Docket 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.*,

Respondents.

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

BRIEF FOR RESPONDENTS

Attorneys for Respondents
September 13, 2024

Team 37

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STATEMENT OF THE CASE

Nature of the case. This case involves a contention by a biological male, A.J.T., to the lawfulness of an act codified by the State of North Greene. (R. at 3–4.) The issue on appeal centers around whether the "Save Women's Sports Act" (the Act) comports with Title IX and the Equal Protection Clause of the Fourteenth Amendment to the Constitution (R. at 3.)

Proceedings in the trial court. A.J.T., by and through the child's mother, filed suit against the State of North Greene Board of Education and State Superintendent Floyd Lawson, and later amended the complaint, naming the State and Attorney General Barney Fife as additional defendants. (R. at 4–5.) A.J.T., seeking declaratory judgment, contended that the North Greene "Save Women's Sports Act" violated Title IX and the Equal Protection Clause of the Fourteenth Amendment. (R. at 5.)

The judgment of the trial court. In response, the North Greene Board of Education and Superintendent Lawson filed a motion for summary judgment, opposing A.J.T.'s motion for a permanent injunction. (R. at 5.) The District Court granted this motion for summary judgment. (R. at 5.)

Proceedings in the Court of Appeals. A.J.T. appealed the District Court's decision that granted the Defendants' motion for summary judgment to the U.S. Court of Appeals for the Fourteenth Circuit. (R. at 3.)

The opinion and judgment of the panel. The appellate panel included Circuit Judges Griffith, Knotts, and Howard, and Judge Howard authored the opinion. (R. at 2.) The U.S. Court of Appeals for the Fourteenth Circuit affirmed the District Court's judgment, finding that the State of North Greene's "Save Women's Sports Act" and the Board's enforcement of the Act comported with Title IX and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution (R. at 2.)

QUESTIONS PRESENTED

I. Under Title IX, does the State of North Greene's "Save Women's Sports Act"—enacted to ensure equal competition in women's sports—comport with federal law when Title IX only considers biological sex, equal opportunities to participate in school sports exist, and congressional authority allows states to implement sex-separate sports involving competitive skills or physical contact?

II. Under the Equal Protection Clause, does the same act comport with the Fourteenth Amendment when the act treats all athletes equally, and the State has an important governmental interest in providing equal athletic opportunities and safeguarding the physical wellness of female athletes?

STATEMENT OF FACTS

A.J.T., a biological male, is a transgender girl, who is wrongly contending the constitutionally of the State of North Greene's "Save Women's Sports Act" (the Act). (R. at 3.) On January 15, 2024, the lower appellate court held that the Act and the enforcement of said Act complied with Title IX and the Equal Protection Clause. (R. at 3.)

A.J.T., a biological male. The Plaintiff, A.J.T., is an eleven-year-old, biological male. (R. at 3.) A.J.T. began identifying as a girl in the third grade and participated on her elementary school's all-girl cheerleading team with no reported issues. (R. at 3.) In 2022, A.J.T. received a diagnosis of gender dysphoria after living as a girl in both public and private. (R. at 3.) Moreover, A.J.T. considered the commencement of puberty delaying treatments; however, A.J.T. has neglected to begin puberty-delaying treatment, although biological males begin puberty between the ages of nine and fourteen-years-old on average. (R. at 3.) Further, A.J.T. wishes to be a member of the girls' volleyball and cross-country teams, but a recently enacted statute prevents biological males from joining all-girl teams. (R. at 3.)

Save Women's Sports Act. Both Houses of the North Greene legislature approved Senate Bill 2750, known as the "Save Women's Sports Act" in April 2023. (R. at 3.) North Greene codified the Bill as North Greene Code § 22-3-4, entitling it "Limiting participation in sports events to the biological sex of the athlete at birth." (R. at 3.) The Act's objective is to "provide equal athletic opportunities for female athletes and to protect the physical safety of female athletes when competing." (R. at 4.)

The Act applies to an individual's biological sex. The Act provides several definitions in § 22-3-15(a). First, "biological sex" is "an individual's physical form as a male or female based solely on the individual's reproductive biology and genetics at birth." (R. at 4.) Second, "female"

refers to "an individual whose biological sex determined at birth is female." (R. at 4.) Third, "male" refers to "an individual whose biological sex determined at birth is male." (R. at 4.) Considering these definitions, the statute requires "[i]nterscholastic, intercollegiate, intramural, or club athletic teams or sports…sponsored by any public secondary school" to be explicitly "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); (R. at 4.) Further, the statute states that members of the male sex may not participate on female sports teams based upon competitive skill or when the sport involves physical contact. *Id.* at § 22-3-16(b); (R. at 4.) Moreover, the statute plainly states that the definition of "biological sex" is unrelated to gender identity. (R. at 4.) In fact, the statute details that "[g]ender identity is separate and distinct from biological sex," explaining that one's biological sex fails to determine or indicate one's gender identity. (R. at 4.) Thus, as stated in N.G. Code § 22-3-16(c), classifications based on gender identity fail to serve any "legitimate relationship to the State of North Greene's interest in promoting equal opportunities for the female sex." (R. at 4.)

SUMMARY OF THE ARGUMENT

North Greene's "Save Women's Sports Act" is valid because the Act fails to exclude transgender athletes from participating in athletics and the legislature's limitation on the definition of "women" and "girls" based on biological sex is substantially related to the important government objectives of promoting equal opportunities for female athletes and protecting the physical safety. Indeed, "sex" in a Title IX context refers to one's biological sex rather than their gender identity; thus, because transgender girls are biologically male, they fail to be similarly situated to biological girls. Additionally, the Act still allows transgender girls to play on coed or boys' teams, offering equal opportunities for each sex pursuant to Title IX. Moreover, Congress

authorizes North Greene to implement laws providing sex-separate sports teams when a competitive skill is required, or the sport involves physical contact.

Further, North Greene's act separating boys' and girls' teams based on biological sex comports with the Equal Protection Clause because transgender girls and biological girls are not similar in all respects; therefore, the Constitution allows the Act to treat transgender girls differently from biological girls. Additionally, the Act treats transgender athletes equally because the Act merely places athletes on sports teams based upon their biological sex. Lastly, even though the classification of the Act is on the basis of sex, which is subject to intermediate scrutiny, the State meets its burden of proof because the law is substantially related to the important governmental objectives of providing equal athletic opportunities for females and protecting the physical safety of female athletes. Therefore, this Court should affirm the Fourteenth Circuit's decision that the Act is in accordance with Title IX and the Equal Protection Clause.

STANDARD OF REVIEW

Summary judgment is proper when "no genuine dispute as to any material fact" exists and "the movant is entitled to judgment as a matter of law." *Libertarian Party of Virginia v. Judd*, 718 F.3d 308, 313 (4th Cir. 2013) (quoting Fed. R. Civ. P. 56(a)). Specifically, if there is potential for a reasonable jury to return a verdict for the nonmoving party, a dispute is genuine. *Id.* Moreover, if a fact may affect the result of the suit under the governing law, the fact is material. *Id.* Additionally, the law requires the court to analyze the facts and all admissible inferences arising from the dispute "in the light most favorable to the nonmoving party." *Id.* at 312. Further, a lower court's "grant or denial of summary judgment is reviewed *de novo*." *B&G Enters., Ltd. V. United States*, 220 F.3d 1318, 1322 (11th Cir. 1994); (R. at 5.) Lastly, when assessing a lower court's grant or denial of a motion for summary judgment, the court confers no deference to the lower

court's decision, applying the same standard as the district court. *Whatley v. CNA Ins. Co.*, 189 F.3d 1310, 1313 (11th Cir. 1999).

ARGUMENT

The Court should affirm the decision of the U.S. Court of Appeals for the Fourteenth Circuit because under Title IX, North Greene's Save Women's Sports Act treats transgender athletes the same as biological male and female athletes. In effect, "sex" used in Title IX refers to one's biological sex, not gender identity, which precedent supports. Thus, transgender girls, as biological males, fail to be similarly situated to biological girls. Additionally, the Act allows transgender athletes to play on teams of their biological sex, offering equal opportunities pursuant to Title IX. Moreover, Congress authorizes North Greene to implement laws for sex-separate sports teams when a competitive skill is required, or the sport involves physical contact. Further, North Greene's Act is lawful under the Equal Protection Clause because transgender girls and biological girls are not similar in all respects. Additionally, the Act simply places athletes on sports teams based on their biological sex rather than facially discriminating against transgender athletes. Also, although the Act classifies by biological sex, the State satisfies its burden of proof because the law is substantially related to the important governmental interests of promoting equal athletic opportunities for females and protecting the physical safety of female athletes.

I. This Court should affirm the Fourteenth Circuit's judgment that North Greene's "Save Women's Sports Act" comports with Title IX because Title IX is inapplicable to gender identity, other opportunities to participate in school sports exist, and states may pass laws implementing sex-separate sports that involve competitive skills or physical contact.

North Greene's Act authorizing sex-separate sports teams based on biological sex determined at birth is valid under Title IX because the Act promotes gender equality by providing equal athletic opportunities for both biological sexes.

Title IX, recognizing the "'enduring' differences 'between men and women,'" provides females the pathway to equal educational and athletic opportunities. *Texas v. United States*, No. 2:24-CV-86-Z, 2024 WL 3405342, *1–2 (N.D. Tex. July 11, 2024) (quoting *United States v. Virginia*, 518 U.S. 515, 533 (1996)). Specifically, the statute stipulates that "no person … shall on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a). The meaning of discrimination in Title IX refers to "treating [an] individual worse than others who are similarly situated." *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 59 (2006)). Additionally, a Title IX claim requires the plaintiff to show: (1) an educational program excluded the plaintiff on the basis of sex, (2) the educational institution accepted federal financial assistance at the time, and (3) indecorous discrimination harmed the plaintiff. *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 616 (4th Cir. 2020), as amended (Aug. 28, 2020).

A. North Greene's law is in accordance with Title IX because Title IX governs discrimination based on biological sex, and transgender girls still receive the opportunity to participate in school sports.

Title IX prevents discrimination on the basis of sex that treats an "individual worse than others who are similarly situated." *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 59 (2006). Moreover, although Title IX forbids discrimination on the basis of sex, it allows sex-separate activities under certain circumstances. *Texas*, 2024 WL 3405342 at *7. For instance, biological girls are inherently different from transgender females who are born as males. *See Adams by & through Kasper v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791, 819 (11th Cir. 2022). Included in these inherent differences between biological males and females are the physiological advantages that biological males possess in many sports. *Id.* For instance, regarding performance, studies show "[biological] differences allow post-pubescent males to 'jump (25%) higher than females, throw (25%) further than females, run (11%) faster than females, and accelerate (20%)

faster than females' on average." *Id.* at 820. Therefore, a school that provides equal opportunities to both biological sexes is authorized to institute sex-separate school sports teams. *Id.*

1. The Act treats A.J.T. equally because transgender girls are biologically male, and Title IX's sex-separation in sports refers to biological sex, not gender identity.

Adhering to textualism, the term "sex" refers to biological sex and not one's gender identity. *See Texas*, 2024 WL 3405342 at *6; *see Fronterio v. Richardson*, 411 U.S. 677, 686 (1973) (Brennan, J.) (plurality op.) ("[Sex] is an immutable characteristic determined solely at birth."). Further, considering the historical significance of the term "sex" in 1972—the year of Title IX's enactment—the word "bore no logical relationship to notions of 'gender identity.'" *Texas*, 2024 WL 3405342 at *6; *see Adams*, 57 F.4th 791 at 812. ("[W]hen Congress prohibited discrimination on the basis of "sex" in education, it meant biological sex, i.e., discrimination between males and females."). Moreover, the court in *Adams* reasoned that because transgender persons are also protected from discrimination on the basis of sex, including gender identity with biological sex would result in a "dual protection" for transgender individuals based on biological sex and gender identity. *Adams*, 57 F.4th at 814. This result defeats the purpose of Title IX, which is to provide equal opportunities. *Id.* Additionally, the court in *Texas v. United States* concluded the purpose of Title IX is to protect female opportunities in education. 2024 WL 3405342 at *7. Therefore, considering the statutory and historical context of Title IX, it is evident that "sex" refers to biological sex rather than gender identity. *Id.*

Here, the Act meets the standards of Title IX because it refers to biological sex. *See Texas*, 2024 WL 3405342 at *7; (R. at 3.) Foremost, the Act, codified in the North Greene Code § 22-3-4, is entitled "Limiting participation in sports events to the biological sex of the athlete at birth." (R. at 3.) Further, similar to the meaning of "sex" in Title IX, the Act specifies that the use of

"biological sex" is unrelated to gender identity, stating that "an individual's biological sex is not determinative or indicative of the individual's gender identity." *Texas*, 2024 WL 3405342 at *6; (R. at 4.) Thus, the Act satisfies Title IX because "sex" in Title IX bears no relationship to gender identity. *Id.* Additionally, A.J.T. argues transgender girls are similarly situated to biological girls. (R. at 11.) However, this argument fails because transgender girls are similarly situated to biological boys rather than biological girls because Title IX clearly refers to biological sex and not gender identity. *Texas*, 2024 WL 3405342 at *6; (R. at 11.)

Therefore, this Court should affirm the lower appellate court's judgment because as the court correctly stated, "there is no serious debate that Title IX's endorsement of sex separation in sports refers to biological sex." (R. at 11–12.)

2. The Act does not discriminate against transgender girls, who are similarly situated to biological boys, because they are not excluded from school sports and may try out for the boys' or coed teams.

Title IX disallows discrimination "on the basis of sex" from sport teams organized by a recipient of federal funds. *Williams v. Sch. Dist. of Bethlehem, Pa.*, 998 F.2d 168, 171 (3d Cir. 1993); 34 C.F.R. § 106.41(a). In fact, Title IX's provisions allows a recipient of federal funds the freedom to control its own athletic programs, "so long as the goal of equal opportunity is met." *Williams*, 998 F.2d at 171.

Here, the Act is in accordance with Title IX because the "goal of equal opportunity" is satisfied by A.J.T.'s ability to participate on a boys' or coed sports team. *Williams*, 998 F.2d at 171; (R. at 11.) To expand, A.J.T. asserts that the Act completely prevents transgender girls from participation on school sports teams. (R. at 11.) Yet, contrary to A.J.T.'s assertion, the Act permits transgender girls to try out for the boys' or coed team, providing equal opportunities for both sexes in accordance with Title IX. § 106.41(b)–(c); (R. at 11.) Therefore, although the Act designates which sports teams A.J.T. may play on, the Act should be considered as fair because it treats all

biological males and females the same way. (R. at 11.) Further, A.J.T.'s elementary school allowed a biological male to be a member of the all-girl cheerleading team. (R. at 3.) However, the Act applies to "public secondary school[s and] state institution[s] of higher education." (R. at 4.) Thus, the enforcement of the Act was not required at A.J.T.'s elementary school, but now that A.J.T. is a seventh grader at a secondary school, the Act is enforceable and prevents A.J.T. from participating on an all-girls' team. (R. at 3–4.)

B. Both Title IX and the Save Women's Sports Act promote the goal of increasing opportunities for female athletes.

Title IX authorizes sex-separate sports on the condition that equal athletic opportunities are available for males and females. *See* § 106.41(b)–(c). However, while the regulation "applies equally to [girls and boys], it cannot be ignored that the motivation for the promulgation of the regulation" is in furtherance of increasing athletic opportunities for females. *Williams*, 998 F.2d at 175. Further, Title IX supports sex-separate sports when the selection for the team is based on a competitive skill, or the activity involves a contact sport. § 106.41(b).

Moreover, courts recognize that substantial differences exist between boys and girls, justifying biological males being excluded from girls' sports. *Clark, By & Through Clark v. Arizona Interscholastic Ass'n*, 695 F.2d 1126, 1131 (9th Cir. 1982). For instance, in *Clark*, the plaintiffs were males who wished to play on a girls' interscholastic volleyball team. *Id.* at 1127. There, the court concluded that males competing for positions on a girls' volleyball team would result in the displacement of females on the team because of average physiological differences between the two sexes. *Id.* Further, the court in *Cape v. Tennessee Secondary School Athletic Association* noted that if sex-separate sports were not available, "the great bulk of females would quickly be eliminated from participation and denied any meaningful opportunity for athletic involvement." 563 F.2d 793, 765 (6th Cir. 1977).

In the present case, Title IX mirrors the Act by authorizing sex-separate sports so long as there are equal athletic opportunities for both sexes. *See* § 106.41(b)–(c). Specifically, the Act is valid because A.J.T.'s school offers female, male, and coed sports teams, providing equal athletic opportunities for all students. *Id.* Thus, rather than violating the purposes of Title IX, the Act furthers them. § 106.41(b)–(c); (R. at 4, 11.) Additionally, similar to Title IX, the motivation for North Greene passing the Act was in promotion of providing equal opportunities for girls and protecting girls' physical safety in sports. *Clark*, 695 F.2d at 1131; (R. at 11.) Thus, the Act furthers the purposes of Title IX rather than interfering.

In addition, A.J.T. is barred from participating on the girls' volleyball team and cross country team because each sport is based upon a competitive skill that a biological male possesses a greater advantage in. *See* § 106.41(b); (R. at 7, 11.) For instance, volleyball is a sport that involves essential skills of "serving, passing, setting, digging, hitting and blocking." *Clark*, 695 F.2d at 1131. Moreover, cross country, a sport of endurance, requires a high VO2 max and a great anaerobic capacity, which biological males have greater quantities of than biological females. *Adams*, 57 F.4th at 819 (quoting Benjamin D. Levine, et al., *The Role of Testosterone in Athletic Performance*, Duke Ctr. for Sports L. & Pol'y (Jan. 2029)). Additionally, the lower appellate court noted an incident in which a biological male spiked a ball in the face of a biological female volleyball player, causing her to suffer severe injuries. (R. at 10.) This incident shows that volleyball involves contact that could lead one to become injured from the strength of another. *Id.* Therefore, because the Act furthers the athletic opportunities available to females in accordance with Title IX, this Court should affirm the judgment of the Fourteenth Circuit.

II. This Court should affirm the Fourteenth Circuit's judgment because North Greene's Act, separating sports teams by biological sex at birth, treats persons equally who are similar in all respects, merely separates athletes on sports teams based on their biological sex, and serves the important governmental purpose of providing equal athletic opportunities for females and protecting the physical safety of female athletes.

Under the Equal Protection Clause, North Greene's Act allowing sex-separate sports teams based upon biological sex is valid because the Act treats all athletes equally and serves the important government objectives of providing equality and protecting the safety of female athletes.

Found in the Fourteenth Amendment to the Constitution, the Equal Protection Clause stipulates that all people within the jurisdiction of a state may not be denied "equal protection of the laws." U.S. Const. amend. XIV, § 1, cl. 4. In particular, "all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). However, the Fourteenth Amendment does not prohibit the law from impacting people differently. *Reed v. Reed*, 404 U.S. 71, 75 (1971). Rather, the Equal Protection Clause forbids a statute from separating people into different classes and providing unequal treatment based on "criteria wholly unrelated to the objective of that statute." *Id.* at 75–76. To expand, a viable classification must have a reasonable and substantial relation to the purpose of the legislation, so that all persons similarly situated shall be treated equally. *Id.* at 76.

It is also important to recognize the role an educational institution has in implementing student policies. *Adams*, 57 F.4th at 801. The Supreme Court has recognized that a different standard applies to public schools given "the schools' custodial and tutelary responsibility for children." *Vernonia Sch. Dist. 47J v. Acton,* 515 U.S. 646, 656 (1995). In particular, schools function in "loco parentis;" thus, the State grants schools the unique power to supervise and control students. *Id.* at 655.

A. Transgender girls and biological girls are not similarly situated.

Under the Equal Protection Clause, a statute that treats persons not similarly situated differently is valid. This is because the Equal Protection Clause provides that "all persons similarly situated should be treated alike." *City of Cleburne*, 473 U.S. at 439. In particular, when proving a violation of equal protection, the plaintiff must present evidence that other persons who are similarly situated to him or her "in all relevant respects alike" are receiving different treatment by governmental decisionmakers. *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992).

The U.S. Supreme Court holds an individual's biological sex is an "immutable characteristic determined solely by the accident of birth." *Fronterio*, 411 U.S. at 686. *see Immutable*, *Oxford English Dictionary* (2d. 1989) ("Not mutable; not subject to or susceptible of change; unchangeable, unalterable, changeless."). For instance, in *Adams*, the court addressed the dissent's argument that gender identity is equivalent to biological sex. 57 F.4th at 807. There, the court ruled that a factual finding to change an immutable characteristic, such as an individual's sex, was unfounded based upon precedent. *Id.* at 807–08.

Here, the Act is valid under Equal Protection because A.J.T., born a biological male, is not similarly situated to biological girls. *See City of Cleburne*, 473 U.S. at 439; *see Adams*, 57 F.4th at 807; (R. at 3.) To prove a violation of Equal Protection, A.J.T. must provide evidence showing they are similar "in all relevant respects alike" to biological females. *Nordlinger*, 505 U.S. 1, 10 (1992). However, given the Supreme Court's determination that an individual's biological sex is an "immutable characteristic" determined at birth, A.J.T. lacks the requisite of being "similarly situated" to biological females. *Fronterio*, 411 U.S. at 686; *City of Cleburne*, 473 U.S. at 439. Even more, A.J.T.'s argument that the Act's "definition of biological sex is used to guarantee a particular outcome" is invalid because the definition is merely in accordance with the Supreme Court.

Fronterio, 411 U.S. at 686; *City of Cleburne*, 473 U.S. at 439; (R. at 7.) Therefore, this Court should affirm that the Act is in accordance with Equal Protection.

B. North Greene's act treats transgender athletes equally because it merely places athletes on sports teams according to their biological sex.

In a facial constitutional challenge, only the text of the law is considered rather than the application of the law to a specific set of circumstances of an individual. *See 828 Mgmt., LLC v. Broward Cnty.*, 508 F. Supp. 3d 1188, 1195 (S.D. Fla. 2020); *see Wa. State Grange v. Wa. State Republican Party*, 552 U.S. 442, 449–50 (2008). Moreover, the plaintiff must prove the statute "explicitly distinguish[es] between individuals on [protected] grounds." *Shaw v. Reno*, 509 U.S. 630, 642 (1993). For example, in *Adams*, the plaintiff, a transgender male, claimed a bathroom policy discriminated against transgender students. 57 F.4th at 808. Specifically, the plaintiff argued that because the policy facially discriminated against male and female students, the policy indirectly discriminated against transgender students. *Id.* at 800. However, the court reasoned that the bathroom policy, which facially classified based on biological sex, failed to address transgender status or gender identity in the policy's classification. *Id.* Thus, the court concluded that because the classification of biological males and biological females included transgender students, the plaintiff's claim that the bathroom policy discriminated against transgender students mischaracterized the operation of the policy. *Id.*

Here, the Act does not facially discriminate against transgender students because the Act does not treat transgender individuals differently. For instance, the N.G. Code § 22-3-16(a) states that "[i]nterscholastic, intercollegiate, intramural, or club athletic teams or sports…shall be expressly designated as" male, female, or coed, "based on biological sex." (R. at 4.) Thus, based on the "text of the law," the Act only treats biological males and biological females differently, failing to distinguish transgender individuals from biological males and females. *Shaw*, 509 U.S.

at 642; *see 828 Mgmt., LLC*, 508 F. Supp. 3d at 1195; *see Wa. State Grange*, 552 U.S. at 449–50; (R. at 4.). Moreover, similar to the policy in *Adams*, the Act facially classifies based only on biological sex. 57 F.4th at 800. Accordingly, the application of the Act places all athletes on a sports team corresponding with their biological sex; thus, transgender athletes receive the same treatment as biological male or female athletes. *Adams*, 57 F.4th at 800; (R. at 8.)

C. North Greene's Act is justified in limiting the definition of "women" and "girls" to biological females because it is substantially related to the important governmental interests of promoting equal athletic opportunities and protecting the physical safety of female athletes.

Generally, intermediate scrutiny applies to laws that allegedly discriminate on the basis of sex, a quasi-suspect classification. *Virginia*, 518 U.S. at 533. To expand, intermediate scrutiny places the burden of justification on the state. *Id.* Specifically, the state must prove that the challenged classification serves "an important governmental objective" and that the means used is "substantially related to the achievement of those objectives." *Wengler v. Druggists Mut. Ins. Co.*, 446 U.S. 142, 150 (1980)).

1. North Greene's Act provides equal athletic opportunities for biological females.

The exclusion of biological males from biological female teams is necessary to preserve athletic opportunities. *See Clark*, 695 F.2d at 1131–32. In fact, courts recognize the physical differences between men and women, noting the two sexes are not interchangeable with one another. *Virginia*, 518 U.S. at 533. Moreover, the Supreme Court consistently upholds statutes which reasonably portray that sexes fail to be similarly situated in specific situations. *Micheal M. v. Superior Court of Sonoma City*, 450 U.S. 464, 468–69 (1981). In an athletic context, males and females are not similarly situated because the physiological differences between the two sexes give males an athletic advantage over females. *See Clark*, 695 F.2d at 1131. For example, in *Clark*, the plaintiffs attended schools only sponsoring volleyball teams for females, and a policy existed that

prevented boys from playing on girls' teams. *Id.* at 1127. There, considering the physical differences between boys and girls, the court held that the governmental interest in redressing past discrimination and promoting equal opportunity for women was a legitimate and important governmental interest. *Id.* at 1131. Moreover, the court ruled that excluding boys from a girls' high school volleyball team was substantially related to the previously mentioned governmental interest. *Id.*

Here, the Act advances the important governmental interest of providing equal athletic opportunities for biological females by excluding biological males. *See Clark*, 695 F.2d at 1131–32. As previously stated, the Act classifies sports teams simply by biological sex rather than gender identity. (R. at 4.) Similar to *Clark*, the State has an important governmental interest to provide equal opportunities for female athletes. *Id.* at 1131 (finding that encouraging equal opportunities for women is a legitimate and important government objective). Moreover, based upon established precedent, the State's classification based on sex is substantially related to its important interest in providing equal opportunity for female athletes because of the athletic advantages males possess over females. *See id.*

Additionally, A.J.T.'s contention that she should be grouped with biological girls because her gender identity is a "girl" is irrelevant. (R. at 9.). As the Fourteenth Circuit correctly stated, "while sex and gender are related, they are not the same." (R. at 9.) Ordinarily, most individuals' gender identity matches their biological sex. *See Grimm*, 972 F.3d at 594. However, the two terms should not be confused. *Id.* The Fourteenth Circuit described gender identity as "a set of socially constructed roles, behaviors, activities, and attributes that a given society considers appropriate" while sex is simply determined by a number of chromosomes. (R. at 9.) Accordingly, how one dresses, acts, or identifies is unrelated to their biological sex. (R. at 9.) Therefore, an individual's

sex determines the physical characteristics one possesses that, in turn, affect their athletic performance. (R. at 9.)

2. North Greene's Act protects the physical safety of biological female athletes.

The physical advantages that males possess over females threaten the physical safety of female athletes. *See, e.g.*, *Clark*, 695 F.2d at 1127 (discussing how males' height, strength, and ability to jump high give males the potential to better hitters and blockers in volleyball). Moreover, for the sake of the principles of Equal Protection, "fail[ing] to acknowledge even our most basic biological difference … risks making the guarantee of equal protection superficial, and so disserving it." *Nguyen v. INS*, 533 U.S. 53, 73 (2001). Additionally, in *Adams*, Justice Lagoa's concurrence lists inherent, biological differences between biological males and females' performances. *Adams*, 57 F.4th 791 at 819 (Lagoa, J., specially concurring). Indeed, these studies show that post-pubescent males possess the ability to "jump (25%) higher than females, throw (25%) further than females, run (11%) faster than females, and accelerate (20%) faster than females on average." *Id.* at 820. Moreover, hormone therapy has the potential to block these biological differences from emerging, but currently, no requirement exists that forces transgender persons to take medications or undergo hormone therapy before or after puberty. (R. at 10.)

Here, the physical advantages biological males possess pose a threat to the physical safety of female athletes. *See Clark*, 695 F.2d at 1127; (R. at 10.) Moreover, the Fourteenth Circuit notes of an incident that occurred, portraying the dangers of allowing a biological male whose gender identity is a "girl" to play on female sports teams. (R. at 10.) To expand, a biological male spiked a ball in the face of a female volleyball player, demonstrating how the size and strength of male athletes can affect the speed and force of a ball. (R. at 10.) In response, A.J.T. argues that omitting transgender girls from the definition of "girls" is unlawful because puberty blockers or other

hormone therapies are available for transgender girls to ingest to avoid these physical advantages that males develop. (R. at 10.) However, A.J.T. has yet to undergo treatment nor is there any guarantee that A.J.T. will participate in hormone therapy in the future. Consequently, without medical intervention, a transgender female is still a biological male. Additionally, the fact that A.J.T. participated on the all-girl cheer team without incident is not significant because cheer is significantly different from volleyball and cross country. (R. at 3.) Thus, the Act's limitation on the definitions of "woman" and "girl" advances the important governmental interest of protecting the physical safety of biological female athletes.

CONCLUSION

Because North Greene's "Save Women's Sports Act" comports with Title IX and the Equal Protection Clause of the Fourteenth Amendment, the Act is lawful under both the federal statute and the U.S. Constitution. Foremost, given the interpretation of "sex" in a Title IX context, gender identity is incongruent with one's biological sex; thus, A.J.T.'s assertion that her gender identity is a "girl" is irrelevant. Additionally, A.J.T. is still afforded the opportunity to play on coed or boys' sports teams. Further, sex-separate sports teams are lawful when a competitive skill is required or when physical contact is involved. Moreover, North Greene's Act separating boys' and girls' teams based on biological sex determined at birth comports with the Equal Protection Clause because transgender girls and biological girls are not similar in all respects. Additionally, the Act fails to facially discriminate against transgender athletes; rather, the Act places students on school sports teams according to their biological sex. Finally, even though the classification of the Act is subject to intermediate scrutiny because it is on the basis of sex, the State exceeds its burden of proof because the law is substantially related to an important governmental objective.

It is for these reasons this Court should affirm the decision of the Fourteenth Circuit that the Act is valid under the U.S. Constitution and Title IX.

/s/_____
Attorneys for Petitioner

CERTIFICATE OF SERVICE

We certify that a copy of Respondent's brief was served upon Petitioner, A.J.T., through the counsel of record by certified U.S. mail return receipt requested, on this, the 13th day of September 2024.

/s/_____
Attorneys for Petitioner