. Reg. 71, 413 (Dec. 11, 1979). This regulation further elaborates on the purpose behind Title IX by clarifying that institutions must effectively accommodate both sexes through their athletic programs. *Id.*

1. The purpose of Title IX, as well as Senate Bill 2750, is to provide equal opportunities for male and female athletes.

As stated above, the fundamental purpose of Title IX is to promote sex equality. One of the most prominent places where this has been accomplished is in athletics. While ten times as many

women are competing in sports since the enactment of Title IX, there is still a long way to go. Margaret E. Juliano, *Forty Years of Title IX: History and New Applications*, 14 Del. L. Rev. 83, 90 (2013). The Women's Sports Foundation found that, at the high school level, male athletes receive 4.5 million opportunities while female athletes only receive 3.2 million. *Id.* This does not end in high school; in the NCAA, female athletes receive 63,000 fewer opportunities and $183 million less in athletic scholarships. *Id.* Additionally, male athletes continue to have better resources such as equipment, uniforms, and facilities. *Id.* This is why women's sports need to be protected and given the opportunity to continue to grow.

Title IX was necessary to create these opportunities for women because of the biological differences between males and females. "Biological sex is a primary determinant of performance in many athletic events and physical tasks." Sandra K. Hunter et. al., *The Biological Basis of Sex Differences in Athletic Performance: Consensus Statement for the American College of Sports Medicine* 2328 (Dec. 2023). This is evidenced by research which shows that, in sports that rely on endurance and muscular power, males outperform women by approximately 10%-30%. *Id.* Further, "men typically outperform women because of fundamental sex differences dictated by their sex chromosomes . . ." and, therefore, should not compete against each other in endurance, strength, speed, and power events. *Id.* These obstacles are overcome when Title IX is applied in a way that accomplishes its purpose: allowing sex-separate sports.

North Greene Senate Bill 2750 furthers this purpose. It states that "[a]thletic teams or sports designated for females, women, or girls shall not be open to students of the male sex where selection for such teams is based on competitive skill or the activity involved is a contact sport." R. at 4; N.G. Code § 22-3-16(b). This provides opportunities for both male and female student athletes to enjoy the benefits of their school's athletic programs while protecting female students

from male students' biological, competitive advantage. North Greene Senate Bill 2750, as well as Title IX, applies equally to both male and female students, but it is clear that the "motivation for the promulgation of the regulation" is to further women's opportunities in athletics. *Williams v. Sch. Dist. of Bethlehem, Pa*., 998 F.2d 168, 175 (3rd Cir. 1993). Allowing transgender female students to participate in female sports takes opportunities away from the biological female students that might not have the same physical advantages in athletics that a biological male might have.

Additionally, one of the main policy concerns behind allowing males to be classified based on their gender identity rather than their sex goes beyond the scope of athletics. It is that male people will be given access to "women's most intimate and vulnerable spaces. . . ." Brief for the Women's Liberation Front as Amicus Curiae, *Joel DOE, a Minor; by and through his Guardians John Doe and Jane Doe v. Boyertown Area Sch. Dist.*, 2018 WL 3460568 at *13. Therefore, since the purpose of Title IX, as well as Senate Bill 2750, is to provide sex-separate, equal opportunities for male and female athletes, Title IX must allow sex-separate athletic opportunities.

2. Since the purposes of Title VII and Title IX differ, this Court's rationale in *Bostock* does not apply in the context of Title IX.

Title VII and Title IX were enacted for different purposes, and the same rationale should not apply to both. *See generally, Adams*, 57 F.4th at 811-14; *Olivarez v. T-Mobile USA, Inc.*, 997 F.3d 595, 559-600 (5th Cir. 2021); *Meriwether v. Hartop*, 992 F.3d 492, 511 (6th Cir. 2021). Title VII was enacted as a part of the Civil Rights Act of 1964 in order to protect employees from discrimination in the workplace based on race, color, religion, sex, and national origin. 42 U.S.C. §§ 2000e-2000e-17. Title VII does not create the same carve-outs and protections provided for in Title IX. Title VII makes sex "not relevant to the selection, evaluation, or compensation of employees," *Bostock*, 590 U.S. at 660 (quoting *Price Waterhouse v. Hopkins*, 490 U.S. 228, 239

(1989) (plurality opinion)). However, Title IX not only allows but requires schools to separate sports teams based on sex. In the context of Title VII, when someone is denied an opportunity based on their sex (or gender identity), that person is completely stripped of a benefit with no other option, whereas Title IX requires effective accommodation. Policy Interpretation, 44 Fed. Reg. 71, 413 (Dec. 11, 1979).

In *Bostock v. Clayton Cnty., Ga.*, this Court held that discrimination on the basis of gender identity is a form of sex discrimination in the context of Title VII. *Bostock*, 590 U.S. at 644. However, the Court made it incredibly clear that its decision did not "sweep beyond Title VII to other federal or state laws" and did not "address bathrooms, locker rooms, or anything else of the kind." *Id*. at 681. When answering the question of whether an employer could fire an employee for being homosexual or transgender, this Court held that to do so would be a violation of Title VII because it violates the purpose of the statute. *Id.* at 644, 651.

The Petitioner has argued that *Bostock*'s holding should be applied in this case. However, to apply *Bostock* in this case would be broadening a painstakingly narrow holding outlined by the Supreme Court. This would not only be a misinterpretation and a misapplication of *Bostock*, but it would also undermine the purposes of Title IX. Regardless of how clear the Court was in its holding, there is a circuit split regarding the issue of whether principles that apply within the context of Title VII should automatically be applied to Title IX claims. *Roe*, 2023 U.S. Dist. LEXIS 184789 at 34. The Fifth, Sixth, and Eleventh Circuits have held that Title VII should not be applied the same way as Title IX, while the Fourth and Ninth Circuits have held that it does.

In the Sixth Circuit case where a professor would not use a student's preferred pronouns, the court stated that "it does not follow that principles announced in the Title VII context automatically apply in the Title IX context." *Meriwether*, 992 F.3d at 510 n.4. Similarly, in *Adams*, the Eleventh

Circuit outright held that the holding in *Bostock* and its meaning of the term "sex" does not apply to Title IX. *Adams*, 57 F.4th at 811-14. The court reasoned that because Title IX, unlike Title VII, includes express carve-outs for differentiating between the sexes, the same standard cannot be applied. *Id.* at 811. If this court were to consider Title IX to include gender identity in the meaning of "sex," then the carve-outs that the statute provides based on the biological sexes would be useless. The drafters of Title IX went through the trouble of providing an express carve-out for sex-separated opportunities, and it is up to this Court to honor their intent. *See generally, D.N. v. DeSantis*, 701 F. Supp. 3d 1244, 1263 (Fla. S. Dist. Ct. 2023). Additionally, the Fifth Circuit has held that discrimination based on sexual orientation is sex discrimination for the purposes of Title VII but has deliberately not held the same for Title IX. *Olivarez v. T-Mobile USA, Inc.*, 997 F.3d 595, 603 (5th Cir. 2021).

On the other side of the split, the Fourth Circuit held in *Grimm v. Gloucester Cty. Sch. Bd.* that even though *Bostock* interprets Title VII, it can guide courts when determining what constitutes discrimination under Title IX. *See generally, Grimm*, 972 F.3d at 616. The Ninth Circuit even went so far as to hold that "discrimination on the basis of sexual orientation is a form of sex-based discrimination under Title IX." *Grabowski v. Ariz. Bd. of Regents*, 69 F.4th 1110, 1116 (9th Cir. 2023). The fact that this Court held that classifications based on gender identity are classifications based on sex in the context of Title VII does not mean that classifications based on sex are "necessarily classifications based on gender identity" in the context of Title IX. *Roe*, 2023 U.S. Dist. LEXIS 184789 at 33.

This Court should side with the Fifth, Sixth, and Eleventh Circuits to further the purpose of Title IX. The Fourth and Ninth Circuits have interpreted a very narrow Supreme Court ruling in a way that would potentially override the purpose in any federal law that uses the term "sex" by

replacing the meaning with gender identity or sexual orientation. They also ignore the specification made by the Supreme Court: that *Bostock* only applies in the employment context and does not implicate schools or athletics in any way. *Id.*

3. North Greene's Act effectively accommodates all students, regardless of their biological sex or gender identity.

In 1979, the OCR issued a policy interpretation of Title IX in order to provide specific guidance on how the statute applies to intercollegiate athletics. Policy Interpretation, 44 Fed. Reg. 71,413 (Dec. 11, 1979). "[T]he selection of sports and levels of competition" must effectively accommodate "the interests and abilities of members of both sexes." *Id.* A three-part test has been drawn from the OCR's 1979 Policy Interpretation and has been further elaborated on in its 1996 Clarification. *Mansourian v. Regents of the Univ. of Cal.*, 602 F.3d 957, 964 (9th Cir. 2010). In order to find compliance with the effective accommodation prong, courts must examine (1) the determination of athletic interests and abilities of students, (2) the selection of sports offered, and (3) the levels of competition available, including the opportunity for team competition. Policy Interpretation, 44 Fed. Reg. 71,413 (Dec. 11, 1979). The effective accommodation clarification concerns the opportunity to participate in athletics. *See generally, McCormick ex rel. v. Sch. Dist, of Mamaroneck*, 370 F.3d 275, 299 (2d Cir. 2004).

Here, Senate Bill 2750 provides that sports "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). As stated above, biological males are only barred from competing in female sports when the sport is a contact sport or if selection is based on competitive skill. North Greene's Act does not prevent the Petitioner from participating in school athletics; it merely designates which team the Petitioner can participate in. R. at 4. While sports such as volleyball and cross country are based on competitive skill, A.J.T. does have other options.

Id. A.J.T. previously had the opportunity to participate in girls' cheerleading, which does not require competitive skill or contact. *Id*. at 3. Additionally, the Petitioner can still participate in boys' or coed sports. *Id*. at 4. A biological male who wants to play on a female team is not denied the rights and protections of Title IX because he would receive effective accommodation through the activities available for his biological gender. Hacke, *supra*, at 150. Therefore, since A.J.T. is still given the opportunity to compete in the school's athletic programs, North Greene's act still effectively accommodates all students, regardless of their gender identity. Forcing schools to disregard biology in competitive sports and allow transgender females to compete in women's sports would wipe out the decades of progress women have made in athletics. *Id*. at 146. This Court should protect the competitive athletic opportunities that women have fought for by upholding Title IX's purpose. For the foregoing reasons, North Greene Senate Bill 2750, which designates girls' and boys' sports teams based on biological sex determined at birth, does not violate Title IX.

II. THE EQUAL PROTECTION CLAUSE IS NOT VIOLATED WHEN A STATE CREATES A LAW SEPARATING SPORTS TEAMS BY BIOLOGICAL SEX DETERMINED AT BIRTH.

The Equal Protection Clause protects all Americans from inequality resulting from the abuse of state power. Under the Fourteenth Amendment of the United States Constitution, the Equal Protection Clause provides that "*no State shall make or enforce any law which shall…deny to any person within its jurisdiction the equal protection of laws"* U.S. Const. Amend. XIV, § 1. When claims are asserted that a state has failed to uphold this duty, such claims must be assessed before determining that a violation has occurred.

When assessing whether a state governmental action violated the Equal Protection Clause, courts must determine if the state law is treating similar persons differently. *See City of Cleburne,*

Tex. v. Cleburne Living Ctr., 473 U.S. 432, 439 (1985); *Plyler v. Doe*, 457 U.S. 202, 216 (1982). If such a finding is made, courts must evaluate the classification the state has created and whether such classification is substantially related to a legitimate legislative objective. *See City of Cleburne*, 473 U.S. at 439-40; *Nordlinger v. Hahn*, 505 U.S. 1, 10-11 (1992). From there, the courts will apply strict scrutiny, intermediate scrutiny, or rational basis dependent on whether the classification is a suspect class, quasi-suspect class, or other class. *See City of Cleburne*, 473 U.S. at 440-41. If the classification is subject to heightened scrutiny, the challenger has the burden of proving that the existence of the law was premised on a discriminatory intent. *See Mt. Healthy City School Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 287 (1977).

The North Greene Senate Bill 2750 did not violate the Equal Protection Clause. By separating individuals on the basis of biological sex, it separated two dissimilar populations. R. at 3. Biological men and women are not similarly situated. To hold otherwise would open the flood gates to the very discrimination and inequality that this country has actively sought to redress. Yet, that is the very purpose that Senate Bill 2750 seeks to combat. R. at 4. Subject to intermediate scrutiny, it is clearly shown that opposing counsel fails to prove that a discriminatory intent exists. The purpose of North Greene's law was to provide equality and safety for female athletes. *Id.* It would be meritless and irrelevant to assert that this is discriminatory towards one's gender identity, as that assertion is wholly unrelated to the intent and purpose of the law. The Equal Protection Clause must not be abused as a pawn to further social agendas; rather, it must remain unwavering through changing societal tides. Thus, Senate Bill 2750 must not be distorted as a violation of the Equal Protection Clause.

A. Essential to the Prevention of Tyranny, States Have Been Delegated the Broad Power to Create Laws for the Public Good That Protect Citizens and Support Public Morals.

State power is a foundational cornerstone of the United States of America. "The people of the United States have seen fit to divide sovereignty, and to establish a complex system. They have conferred certain powers on the state governments, and certain other powers on the national government." *M'Culloch v. State*, 17 U.S. 316, 326 (1819). James Madison articulated that "the powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite." *United States v. Lopez*, 514 U.S. 549, 552 (1995) (quoting The Federalist No. 45, pp. 292–293 (C. Rossiter ed. 1961)). Therefore, while the Constitution designates limited power to the federal government, the remaining power is delegated to the state governments. *See Bond v. United States*, 572 U.S. 844, 854 (2014); *Trump v. Anderson*, 601 U.S. 100, 110 (2024). The Framers intentionally created this dual form of government to protect fundamental liberties and prevent tyranny. *See Lopez*, 514 U.S. at 552; *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991); *United States v. Butler*, 297 U.S. 1, 63 (1936). Thus, the protection of state power serves as a safeguard against abuse and provides the people with a voice and autonomy. *Lopez*, 514 U.S. at 552.

With the power delegated to the states, each can make laws that govern its citizens. This Court has explained that "[t]he States have broad authority to enact legislation for the public good—what we have often called a 'police power.'" *Bond, 572 U.S.* at 854; *See also, Lopez,* 514 U.S. at 567. This Court has further emphasized that states "may exert not only for the public health, the public morals, and the public safety, but for the general or common good, for the well-being, comfort and good order of the people" so long as such laws "do not violate the rights granted or secured by the Supreme Law of the land." *Western Turf Ass'n v. Greenberg*, 204 U.S. 359, 363 (1907). With this authority, states have continued to create and enforce laws for public morals and the common good.

See Williams v. Pryor, 240 F.3d 944, 956 (11th Cir. 2001) (quoting "The Alabama statute making it a criminal offense to commercially distribute sexual devices in the State is rationally related to the State's legitimate government interest in public morality"); *Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 444-45 (1934) (holding that in order to protect the interests of the community, a Minnesota law was valid for extending time for redemption from mortgage foreclosure sales with certain limitations); *Stone v. State of Mississippi*, 101 U.S. 814, 816 (1879) (holding to protect people from the evil of lotteries, states can exercise police power over them). State power is an essential component to the function of the United States.

Empowering states to create laws—and establishing broad discretion to do so—is necessary and essential to retaliate against the Founding Father's fear of a tyrannical government. Therefore, when a state makes laws regarding public morals, it is acting within its' desired power. Indeed, when the North Greene Senate introduced Senate Bill 2750 to save women's sports, it was acting within its' ordained power and in the interest of public morals. Accordingly, when a law–like Senate Bill 2750–is created to ensure equality and protection, such law should be encouraged rather than admonished.

B. Under the Equal Protection Clause, States Have the Authority to Make Laws That Separate Biological Sexes for Purposes of Furthering Equality, Redressing Arbitrary Gender Stereotypes, and Creating Societal Outlets for Men and Women to Excel.

Even though states have the power to make laws protecting public morals, such laws must not violate the Fourteenth Amendment. Under the Fourteenth Amendment of the United States Constitution, states are not authorized to create or execute laws that would "*deny to any person within its jurisdiction the equal protection of laws"* U.S. Const. Amend. XIV, § 1. States have a duty to treat all persons who are similarly situated equally. *See City of Cleburne*, 473 U.S. at 439; *Plyler*, 457 U.S. at 216. When an allegation arises about a potential equal protection violation, the

challenger will assert either a facial challenge or an as-applied challenge. R. at 6. However, "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). Even so, courts must analyze who the law classifies to determine whether the states are upholding their obligation under the Fourteenth Amendment. *See City of Cleburne*, 473 U.S. at 439. Under this analysis, no equal protection violation occurs when a state authorizes that sports teams be separated by biological sex determined at birth. For this reason, the State of North Greene did not violate the Equal Protection Clause when it introduced Senate Bill 2750 for this very purpose.

1. Under the Equal Protection Clause, states can classify persons so long as the law serves a reasonable government objective, the law is substantially related to that objective, and similarly situated individuals are not treated differently.

"The Equal Protection Clause does not forbid classifications." *Nordlinger*, 505 U.S. at 10; *See also, F.S. Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920). The Supreme Court has continuously recognized that due to the discretion that the states have, some state laws will impact groups of citizens differently. *See McGowan v. State of Md.*, 366 U.S. 420, 425 (1961). In *Nordlinger v. Hahn*, this Court stated that "[a]s a general rule, 'legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality.'" *Nordlinger*, 505 U.S. at 10 (quoting *McGowan*, 366 U.S. at 425–426). For a law to satisfy the Equal Protection Clause, it must be reasonable, not arbitrary, have plausible policy, and have a fair and substantial relation to the object of the legislation. *See Nordlinger*, 505 U.S. at 11; *F.S. Royster Guano Co. v. Commonwealth of Virginia*, 253 U.S. 412, 415 (1920); *United States Railroad Retirement Bd. v. Fritz*, 449 U.S. 166, 174, 179 (1980). Even so, the Equal Protection Clause does allow states to legislate in a way that provides different treatment to persons "on the basis of criteria [that is] wholly unrelated to the objective of that statute." *Reed v. Reed*, 404 U.S.

71, 75-76 (1971). Therefore, for an Equal Protection Clause violation to occur, the law must not only classify persons but also provide different legal treatment to those similar persons. *See, e.g.* Appellee's Brief of Defendant-Appellee Kein Stitt, in his official capacity as Governor of the State of Oklahoma, et al., *Fowler v. Stitt,* 104 F. 4th 770 (10th Cir. 2024) (No. 23-5080); *Caskey Baking Co. v. Virginia,* 313 U.S. 117, 121 (1941); *see also F.S. Royster Guano Co.*, 253 U.S. at 415.

Before determining whether identical persons were treated differently, courts must first determine who those persons are and what scrutiny should be applied. Heightened scrutiny will be used when a classification jeopardizes the "exercise of a fundamental right or categorizes on the basis of an inherently suspect characteristic." *See Nordlinger*, 505 U.S. at 10; *City of Cleburne,* 473 U.S. at 439–441; *New Orleans v. Dukes,* 427 U.S. 297, 303 (1976). Therefore, just because heightened scrutiny is used does not inherently mean that a fundamental right has been violated; rather, it means that this Court has merely predetermined that such classifications are subject to heightened scrutiny. One such classification is sex.

a. The Equal Protection Clause is not violated when states create sex classifications that are not premised on arbitrary gender stereotypes.

This Court has long recognized that sex classifications are subject to intermediate scrutiny. However, many of these decisions that were determined under such heightened scrutiny violated the Equal Protection Clause because they were premised on arbitrary gender stereotypes.

In *Reed v. Reed*, this Court applied heightened scrutiny to determine that an Idaho statute violated the Equal Protection Clause for preferring males over females to administer an estate of one who dies intestate. *Reed,* 404 U.S. at 72–73. This Court explained that all persons are similarly situated to administer an estate; thus, a statute placing a mandatory preference for men causes dissimilar treatment. *Id*. at 76–77. Hence, even though the Idaho statute had the objective to

eliminate hearings on the merits, such objective had no correlation to sex and thereby caused similarly situated persons to be treated differently. *Id*.

Since *Reed*, other decisions have followed suit. In *Craig v. Boren*, this Court followed the *Reed* decision by applying heightened scrutiny to an Oklahoma statute to determine whether it was substantially related to an important governmental objective when males and females were permitted to purchase beer at different ages. *See Craig v. Boren*, 429 U.S. 190, 199 (1976). This Court found that, while protecting public health and safety is an important objective of the government, creating gender distinctions premised on "loose-fitting generalities concerning the drinking tendencies of aggregate groups" is a violation of the Equal Protection Clause. *Craig,* 429 U.S. at 208-09.

Additionally, in *United States v. Virginia*, this Court applied the same scrutiny to determine whether Virginia violated the Equal Protection Clause for excluding women from military training provided at the Virginia Military Institute (VMI). *See United States v. Virginia,* 518 U.S. 515, 534 (1996). This Court held that Virginia violated the Equal Protection Clause because it did not provide women with an equal opportunity to have such an education. *See Virginia,* 518 U.S. at 534. Despite opening an all-women's program, it did not equate to the VMI program. *Id*. This Court emphasized that there was no "exceedingly persuasive" reason for why Virginia created such division among men and women. *Id. at* 556.

In *Mississippi University for Women v. Hogan,* Mississippi University for Women (MUW), created by the Mississippi Legislature, created a nursing school that only admitted women but allowed men to audit the classes. *See Mississippi Univ. for Women v. Hogan*, 458 U.S. 718, 720–21 (1982). This Court determined that an Equal Protection Clause violation existed by not admitting men for credit. *See Mississippi*, 458 U.S. at 731. This Court emphasized that "[r]ather

than compensate for discriminatory barriers faced by women, MUW's policy of excluding males from admission to the School of Nursing tends to perpetuate the stereotyped view of nursing as an exclusively woman's job." *Id.* at 729.

Furthermore, in *Fontiero v. Richardson*, a suit was brought when a female lieutenant had to prove dependency on her husband to increase her benefits, while male members automatically were granted such benefits. *See Frontiero v. Richardson*, 411 U.S. 677, 680–81 (1973). While this was a Fifth Amendment case, this Court still went through the Equal Protection Clause analysis and determined that statutes cannot create different treatment for "male and female members of the uniformed services for the sole purpose of achieving administrative convenience." *Frontiero*, 411 U.S. at 690–91.

As illustrated in the previous cases, socially constructed stereotypes are not means to divide similarly situated persons for the purpose of fulfilling a government objective. One's sex has no correlation to one's abilities to attend nursing school, receive equal military training, be the administrator of an estate, or automatically receive benefits. Further, inherent biological differences are not socially constructed stereotypes. Therefore, biological differences cannot be viewed through the same lens as social perceptions or preferential identification. Nor should cases determining an Equal Protection Clause violation for a gender stereotype be synonymous with cases pertaining to biological differences. Thus, while states cannot create legislature that discriminates on the foundation of arbitrary gender stereotypes, statutes, such as Senate Bill 2750, can be made to separate men and women on their inherent biological differences.

b. An Equal Protection Clause violation does not occur when a state law separates biological sexes because it distinguishes two dissimilarly situated individuals and does not show discriminatory intent towards the transgender community.

Gender and biological sex are not synonymous. This Court has previously asserted "that homosexuality and transgender status are distinct concepts from sex." *Bostock v. Clayton Cnty., Ga.*, 590 U.S. 644, 669 (2020). *Merriam-Webster Dictionary* defines "gender" as "the behavior, cultural, or psychological traits typically associated with one sex." *Gender*, MERRIAM-WEBSTER DICTIONARY (11th ed. 2024)*; Doe by & through Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 522 (3d Cir. 2018) (explaining that gender is a broader societal construct, whereas gender identity is an individual's deep-core sense of self as being a particular gender). As previously stated, "sex" is defined as "either of the two major forms of individuals that occur in many species and that are distinguished respectively as female or male, especially on the basis of their reproductive organs and structures." *Sex*, MERRIAM-WEBSTER DICTIONARY (11th ed. 2024). When a statute classifies individuals who share the same behavior, culture, or psychological traits, such individuals are similarly situated. Conversely, when a statute classifies individuals based on their biological reproductive organs and structures, if individuals do not share the same composition, they are not similarly situated. For instance, Senate Bill 2750 classified individuals by biological sex and explained that gender identity was "separate and distinct from biological sex." R. at 4. Therefore, as shown here, when a law separates biological sexes, gender identity serves no legitimate relationship with that law. *Id.*

Separating sexes is deeply embedded within our country. *See Adams by & through Kasper v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791, 801 (11th Cir. 2022) (quoting "There has been a long tradition in this country of separating sexes in some, but not all, circumstances—and public bathrooms are likely the most frequently encountered example."); *Tuan Anh Nguyen v. I.N.S.,* 533

U.S. 53, 73 (2001) (quoting "To fail to acknowledge even our most basic biological differences…risks making the guarantee of equal protection superficial, and so disserving it."). Separate sex policies are instrumental to ensure equality.

However, when a policy is made separating men and women for their biological differences, such policies are not discriminatory towards the transgender population, nor targeting one's transgender status. Appellee's Brief of Defendant-Appellee Kein Stitt, in his official capacity as Governor of the State of Oklahoma, et al., *Fowler v. Stitt,* 104 F. 4th 770 (10th Cir. 2024) (No. 23-5080). If a claim were to assert the existence of discriminatory intent on these grounds, it must fail. Rather, when a law is offering to separate biological sexes—for instance, amongst sports teams or bathrooms—an individual's gender identity is not the basis for such legislation. *Id.* For example, Senate Bill 2750 was only designed to separate sports teams by biological sex. R. at 3. The purpose of the law was to provide female athletes with "equal athletic opportunities" and a safe environment to compete. R. at 4. Gender identity had no relevance to the purpose of the law. *Id.* Therefore, one's transgender status was not targeted. *Id.* To hold otherwise would be an injustice to our legal system and undermine victims who have experienced true discrimination and prejudice. *See Tuan Anh Nguyen,* 533 U.S. at 73 (quoting "Mechanistic classification of all our differences as stereotypes would operate to obscure those misconceptions and prejudices that are real."). Furthermore, pure disagreement with a law does not inherently mean there is discrimination. Appellee's Brief of Defendant-Appellee Kein Stitt, in his official capacity as Governor of the State of Oklahoma, et al., *Fowler v. Stitt,* 104 F. 4th 770 (10th Cir. 2024) (No. 23-5080).

In *Adams*, the United States Court of Appeals for the Eleventh Circuit decided that the Equal Protection Clause claim brought forth failed because the bathroom policy was not discriminatory to transgender students. *Adams*, 57 F.4th at 800. The Eleventh Circuit reasoned it would lack legal

significance for the lower court to find that gender identity and biological sex are akin. *Id.* at 807. Such a finding would "refute the Supreme Court's longstanding recognition that 'sex, like race and national origin, is an immutable characteristic determined solely by the accident of birth.'" *Frontiero*, 411 U.S. at 686; *Adams*, 57 F.4th at 807. The Eleventh Circuit explained that a bathroom policy that separates bathrooms by biological sex is not premised on impermissible stereotypes because biological sex is not a stereotype. *See Adams*, 57 F.4th at 809. Moreover, "'transgender status and gender identity are wholly absent' when a bathroom policy facially separates bathrooms based on biological sex." *Id.* at 808.

Separating biological sexes is not a cry to inequality but rather a potential outlet to further equal protection for all. Laws–like Senate Bill 2750–that separate persons by biological sex have no intent to suppress how one identifies. To assert otherwise would be inaccurate and would create a concerning precedent that welcomes meritless claims under the umbrella of "injustice."

c. Separate-sex sports teams are necessary to provide equality among men and women and to ensure that each dissimilar class is protected.

Separation on the basis of sex further transcends into the realm of athletics. Offering separate boys' and girls' teams based on biological sex serves to protect athletes and provide opportunities for success. Courts have continuously recognized that sex-based classifications in interscholastic sports "'will help promote safety, increase competition within each classification, and provide more athletic opportunities for both boys and girls.'" Ray D. Hacke, "*Girls Will Be Boys, and Boys Will Be Girls": The Emergence of the Transgender Athlete and A Defensive Game Plan for High Schools That Want to Keep Their Playing Fields Level-for Athletes of Both Genders*, 25 Sports Law. J. 57, 76 (2021).

Separate but equal teams provide opportunities for equality while providing a platform for both men and women to succeed. "[I]f teams are given substantially equal support and have

substantially comparable programs, separate-sex teams will satisfy the equality of opportunity required by the Equal Protection Clause." Polly S. Woods, *Boys Muscling in on Girls' Sports*, 53 Ohio St. L.J. 891, 893 (1992). This Court has previously recognized this position for military training programs. In *Virginia*, this Court did not contend that separating men and women was unconstitutional; rather, the contention rested upon the failure to provide a program for women that was parallel to the VMI program for men. *See Virginia*, 518 U.S. at 547–48. If this Court previously recognized separate-sex military training, then the same forethought should be applied to sports teams.

Choosing to separate men and women on sports teams is rooted in equality. Men and women should have equal opportunity to train, compete, and succeed. Such opportunities highlight women and men for who they are. Men and women need not share the same spotlight, as each are qualified to have their own. Considering this country's history is rooted in male domination, especially in the realm of sports, creating an equal space in society allows women to have their own spotlight. Thus, recognizing biological differences between men and women is a celebration of what each can do, which is what the State of North Greene intended to encourage. R. at 3.

C. There are Important Policy Justifications for Why States Can Enforce Laws that Create Separate Teams for Biological Sexes.

Beyond the non-existence of an Equal Protection Clause violation when sports teams are separated by biological sex, there are additional important policy considerations for why this is necessary. Such considerations address how separate-sex teams redress previous discrimination of women, acknowledge the distinct physiological differences between men and women, and show recognition of state power to execute such policies amidst transgender litigation. In considering such policies, it is imperative to allow states the discretion to provide separate-sex sports teams based on biological sex.

1. Maintaining separate sports teams is a remedy for the history of discrimination that women have endured.

Women are still experiencing the aftershocks of discrimination from the past. Previously, "[n]either slaves nor women could hold office, serve on juries, or bring suit in their own names, and married women traditionally were denied the legal capacity to hold or convey property or to serve as legal guardians of their own children." *Frontiero*, 411 U.S. at 685, 93; *See generally*, L. Kanowitz, *Women and the Law: The Unfinished Revolution* 5, 6 (1969); G. Myrdal, *An American Dilemma* 1073 (20th ed. 1962). Moreover, even after women achieved the right to vote in 1920, federal and state governments had the authority to "withhold from women opportunities accorded men so long as any "basis in reason" could be conceived for the discrimination." *Virginia*, 518 U.S. at 531. Justice Ginsburg previously emphasized that the discrimination women face is comparable, but more subtle, to that of other minority groups. Earl M. Maltz, *The Road to United States v. Virginia: Ruth Bader Ginsburg and the Battle over Strict Scrutiny*, 43 Women's Rts. L. Rep. 5, 8 (2022). Therefore, laws will survive scrutiny under the Equal Protection Clause when they are "(1) remedying invidious discrimination, (2) enabling women to receive opportunities that have previously been denied them, and (3) empowering them to overcome obstacles they face with regard to advancing their status." Hacke, *supra*, at 137. Accordingly, "'maintaining separate teams for boys and girls clearly addresses 'the goal of redressing past discrimination and providing equal opportunities for women.'" *Id.*

Throughout the history of this country, women were unwelcomed in society. However, one of the ways that women have channeled their power and strength is through sports. Whether it be high school teams, collegiate sports, or the Olympics, women in sports have left a remarkable impact on society. To not have separate-sex teams would largely inhibit the progress that this

country and society has made. Therefore, having such distinctions in sports not only highlights women but also protects them from potential inequality that has already tainted history.

2. Inherent physiological changes call for the need for biologically separate teams to ensure equality and safety.

A primary reason for the need of separate-sex teams filters down to physiological differences. *See* Woods, *supra*, at 895 (quoting *"*[D]ue to differences in body structure and composition, females are at a disadvantage in activities that involve leg strength and speed, arm strength, and cardiovascular endurance"); *Clark, By & Through Clark v. Arizona Interscholastic Ass'n*, 695 F.2d 1126, 1131 (9th Cir. 1982) (quoting*"*[D]ue to average physiological differences, males would displace females to a substantial extent if they were allowed to compete for positions on the volleyball team"); *Kleczek v. Rhode Island Interscholastic League, Inc.*, 612 A.2d 734, 738 (R.I. 1992) (quoting "Because of innate physiological differences, boys and girls are not similarly situated as they enter athletic competition"); *Ritacco v. Norwin Sch. Dist.*, 361 F. Supp. 930, 931 (W.D. Pa. 1973) (quoting "[M]en are taller than women, stronger than women by reason of a greater muscle mass; have larger hearts than women and a deeper breathing capacity, enabling them to utilize oxygen more efficiently than women, run faster, based upon the construction of the pelvic area, which, when women reach puberty, widens, causing the femur to bend outward, rendering the female incapable of running as efficiently as a male"); *B.P.J. by Jackson v. W. Virginia State Bd. of Educ.*, 98 F.4th 542, 567 (4th Cir. 2024) (*Agree, concurring in part and dissenting in part*) (quoting *"'*[M]edical consensus is that the largest known biological cause of average differences in athletic performance between cisgender men as a group and cisgender women as a group is their levels of circulating testosterone, which start to diverge between boys and girls beginning with puberty'").

While biological differences should be celebrated, they must also be recognized to ensure that men and women are treated equally. The reality is that biological men and women are not similarly situated. There are distinct differences in body composition. Such differences do not make one biological sex superior to the other. Thus, laws are needed to redress fictitious superiority and domination that have previously infiltrated this country. The perfect example to illustrate such steps toward equality is Senate Bill 2750. R. at 3. The State of North Greene was not naive to the "inherent differences between biological males and biological females." R. at 3. Therefore, by creating this law, the state hoped to ensure that females were given an equal opportunity to compete in athletics while also ensuring that they were safe. R. at 4. This Court should affirm, not only that separate biological sex teams are within the realm of the Equal Protection Clause, but that such laws are needed to ensure that citizens' equal protection rights are prevalent in all aspects of society.

3. Courts across the country have allowed states the discretion to exercise power on pressing transgender issues while litigation is pending.

Separate biological sex teams have sparked a debate on whether a state has the power to execute such laws due to the potential impact on the transgender population. However, this is not the only issue presently being debated in terms of transgender litigation. While litigation is underway, courts across the country have allowed states to continue practicing various policies that have a more direct impact on the transgender population.

The United States Court of Appeals for the Seventh Circuit denied the appellee's motion to reconsider and request en banc consideration for an injunction entered for that Ind. Code § 25-1-22, Gender Transition Procedures for Minors. *See K.C. v. Individual Members of the Med. Licensing Bd. of Ind*., 2024 U.S. App. LEXIS 6924, at *4, *5 (2024). From this, the state could continue regulating the practice of medicine while the law was not in effect. *See K.C.*, 2024 U.S. App. LEXIS at *4, *5. Additionally, the Eleventh Circuit found that the district court incorrectly

reviewed the law when it granted a preliminary injunction and enjoined the State of Alabama from enforcing section 4(a)(1)–(3) of Alabama's Vulnerable Child Compassion and Protection Act. *See Eknes-Tucker v. Governor of Alabama*, 80 F.4th 1205, 1210, 1231 (11th Cir. 2023) (paraphrasing Act prohibiting the administration of puberty-blocking medicine or cross-sex hormones to a minor). The Eleventh Circuit stated that "[a]bsent a constitutional mandate to the contrary, these types of issues are quintessentially the sort that our system of government reserves to legislative, not judicial, action." *Eknes-Tucker*, 80 F.4th at 1231. Lastly, the state of Idaho adopted the Vulnerable Protection Act to regulate children attempting to undergo gender transition treatment. *See Labrador v. Poe by and through Poe*, 144 S. Ct. 921, 921 (2024) (quoting "The law sought to regulate a number of 'practices upon a child for the purpose of attempting to alter...child's sex.'"). This Court has granted Idaho's emergency application for a partial stay on the injunction placed on its law. *Labrador*, 144 S. Ct. at 928. Thus, states may exert their power and proceed with their practices until a direct ruling says otherwise. A subject of controversy alone does not supersede the constitutional power states have to govern their jurisdiction. Until this Court expresses a definitive decision, North Green should be allowed to apply Senate Bill 2750 to its jurisdiction.

CONCLUSION

Senate Bill 2750 does not violate Title IX when it separates sports teams based on biological sex determined at birth rather than gender identity. Additionally, Senate Bill 2750 does not violate the Equal Protection Clause when it creates sex-separate sports teams for the purpose of promoting equal opportunities for female athletes. Therefore, this Court should affirm the judgment of the Court of Appeals for the Fourteenth Circuit.

Team 31

Counsel for Respondent