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 UNITED STATES
COURT OF APPEALS FOR THE FOURTEENTH CIRCUIT

BRIEF FOR PETITIONER

Team 8

QUESTION PRESENTED

1. Whether Title IX permits a state to systematically discriminate against transgender women and girls by denying them access to sports teams aligned with their gender identity, based solely on the individual's biological sex at birth.
2. Whether a state's denial of transgender women and girls' access to sports teams consistent with their gender identity, based solely on their biological sex at birth violates the Equal Protection Clause by engaging in systematic discrimination.

TABLE OF CONTENTS

QUESTION PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES i

OPINIONS BELOW 1

CONSTITUTIONAL PROVISIONS & STATUTES INVOLVED 1

STATEMENT OF THE CASE 1

Save Women's Sports Act 1

A Young Athlete Denied Access to Quintessential Childhood Experiences 2

Procedural History 3

ARGUMENT 5

I. The Save Women's Sports Act Violates Title IX as Applied to Plaintiff A.J.T. 5

A. The Act Unjustly Bars A.J.T. From Participating in Gender-Aligned Sports Based on Her Sex. 6

1. Discrimination on the Basis of Incongruence Between Sex and Gender Identity is Discrimination on the Basis of Sex. 7

2. The Act Categorically Excludes *Only* Transgender Girls from Sports Teams Corresponding with Their Gender. 9

B. The Act Harms Petitioner A.J.T. Through Unlawful and Pervasive Discrimination. 10

1. Petitioner A.J.T. Has Suffered Tangible Harm from The Act's Discrimination. 12

II. The Act's Exclusion of Transgender Women from Gender-Aligned Sports Violates the Equal Protection Clause by Failing to Satisfy Intermediate Scrutiny. 12

A. The Act Does Not Serve a Sufficiently Important Government Interest to Justify Blatant Discrimination Against Transgender Women and Girls. 14

1. The Act's Objectives Do Not Constitute a Compelling Government Interest to Justify the Exclusion of Transgender Women. 15

2. The Exclusion of Transgender Women is Not Substantially Related to the Act's Purported Goals, Making the Discrimination Arbitrary and Unjustified. 19

3. The Government Could Achieve its Objectives Through Less Restrictive, Non-discriminatory Measures. 22

B. The Act Discriminates by Applying Unequally Across Gender Identities Thereby Violating the Equal Protection Clause. 24

1. The Act Targets Transgender Women and Ignores Transgender Men, Resulting in an Unequal Application of the Law. 25

2. The Acts Exclusion of Transgender Girls Fosters Societal Prejudice, Reinforcing Stereotypes and Discrimination. 27

Conclusion. 30

TABLE OF AUTHORITIES

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Bostock v. Clayton County, Georgia, 590 U.S. 644 (2020)....7

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L.W. ex rel. Williams v. Skrmetti, 83 F.4th 460 (6th Cir. 2023) 11

Peltier v. Charter Day Sch., Inc., 37 F. 4th 104 (4th Cir. 2022) 6, 8

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Smith v. City of Salem, 378 F.3d 566 (6th Cir. 2004) 27

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Williams v. Sch. Dist., 998 F.2d 168 (3d Cir. 1993) 9

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Doe v. City of Philadelphia, No. 2024 WL 3634221 (E.D. Pa. Aug. 2, 2024) 11

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CONSTITUTIONAL & STATUTORY PROVISIONS

34 C.F.R. § 106.41(b)-(c) 8, 9

U.S. Const. amend. XIV, § 1 13

U.S.C. § 1681(a) 6

OPINIONS BELOW

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CONSTITUTIONAL PROVISIONS & STATUTES INVOLVED

Title IX states that "[n]o person in the United States shall, *on the basis of sex*, be excluded from participation, in be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C.S. § 1681 (emphasis added). The Fourteenth Amendment to the United States Constitution maintains that no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

STATEMENT OF THE CASE
Save Women's Sports Act

In April 2023, Senate Bill 2750 – the "Save Women's Sports Act" – was introduced by the North Greene State Senate. R. at 3. Then, on May 1, 2023, Governor Howard Sprague signed the "Save Women's Sports Act" ("Act") into law. R. at 3. This Act did not in turn save women's sports, but rather limited "participation in sports events to the biological sex of the athlete at birth" due to the "inherent differences between biological males and biological females." R. at 3.

The Act defines "biological sex" as "an individual's physical form as a male or female based solely on the individual's reproductive biology and genetics at birth." R. at 4. Based on the definition of "biological sex" and its application to males and females, the Act requires that any "[i]nterscholastic, intercollegiate, intramural, or club athletic teams or sports that are sponsored by

any public secondary school or state institution of higher education" be designated as either male, female, or coed. R. at 4.

The Act goes on to address who may participate on a particular team by exclusively limiting “[a]thletic teams or sports designated for female, women, or girls [as] not [being] open to students of the male sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport.” R. at 4. There is no evidence in the Act or the record to indicate a similar limitation on the participation of students of the female sex on athletic teams designated for males.

In enacting this law, the State of North Greene explicitly noted that “[c]lassifications based on gender identity serve no legitimate relationship to the State of North Greene’s interest in promoting equal athletic opportunities for the female sex” because “an individual’s biological sex is not determinative or indicative of the individual’s gender identity” given that the two are “separate and distinct.” R. at 4. In essence, this Act utilizes narrowly tailored definitions to further ostracize transgender girls, limiting not only their opportunities to partake in school athletics, but to just be kids.

A Young Athlete Denied Access to Quintessential Childhood Experiences

From a young age, A.J.T. was not only learning and discovering different aspects of the human experience but discovering her true self. At birth, A.J.T. was assigned the sex of male but from an early age began identifying as a girl. R. at 3. After the third grade, A.J.T. began living as a young girl both publicly and privately, using a name associated with her gender, and even participating in the all-girls cheerleading team at her elementary school, an all-around experience of a young American girl. R. at 3. Then, upon the commencement of this lawsuit, A.J.T. was denied participation in her middle school’s girls’ cross-country and volleyball teams due to the Act. R. at 3.

A.J.T. not only struggled with access to sports conforming to her gender but was diagnosed with gender dysphoria and began counseling to consider various courses of action, including the use of puberty-delaying treatments intended to prevent endogenous puberty and prevent physiological changes resulting from testosterone. R. at 3. At the filing of this lawsuit, A.J.T. was not partaking in puberty-delaying treatments and it is unclear if such treatments have commenced. R. at 3.

Procedural History

The Petitioner, A.J.T., by and through her mother, filed a lawsuit against the State of Greene Board of Education and the State Superintendent Floyd Lawson in District Court. R. at 4. In response to the motion to intervene filed by the State of North Greene, Petitioner amended her complaint to include the State and the Attorney General, Barney Fife. R. at 4-5.

Petitioner sought an injunction preventing Respondent from enforcing the discriminatory law against Petitioner and declaratory judgment finding the Act violates both Title IX and the Equal Protection Clause of the Fourteenth Amendment. R. at 5. In response, Respondent filed a motion for summary judgment in opposition to the permanent injunction, which the District Court granted. R. at 5. Petitioner appealed to the United States Court of Appeals for the Fourteenth Circuit, which in turn affirmed the District Court in finding that the discriminatory Act does not violate Title IX or the Equal Protection Clause of the Fourteenth Amendment. R. at 5.

Now, Petitioner, A.J.T., by and through her mother, seeks justice and access to not just girls' sports, but a childhood unfettered by social biases, stereotypes, and misconceived perceptions, through this Writ of Certiorari before the Supreme Court of the United States. R. at 17.

SUMMARY OF THE ARGUMENT

This Court should not only reverse the Fourteenth Circuit's holding in the case at bar, but uphold the integrity and equality enshrined within the very foundations of the justice system. The Save Women's Sports Act is not only an oppressive instrument turned law in the State of North Greene, but a clear violation of both Title IX and the Equal Protection Clause ("EPC") of the Fourteenth Amendment. Put simply, such law must not stand.

First, despite its brevity, Title IX's words amass to voluminous protections from discrimination *on the basis of sex*. The institution in the case at bar is subject to Title IX because it is an educational institution receiving federal financial assistance whilst excluding students from sports *on the basis of sex,* thereby causing individual harm. The act in question targets transgender girls as the only group excluded from the sports teams with which they identify, thereby punishing them for incongruence between their sex and gender identity. The Supreme Court has established that transgender discrimination inescapably intends to rely on sex, as the individual is subject to considerations that would be moot if they were of a different biological sex. A.J.T. is just a child, but nonetheless is treated worse than similarly situated children and forced to either reject her gender identity or forfeit her participation in quintessential childhood activities. This is not only immoral, but a vehement violation of Title IX.

Second, this law is a blatant violation of the EPC. The EPC ensures equal protection for all citizens, and laws involving quasi-suspect classifications—such as transgender status—must pass intermediate scrutiny. To survive intermediate scrutiny, the classification must not only serve an important governmental interest but must be substantially related to achieving and promoting such interest. Here, the Act fails to survive the stringent scrutiny set forth by the EPC. The Act, alleging to protect the safety and integrity of women's sports, blatantly discriminates against transgender

women, but not transgender men. Further, this discrimination does not relate to nor further the Act's purported goals, thereby rendering it arbitrary, unjustified, and unsupported by the tenets of the legal system. Finally, the goals of the State of North Greene can be achieved through less restrictive and non-discriminatory means. Thus, the Act fails to satisfy the requirements of intermediate scrutiny under the EPC. The only thing that the Act successfully achieves is the reinforcement of stereotypes and discrimination of an already marginalized group – a feat that is a far cry from equal protection under the law.

The Save Women's Sports Act is not only discriminatory and harmful, but a clear violation of both Title IX and the EPC. Accordingly, this Court should reverse the Fourteenth Circuit's holding and ensure that transgender women and girls, like A.J.T., are not denied equal access to not just society, but quite frankly, a childhood.

ARGUMENT

I. The Save Women's Sports Act Violates Title IX as Applied to Plaintiff A.J.T.

Equality for all is not won by the exclusion of some. The Save Women's Sports Act ("Act") weaponizes Title IX to disregard the very principles it stands to protect. An act violates Title IX when it (1) excludes an individual from an educational program on the basis of sex; (2) the educational institution received federal financial assistance at the time; and (3) that improper discrimination caused the individual harm. *Grimm v. Gloucester Cty. Sch. Bd.*, 972 F.3d 586, 616 (4th Cir. 2020).[1] The North Greene legislature's purported objectives of sex equality and women's safety may fall within the realm of Title IX, but these objectives cannot be met at the expense of transgender women and girls. *See Peltier v. Charter Day Sch., Inc.*, 37 F. 4th 104, 130 (4th Cir. 2022) (en banc) ("Title IX protects the rights of individuals, not groups . . .").

[1] Here, only the first and third elements of Title IX are addressed as it is undisputed that Defendants were receiving federal funds at all relevant times. *See* R. at 16.

The Supreme Court recognized the irony in separating students based on their protected class to further the fight for equality. *See Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181, 220 (2023) ("[y]et by accepting race-based admission programs in which some students may obtain preferences on the basis of race alone, respondents' programs tolerate the very thing that *Grutter* foreswore: stereotyping").Worse, before the Court today is not mere separation, but an unequivocal bar of transgender girls, which takes no account of the participant's age, the sport's degree of contact, or whether the athlete has undergone the physiological changes purportedly at the root of this Act. Elite Regulatory bodies like the National Collegiate Athletic Association (NCAA) and the International Olympic Committee (IOC), allow transgender women to compete if they meet certain criteria, yet the North Greene legislature makes no exceptions for middle school volleyball or cross country. *See Hecox v. Little*, 104 F.4th 1061, 1068 (9th Cir. 2024). Instead, it singles out transgender girls as the *only* group unable to play on sports teams with which they identify, imposing punishment for nonconformance with the sex assigned at birth. It remains to be seen what this discrimination is based on, if not sex.

A. The Act Unjustly Bars A.J.T. From Participating in Gender-Aligned Sports Based on Her Sex.

Title IX is but thirty-seven words long and lacks a definition of sex, mention of gender, or guidance for courts on the interpretation of the language "on the basis of sex." *See* U.S.C. § 1681(a). As such, the Supreme Court and other federal courts consistently look to interpretations of Title VII to inform Title IX. *See Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 258 (2009) ("Congress modeled Title IX after Title VI . . . and passed Title IX with the explicit understanding that it would be interpreted as Title VI was."); *Koenke v. Saint Joseph's Univ.*, No. Cv 19-4731, 2021 WL 75778 at *2 (E.D. Pa. Jan. 8, 2021) ("[i]t is well-settled that Title VII of the Civil Rights Act of 1964 precedents are instructive in Title IX discrimination cases"). Under Title VII, the law

is clear: discrimination on the grounds of gender identity "inescapably intends to rely on sex." *Bostock v. Clayton County, Georgia*, 590 U.S. 644, 661 (2020). Transgender discrimination is rooted in traits or actions which would go unquestioned in members of a different sex. *Id. a*t 651-52. As such, sex plays a "necessary and undisguisable role" in the discrimination. *Id.* at 652. The same holds true for Title IX, where "[a] law that prohibits an individual from playing on a sports team that does not conform to his or her gender identity punishes that individual for his or her gender non-conformance, which violates the clear language of Title IX." *A.M. v. Indianapolis Pub. Sch.*, 617 F. Supp. 3d 950 (S.D. Ind. 2022).

1. Discrimination on the Basis of Incongruence Between Sex and Gender Identity is Discrimination on the Basis of Sex.

True is the notion that an "individual's biological sex is not determinative or indicative of the individual's gender identity." R. at 4. However, this fact does not erase the role that sex plays in gender identity discrimination. *See Hecox,* 104 F. 4th at 1076 ("A persons sex encompasses the sum of several biological attributes . . . and gender identity"); *see also Grimm*, 972 F. 3d at 616 (to discriminate against a transgender individual, the discriminator must refer to the individual's sex to determine the incongruence between sex and gender, making sex a but-for cause). This Act singles out transgender girls as the *only* individuals prohibited from playing on sports teams conforming to their gender identity. *A.M.,* 617 F. Supp. 3d at 966. This prohibition cannot be minimized to 'separation' or 'designation', because, as the Dissent correctly notes, transgender girls are the only group left with "no real choice at all." R. at 16; *Doe v. Horne*, 683 F. Supp. 3d 950, 974 (D. Ariz. 2023) ("Exclusion from athletics on the basis of sex . . . deprives [transgender girls] of the benefits of sports programs and activities that their non-transgender classmates enjoy").

The lower court seeks to wish away the existence of gender identity, contending it has "nothing to do with sports." R. at 8. Title IX, however, protects individuals, not sports, from

discrimination on the basis of sex, and gender identity has *everything* to do with these individuals' sense of self. *See Peltier*, 37 F. 4th at 130; C.E. Roselli, *Neurobiology of Gender Identity and Sexual Orientation*, 30 JOURNAL OF NEUROENDOCRINOLOGY (2019) at 1 ("Gender identity refers to a person's innermost concept of self as male, female, or something else"). A.J.T. has identified as a girl both publicly and privately since third grade, even participating on her school's all-girl cheerleading team. R. at 3. To force A.J.T. off these teams is to ask her to re-suppress the identity she has spent years uncovering. Worse yet, it would bear no effect on the physiological differences of the biological sexes cited throughout the Act and the lower court's opinion. R. at 3-10. Prior to puberty, there is no sex difference in circulating testosterone concentrations or athletic performance. Handelsman, Hirschberg, Bermon, *Circulating Testosterone as the Hormonal Basis of Sex Differences in Athletic Performance*, 39 ENDOCRINE REVIEWS 803 (2019). Still, the Act makes no exception for pre-pubescent transgender girls nor those who have undergone puberty-delaying treatment. R. at 3-4.

At the commencement of this lawsuit, A.J.T. had not undergone puberty. R. at 3. She now seeks to participate in cross-country and volleyball, two non-contact sports. *See* C.F.R. § 106.41 (". . . Contact sports include boxing, wrestling, rugby, ice hockey, basketball, and other sports the purpose or major activity of which involves bodily contact"); *Williams v. Sch. Dist.*, 998 F.2d 168, 173 (3d Cir. 1993) ("[C.F.R. § 106.41] defines a contact sport as one "the purpose or major activity of which involves bodily contact"); *Othen v. Ann Arbor Sch. Bd.*, 507 F. Supp. 1376, 1381 (E.D. Mich. 1981) (same); *Force by Force v. Pierce City R-VI Sch. Dist.*, 570 F. Supp. 1020, 1025 (W.D. Mo. 1983) (same). This Act treats Petitioner A.J.T. worse than her transgender male, cisgender male, and cisgender female classmates. It does so in furtherance of objectives which are irrelevant here. This needless discrimination is exactly what Congress sought to circumvent by enacting Title

IX. *See Canon v. Univ. Of Chicago*, 441 U.S. 677, 678 (1979) ("In enacting Title IX, Congress wanted to protect individual citizens effective protection against those [discriminatory practices]").

2. The Act Categorically Excludes *Only* Transgender Girls from Sports Teams Corresponding with Their Gender.

Title IX authorizes sex-separate sports so long as overall athletic opportunities for each sex are equal. 34 C.F.R. § 106.41(b)-(c). As such, courts have upheld statutes which merely designate teams based on sex, but opposed statutes which single out transgender girls, either explicitly or effectively. *See D.N. by Jessica N. v. DeSantis*, 701 F. Supp. 3d 1244, 1265 (N.D. Fla. 2023) (finding that the "Fairness in Women's Sports Act" did not violate Title IX as it treated transgender boys and girls the same). *But see B.P.J. v. West Virginia St. Bd. Of Educ.*, 550 F. Supp. 3d. 347, 356 (S.D. W. Va. 2021) (granting preliminary injunction in favor of transgender female, noting "[a]ll other students in West Virginia secondary schools ... are permitted to play on sports teams that best fit their gender identity"); *A.M.*, 617 F.Supp.3d. at 966 (holding that plaintiff had established a strong likelihood of success on the merits of her Title IX claim where the statute only prohibited transgender females from playing on the team of the sex with which they identify). If a statute separates participants on the basis of sex – no matter the legislatures' motives – the statute is only compliant with Title IX if *all* individuals have equal opportunities for participation. Here, under this Act, A.J.T. does not.

The asserted objective of the Act is to provide equal athletic opportunities for female athletes while promoting safety in competition. R. at 4. But, the Act singles out transgender girls as the only group unable to compete on a team with which they identify: "[a]thletic teams or sports designated for females, women, or girls shall not be open to students of the male sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport." R. at 4. This language marginalizes an already ostracized group by restricting women's teams to

biological women, while allowing men's teams to include biological men, transgender men, and biological women. Albeit its asserted objectives, the Act does not regard the safety of transgender men, whom it deems biological women. *See Horne*, 683 F. Supp 3d. at 963 ("Contrary to the asserted safety goal, the Act does not protect transgender boys – identified by Defendant Horne and intervenors as 'biological girls'"). Nor does it bother to streamline the team designation process in a way that applies equally to transgender boys and transgender girls. Under this guise, it is clear the Act was tactfully created to keep transgender girls out of women's sports, with "safety" and "equality" offered as pretext. This pretext extends beyond the four corners of the statue and infiltrates the intimate crevices of transgender athletes' lives, sending a clear message that their identities are not valid or worthy of respect.

B. The Act Harms Petitioner A.J.T. Through Unlawful and Pervasive Discrimination.

For purposes of Title IX, "discrimination means treating an individual worse than others who are similarly situated." *B.P.J. by Jackson,* 96 F. 4th at 563. Once a plaintiff establishes discrimination, they must then establish a harm suffered from the discrimination. *Id.* Unlike an Equal Protection Clause claim, once discrimination and harm have been established, no showing of a substantial relationship can save the discriminatory policy. *Id.* Courts have acknowledged the "emotional and dignitary harm" that ensues from "[t]he stigma of being" excluded from sports teams with friends and peers. *Grimm*, 972 F.3d at 617-18.

1. Petitioner A.J.T. is Treated Worse Than Similarly Situated Children.

This Court should recognize that Petitioner is similarly situated to biological girls, for "courts cannot close their eyes to the legal and social needs of society, and courts should not hesitate to alter, amend, or abrogate the common law when society's needs so dictate." *In re Adoption of M.M.G.C.*, 785 N.E.2d 267, 270 (2003). Science has established that attempts to force transgender individuals to align their gender identity and birth sex are ineffective and, in many

cases, life-threatening. *See Horne*, 683 F. Supp. 3d at 957-58 (attempted suicide rates in the transgender community are over 40%; untreated gender dysphoria can cause anxiety, depression, eating disorders, substance abuse, self-harm, and suicide). As such, this practice has been denounced by *all* major professional associations of medical and mental health professionals, including the American Medical Association, the American Academy of Pediatrics, the American Psychiatric Association, and the American Psychological Association. *Id.* For individuals with gender dysphoria, like A.J.T., allowing them to live in ways that align with their gender identity is crucial to their well-being. *See Doe v. City of Philadelphia*, No. 2024 WL 3634221, at *5 (E.D. Pa. Aug. 2, 2024) (citing *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 596 (4th Cir. 2020) (noting that WPATH's standard of care for people with gender dysphoria "may involve living part time or full time in another gender role, consistent with one's gender identity"); *L.W. ex rel. Williams v. Skrmetti*, 83 F.4th 460, 492 (6th Cir. 2023) (White, J., dissenting) ("The goal of treatment for gender dysphoria is to reduce distress and improve functioning by enabling an affected person to live in conformity with the person's gender identity"). To suddenly strip A.J.T. of the only identity her middle school classmates recognize would be needlessly damaging to her mental health. *See* R. at 3.

Should this Court, however, choose to follow the reasoning of the lower court and find Petitioner similarly situated to biological males, Petitioner still succeeds. Title IX only requires that Petitioner establish she is treated worse than individuals who are similarly situated on the basis of sex. *See Grimm*, 972 F.3d at 618 (internal citations omitted) ("In the Title IX context, discrimination 'mean[s] treating [an] individual worse than others who are similarly situated'"). Here, A.J.T. need not establish that she is similarly situated to biological girls. She must simply establish that she is treated worse than similarly situated individuals on the basis of sex. Under

their exclusion, transgender girls are treated worse than all other sexes. *See* R. at 4; *A.M.*, 617 F. Supp. 3d at 966 ("A law that prohibits an individual from playing on a sports team that does not conform to his or her gender identity [discriminates on the basis of sex]"). Therefore, regardless of whether this Court finds her similarly situated to biological women, biological men, or even transgender men – A.J.T. is still treated worse *on the basis of sex*.

1. Petitioner A.J.T. Has Suffered Tangible Harm from The Act's Discrimination.

The exclusion of Petitioner from the sports teams she has long enjoyed would be accompanied by unquestionable emotional and dignitary harm, a natural result of ostracization. *See* R. at 3; *Grimm*, 972 F.3d at 617-18. Under this Act, Petitioner has two options, both inherently harmful: either abandon the sports she loves or abandon her identity. It has been scientifically and legally established that transgender individuals suffer under policies which forbid them to conform with their gender identity. *See Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1049 (7th Cir. 2017); R. at 16 ("Offering Plaintiff a "choice" between not participating in sports and only participating on boys' teams . . . would require Plaintiff to countermand the social transition that has occurred and to be reintroduced . . . as a boy"). With such a stake, should Petitioner forego the option to join the boys' teams, she does so at the expense of her athletic career. This Court need not sit idly by and wait for students to endure physical harm, induced by themselves or others, to acknowledge that they have suffered. It has an opportunity to protect A.J.T. now.

II. The Act's Exclusion of Transgender Women from Gender-Aligned Sports Violates the Equal Protection Clause by Failing to Satisfy Intermediate Scrutiny.

The Equal Protection Clause ("EPC") of the Fourteenth Amendment ensures that no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. This requires that individuals who are similarly situated be treated equally under

the law. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). In practice, however, laws often create classifications that are advantageous to some groups but inherently harmful to others, particularly in cases involving vulnerable or historically marginalized populations. *Romer v. Evans*, 517 U.S. 620, 631 (1996). To evaluate the constitutionality of such classifications, the United States Supreme Court applies intermediate scrutiny to laws that discriminate based on gender or quasi-suspect classifications, such as transgender status. *Hecox*, 479 F. Supp. 3d 930 at 972; *Glenn v. Brumby*, 663 F.3d 1312, 1316 (11th Cir. 2011). Courts have increasingly recognized that transgender classifications—classifications so intrinsic to one's persona and existence—must be subject to at least intermediate scrutiny due to the significant history of discrimination and marginalization faced by this group. *Whitaker*, 858 F.3d at 1051; *Adams ex rel. Kasper v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791, 801 (11th Cir. 2022) (en banc).[2] The Act's exclusion of transgender girls from sport teams that align with their gender identity creates a discriminatory classification based on transgender status and biological sex at birth. R. at 4. This classification fails to meet intermediate scrutiny because it neither serves an important governmental interest nor is substantially related to achieving that interest.

In any EPC case, the government's classification must be justified by a compelling governmental interest, and the means must not only justify the ends, but ensure that the interests are tightly aligned with the given objectives. *United States v. Virginia*, 518 U.S. 515, 533 (1996).

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[2] *See also Glenn v. Brumby*, 663 F.3d 1312, 1316 (11th Cir. 2011) (holding that discrimination based on gender nonconformity constitutes sex-based discrimination subject to heightened scrutiny); *Price Waterhouse v. Hopkins*, 490 U.S. 228, 251 (1989) (holding that gender stereotyping constitutes sex discrimination under Title VII); *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1049 (7th Cir. 2017) (holding that a policy barring a transgender boy from using the boys' restroom was unconstitutional under the Equal Protection Clause); *Grimm v. Gloucester Cty. Sch. Bd.*, 972 F.3d 586, 607 (4th Cir. 2020) (holding that discrimination based on transgender status is inherently suspect and requires heightened scrutiny).

The Act's exclusionary provisions are not justified by the government's stated objectives, such as protecting women's safety or ensuring fairness in sports, but rather are rooted in archaic assessments of gender that fail to satisfy or serve an important government interest. This Court must recognize that the law is fundamentally designed to protect those who are most vulnerable and to ensure equal protection for all individuals. *Plyler v. Doe*, 457 U.S. 202, 217-18 (1982). Transgender children should have the right to thrive, participate, and live their lives without fear of exclusion. Denying these rights directly contradicts the principles of fairness and equality enshrined in the EPC. The law must serve its purpose and guarantee that all individuals, including transgender children, are treated with dignity and respect. *Whitaker,* 858 F.3d at 1050. Anything less would be a failure of the justice system.

The Supreme Court has consistently held that arbitrary and harmful classifications are impermissible under the EPC. *Romer*, 517 U.S. at 635. Thus, the Act, alleging to protect women and girls, violates the EPC by perpetuating systemic discrimination against transgender women. This Court should not only follow the case law demonstrating the unconstitutionality of the Act but follow the clear moral and human need to create safe and nondiscriminatory spaces for transgender girls to be what they are—kids.

A. The Act Does Not Serve a Sufficiently Important Government Interest to Justify Blatant Discrimination Against Transgender Women and Girls.

To uphold a statute that classifies individuals based on gender, the party defending the law must meet the heavy burden of proving an "exceedingly persuasive justification" for the classification. *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718, 724 (1982). This burden is satisfied *only if* the classification serves important governmental objectives, and the discriminatory means employed are substantially related to achieving those objectives. (Emphasis added). *Kirchberg v. Feenstra*, 450 U.S. 455, 461 (1981). A law that discriminates based on sex cannot be

deemed constitutional simply because it doesn't create an "insurmountable obstacle"; it remains unacceptable under the Constitution even if citizens can navigate around the discrimination. *Id*. Therefore, the exclusion of transgender women is not substantially related to the Act's purported goals, rendering the discrimination arbitrary and unjustified. The Act fails to meet the rigorous standards under the EPC and thus cannot be deemed constitutional.

1. The Act's Objectives Do Not Constitute a Compelling Government Interest to Justify the Exclusion of Transgender Women.

The State of North Greene, in passing this discriminatory Act, justified its actions by purporting to protect women's safety by excluding transgender women from participating in gender-aligned sports teams. R. at 4. This objective, however, does not amount to an important governmental interest under the intermediate scrutiny standard required by the EPC.

In *United States v. Virginia*, the Supreme Court held that gender-based classifications must be supported by an "exceedingly persuasive justification." *Virginia*, 518 U.S. at 520. The Supreme Court rejected Virginia's claim that excluding women from the Virginia Military Institute was necessary, holding that the state failed to show the exclusion was substantially tied to an important government interest. *Virginia*, 518 U.S. at 520. Similarly, the mere assertion of protecting women's safety is insufficient to justify the exclusion of transgender women and girls, especially when the government offers no evidence that transgender participation in women's sports inherently compromises safety. R. at 4. *See generally*, Kyle C. Velte, *Anti-LGBT Free Speech and Group Subordinatio*n, 57 HOUS. L. REV. 971 (2020) (discussing the use of discriminatory rhetoric to subordinate marginalized groups under the guise of safety); Catherine Jean Archibald, *Is Full Marriage Equality for Same-Sex Couples Next?* 24 U. PA. J.L. & SOC. CHANGE 1 (2021) (exploring how unfounded safety concerns are often used to justify the exclusion of marginalized groups from full participation in society).

Moreover, the Supreme Court has consistently required that gender-based classifications be closely examined to ensure they are not based on overbroad generalizations or unsupported assumptions. *Virginia*, 518 U.S. at 520. Specifically, the Supreme Court struck down a state law prohibiting men from enrolling in a state-supported nursing school, finding the law's stated objective of compensating for past discrimination against women did not justify the gender-based exclusion, nor was it "substantially related" to important governmental objectives because the law cannot rely on *outdated or inaccurate* stereotypes. (Emphasis added). *Hogan,* 458 U.S. at 720. Here, the Act's exclusion of transgender women, ostensibly to protect women's safety, fails to demonstrate a substantial relationship to that objective, but rather relies on unfounded assumptions about transgender athletes.

A study found that only 0.6% of U.S. adults identify as transgender, with no evidence that transgender women dominate women's sports or pose a safety risk. *See* Sharita Gruberg, *The State of the LGBTQ Community in 2020*, Ctr. for Am. Progress (Oct. 6, 2020). The Human Rights Campaign also reports no significant disruption or unfair advantage where transgender athletes compete. *See* Human Rights Campaign, *Transgender Athletes: A Statistical Review of Inclusion in Sports* (2021). Additional research shows that performance advantages of transgender women on hormone therapy are minimal and diminish after 12 months. *See* Joanna Harper, *Race Times for Transgender Athletes*, 54 BR. J. SPORTS MED. 344, 347 (2020). Additionally, less than 2% of transgender high school students participate in sports, undercutting arguments about safety or fairness. *See* Jody L. Herman et al., *LGBTQ Youth Sports Participation*, Williams Inst. (2020). These findings reveal the Act's foundation in harmful misconceptions rather than truth, unfairly targeting and isolating transgender women without any real justification. It perpetuates fear and discrimination where inclusion and understanding should prevail.

Further, the Supreme Court, applying intermediate scrutiny to a gender-based law setting different minimum drinking ages for men and women, found the law unconstitutional because the state failed to show that the gender classification was substantially related to the stated objective of traffic safety. *Craig v. Boren*, 429 U.S. 190, 194 (1976). The Supreme Court noted that even when a government interest is important, the means used to achieve it must be closely examined and justified. *Id*. In the case at bar, the Act's blanket exclusion of transgender women and girls from gender-aligning sports teams fails this test, as it does not demonstrate how such an exclusion is substantially related to the objective of protecting women's safety. R. at 4. Instead, it imposes a discriminatory barrier based on gender identity without sufficient evidence or justification, making the law unconstitutional under the EPC.[3]

Moreover, research supports that transgender individuals, especially youth, do not pose a unique threat to fairness in sports. Jack Drescher, in his discussion of gender identity, explains that much of the opposition to transgender participation in gender-affirming activities stems from misconceptions and biases, not factual data. *See* Jack Drescher, *Controversies in Gender Diagnoses*, 39 Hastings Ctr. Rep. 21 (2009). The Act's failure to substantiate its claims with actual evidence undermines its legal justification and reinforces that the law is rooted in prejudice, not legitimate concern. Without sufficient evidence to justify the exclusion of transgender women, the law fails the required scrutiny and is thus unconstitutional.

Proponents of the Act argue that excluding transgender women is necessary to protect the safety and competitive integrity of women's sports, asserting this is an important government

[3] See Julie A. Greenberg, *Defining Male and Female: Intersexuality and the Collision Between Law and Biology*, 41 ARIZ. L. REV. 265, 281 (1999) (arguing that laws discriminating based on gender identity lack a biological basis and are constitutionally suspect); Harper Jean Tobin, *Against the*

interest.[4] This, however, fails the EPC's heightened scrutiny. *See Michael M. v. Superior Court of Sonoma County*, 450 U.S. 464, 467 (1981) (upholding gender-based statutory rape law, reasoning that it addressed real biological differences and protected women from the unique risk of pregnancy). *But see Glenn,* 663 F.3d at 1321 (holding that discriminating against a transgender individual due to gender nonconformity violates EPC and is not a justified government interest); *Adams*, 968 F.3d at 1299 (finding policy excluding transgender students from gender-appropriate restrooms was not sufficiently tailored to further a legitimate government interest).

Unlike *Michael M*., where the law narrowly targeted a specific harm rooted in biological differences, the Act imposes a broad exclusion without narrowly tailoring its measures to serve its purported goals. *Michael M*., 450 U.S. at 467. Here, A.J.T. participated in an all-girls cheerleading team in elementary school prior to this law. R. at 3. Much like volleyball or cross-country, cheerleading is not a contact sport, and A.J.T's participation did not raise any safety concerns or disrupt the integrity of the team. R. at 3. This further demonstrates that the blanket exclusion imposed by the Act is unjustified, particularly in non-contact sports where any supposed safety risks are even less applicable. The Acts fails to account for individual circumstances or the nature of specific sports, instead broadly excluding transgender women from participation without evidence that their involvement presents any legitimate risk.

Further, legal scholarship shows the dangers of relying on broad exclusionary measures when less restrictive, non-discriminatory alternatives are available. Professor Julie Greenberg explains that legal classifications based on sex often rely on oversimplified and scientifically unsupported notions of biological differences which can perpetuate discrimination and fail to

[4] *Surgical Requirement for Change of Legal Sex*, 38 CASE W. RES. J. INT'L L. 393, 401 (2007) (criticizing legal barriers based on gender identity as lacking sufficient justification under the Equal Protection Clause).

account for the complexities of gender identity. Julie Greenberg, *Defining Male and Female: Intersexuality and the Collision Between Law and Biology,* 41 ARIZ. L. REV. 265, 275 (1999).

The harmful effects of such discrimination are especially evident in the transgender community. Studies show that 86% of transgender youth report experiencing harassment or discrimination at school, and transgender youth who face rejection or exclusion are at significantly higher risk for depression and suicidal ideation and attempts.[5] In fact, 35% of transgender youth have attempted suicide at least once, and the prevalence of suicidal ideation is even higher among those subjected to exclusionary policies or hostile environments.[6] These alarming statistics demonstrate the devastating consequences of discriminatory laws, further emphasizing the importance of adopting inclusive, nondiscriminatory alternatives.

The Act, in relying on outdated notions of sex and gender, bans transgender women and girls from gender-aligned sports without considering less restrictive alternatives or individualized assessments. The protection of women's safety is a valid end, but the exclusion of transgender athletes is not a justified means, particularly where the Act lacks sufficient evidence or an exceedingly persuasive justification.

2. The Exclusion of Transgender Women is Not Substantially Related to the Act's Purported Goals, Making the Discrimination Arbitrary and Unjustified.

The exclusion of transgender women and girls from participating in gender- aligned sports is not substantially related to the Act's goals of promoting fairness and protecting women's safety,

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[5] *See* Joseph G. Kosciw et al., *The 2019 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Youth in Our Nation's Schools*, GLSEN (2019), at 32, available at https://www.glsen.org/sites/default/files/2020-04/GLSEN-2019-National-School-Climate-Survey-NSCS-Full-Report.pdf.

[6] *See* Amit Paley, *The Trevor Project National Survey on LGBTQ Youth Mental Health 2020*, The Trevor Project (2020), at 13, available at https://www.thetrevorproject.org/survey-2020/; Stephen T. Russell et al., *Challenging Assumptions: Gender Identity and Issues of School Safety*, 39(4) YOUTH & SOCIETY 339, 351 (2008).

rendering the discrimination arbitrary and unjustified. The Supreme Court previously struck down a state law that automatically preferred men over women in the administration of estates, finding that the gender-based classification was arbitrary and not substantially related to the law's objective of reducing administrative burdens. *Reed v. Reed*, 404 U.S. 71, 73 (1971). *See generally SmithKline Beecham Corp. v. Abbott Labs.*, 740 F.3d 471, 472 (9th Cir. 2014) (invalidating the exclusion of jurors based on sexual orientation, emphasizing that classifications must have a substantial and genuine relationship to the law's goals and that generalizations and stereotypes fail to meet heightened scrutiny).

Here, the Act's exclusion of transgender women lacks a concrete connection to its objectives, relying on isolated anecdotes to justify its arbitrary and baseless discrimination. R. at 7. The Act fails to provide empirical evidence or data demonstrating that transgender women's participation in sports undermines fairness or safety, relying instead on speculative fears and broad generalizations. R. at 7. In basing its discriminatory provisions on unsubstantiated concerns rather than on a genuine, evidence-based need, the Act imposes arbitrary restrictions that do not withstand scrutiny. This approach mirrors the flawed reasoning rejected in multiple cases, where courts have consistently struck down laws and policies that rely on anecdotal or speculative justifications rather than substantial and genuine connections to the law's stated goals.[7]

Further, the United States Supreme Court invalidated a Colorado law that prohibited any state or local laws protecting individuals from discrimination based on sexual orientation. *Romer,*

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[7] *See*, e.g., *United States v. Virginia*, 518 U.S. 515, 533 (1996) (rejecting broad justifications for excluding women from military education based on generalizations and stereotypes); *Craig v. Boren*, 429 U.S. 190, 204 (1976) (invalidating a gender-based alcohol regulation due to insufficient statistical support for the law's stated goals); *Windsor v. United States*, 570 U.S. 744, 770 (2013) (striking down DOMA as based on speculation and stereotypes rather than legitimate government interests).

517 U.S. at 625. The Court found that the amendment was motivated by animus rather than any legitimate governmental objective and that the broad exclusionary effect of the law was not rationally related to any valid purpose. *Id*. Although *Romer* applied a rational basis review, the requirement that laws must be genuinely related to their stated objectives is even more important under intermediate scrutiny. *Id*. Here, the Act's blanket exclusion of transgender women and girls from sports teams, purportedly to protect fairness and safety, appears to be motivated by bias rather than a legitimate concern, as it fails to show how this exclusion is necessary to achieve those goals. R. at 4.

Moreover, the Supreme Court reinforced that classifications based on unsupported fears or stereotypes cannot withstand constitutional scrutiny. *City of Cleburne,* 473 U.S. at 438. In *Cleburne*, the Supreme Court struck down a zoning ordinance requiring a special permit for a group home for people with intellectual disabilities, finding it was based on irrational fears and prejudices, not a legitimate government interest. *City of Cleburne,* 473 U.S. at 438. The Court ruled that arbitrary classifications like this fail even the lowest level of scrutiny. *Id*. Here, the exclusion of transgender women and girls from sports, does not withstand the more rigorous scrutiny required for gender-based classification. The lack of evidence showing that exclusion is necessary to achieve the Act's goals demonstrates that the discrimination is both arbitrary and unconstitutional.

In essence, the Act's exclusion of transgender women and girls from participating in gender-aligned sports is not substantially related to its stated goals of fairness and safety, making the discrimination it imposes unconstitutional. Laws that rely on unfounded assumptions,

stereotypes, or isolated incidents cannot justify discriminatory practices.[8] The Act's failure to demonstrate a legitimate and substantial relationship between its exclusionary measures and its objectives emphasizes its discriminatory nature, rendering it unjustified under the EPC.

3. The Government Could Achieve its Objectives Through Less Restrictive, Non-discriminatory Measures.

The Act's exclusionary provisions fail to meet constitutional standards because the government could achieve its stated objective through less restrictive, non-discriminatory measures, as required under the EPC. The Supreme Court has held that overly broad and not narrowly tailored objectives are unconstitutional. *Shelton v. Tucker*, 364 U.S. 479, 485 (1960). In *Shelton* the Supreme Court emphasized that a more targeted, less intrusive approach could have served the state's interest without infringing on individual rights. *Id.*; *see also Whitaker*, 858 F.3d at 1051 (holding that blanket exclusion of transgender students from bathrooms matching their gender identity failed to consider less restrictive alternatives like privacy screens); *Grimm*, 972 F.3d 586 at 615 (finding school board's exclusion of transgender student was overly broad and failed to consider less intrusive measures); *Doe v. Regional Sch. Unit 26*, 86 A.3d 600, 607 (Me. 2014) (striking down policy excluding transgender students from using bathrooms corresponding to their gender identity, noting that school could achieve privacy goals with less discriminatory means); *City of Cleburne,* 473 U.S. at 448 (invalidating zoning ordinance targeting individuals with disabilities, stating that the government's interests could be met through less restrictive measures); *Roberts v. United States Jaycees*, 468 U.S. 609, 612 (1984) (holding that that the

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[8] *See Lawrence v. Texas*, 539 U.S. 558, 580 (2003) (striking down a law criminalizing same-sex intimacy, holding that moral disapproval and unfounded assumptions cannot justify discrimination); *Plyler v. Doe*, 457 U.S. 202, 218-20 (1982) (invalidating a Texas statute denying public education to undocumented children based on stereotypes and unsupported claims about resource allocation)

government must use the least restrictive means available to achieve its objectives, especially when fundamental rights are at stake).

Applying this principle to the Act in question, the government could adopt policies that promote safety and fairness in sports—such as implementing gender-neutral safety standards or providing additional resources for coaching and training—without resorting to a blanket exclusion of transgender women.[9] The failure to consider such alternatives renders the Act's provisions unnecessarily restrictive and discriminatory.

The Act's blanket exclusion of transgender women and girls from sports is not just overly broad—it's discriminatory and unnecessary. By ignoring less harmful alternatives like individualized assessments or safety protocols, the Act isolates and marginalizes an already vulnerable group. It distorts safety and gender norms to exclude transgender girls from sports, community, and a childhood free from hostility. The Act's refusal to consider fairer, more compassionate solutions makes it nothing more than sweeping and harmful discrimination. This is not just a failure of law; it is a deliberate marginalization and stigmatization of transgender women and girls. The government's refusal to consider less discriminatory alternatives forces A.J.T. and others like her into the shadows, denying them the respect and dignity they deserve. The Act's

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[9] *See* Erin E. Buzuvis, *Transgender Student-Athletes and Sex-Segregated Sport: Developing Policies of Inclusion for Intercollegiate and Interscholastic Athletics*, 21 SETON HALL J. SPORTS & ENT. L. 1, 40-41 (2011) (arguing that inclusive policies, such as individualized assessments and gender-neutral safety standards, could promote fairness and safety in sports without excluding transgender athletes); Elizabeth L. Hillman, *Policing the Borders of Sex and Gender: A Critique of Military Service Policies for Transgender and Intersex People*, 9 DUKE J. GENDER L. & POL'Y 433, 451 (2002) (suggesting that gender-neutral policies and improved training can address concerns of fairness and safety without blanket exclusions); Jennifer C. Pizer et al., *Improving LGBT Equality Through Administrative Policy Changes*, 25 STAN. L. & POL'Y REV. 141, 149 (2014) (proposing that nondiscriminatory alternatives, such as enhanced training and resources, are more effective than exclusionary practices in achieving safety and fairness).

exclusionary approach is not only legally indefensible but also a stark violation of the principles of equality and fairness.

The Act's blanket exclusion of transgender women and girls from sports goes against the Supreme Court's requirement of narrowly tailoring laws to serve legitimate government interests for the Act is both overly broad and fails to consider less restrictive, non-discriminatory alternatives. Thus, the Act's refusal to explore individualized assessments or solutions demonstrates its unconstitutional nature and violates the principles of equality and fairness under the EPC.

B. The Act Discriminates by Applying Unequally Across Gender Identities Thereby Violating the Equal Protection Clause.

The Act blatantly violates the EPC by targeting transgender women and girls while ignoring men, creating an unjustifiable disparity based on gender identity. In *Romer,* the Supreme Court made clear that laws singling out groups for unequal treatment without legitimate justification are unconstitutional. *Romer,* 517 U.S. at 625. Here, the Act's selective exclusion of transgender women, without any legitimate reason, fails to meet this standard. Worse, it perpetuates harmful stereotypes, much like the stigmatizing policies condemned in *Brown v. Board of Education*. *Brown v. Board of Education*, 347 U.S. 483 (1954). Legal scholarship echoes this principle, exposing this Act's reliance on outdated, oversimplified assumptions about gender. [10] The Act's discriminatory impact and unjustified bias render it undeniably unconstitutional.

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[10] See Greenberg, Julie A. "Defining Male and Female: Intersexuality and the Collision Between Law and Biology." ARIZONA LAW REVIEW, vol. 41, no. 2, 1999, pp. 265-328.

1. The Act Targets Transgender Women and Ignores Transgender Men, Resulting in an Unequal Application of the Law.

The Act specifically targets transgender women while disregarding transgender men, resulting in an unequal application of the law that violates the Equal Protection Clause. This selective enforcement against transgender women creates a disparate impact, fostering discrimination without any valid justification. In *Glenn*, the Eleventh Circuit clarified that discriminating against an individual for not conforming to gender stereotypes constitutes sex-based discrimination. *Glenn*, 663 F.3d at 1317. The court held that firing a transgender employee solely for transitioning was a violation of the EPC, emphasizing that such discrimination based on gender nonconformity is impermissible. *Id*. Similarly, here, the Act's focus on transgender women, while failing to impose similar restrictions on transgender men, demonstrates an unequal and constitutionally suspect application of the law.

This unequal application is further demonstrated by the Act's failure to rationalize the targeting of transgender women. In *Whitaker*, the Seventh Circuit found that a school district's policy preventing a transgender boy from using the boys' restroom was unconstitutional under the EPC. *Whitaker,* 858 F.3d at 1034. The court emphasized that the policy was discriminatory because it singled out transgender students and treated them differently from their peers without adequate justification. *Id.;* see also *Grimm*, 972 F.3d at 586.

Additionally, the Eleventh Circuit in *Adams*, ruled that a school board's restroom policy that discriminated against a transgender student was unconstitutional, further underscoring that discriminatory treatment based on gender identity lacks legal justification. *Adams*, 968 F.3d 1286 at 1289. Further in *Boyertown*, the Third Circuit upheld a school district's policy allowing transgender students to use restrooms aligning with their gender identity, rejecting the argument that accommodating transgender students imposes a burden on others, and highlighting that equal

treatment must extend to all students. *Doe v. Boyertown Area School District*, 897 F.3d 518 (3d Cir. 2018).

Here, the Act imposes discriminatory barriers on transgender women without applying the same standards to transgender men, resulting in an unequal and unjustifiable application of the law in violation of the EPC. The Act explicitly prohibits transgender *women* from participating in sports aligned with their gender identity, based solely on the claim that biological differences between men and women warrant such exclusion. (Emphasis added). R. at 3-4. However, it fails to impose any similar restrictions on transgender men, thereby creating an arbitrary and inconsistent legal standard that targets one group while ignoring the other.

Moreover, the Sixth Circuit held that a transgender firefighter who was disciplined after beginning to express a female gender identity could pursue an EPC claim based on sex discrimination. *Smith v. City of Salem*, 378 F.3d 566, 568 (6th Cir. 2004). The court recognized that discrimination against a transgender person for failing to conform to gender norms constitutes impermissible sex-based discrimination. *Id.*, *see generally Rosa v. Park W. Bank & Tr. Co.*, 214 F.3d 213, 215–16 (1st Cir. 2000) (holding that a bank's refusal to provide a loan application to a transgender woman because she did not appear "masculine enough" could constitute sex discrimination under the Equal Credit Opportunity Act, and underscoring that denying service based on failure to conform to gender expectations is a form of sex discrimination, rendering laws or policies enforcing gender norms constitutionally suspect); *Karnoski v. Trump*, 926 F.3d 1180, 1200 (9th Cir. 2019) (holding that a government policy banning transgender individuals from military service is subject to heightened scrutiny and remanding to determine if the ban could survive this level of review, emphasizing that discrimination based on transgender status requires rigorous justification). Here, the Act operates under similar discriminatory principles by targeting

transgender women for exclusion while ignoring transgender men, thereby enforcing gender norms in a way that is constitutionally indefensible.

Legal scholars also criticize laws that selectively target transgender individuals, arguing that such policies are rooted in outdated and harmful stereotypes. Professor Paisley Currah discusses how laws that disproportionately impact transgender individuals often fail to recognize the complex realities of gender identity and instead rely on oversimplified and discriminatory notions of sex and gender.[11] Similarly, *The Misuse of Gender Stereotyping in Anti-Discrimination Law* argues that policies based on rigid gender stereotypes are fundamentally flawed and should be scrutinized under heightened review.[12] These scholarly perspectives reinforce the argument that this Act, by selectively targeting transgender women while ignoring transgender men, perpetuates discrimination and fails to meet constitutional standards.

The selective targeting of transgender women under the Act creates an unequal application of the law that is not only discriminatory but also fails to withstand constitutional scrutiny. As courts have repeatedly emphasized, laws that discriminate based on gender identity must be narrowly tailored and must serve a compelling governmental interest to be upheld, thus the Act's failure to apply equally to transgender men and its reliance on outdated gender norms render it unconstitutional under the EPC.

2. The Acts Exclusion of Transgender Girls Fosters Societal Prejudice, Reinforcing Stereotypes and Discrimination.

The Act's exclusion of transgender girls from participating in sports aligned with their gender identity not only discriminates against them but also fosters societal prejudice, reinforces harmful stereotypes, and perpetuates discrimination. The codification of such a policy legitimizes

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[11] See Paisley Currah, *Transgender Rights as Human Rights*, 17 GEO. J. GENDER & L. 1 (2016).
[12] See Jessica A. Clarke, *The Misuse of Gender Stereotyping in Anti-Discrimination Law*, 95 B.U. L. REV. 579 (2015).

the erroneous belief that transgender individuals are inherently different and should be treated as such under the law. This exclusion has profound social implications, as it perpetuates the stigma surrounding transgender identity, marginalizing transgender girls and exacerbating the discrimination they already face.[13]

The Maine Supreme Judicial Court held that denying a transgender girl access to the girls' restroom was a violation of her rights under the state's Human Rights Act. *Regional School Unit 26*, 86 A.3d 600 at 605. The court recognized that such exclusion was not just a matter of inconvenience but a significant harm that validated societal prejudice and reinforced harmful stereotypes. *Id*. In the case at hand, the exclusion of transgender girls from sports, as mandated by the Act, similarly inflicts harm by legitimizing the idea that transgender girls are not "real" girls and should not be afforded the same opportunities as their cisgender peers. This legal exclusion contributes to a hostile environment that can lead to further marginalization and psychological harm, as evidenced by the experiences of transgender individuals who face exclusion and discrimination in various aspects of life.[14]

Secondary sources have highlighted the dangerous impact of laws that reinforce stereotypes and exclude transgender individuals from public life. Erin Buzuvis argues that excluding transgender students from sports not only denies them equal opportunities but also reinforces the harmful stereotype that gender identity is solely determined by biological sex, which

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[13] *See* Stephen T. Russell et al., *Challenging Assumptions: Gender Identity and Issues of School Safety*, 39 YOUTH & SOCIETY 339, 351 (2008) (discussing how exclusionary policies toward transgender youth exacerbate stigma and contribute to their marginalization in educational settings); Jody L. Herman, *Gendered Restrooms and Minority Stress: The Public Regulation of Gender and Its Impact on Transgender People's Lives*, 19 J. PUB. MGMT. & SOC. POL'Y 65, 75 (2013) (arguing that exclusionary policies increase social stigma and discrimination against transgender individuals, particularly in public spaces).

[14] *See The Trevor Project, 2022 National Survey on LGBTQ Youth Mental Health*, at 10 (2022), https://www.thetrevorproject.org/survey-2022.

is both scientifically and legally flawed. Erin E. Buzuvis, *Transgender Students, Athletic Participation, and the Intersection of Identity and Equal Protection*, 19 DUKE J. GENDER L. & POL'Y 187 (2012). Similarly, Jessica Clarke discusses how stereotypes about gender and sex have been used to justify discriminatory practices, and how such practices are increasingly being challenged under the EPC. Jessica A. Clarke, *The Role of Stereotyping in U.S. Employment Discrimination Law*, 25 GEO. J. GENDER & L. 453 (2016). These scholarly perspectives demonstrate that the Act is rooted in and perpetuates outdated and harmful stereotypes that have no place in modern jurisprudence.

Furthermore, a federal district court recognized that denying necessary medical care to a transgender prisoner based on outdated stereotypes about gender identity constituted cruel and unusual punishment under the Eighth Amendment and violated the EPC. *Norsworthy v. Beard*, 87 F. Supp. 3d 1164, 1167 (N.D. Cal. 2015). The court noted that policies based on stereotypes rather than individualized assessments contribute to societal harm and reinforce discrimination. *Id*. The Act at bar also bases its exclusion of transgender women and girls on broad and unsubstantiated generalizations about gender, rather than on any legitimate evidence or individualized considerations. By reinforcing the stereotype that transgender girls are inherently different and should be excluded, the Act perpetuates a cycle of prejudice and harm that has been consistently condemned by courts.

The Act's exclusion of transgender women and girls from sports, while failing to impose similar restrictions on transgender men, fosters harmful stereotypes and reinforces societal prejudice. This selective enforcement not only marginalizes transgender women but also lacks any legitimate, narrowly tailored justification under the EPC. As such, the Act must be struck down

when it perpetuates stereotypes and fails to consider less discriminatory alternatives. The Act's unequal application and reliance on outdated gender norms render it unconstitutional.

CONCLUSION

For these reasons, this Court should reverse the judgment of the United States Court of Appeals for the Fourteenth Circuit.

Respectfully Submitted,

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