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.,*

Respondent.

On Writ of Certiorari
To the Supreme Court of the United States

BRIEF FOR RESPONDENT

Team 32
Counsel for Respondents

QUESTIONS PRESENTED

I. Is the "Save Women's Sports Act" permissible under Title IX when it provides equal athletic opportunities for both sexes and expressly designates that its schools' sports teams consist of one's biological sex as determined at birth: males, females, or coed?

II. Is the "Save Women's Sports Act" permissible under the Equal Protection Clause of the Fourteenth Amendment when it classifies participation in school sports according to biological sex determined at birth in order to provide equal opportunities for biological girls?

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The opinion of the United States Court of Appeals for the Fourteenth Circuit's opinion is reported at *A.J.T. v. North Greene Bd. of Educ.*, 2024 WL 98765 (14th Cir. 2024) and is reprinted in the Record on Appeal ("Record") at 2–12. The District Court's Memorandum opinion has not yet been published in the Federal Supplement but is reported at *A.J.T. v. North Greene Bd. of Educ.*, 2023 WL 56789 (E.D. N. Greene 2023).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, which provides in relevant part: "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[.]

This case also involves a challenge to a state statute under the Equal Protection Clause of the Fourteenth Amendment which provides: "No state shall…deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV.

North Greene Code § 22-3-4, the "Save Women's Sports Act," provides in pertinent part: "[t]here are inherent differences between biological males and biological females, and that these differences are cause for celebration." R.3. N.G. Code § 22-3-15(a)(1)–(3) defines the following:

(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.

The Act further provides 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." N.G. Code § 22-3-16(a). Upon designation, the Act states that: "Athletic teams or sports designated for females, women, or girls shall not be open to students of the male sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport." N.G. Code § 22-3-16(b).

STATEMENT OF THE CASE

I. STATEMENT OF FACTS.

There is no question that biological boys and girls differ in physiological makeup. R.3. The State of North Greene, recognizing this, enacted the "Save Women's Sports Act," ("the Act") to celebrate and protect these differences. R.3. To ensure female athletes' equal opportunity and physical safety when competing, the Act designates participation according to biological sex as determined at birth. R.3, 4.

The Act emphasizes that designation based on biological sex is not to discount the existence of other gender identifications. R.4. Rather, the Act simply uses biological sex as a classification in this context to carry out the State's interest in promoting equal opportunity and safety for female athletes. R.4. Under the Act, sports are designated as for biological boys, biological girls, or coed participation. R.4. Where a team is designated for biological girls, a biological boy cannot participate when the sport involves competitive skill or contact sport. R.4.

The Petitioner, an eleven-year-old biological boy, wanted to join the school's biological girls' volleyball and cross-country teams. R.3. The school explained that the Petitioner could not join those particular teams under the Act. R.3. The Petitioner disagreed that participation on the biological girls' teams should be limited because the Petitioner is a biological boy. R.3. Instead, the Petitioner argues that her identity as a transgender girl should supersede her biological makeup. R.3. Accordingly, the Petitioner brought this suit, alleging that the North Greene Board of Education discriminated against her on the basis of gender identity by complying with the Act. R.3.

II. PROCEDURAL HISTORY.

The trial court found in favor of the Defendants and granted motion for summary judgment. R.5. The Plaintiff appealed. The United States Court of Appeals for the Fourteenth Circuit then

affirmed the District Court and held that the Act did not violate Title IX, nor the Equal Protection Clause of the United States Constitution. R.12. The Plaintiff-Petitioner now appeals to this honorable Supreme Court of the United States. R.17.

SUMMARY OF THE ARGUMENT

This case is about a straightforward reading of Title IX. The plain text of Title IX is clear. And thus, the analysis ends there. Sex means biological sex. Though the Petitioner urges this Court to legislate from the bench, the Respondent prays that this Court abide by Title IX's crystal clarity and affirm the Fourteenth Circuit's holding that sex within the context of Title IX means biological sex.

Title IX permits the State of North Greene to designate school sports according to participants' biological sex as determined at birth for three reasons. First, both Title IX's plain text and its legislative intent confirm that sex means biological sex in this context. Second, *Bostock* and *Grimm* lack merit here and should not impact this Court's holding today. Third, discrimination did not occur here because the Act treated the Petitioner the same as biological boys, or rather, those similarly situated. Fourth, even if this Court remains unpersuaded, this Court should safeguard the natural limits of Title IX by holding that sex means biological sex as to provide clear notice for schools and prevent their limitless liability.

The Act goes farther than mere adherence to the Equal Protection Clause of the United States. It advances it. The Act serves the very purpose of affording equal protection of the law to the biological sexes. The Petitioner proposes that this Court set a precedent in direct controversy with equal protection standards. The Respondent asks simply that this Court maintain what is already established as consistent with the Constitution.

The Act propels equal protection of the law for three reasons. First, the Act classifies all athletes and thus treats all athletes similarly according to their biological sex. Second, the

protection of biological sex in athletics serves an important government interest and thereby satisfies intermediate scrutiny. Third, as a matter of policy, this Court should hold in favor of the Respondent because to conflate sex with gender identity is to strip biological females of their equal protection of the law, and as a result, undermine the integrity of this nation's Constitution. Therefore, this Court should affirm the Fourteenth Circuit's holding that the Act does not violate Title IX nor the Equal Protection Clause of the United States Constitution.

ARGUMENT

I. THIS COURT SHOULD AFFIRM THE FOURTEENTH CIRCUIT'S HOLDING THAT THE "SAVE WOMEN'S SPORTS ACT" DOES NOT VIOLATE TITLE IX.

Title IX is clear. Sex means *biological sex*. To weave gender identity into Title IX as the Petitioner suggests is to construct a complex web that entraps the very women that Title IX intends to protect.

This Court should affirm that the "Save Women's Sports Act" ("the Act") does not violate Title IX. Under Title IX, "[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). To prevail on a Title IX claim, the plaintiff must establish that (1) discrimination occurred on the basis of sex; (2) that the educational institution was receiving federal funding when the discrimination occurred; and (3) that improper discrimination caused the harm. *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 616 (4th Cir. 2020). That is, discrimination where the individual is treated differently, and worse, than those similarly situated. *Id*. at 618.

Here, the State of North Greene passed North Greene Code § 22-3-4 which designates participation on school sports teams according to biological sex as determined at birth. R.4. Recognizing that "[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," the Act treats all individuals the same by classifying all individuals by biological sex. N.G. Code 22-3-16(c). Therefore, there is no discrimination on the basis of sex here because the Act considers all individuals similarly—as according to their biological sex, just as Title IX intended. This Court need not reach the rest of the Title IX analysis.

A. "Sex" under Title IX means biological sex, not gender identity.

1. The plain meaning of Title IX, its legislative history, and regularly carve-outs are clear that sex means biological sex.

It is a bedrock principle of statutory interpretation that "[o]nly the written word is the law." *Bostock v. Clayton Cnty., Georgia*, 590 U.S. 644, 653 (2020). Such is what the law demands; we cannot ignore it. *Id*. Title IX does not define "sex," but it does not need to. "[F]or decades," the written words of Title IX have been plainly interpreted so as to allow "biological sex [to be] a classification method for athletic programs." *Tennessee v. Dep't of Educ.*, 104 F.4th 577, 611 (6th Cir. 2024). This is because courts interpret the word "sex" in Title IX in accordance with "the ordinary meaning of the word when it was enacted in 1972," *Adams ex rel. Kasper v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791, 812 (11th. Cir. 2022), and "in [its] context and with a view to [its] place in the overall statutory scheme." *West Virginia. v. EPA*, 597 U.S. 697, 721 (2022). Until now, the meaning of sex under Title IX has been clear.

Without doubt, the ordinary public meaning of "sex" in 1972 pointed only to biological and reproductive markers. Gender identity was not a thought at the time of Title IX's enactment. Courts often reference contemporaneous dictionaries from the time of enactment to discern ordinary public meaning. *Adams*, 57 F.4th at 812. Dictionaries surrounding the enactment of Title IX emphasize the biological and binary nature of "sex." *See id.* (collecting definitions similar to the WEBSTER'S NEW WORLD DICTIONARY (1972), which defined "sex" as "either of the two divisions,

male or female . . . with reference to their reproductive functions."). In fact, "[w]hen Title IX was enacted, 'virtually every dictionary definition of "sex" referred to the *physiological* distinctions between males and females[.]" *B.P.J. by Jackson v. W. Va. State Bd. of Educ.*, 98 F.4th 542, 571 (4th Cir. 2024) ("*B.P.J.*") (Agee, J., dissenting) (emphasis in original) (citation omitted), *appeal docketed W. Va. Secondary Sch. Activities Comm'n v. B.P.J. ex. rel. Heather Jackson*, __ U.S. __ (2024).

Furthermore, the legislative history of Title IX incorporates this biologically-based meaning of "sex." *See Gundy v. United States*, 588 U.S. 128, 140 (2019) (holding that statutory interpretation is a "holistic endeavor" that weighs "purpose and history"). The Senate sponsor of those amendments that later became Title IX even characterized "the heart of [the] amendment[s]" as "provision[s] banning sex discrimination[.]" *North Haven Bd. of Ed. v. Bell*, 456 U.S. 512, 524 (quoting 118 Cong. Rec. 5803 (1972)) (emphasis omitted). Therefore, it follows logically that the text of Title IX includes and protects foundational distinctions between the biological sexes. *See, e.g.*, 20 U.S.C. §§ 1681(a)(2) (allowing schools to shift from admitting "only students of *one* sex" to admitting "students of *both* sexes"), 1681(a)(6) (contemplating single-sex social organizations), 1686 (providing that institutions receiving Title IX funding may maintain "separate living facilities for the different sexes"), 1689 (referring separately and distinctly to "transgender status").

Congress also plainly endorses these biological distinctions in Title IX's regulatory carve-outs in the specific context at issue in this case. Institutions have the express permission to "operate or sponsor separate teams for members of *each* sex[.]" 34 C.F.R. § 106.41 (b) (emphasis added). The regulation goes on to permit circumstances whereby "a recipient [of Title IX funding] operates or sponsors a team in a particular sport for members of *one* sex but operates or sponsors no such team for members of the *other* sex." *Id.* (emphasis added). This is because Congress requires

institutions to promote "equal athletic opportunity for *both* sexes" in order to "effectively accommodate the interests and abilities of members of *both* sexes." *Id.* at § 106.41(c) (emphasis added). "Both" is the thought of "being the two" or "affecting or involving the one and the other." *Both*, MERRIAM-WEBSTER https://www.merriam-webster.com/dictionary/both (last visited Aug. 27, 2024).

These specific words, when read "in their context," *West Virginia*, 597 U.S. at 721, reflect Congress' intent for "sex" under Title IX to consider only "each," "one…[and] the other," and "both:" biological males and biological females. C.F.R. §§ 106.41(b)(c). Gender identity does not lurk behind these adjectives; for Congress to intend so would render the carve-outs mere surplusage. *See City of Chi., Ill. v. Fulton*, 592 U.S. 154, 159 (2021) ("'The canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.'") (citation omitted). Congress knows how to interpret Title IX. *See, e.g.*, 20 U.S.C. § 1687(2)(A) (enacting the 1987 Civil Rights Restoration Act and overturning *Grove City College v. Bell*, 465 U.S. 555 (1974) in the process). If it wanted to include gender identity, it would have made that desire known, by amendment, in the fifty years since Title IX's enactment. Congress has not done so.

Courts have consistently and correctly affirmed the original public meaning of "sex" within Title IX to encompass only the biological binary of male and female. Only one year after Congress enacted Title IX, this Court characterized "sex" as an "immutable characteristic" determined by "birth." *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973). This did not include gender identity, and subsequent precedent reflects the same. In this Court's 1993 decision, *Bray v. Alexandria Women's Health Clinic*, Justices Stevens and Blackmun relied on the *Frontiero* distinction to reiterate that female reproductive ability "is the inherited and immutable characteristic that

'primarily differentiates the female from the male.'" 506 U.S. 263, 330 (1993) (Stevens, J., dissenting) (citation omitted).

Again, in 2022, the Eleventh Circuit set a sterling standard for how this Court should reason yet again: Title IX is clear, and therefore, the meaning of sex must be interpreted in accordance with its ordinary public meaning at the time of Title IX's enactment in 1972. *Adams* F.4th at 811. There, the Eleventh Circuit considered whether a school bathroom policy violated Title IX when it required a transgender male student to use either female or sex-neutral bathrooms but not male bathrooms. *Id*. at 798–99. The court, looking to dictionaries from or around 1972, determined that sex meant biological sex when Title IX was enacted. *Id*. at 812. Looking then to how this reading impacts other Title IX provisions, the *Adams* court concluded that Congress intended sex to mean biological sex because to hold otherwise would nullify Title IX exceptions that explicate sex-separate facilities. *Id*. at 813 (considering Title IX's express exceptions permitting "separate living facilities for the different sexes"). The court therefore held that the bathroom policy did not violate Title IX because both the ordinary public meaning of sex and Title IX's other provisions require that sex mean biological sex. *Id*. at 812.

Since *Adams*, courts have joined in a resounding affirmation of its holding. Two years later in 2024, the Southeastern Legal Foundation and States of Kansas, Colorado, Utah, and Wyoming took action to prevent passage of the United States Department of Education ("DoE") proposed regulations which sought to dramatically expand the scope of Title IX to include "discrimination on the basis of . . . gender identity." *Kansas v. U.S. Dept. of Educ.*, No. 24-4041-JWB, 2024 WL 3273285, at *24 (D. Kan. Jul. 2, 2024). The court echoed *Adams*, characterizing such a rewriting as "a sharp departure from past practice without reasonable explanation." *Id*. at *17; *see also Texas v. Cardona*, No. 4:23-CV-00604-0, 2024 WL 3658767, at *38 (N.D. Tex. Aug. 5, 2024)

(recognizing that "this . . . illogical distinction forbidden by Title IX's exclusions . . . constitute[s] the very type of sex discrimination Title IX prohibits by privileging transgender persons with the ability to abide by their biological sex or not in order to take advantage of preferred benefits or services"); *see also Tennessee v. Cardona*, No. CV 2: 24-072-DCR, 2024 WL 3019146, at *44 (E.D. Ky. June 17, 2024) (holding that "the [DoE] would turn Title IX on its head by redefining "sex" to include "gender identity[]").

If the "heart" of Title IX is banning sex discrimination, the heartbeat of Title IX must be the consistent recognition of the binary and biological differences between the sexes. To insert gender identity into the bloodstream of Title IX will surely cause the heart of Title IX to beat irregularly. From *Frontiero* to *Bostock*, this Court's precedent points plainly to one conclusion: under Title IX, sex means biological sex. This Court should again rule in congruence with those cases, thus reaffirming the central purpose of Title IX: to protect biological women. *See Adams*, 57 F.4th at 812.

2. *Bostock* and *Grimm* lack bearing on this Court's definition of "sex" under Title IX.

Certainly, this Court is bound by its 2020 holding in *Bostock v. Clayton Cnty., Georgia*. In *Bostock*, this Court considered whether Title VII prohibits discrimination based on sexual orientation. 590 U.S. 644 at 652. There, this Court held that sexual orientation cannot be considered in hiring and firing decisions, meaning thus that sex includes sexual orientation within the limited context of *Title VII*. *Id*. at 660. As such, *Bostock* is not binding on this Court today as it relates to the issue of *Title IX*.

In fact, this Court acknowledged in 2005 that Title VII and Title IX are starkly distinguishable. *See Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 175 (2005) (providing that "Title VII . . . is a vastly different statute" than Title IX); *see also Eknes-Tucker v. Gov't of*

Ala., No. 22-11707, 2023 WL 5344981, at *16 (11th Cir. Aug. 21, 2023) (holding that "Because Bostrock…concerned a different law (with materially different language),....it bears minimal relevance[]"); *see also L.W. ex rel. Williams v. Skrmetti*, 73 F.4th 408, 420 (6th Cir. 2023) (finding that *Bostock* "applies only to Title VII").

First, Title VII and Title IX differ on their faces. Unlike Title VII, Title IX codifies express statutory exceptions that differentiate between both sexes. *See Adams*, 57 F.4th at 811. Second, Title VII and Title IX differ in the relevance of sex to the objectives they serve. On the one hand, Title VII was enacted to "achieve equality and eliminate discrimination based on artificial, arbitrary and unnecessary barriers to employment which Congress has determined have no relevance to satisfactory employment." *Vant Hul v. City of Dell Rapids*, 462 F. Supp. 828, 833 (D.S.D. 1978); *see Ricci v. DeStefano*, 557 U.S. 557 (2009) (holding that "the purpose of Title VII…[is] that the workplace be an environment free from discrimination"). On the other hand, Title IX was enacted as a "response to evidence of pervasive discrimination against women." *McCormick ex rel. McCormick v. Sch. Dist. of Mamaroneck*, 370 F.3d 275, 286 (2d Cir. 2004). The upshot being, where Title VII's purpose can be served without a distinction between sex and gender, Title IX's cannot. As a result, this Court is not bound by *Bostock* to hold that sex under Title IX should mean what sex means under Title VII. Different definitions of sex can, and should, coexist when considerations of sex are designed for different purposes.

Nevertheless, this Court's precedent in *Bostock* echoes the statutory interpretation rules provided by Adams—and should be maintained accordingly. In *Bostock*, the statutory interpretation issue turned on whether "sex" under Title VII includes such statuses. *Bostock*, 590 U.S. 644 at 652. There, this Court, acknowledging that Congress did not anticipate issues with homosexuality or transgender discrimination, relied on longstanding rules of statutory

interpretation to look to the ordinary public meaning at the time of legislative enactment. *Id*. at 654; *see also Wisconsin C. Ltd v. United States*, 585 U.S. 274, 277 (2018) (stating that "a fundamental canon of statutory construction is that words…should be interpreted as taking their ordinary, contemporary, common meaning at the time Congress enacted the statute"); *Perrin v. United States*, 444 U.S. 37, 42 (1979) (stating that "unless otherwise defined[,] words will be interpreted as taking their ordinary, contemporary, common meaning"). While *Bostock*'s limited holding is not binding on the Title IX issue here, at a minimum, its adherence to rules of statutory interpretation is.

Though *Adams* hit the mark, *Grimm* got it wrong. There, the Fourth Circuit erred in holding that a school bathroom policy violated Title IX when it required students to use bathrooms according to their "biological gender." *Grimm*, 972 F.3d at 593. Nonetheless, the *Grimm* court faced facts patently distinguishable from those presented here. First, at mere face value, the Grimm bathroom policy differs from the Act by designating among "biological gender," not biological *sex*. *Id*. Unlike biological sex, biological gender is a mischaracterized term lacking any support from "medical professionals." *Id*. at 621 (Wynn, J., concurring) (stating that "this term has no standard meaning (to say nothing of widespread acceptance) in the medical field"); s*ee Grimm v. Gloucester Cnty. Sch. Bd.*, 400 F. Supp. 3d 444, 457 (E.D. Va. 2019) (citing Wylie C. Hembree et al., *Endocrine Treatment of Gender-dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline*, 102(11), J. CLIN. ENDOCRINOLOGY & METABOLISM 3869, 3875 (2017)). Strikingly, even in *Grimm*, the court hailed this distinction. Biological gender is not biological sex, but rather a "conflat[ion] [of] two medical concepts: a person's biological sex (a set of physical traits) and gender (a deeply held sense of self.)" *Grimm*, 400 F. Supp. 3d at 621 (Wynn, J., concurring).

Second, the *Grimm* policy expressly operated to address what the Board deemed "students question[ing] their gender identities" with "gender identity issues." *Id*. at 610. Reeking disapproval and disdain, the policy plainly sought to place a scarlet letter on students that the Board saw as "issues." *Id*. Yet, here, the Act functions not to punish students, but to propel them into athletic success. R.3, 4; *see also* N.G. Code § 22-3-16(c) (providing that "North Greene's interest [is] in promoting equal athletic opportunities for the female sex"). And, insofar as Title IX serves that same purpose, the Act simply agrees with what Congress already approved.

B. A.J.T was not treated worse than those similarly situated—other biological boys.

Under Title IX, liability may be imposed only where it is shown that an individual faced discrimination on the basis of sex. 20 U.S.C. § 1681(a). Discrimination occurs when an individual is treated worse than those similarly situated. *Grimm*, 972 F.3d at 618.

In a factually-parallel case, the United States District Court for the Southern District of Florida considered whether a Florida law prohibiting a biological male that identified as female from playing on her high school girls' sports team violated Title IX. *D.N. by Jessica N. v. DeSantis*, 701 F. Supp. 3d 1244, 1247–48 (S.D. Fla. 2023). There, the court looked to *Adams*' interpretation of sex to guide their analysis. *Id*. at 1263. Like A.J.T., the plaintiff alleged facing worse treatment as a transgender girl than biological girls. *Id*. at 1265. Rejecting this position, the court held that the plaintiff's argument afforded some individuals "dual protection under Title IX" because they may claim designation—or at least, identity—with both sexes. *Id*.

Here, the logic of *Adams* and *D.N. by Jessica N.* should lead. Accepting that the plain text of Title IX shows that sex means biological sex, then discrimination can occur only according to those designations. A.J.T., like the plaintiff in *D.N. by Jessica N.*, aims to weave gender identity

into the clear construct of Title IX. R.15. Like wedging a square peg in a round hole, A.J.T. urges that she is just like a biological girl despite objectively being a biological boy. *Id*.

A.J.T.'s argument lacks merit because a transgender girl, or biological boy, is not similarly situated to a biological girl. Congress acknowledged those physical distinctions and codified sex-separate exceptions as such. 34 C.F.R. § 106.41(b). Those exceptions permit sex-separate sports where participation is determined by competitive skill or where the activity is a contact sport. *Id*. In the same way, the Act requires separation of biological boys and girls for teams based on competitive skill or activities that are contact sports. N.G. Code § 22-3-16(b).

These rules exist both with and for good reason. Biological boys are stronger, faster, and bigger than biological girls. *Adams*, 57 F.4th at 819, 820. Of course, one biological girl may be stronger, faster, or bigger than one biological boy. Nevertheless, the medical community accepts biological boys as having more lean body mass, more skeletal muscle, less fat, and larger hearts than biological girls. *Id.*

As a result, biological boys on average jump 25% higher, throw 25% farther, run 11% faster, and lift 30% more than biological girls. *Id.* Accordingly, and as this Court has long recognized, "the difference between men and women…is a real one," one that should be a "cause for celebration." *United States v. Virginia*, 518 U.S. 515, 533 (1996) ("*VMI*"); *see also B.P.J.*, 98 F.4th at 571 (4th Cir. 2024) (Agee, J., dissenting) ("Given how biological differences affect typical outcomes in sports, ensuring equal opportunities for biological girls in sports requires that they not have to compete against biological boys.")

Just as the medical community accepts that biological boys have inherent advantages over biological girls, Congress certified that Title IX affords equal opportunity to the sexes only when the sexes are separate in contact and competitive sport. *McCormick*, 370 F.3d at 295. Undeniably,

the desire to win is the crux of competitive sports. *Id*. at 294–95. And, Congress permitted sex-separate sports accordingly, recognizing that the disparity in biological boys' and girls' physical ability simply disadvantages girls. *Id*.

Sex-separate sports under Title IX are not only sufficient but necessary. Title IX cannot afford equal opportunity for biological girls should biological boys be permitted to compete against them. Plainly, to hold that sex-separation is impermissible under Title IX is to undermine the very purpose Title IX serves. Title IX cannot preserve equal opportunity for the sexes if, at the same time, Title IX subjects biological girls to innately and irreparable disadvantage. To hold otherwise will allow biological boys to "dominate the girls' programs and deny them the equal opportunity to compete in interscholastic events." *O'Connor v. Bd. of Educ. of Sch. Dist.* 23, 449 U.S. 1301, 1307 (1980) (Stevens, J., in chambers). Therefore, sex-designation under these circumstances simply ensures that both biological girls and biological boys have "the [equal] chance to be champions." *McCormick*, 370 F.3d at 294, 295. Congress agrees.

C. To bloat the scope of sex under Title IX as the Petitioner suggests is to subject schools to limitless liability.

A.J.T. purports a dual protection under Title IX that cuts squarely against its purpose: to avoid the use of federal resources to support discriminatory practices. *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 286 (1998). Title IX birthed "a virtual revolution for girls and women in sports." *Adams*, 57 F.4th at 818 (Lago, J., specially concurring). Now, what A.J.T. carefully crafts as discrimination against transgender girls, in effect, breeds discrimination against not only biological girls, but any individual that identifies with only their biological sex.

Sure, A.J.T. may assert that she now only identifies as a transgender girl and should be analyzed as similarly situated to biological girls as such. Yet, this argument fails to acknowledge that merely because A.J.T. identifies as a transgender girl today does not mean A.J.T. will maintain

that identity tomorrow. In fact, this Court recognized in *Bostock* that transgender identity is a "distinct concept[] from sex." 590 U.S. at 669.

Here, A.J.T. lived and identified as a biological boy for several years. R.3. During that time, the similarly-situated analysis was clear. A.J.T. was similarly situated with biological boys because A.J.T. is a biological boy. When A.J.T. began identifying as a transgender girl, the waters of legal analysis muddied. Where A.J.T. may now claim both her biological status as a boy and her gender identity as a transgender girl, A.J.T. proposes that this Court permit some individuals to double-dip in Title IX protection. While gender identity is fluid, the law is not. And, the *Adams* court acceded to this very logic when holding that sex must mean biological sex. *Adams*, 57 F.4th at 815–16.

Because Congress enacted Title IX through its Spending Clause powers under the United States Constitution, Title IX must comply with the Spending Clause's clear-statement requirement. *Id*. Since 1981, this Court has maintained that when Congress acts under its powers vested by the Spending Clause, all conditions imposed upon funding recipients must be communicated clearly and unambiguously. *Id*. at 815; see *Pennhurst State Sch. and Hosp. v. Halderman*, 451 U.S. 1 (1981). In *Adams*, the court established that gender identity lacks sufficient constancy and clarity to demonstrate the scope of school liability. *Id*. at 815–16; *see also Kansas* v. *Dep't of Educ.*, 2024 WL 3273285, at *10 (noting that the Spending Clause prohibits gender identity discrimination from acting as a contingency of Title IX funding).

Contrary to the Petitioner's assertion, biological sex is the only definition that can ascertain a definite standard of notice. Without crystal clear notice, Congress *cannot* impose funding conditions upon the State, here, the schools. *Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 296 (2006). By the very virtue of identity, an individual's gender status turns on an

individual's choice at a given time and unbeknownst to those around them. This inherently fosters fluidity that fails to be consistent—and thus, fails to be clear.

For instance, students that identify differently than their biological sex may assert Title IX protection under the gender with which they identify. A standard permitting Title IX protection according to gender identity grants some students the privilege of asserting protection in different ways on different days: they may assert protection according to their gender identity one day and their biological sex the next.

On the other hand, students identifying with only their biological sex are left with a protection that is depleted. Under the standard A.J.T. asserts, some students could viably participate on multiple teams for which their gender identity and biological sex aligns. Consequently, students that identify with only their biological sex grasp for what positions are left on the one team for which they fit. Those individuals are then left with different and worse treatment than those similarly situated. Those individuals are then discriminated against on the basis of their sex. In an effort to guise gender fluidity as discrimination, A.J.T. asks this Court to let some pick and choose how they want their Title IX protection, while others cannot.

Without doubt, A.J.T. does not seek an inequitable result in her efforts to participate in school athletics. Yet, still, this case is about the consequences of this legal action. Even if this Court holds that sex may include gender identity, this Court should affirm the Fourteenth Circuit because Title IX cannot serve its equitable purpose when the very safeguard that Title IX aims to protect—the prevention of discrimination on the basis of *sex*—is conditioned upon individual choice and circumstance. Therefore, as both a matter of law and policy, this Court should affirm the Fourteenth Circuit and uphold what Title IX already so plainly provides: sex means biological sex.

II. THIS COURT SHOULD AFFIRM THE FOURTEENTH CIRCUIT'S HOLDING THAT THE ACT DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE OF THE UNITED STATES CONSTITUTION.

The Fourteenth Circuit held that the Act does not violate equal protection for three reasons: (1) the Act classifies and treats all athletes similarly because all athletes are designated according to biological sex; (2) the Act aims to protect biological females in athletes, which constitutes an important government interest and satisfies intermediate scrutiny as such; and (3) to hold otherwise is to deny biological females the very equal protection of the law that this nation's Constitution protects. *See A.J.T.*, 2024 WL 98765, at *6. This Court should affirm the Fourteenth Circuit because the Act treats similarly situated persons the same and designates school sports according to biological sex as to achieve an important government interest in providing equal athletic opportunities for females and protecting safety in competition.

Here, the Act treats all similarly situated persons the same way for two reasons. First, all biological males are restricted to playing sports designated for them. Second, all biological females are restricted to playing sports designated for their own participation. Biological males and females are not the same. Especially in competitive sports, biological males are positioned with inherent physiological advantages to dominate biological females—a patently relevant aspect here. The purpose of the Act is both: to provide equal athletic opportunities for female athletes and to protect the physical safety of female athletes when competing. And, given those inherent differences, it is only by classifying sports based on biological sex that the State can ensure that female athletes have both a fair and safe chance to compete. Therefore, the Act is permissible under the Equal Protection Clause because it both treats similarly situated persons alike and is substantially related to achieving an important government objective.

A. The Act designates separate sports teams on the basis of biological sex, not gender identity.

The "scouting" of an equal protection claim "must begin with the statutory classification itself." *Califano v. Boles*, 443 U.S. 282, 293–94 (1979). North Greene "expressly designates" its sports teams "based on biological sex at birth[.]" North Greene Code § 22-3-16(a). The "male *sex*," regardless of how that male identifies in their *gender*, are precluded from participation on "[a]thletic teams or [in] sports designated for females, women, or girls[.]" *Id.* at § -16(b) (emphasis added); *see also Id.* at § -15(a)(2) (defining "female", "women," or "girls" to "mean[] an individual whose biological sex determined at birth is female"). Moreover, the Act includes an express provision that categorizes "[g]ender identity [as] 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." *Id.* at § -16(c). In fact, the entire statutory scheme reflects the legislature's goal of designating its sports teams on the basis of biological sex and not gender identity—the law itself is entitled "Limiting participation in sports events to the biological sex of the athlete at birth." N.G. Code § 22-3-4 *et seq.*; *see also Dubin v. United States*, 599 U.S. 110, 121 (2023) (holding that "when interpreting a statute, a title of the statute is especially valuable where it reinforces what the text's nouns and verbs independently suggest"). North Greene went to great lengths to enumerate that the Act designates sports teams on the basis of biological sex alone.

A consistent understanding of "sex" to include only the binary of biological males and biological females is a cornerstone of this Court's equal protection jurisprudence and incorporated into the Act. To move away from this consistent understanding by equating "gender identity" with "sex" would nullify Justice Ginsburg's charge "to appreciate" and "celebrat[e]" the "'[i]nherent differences' between men and women." *VMI*, 518 U.S. at 533; *see A.J.T.*, 2024 WL 98765, at *3 ("The [Act] states that '[t]here are inherent differences between biological males and biological

females, and that these differences are cause for celebration.'"). These inherent differences between the "two sexes," *VMI*, 518 U.S. at 533, are at the core of "our most basic biological differences." *See Tuan Anh Nguyen v. I.N.S.*, 533 U.S. 53, 73 (2001) (describing "[t]he difference between men and women in relation to the birth process [as] a real one"). The distinctions between biological sex are so important to this Court that it is a difficult and perhaps fruitless endeavor to find in the law where this Court has assigned adjectives like "not fungible," *Ballard v. U.S.*, 329 U.S. 187, 193 (1946) (providing reasoning for the adoption of a system of federal jury selection that included women where eligible under local law), "immutable," *Frontiero*, 411 U.S. at 686, and "enduring," *VMI*, 518 U.S. at 533, to a statutory classification.

The Act's designation on the basis of sex is no different; it merely falls in line with this Court's precedent on promoting the biological differences between men and women. Therefore, the Act is not facially discriminatory, but facially neutral. A law violates equal protection on its face when it "explicitly distinguish[es] between individuals on [protected] grounds." *Shaw v. Reno*, 509 U.S. 630, 642 (1993). While the Petitioner suggests otherwise, "[t]he Act does not facially discriminate based on transgender status[,]" but instead "simply places athletes on sports teams based on their biological sex[,]" and "does not expressly treat transgender individuals differently." *A.J.T.*, 2024 WL 98765, at *8; *see* N.G. Code § 22-3-16(a) ("[A]thletic teams or sports . . . shall be expressly designated . . . based on biological sex at birth[.]"). Classifying on the basis of biological sex is not discriminating on the basis of transgender status. *See Bostock*, 590 U.S. at 669 (agreeing that "transgender status" is a "distinct concept[] from sex"). Furthermore, just because the Act props up "[g]ender identity [as] separate and distinct from biological sex," that does not mean that the Act "serve[s] to treat transgender individuals differently" when it comes to

competitive athletics. *A.J.T.*, 2024 WL 98765, at *8; *B.P.J.*, 98 F.4th at 570 (Agee, J., dissenting) (same). This is because the Act treats biological males and biological females the same.

The dissent below argues "that the purpose of the Act was to *categorically ban* transgender women and girls from public school sports teams that correspond with their gender identity." *A.J.T.*, 2024 WL 98765, at *13 (Knotts, J., dissenting) (emphasis added). While the dissent attempts to use *Personal Administrator of Massachusetts v. Feeney* for the proposition that North Greene "'selected . . . a particular course of action [(*i.e.* the Act)] at least in part "because of" . . . its adverse effects upon an identifiable group": transgender women and girls, *Id.* (quoting *Pers. Adm'r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979)), this Court also said in that case that laws may "affect certain groups unevenly, even though the law itself *treats them* no differently[.]" *Feeney*, 442 U.S. at 279 (emphasis added). To the extent that the Petitioner believes in such a disparity, at most, Petitioner's claims amount to disparate impact, which is not a cause of action under the Equal Protection Clause. *See Ricci*, 557 U.S. at 627 (Ginsburg, J. dissenting).

Petitioner seeks to build "an invidious [facially] discriminatory purpose" into the Act, in order to use "gender identity" as a wrecking ball to the Act's classification on the basis of sex under the Equal Protection Clause. *Washington v. Davis*, 426 U.S. 229, 242 (1976). Such construction and demolition will ruin this Court's equal protection jurisprudence. This Court must not allow it.

B. Protecting biological sex in athletics is an important government interest.

The Equal Protection Clause instructs that all persons within a state's jurisdiction shall be afforded "equal protection of the laws." U.S. CONST. amend. XIV, § 1. This Court has interpreted the Clause to require that states treat all persons similarly situated in all relevant aspects the same. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985) ("*Cleburne*"). Even so, courts

have long recognized that the Fourteenth Amendment permits the legislature to not just classify people, but impact people differently under some circumstances. *Barbier v. Connolly*, 113 U.S. 27 (1885) (public laundries and wash-houses); *Reed v. Reed*, 404 U.S. 71, 75 (1971) (estate administration); *Tuah Anh Nguyen*, 533 U.S. at 56 (citizenship).

When a statute prescribes a sex-based classification, this Court has applied a higher level of intermediate scrutiny—meaning simply that the classification must be substantially related to achieving an important government interest. *VMI*, 518 U.S. at 533; *Adams*, 57 F.4th at 801. For the government objective to be important, it cannot rely solely on "overbroad generalizations about the different talents, capacities, or preferences of males and females." *VMI*, 518 U.S. at 533. However, this Court will consider differences between the sexes because some classifications "realistically reflect the fact that the sexes are not similarly situated in certain circumstances." *Michael M. v. Sonoma County Superior Court*, 450 U.S. 464, 469 (1981). For a classification to be substantially related to the important objective, there must be a sufficient correlation between the statute and the justification for its means. *Danskine v. Mia. Dade Fire Dep't*, 253 F.3d 1288, 1299 (11th Cir. 2001). Even so, it is not necessary that a statute render successful results with each application. *Tuah Anh Nguyen*, 533 U.S. at 70.

Adopting the Petitioner's claim that transgender girls should be permitted to play on girls' teams because their gender identity is a "girl" would destroy the purpose of the statute and the interests it protects. A person' gender identity is their personal "internal sense of gender." DISCRIMINATION, BLACK'S LAW DICTIONARY (12th ed. 2024). Most commonly, a person's gender identity is the same as their biological sex. *A.J.T.*, 2024 WL 98765, at *9. However, sometimes, a person identifies with a gender that is not their biological sex and, as a result, they are transgender. But, the person's gender identity does not determine their physical attributes that correlate to

athletic performance. Rather, a person's strength, speed, height, and weight are determined by their biological sex. *Adams*, 57 F.4th 791 at 820. Because of these differences, the legislature is plainly trying to protect the integrity of women's sports by "[l]imiting participation in sports events to the biological sex of the athlete at birth." N.G. Code § 22-3-4.

So too, courts recognize biological males' inherent physiological advantages over biological females, specifically after puberty due to testosterone levels. *Adams*, 57 F.4th 791 at 820 (citing evidence that post-pubescent males jump (25%) higher, throw (25%) further, run (11%) faster, and accelerate (20%) faster than females on average); *see also* Gregory A. Brown, *Concerning Male Physiological and Performance Advantages in Athletic Competition and The Effect of Testosterone Suppression on Male Athletic Advantage*, (Dec. 14, 2021), https://dm1l19z832j5m.cloudfront.net/public/202201/Gregory%20Brown%20Male%20Athletic%20Advantages%20White%20Paper.pdf (concluding that biological males have an athletic advantage over equally aged and trained women in almost all athletic contests, that biological male physiology is the basis for that performance advantage, and that the administration of cross-sex hormones after male puberty does not eliminate this performance advantage in athletic contests). Regardless of a person's gender identity, a biological male undergoes puberty and experiences an increase in testosterone as a result. Even when transgender females seek hormone therapies to lower testosterone levels, scientific studies indicate that the advantages of muscle mass and strength remain. *Id*. That physiological change creates an advantage for biological males in sports. *Id*. While some females can outperform males in athletics, on average biological males outperform biological females. This is more than an overbroad generalization but is a classification that realistically reflects that the sexes do not perform the same athletically due to physical differences. *A.J.T.*, 2024 WL 98765, at *9. Thus, biological sex is inherently intertwined with sports. Not only

do these physical differences take opportunities away from biological females but they also create safety risks in contact sports–the very interests that the government sought to protect through the "Save Women's Sports Act." *Id*. at *4; N.G Code § 22-3-16.

To the extent that the Petitioner argues transgender females can go through hormone therapy to mitigate any athletic advantage they have over biological females, they are assuming both (1) that the therapy would create a level playing field and (2) that all transgender females are willing to undergo the hormone therapy. This assumption is highly speculative and undermined by the fact the Petitioner has not received any hormone treatment. *Id*. at *3. Further, unless the Petitioner and other transgender females start the treatment prior to puberty, they will experience physiological changes that give them an unfair advantage in sports. *See B.P.J.*, 98 F.4th at 570 (finding that a transgender female displaced biological females from sports even *after* undergoing hormone treatment) (Agee, J., dissenting) (emphasis added). Here, the Petitioner is between the normal ages to start puberty and has neglected any kind of puberty-delaying treatment making her even more likely to displace biological females than the *B.P.J.* plaintiff. *A.J.T.*, 2024 WL 98765, at *4. Moreover, even if all transgenders do want to receive hormone treatment, they could have difficulty accessing the treatment depending on age, financial, and geographical factors. *Id* at *10. North Greene does not require a transgender person to seek hormone therapy; instead, they may transition only socially, medically, or both. *Id*. at *10.

The generally applied rule is that the Equal Protection Clause is a safeguard to ensure that everyone who can be classified similarly is treated equally. *Cleburne*, 473 U.S. at 439. Pursuant to this Court's precedent, similarly situated persons are those who are alike "in all relevant aspects" of the law. *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992). A person most similarly situated in all relevant athletic aspects to a transgender female, such as the Petitioner, is a biological male. Gender

identity is wholly unrelated to an individual's athletic ability or how situated they are to play sports. *Adams*, 57 F.4th 791 at 819. Further, the Act cannot be construed to discriminate against a person's gender status because, based on its classification system, all athletes are required to compete based on their biological sex—regardless of gender status. N.G. Code § 22-3-16(b). In a plain application of the Act's text, transgender and non-transgender athletes are treated the same. Any reference in the Act to gender identity serves simply to further assist in avoiding any confusion between two often mistakenly interchanged terms. N.G. Code § 22-3-16(d) (providing "gender identity is separate and distinct from biological sex.")

Simply put, the Petitioner fails to acknowledge that identity does not impact athleticism. Biology, on the other hand, *is* determinative. Given how biological differences can affect competitive advantages and disadvantages, ensuring that North Greene's females have safe and equal opportunities in sports requires that they not compete against biological males. N.G. Code § 22-3-4. North Greene goes so far as to codify that "gender identity serve[s] no legitimate relationship to the State of North Greene's interest in promoting equal athletic opportunities for the female sex." N.G. Code § 22-3-16(c). Therefore, North Greene's "Save Women's Sports Act" more than sufficiently satisfies this Court's review under intermediate scrutiny.

Should this Court accept Petitioner's argument to equate "gender identity" with "sex," the Act would then fail to satisfy intermediate scrutiny because gender identity is not a quasi-suspect class. Nor should it become one. "[I]ntermediate scrutiny applies to laws that discriminate on the basis of a quasi-suspect classification, like sex." *A.J.T.*, 2024 WL 98765, at *6. This Court is reluctant to recognize new quasi-suspect classes, having only recognized gender and illegitimacy in the last forty years. *See Cleburne*, 473 U.S. at 441 (declining also to recognize age and mental

disability as quasi-suspect classes). Accordingly, the "bar for recognizing a new suspect class is a high one." *L.W. ex rel. Williams v. Skrmetti*, 83 F.4th 460, 486 (6th Cir. 2023), *cert. granted sub nom. United States v. Skrmetti*, 144 S. Ct. 2679 (Mem) (2024). To establish gender identity as a quasi-suspect class, A.J.T. would have to prove (1) "obvious, immutable, or distinguishing characteristics that define [transgender people] as a discrete group, *Bowen v. Gilliard*, 483 U.S. 587, 602 (1987), that; (2) individuals that identify as transgender are subject to "political powerlessness," *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973), and; (3) "that animus toward transgender individuals as a class drives [the] law," *Skrmetti*, 83 F.4th at 487. Petitioner would be unable to satisfy these requirements.

As previously mentioned, this Court has determined that "sex," not gender identity, is "immutable." *Frontiero*, 411 U.S. at 686. Petitioner has made no claims regarding the political status of those like A.J.T., but "[c]oncerns about a 'political[ly] powerless[]' group . . . do not supply a reason for heightened review." *Skrmetti*, 83 F.4th at 487. Finally, any discrimination that the Petitioner submits is a result of the Act is not born of animus, but of this Court's recognition of the "inherent [biological] differences" between males and females. *VMI*, 518 U.S. at 533; *see A.J.T.*, 2024 WL 98765, at *3 ("The [Act] states that '[t]here are inherent differences between biological males and biological females, and that these differences are cause for celebration.'"); *Adams*, 57 F.4th at 819 (Lagoa, J., specially concurring) ("[T]here are inherent differences between those born male and those born female[.]").

Notwithstanding the rule-based difficulty in establishing a new quasi-suspect class, the Petitioner is also on the wrong side of precedent. Four circuits—the Sixth, Ninth, Tenth, and Eleventh—have ruled against recognizing gender identity as a quasi-suspect class. *Skrmetti*, 73 F.4th at 419 ("[N]either the Supreme Court nor this court has recognized transgender status as a

quasi-suspect class."); *Karnoski v. Trump*, 926 F.3d 1180, 1200–01 (9th Cir. 2019) (concluding that "a standard of review that is more than rational basis but less than strict scrutiny" should apply to a policy precluding transgender individuals from military service, but declining to formally recognize transgender individuals as a quasi-suspect class); *Brown v. Zavaras*, 63 F.3d 967, 971 (10th Cir. 1995) (declining to reconsider that "[t]he Ninth Circuit has held that transsexuals are not a protected class," and therefore ruling in conjunction with the Ninth Circuit); *Adams*, 57 F.4th at 803 n.5 (expressing "grave 'doubt' that transgender persons constitute a quasi-suspect class) (citation omitted)). Again, *Grimm* stands alone as an outlier case and should not be considered by this Court as dispositive. *Grimm*, 972 F.3d at 611 ("[I]t is apparent that transgender persons constitute a quasi-suspect class."). The movement to adopt gender identity as a quasi-suspect class is a wet wick, and this Court should not wait for that wick to dry, in the hopes of emitting a spark, by entertaining arguments contrary to widely-accepted precedent.

C. The Court cannot replace "sex" with "gender identity.

"While sex and gender are related, they are not the same." *A.J.T.*, 2024 WL 98765, at *9. This Court must reject the idea that "[t]he Act's use of 'biological sex' functions as a form of proxy discrimination." *Id.* at *14 (Knotts, J., dissenting). If Petitioner wants to receive the benefits of equal protection by asking this Court to associate "gender identity" with "sex" in athletics, then this Court should require Petitioner to play by the rules. Gender identity would have to "represent[] a legitimate, accurate proxy," *Craig v. Boren*, 429 U.S. 190, 204 (1976), for "the important government interests of providing equal athletic opportunities for females and protecting the physical safety of female athletes when competing." *A.J.T.*, 2024 WL 98765, at *10. The Fourteenth Circuit did not think that gender identity "legitimate[ly] [or] accurate[ly]" represented sex, and neither should this Court. *Craig*, 429 U.S. at 204; *A.J.T.*, 2024 WL 98765, at *10 (finding

the Act's "definition of 'girl' as being based on 'biological sex' is substantially related to the important government interests" of equal opportunity and physical safety).

The dissent below argues that "[t]ransgender women have not and could not displace [biological] women in athletics to a *substantial* extent." *A.J.T.*, 2024 WL 98765, at *14 (Knotts, J., dissenting). But in reality, and "[a]t the end of the day, a transgender girl is biologically male," and "biological males outperform females athletically." *Id.* at *10. Two contemporary examples illustrate the effects of ignoring this reality. In West Virginia, a 13-year-old transgender girl "dominate[s] track meets," despite taking puberty blockers, by "consistently plac[ing] in the top fifteen participants" and "earn[ing] a spot at the conference championship in both shot put and discuss." *B.P.J.*, 98 F.4th at 566 (Agee, J., dissenting). Even more concerning, in the recent Paris Olympics, a transgender female competing against a biological female in women's boxing "dislodged [the biological female's] chinstrap . . . smashed . . . her chin and bloodied her shorts" after one punch and only forty-six seconds into the fight. Sean Ingle, *Angela Carini abandons Olympic fight after 46 seconds against Imane Khelif*, The Guardian (Aug. 1, 2024, 7:22 AM), https://www.theguardian.com/sport/article/2024/aug/01/angela-carini-abandons-fight-after-46-seconds-against-imane-khelif. It is hard to conclude that winning a boxing match in forty-six seconds with one punch is anything other than "outperform[ance]." *A.J.T.*, 2024 WL 98765, at *9–10. As discussed above, A.J.T. is not similarly situated to biological females. Even more so, eleven-year-old A.J.T. is not taking puberty blockers, and will likely begin puberty soon, which will further enhance A.J.T.'s biological advantages in athletics. R.3; *A.J.T.*, 2024 WL 98765, at *7 ("It is undisputed that after puberty biological males have physiological advantages over biological females that significantly impact athletic performance."). "If males are permitted to displace females on the school volleyball [or cross-country] team[s], even to the extent of one player like

[A.J.T.], the goal of equal protection by females in interscholastic athletics is set back, not advanced." *Clark v. Ariz. Interscholastic Ass'n*, 886 F.2d 1191, 1193 (9th Cir. 1989). Furthermore, for this Court to prioritize gender identity over biological sex is to move beyond the displacement of biological females and provide a premature knockout blow to women's sports—allowing an influx of biological men into female athletic contexts. Carrying this to its logical end, to allow biological men to participate in women's sports on the basis of gender identity will move this Court's equal protection jurisprudence one step closer to effectively sanctioning domestic violence.

To rule for Petitioner would lead to a parade of horribles. For example, conflating gender identity with biological sex would allow a transgender athlete, who is born a male, to try out and compete for a team that consists of biological females. The inherent advantages these athletes have would leave parents across the nation with the impossible task of explaining to their daughters why someone who was born a male made the girls team over them or why they lose despite being the best biological female. More widespread is the concerning effect on the integrity of the sports themselves. Biological females would be left with fewer opportunities to feel the joy of winning championships, earning scholarships, or advancing to higher levels of competition. This would lead to issues concerning the sustainability of female sports. The sports would lose appeal to the public due to a perception of unfair competition, and resultantly, a dramatic loss of entertainment value. This Court should not schedule a scrimmage between gender identity and equal protection. It would be the end of women's sports as we know it.

CONCLUSION

The "Save Women's Sports Act" not only complies with Title IX but compliments it. By design, Title IX is the shield protecting equal opportunity among the sexes. The Petitioner urges that this Court disregard any consideration for biological sex to, rather, enable infinite choice as to

how and when Title IX applies. To the contrary, consideration of the biological sexes must occur to carry out Congress' clear purpose for Title IX. The Act does no more than execute what both Congress and courts have confirmed as its crux: the pursuit to protect biological women. *See Adams*, 57 F.4th at 812.

As to promote equal protection of the biological sexes, the Act also reasonably designates participation to achieve both its own and Title IX's interest. Equal protection of the law is afforded only by reaffirming that sex means biological sex. Insofar as the Act classifies all athletes according to their biological sex, it treats similarly situated individuals the same. *See Id.* at 820. Further, the Act does so for the important State interest of protecting biological women in the face of those "inherent [biological] differences" that this Court has recognized between males and females. *VMI*, 518 U.S. at 533; *see A.J.T.*, 2024 WL 98765, at *3 ("The [Act] states that '[t]here are inherent differences between biological males and biological females, and that these differences are cause for celebration.'"). As such, intermediate scrutiny is satisfied. *See VMI*, 518 U.S. at 533.

To hold otherwise is to devastate years of Title IX and equal protection jurisprudence, and consequently, to rewind the clock on all efforts to effectuate women's equal opportunity under the law. Therefore, this Court should affirm the judgment of the Court of Appeals for the Fourteenth Circuit and hold that the "Save Women's Sports Act" is permissible under both Title IX and the Equal Protection Clause of the United States Constitution.

Team 32
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