Case No. 24-2020

IN THE

SUPREME COURT OF THE UNITED STATES

A.J.T.,

Plaintiff—*Petitioner*,

v.

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

Defendants—Respondents

On Writ of Certiorari

To The United States Court of Appeals

For The Fourteenth Circuit

BRIEF FOR THE RESPONDENTS

Respectfully Submitted,
Team 9

Counsel for Respondents

QUESTIONS PRESENTED

1) Whether the Circuit Court erred in holding that the Save Women's Sports Act is substantially related to an important government interest, and therefore, does not violate the Equal Protection Clause of the Fourteenth Amendment.
2) Whether the Circuit Court erred in holding that Title IX does not prohibit North Greene from enacting the North Greene Save Women's Sports Act, which allows the State to have sex-separated sports that limit participation based on biological sex of the athlete at birth.

PARTIES TO THE PROCEEDING

Petitioner, A.J.T., is a transgender minor who filed this lawsuit by and through her mother.

Respondents entail (1) the State of North Greene Board of Education; (2) the North Greene State Superintendent, Floyd Lawson; (3) the State of North Greene; and (4) the State of North Greene Attorney General, Barney Fife. Collectively, Respondents shall be referred to as "the State" throughout this Brief.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Federal Constitution

STATEMENT OF FACTS

I. Introduction

A.J.T. (the Appellant) is a transgender girl who sought to join the girls' volleyball and cross-country teams at A.J.T.'s middle school in North Greene. R. at 3. However, the Save Women's Sports Act (the "Act"), a state statute requiring student-athletes to join sports teams consistent with their biological sex, prevented A.J.T. from joining either team. R. at 4. As a result, A.J.T. filed this lawsuit against the State to challenge the constitutionality of the Act and to secure the ability to join sports teams consistent with A.J.T.'s gender identity. R. at 4-5.

II. A.J.T.'s Biological and Gender Background

A.J.T. is a transgender girl that was assigned the sex of male at birth. R. at 3. Since elementary school, A.J.T. has lived as a girl, by adopting a name commonly associated with girls and by dressing as a girl, both at home and in public. R. at 3. Further, A.J.T. joined and participated on the elementary school's cheerleading team without incident. R. at 3.

In 2022, A.J.T. was diagnosed with gender dysphoria. R. at 3. In connection with this diagnosis, A.J.T. began going to counseling. R. at 3. A.J.T. also began discussing the possibility of undergoing puberty-delaying treatments to "prevent endogenous puberty and therefore any physiological changes caused by increased testosterone circulation." R. at 3. "As of the commencement of this lawsuit, A.J.T. had not begun puberty or puberty-delaying treatment, and the court has not learned of any subsequent changes in A.J.T.'s treatment." R. at 3.

III. The "Save the Women's Sports Act"

In 2023, the North Greene legislature enacted the "Save the Women's Sports Act" to preserve the physical safety and athletic integrity of sports between the sexes. R. at 3. The statute provides objective definitions for the classifications of athletes affected by it. R. at 3. The relevant definitions include the following:

(1) "Biological sex" means an individual's physical form as a male or female based solely on the individual's reproductive biology and genetics at birth. R. at 4.

(2) "Female" means an individual whose biological sex determined at birth is female. As used in this section, "women" or "girls" refers to biological females. R. at 4.

(3) "Male" means an individual whose biological sex determined at birth is male. As used in this section, "men or "boys" refers to biological males. R. at 4.

The statute further requires that "[i]nterscholastic, intercollegiate, intramural, or club athletic teams or sports that are sponsored by any public secondary school or a state institution of higher education," "shall be expressly designated as one of the following based on biological sex at birth: (A) Males, men, or boys; (B) Females, women, or girls; or (C) Coed or mixed." R. at 4. After proper designation, the statute continues to address who may participate on which teams. R. at 4. "Athletic teams or sports designated for females, women, or girls shall not be open to students of the male sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport." R. at 4.

The statute's definition of "biological sex" is based solely on sex and has nothing to do with gender identity. R. at 4. As the statute explains: "Gender identity is separate and distinct from biological sex to the extent that an individual's biological sex is not determinative or indicative of the individual's gender identity. Classifications based on gender identity serve no

legitimate relationship to the state of North Greene's interest in promoting equal athletic opportunities for the female sex." R. at 4.

IV. Procedural History

"A.J.T., by and through [her] mother, filed this lawsuit against the State of North Greene Board of Education and State Superintendent Floyd Lawson." R. at 4. "The State of North Greene moved to intervene, and that motion was granted." R. at 4. "Plaintiff then amended the complaint to name both the State and Attorney General Barney Fife as defendants." R. at 4-5.

"Plaintiff sought a declaratory judgment that the North Greene Act violates Title IX and the Equal Protection Clause of the Fourteenth Amendment and an injunction preventing Defendants from enforcing the law against Plaintiff." R. at 5. "Defendants opposed Plaintiff's motion for a permanent injunction and filed a motion for summary judgment on Plaintiff's claims." R. at 5. "The District Court granted Defendants' motion for summary judgment." R. at 5.

"Plaintiff appealed, and this Court has jurisdiction under 28 U.S.C. § 1291." R. at 5.

SUMMARY OF THE ARGUMENT

This Court should affirm the Fourteenth Circuit's decision because the Act does not violate Title IX or the Equal Protection Clause of the Fourteenth Amendment.

The Save Women's Sports Act's enforcement aligns with Title IX, which protects individuals from discrimination based on "sex." Under Title IX, sex is defined as the biological sex assigned at birth and does not extend to gender identity. Court precedents, such as Loper Bright Enters. v. Raimondo and Texas v. Becrra, emphasize the importance of interpreting statutes according to the original meaning of terms defined at the time of legislation. Reliance on Bostock v. Clayton County's reasoning, which interpreted gender identity to be included in the definition of "sex" under Title VII, would be misplaced, as Title IX's language and application in

education differs from employment law. The Appellant suffered no harm under Title IX compared to a similarly situated individual.

The Equal Protection Clause requires that no State shall deny any person within its jurisdiction equal protection of the laws. "Equal protection of the laws" does not proscribe the creation of sex classifications. If sex classifications are created, they must be reviewed using the intermediate scrutiny standard, which requires that classifications serve important governmental objectives and are substantially related to achieving those objectives.

The Save Women's Sports Act lawfully discriminates on the basis of sex by treating similarly situated individuals equally. Further, the Act provides equal athletic opportunities to female athletes and protects the physical safety of female athletes when competing in sports. These achievements have continuously been upheld as important governmental objectives that are served by and are substantially related to the exclusion of males from female sports teams. Thus, the Act, by treating similarly situated individuals equally, and in excluding males from female sports teams, does not violate the Equal Protection Clause of the Fourteenth Amendment.

ARGUMENT

I. THE ENFORCEMENT OF THE SAVE WOMEN'S SPORTS ACT DOES NOT VIOLATE TITLE IX OF THE EDUCATION ADMENDMENTS OF 1972.

A. A person's "sex," as defined under Title IX of the Education Amendments of 1972, is a person's biological sex assigned at birth, and therefore, gender identity is not protected under Title IX.

A person's "sex," as defined under Title IX of the Education Amendments of 1972 ("Title IX"), is a person's biological sex assigned at birth, and therefore, gender identity is not protected under the legislature. This honorable Court in Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244 (2024) determined that courts must exercise independent judgment in determining the meaning of terms defined in statutory provisions, and terms defined are not delegated to

another branch of government. In exercising independent judgment, this Court will find that "sex" refers to biological sex assigned at birth under the statute. To find gender protected under Title IX means pushing a sweeping social policy that is not supported by Title IX legislation or precedent.

Title IX states, "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance[.]" 20 U.S.C. § 1681. In the current case, Plaintiff contends that the enforcement of the Save Women's Sports Act violates Title IX, under the presumption that gender is included under the umbrella of "on the basis of sex" within Title IX. This Court has recognized that the statutes must have a single, best meaning when confronting statutory ambiguities where legislatures have left a statutory gap. Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244, 2266 (2024). Because a statute's meaning is fixed at the time of enactment, the Court should use every tool to determine the best reading of the statute in resolving the ambiguity instead of declaring a party's interpretation permissible. Id. In doing so, the Court applies a "fundamental canon of statutory construction," meaning that words generally should be interpreted as taking their ordinary meaning at the time Congress enacts the statute. New Prime Inc. v. Oliveira, 586 U.S. 105, 113 (2019).

Here, the key text is Title IX, a statute prohibiting discrimination "on the basis of sex," a phrase not associated with discrimination based on "gender identity." When Title IX was enacted in 1972, "sex unambiguously meant only a person's biological sex." Texas v. Becerra, No. 6:24-cv-211-JDK, 2024 U.S. Dist. LEXIS 117573, at *14 (E.D. Tex. July 3, 2024). The case of Texas v. Becerra arises out of a final rule promulgated by the Department of Health and Human

Services' Office for Civil Rights and the Centers for Medicare & Medicaid Services (collectively, "HHS"). Id. at *2. The rule made states require healthcare providers to perform and pay for "gender transition" procedures—or else lose federal funding. Id. HHS cited Title IX as an authority for the final rule. Id. The issue for the Texas Eastern District Court to decide became whether HHS is permitted to bring the new rule into effect under Title IX. Id. at *3. HHS claimed the phrase "on the basis of sex" prohibits discrimination on the basis of "gender identity." Id. at *5. Reviewing agency action and statutory interpretation under Loper Bright, the court granted a stay for the final rule, stating that HHS's interpretation of Title IX to include gender-based discrimination is outside Title IX's statutory authority and inconsistent with the court's interpretation of the law. Id. at 30. To support this finding, the court looked to dictionaries at the time of Title IX's enactment for the common use of the term "sex." Id. at 14. Furthermore, the Court also looked to rulings that defined "sex" around the same time, such as Justice Brennan, who defined "sex" as "an immutable characteristic determined solely by the accident of birth." Id. (quoting Frontiero v. Richardson, 411 U.S. 677, 686, 93 S. Ct. 1764, 36 L. Ed. 2d 583 (1973)). The ordinary meaning rule for statutory interpretation under Loper Bright reinforces the idea that courts must define vague or ambiguous words in statutes with definitions that conform with the time period of the statute's enactment. Id. at 13. Therefore, when a court reads the term "sex" in the context of Title IX, a court must interpret "sex" as "a person's biological sex assigned at birth."

Appellant may argue that this honorable Court held gender identity in Bostock v. Clayton Cnty., 590 U.S. 644 (2020) is the same as sexual identity. That is simply not the case. Bostock v. Clayton Cnty. is a case that was brought before this Court in 2020 under Title VII of the Civil Rights Act when employers fired employees based on individual sexual orientation and gender

identity. Id. The issue before the Court was "whether an employer who fires someone simply for being homosexual or transgender has discharged or otherwise discriminated against that individual 'because of such individual's sex" under Title VII, which did not interpret or identify the phrase "on the basis of sex" under Title IX. Id. at 651. Still, the Court held sexual orientation and gender identity included in the definition of "based on sex" under Title VII. Id. at 652. This Court emphasized that the interpretation of "based on sex" will not have a sweeping effect beyond Title VII to other federal or state laws that prohibit sex discrimination, stating "none of these other laws are before us; we have not had the benefit of adversarial testing about the meaning of their terms, and we do not prejudge any such question today." Id. at 681.

Furthermore, this Court distinguished the language of Title VII from that of other laws by reliance on the phrase "because of," which, according to this Court, under Title VII creates a "sweeping standard" cause-and-effect analysis that would not allow a defendant to "avoid liability just by citing some other factor that contributed to its challenged employment decision." Id. at 656. No such language is found in Title IX. 20 U.S.C.S. § 1681. Instead, the statute contains the phrase "on the basis of," which this Court should find does not create such a sweeping standard. Title VII addresses discrimination in employment, where an "individual employee's sex is 'not relevant to the selection, evaluation, or compensation of employees," Bostock, 590 U.S. at 660 (quoting Price Waterhouse v. Hopkins, 490 U.S. 228, 239, 109 S. Ct. 1775, 104 L. Ed. 2d 268 (1989) (plurality opinion)). Alternatively, Title IX is "concerned with discrimination in education—[an] area of life in which an individual's biological sex is often relevant and sometimes critical." Texas v. Becerra, No. 6:24-cv-211-JDK, 2024 U.S. Dist. LEXIS 117573, at *18 (E.D. Tex. July 3, 2024). This Court's distinction between Title IX and

Title VII reinforces the notion that statutory language and context indeed matter in determining the scope of protections under a statute. Id. at *5.

Therefore, interpreting the term "sex" in the context of Title IX as referring exclusively to biological sex assigned at birth is consistent with the statutory construction principles articulated in Loper Bright Enters v. Raimondo and the historical understanding of the term at the time of the statute's enactment. Given the ordinary meaning rule and the legislative context of 1972, the application of Title IX should remain within the scope intended by Congress, focusing on biological sex instead of expanding the definition to include gender identity. Ultimately, broadening the interpretation of "sex" under Title IX to include gender identity would depart from its original intent, necessitating a legislative amendment rather than judicial reinterpretation.

B. To establish a claim under Title IX, a person must demonstrate harm suffered by discrimination in the statute, and the discrimination must treat an individual worse than others who are similarly situated.

To establish a claim under Title IX, a person must demonstrate harm suffered by discrimination in the statute, and the discrimination must treat an individual worse than others who are similarly situated.

Title IX states, "[n]o 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. While there is no dispute that school athletics such as volleyball and cross-country receive Federal financial assistance, Appellant does dispute the fact that the Appellant suffered harm from discrimination resulting from the Save Women's Sports Act and its enforcement. "In the Title IX context, discrimination

'mean[s] treating [an] individual worse than others who are similarly situated.'" Grimm, 972 F.3d at 618 (quoting Bostock v. Clayton Cnty., Ga., 590 U.S. 644, 657-58 (2020)). An individual is similarly situated under Title IX if a person is in a comparable position to another individual regarding the circumstances relevant to the discrimination claim. See Jackson v. Birmingham Bd. of Educ., 544 U.S. 167, 125 S. Ct. 1497 (2005). It is permissible for a school to use sex as a criterion in the eligibility for sports if most of the applications can be considered reasonable. See O'Connor v. Bd. of Educ., 449 U.S. 1301, 1306 (1980). This general rule should not be found unconstitutional because it appears arbitrary in an individual case. Id.

The court in Grimm v. Gloucester Cty. Sch. Bd., 972 F.3d 586 (4th Cir. 2020) applied gender identity in the definition of "sex" under Title IX and cited Bostock as a guiding case but failed in its analysis of a similarly situated individual. In Grimm, a transgender male (biological female at birth) had been using the boy's bathroom at Gloucester County High School. Id. at 593. After word got out to parents that the high school had been allowing a transgender male to use the boy's restroom, the school faced backlash and adopted a policy that required individuals to use the bathrooms according to their sex assigned at birth. Id. The school also built "alternative" single-stall restrooms that allowed any student to use them. Id. The court found that the school policy violated Title IX and reasoned that under Bostock, it is "impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex." Id. at 616 (quoting Bostock, 590 U.S. 644, 660 (2020)).

However, the Court failed to differentiate what a similarly situated individual is in the context of Grimm and in the context of Bostock. The court in Bostock reasoned that the impossibility arises because an employer tolerates actions from one sex and not the other.

Bostock, 590 U.S. 644, 660 (2020). "Consider, for example, an employer with two employees, both of whom are attracted to men. The two individuals are, to the employer's mind, materially identical in all respects, except that one is a man and the other a woman. If the employer fires the male employee for no reason other than the fact he is attracted to men, the employer discriminates against him for traits or actions it tolerates in his female colleague." Id. In Bostock, a similarly situated individual is an employee of the opposite sex. Id. at 657. Furthermore, the Court uses the firing of a transgender female to demonstrate that an employer is discriminating against the individual's sex if they tolerate female traits in the female sex but not the male sex. Id. at 660. However, this distinction is in terms of employment where an employee's sex is "not relevant to the selection, evaluation, or compensation of employees." Id. Therefore, under Bostock, a similarly situated individual is a person of the opposite sex when determining if there has been discrimination.

In Grimm, however, a similarly situated individual is a person of the same sex assigned at birth. Unlike Bostock, a person's preferences as to sexual orientation or gender traits are not the determining factor that determines which restroom an individual is required to use. Grimm, 972 F.3d 586, 593 (4th Cir. 2020). The determining factor is a person's assigned sex at birth. Id. The school's policy in Grimm prevents cis females, females who identify as lesbian, any nonbinary individuals (whose sex is female assigned at birth), and any trans males from entering the male restroom, all whose sex assigned at birth is female and therefore are similarly situated. Grimm argues that a similarly situated individual, in its case, is a cis male. Id. at 610. Biological differences between the male and female sexes make this simply not the case. Just as a man's public restroom has urinals, the reproductive organs, along with other biological differences

between the sexes. Therefore, the court in Grimm incorrectly applied what constitutes a similarly situated individual in the scope of educational setting under Title IX.

Appellant, like in Grimm, is an individual that identifies as a gender opposite the sex assigned at birth (biological male that identifies for gender purposes as a female). The Appellant argues that the harm suffered is their exclusion from school athletics. This is not the case; the Appellant can still join the boys' team with other similarly situated individuals. The Save Women's Sports Act prevents biological males from joining the girls' team because of biological advantages that the male sex may have over the female sex, differences that play a role in competitive sports. Unlike Bostock, where employment has no reason to differentiate sex. Compared to other similarly situated individuals—those of the same sex, there is no harm to Appellant. The sexual orientation or gender identity of a person of the male sex does not prevent them from joining the male athletics team. Therefore, this Court should not use Grimm's interpretation of Bostock in comparing the male and female sex as similarly situated individuals for school programs where an individual's sex may provide an advantage. To compare discriminatory effects on an individual, this Court should use similarly situated individuals of the same sex and determine whether their sexual orientation or gender identity created unequal treatment to those of the same sex. In this case, the Court should find it has not caused unequal treatment compared to other individuals of the male sex.

Title IX allows for sex-segregated facilities and programs if they do not result in unequal treatment. In the case of O'Connor v. Bd. of Educ., 449 U.S. 1301 (1980), an 11-year-old sixth-grade female has successfully competed with boys in various organized basketball programs. Id. at 1302. The junior high school she attended required separate teams for the sexes in contact

sports, including basketball. Id. After multiple requests by her father that she be permitted to try out for the boys' basketball team were denied, her parents commenced litigation, seeking a temporary order requiring the school's program to allow her to participate in tryouts. Id. The question for the Court to determine became whether it is permissible for the defendants to structure their athletic programs by using sex as one criterion for eligibility. Id. 1306. The Court found that "without a [sex]-based classification in competitive contact sports, there would be a substantial risk that boys would dominate the girls' programs and deny them an equal opportunity to compete in interscholastic events," therefore, the segregation can be adequately justified. Id. 1307. "[S]imply because [the segregation] appears arbitrary in an individual case" does not mean the classification is unreasonable or unconstitutional. Id. at 1306.

In our case, it is reasonable to separate an individual of the male sex from competing with individuals of the female sex. Like the court's reasoning in O'Conner, a sex-based classification in contact sports can help prevent those of the male sex from dominating women's sports programs. Although the Appellant argues that they can commence puberty-delaying treatments, that an expert witness attested would "prevent endogenous puberty and [] any physiological changes caused by increased testosterone circulation" that may give them a competitive edge, this may not be the case for every male sex individual that identifies as a female for gender. R. at 3. The girl in O'Conner had a more compelling argument than the Appellant as she competed and was successful in boy basketball programs, programs a female competitor may find themselves at a disadvantage. However, the court still found that an individual case where a female is successful against those of the male sex is insufficient to find a school's athletic policy that segregates based on sex unreasonable. See O'Connor v. Bd. of Educ., 449 U.S. 1301 (1980). Even if an individual of the male sex with the help of puberty delaying treatments competes at

the same level as those of the female sex, it is an exception to the norm of biological men having a competitive advantage and is not sufficient to find sex-segregated athletic programs unreasonable and therefore does not violate Title IX.

The Save Women's Sports Act segregation of sports teams by sex aims to maintain competitive fairness. The argument that the Appellant, who identifies as female but was assigned male at birth, suffers discrimination is not substantiated when compared to similarly situated individuals of the same sex. The Court should, therefore, assess the impact of the Act by comparing the Appellant's treatment to that of other male athletes rather than applying the standard used in employment discrimination under Bostock. The segregation, while appearing arbitrary in individual cases, aligns with the intent of Title IX to ensure equal opportunities between the sexes. Thus, the Court should find that the Act is not a violation of Title IX and that the Appellant is not worse off when compared to other similarly situated individuals.

II. THE SAVE WOMEN'S SPORT'S ACT DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT

The Equal Protection Clause of the Fourteenth Amendment commands that no State shall deny "any person within its jurisdiction [] equal protection of the laws." U.S. Const. amend. XIV, § 1. The Equal Protection Clause "simply keeps governmental decisionmakers from treating differently persons who are in all relevant respects alike." Nordlinger v. Hahn, 505 U.S. 1, 10 (1992). It does not prohibit "laws [from] differentiat[ing] in some fashion between classes of persons," meaning it does not forbid the creation of classifications. Id.

When sex classifications are created, a heightened or intermediate review standard is required to determine the constitutionality of the classifications. United States v. Virginia, 518 U.S. 515, 533 (1996). This standard requires a State to show that the classifications serve

important governmental objectives and that the classifications are substantially related to the achievement of those objectives. Id. "Justification[s] [given to satisfy this standard] must be genuine, not hypothesized or invented *post hoc* in response to litigation." Id. "And [they] must not rely on overbroad generalizations about the different talents, capacities, or preferences of males and females." Id.

A. The act lawfully discriminates on the basis of biological sex not transgender status.

The Save Women's Sports Act (the "Act") solely and lawfully discriminates on the basis of biological sex. Precedent has established that statutes may lawfully discriminate on the basis of sex as long as such discrimination serves important governmental objectives and are substantially related to the achievement of those objectives. In this case, the Act's exclusion of A.J.T. from female sports serves the legitimate governmental interests of providing equal athletic opportunities for women and protecting their safety in sports. Therefore, the sex discrimination the Act imposes on A.J.T. and those whom are similarly situated is not unlawful.

The Equal Protection Clause requires similarly situated persons to be treated equally under the law. Persons are similarly situated when, in all relevant aspects, they are alike. The Act creates sex-based classifications to prevent males and females from commingling in school sports. Because this is the classification on which the Act is based, the relevant aspect in determining whom A.J.T. is alike—biological girls or biological boys—or is a similarly situated individual based solely on sex, not transgender status.

In Adams v. School Board of St. Johns County, a School Board policy prevented plaintiff, Drew Adams, a transgender boy, from using the school bathrooms that corresponded with Adams's gender identity. Adams by & through Kasper v. Sch. Bd. of St. Johns Cnty., 57 F.4th 791, 798 (11th Cir. 2022). Specifically, the policy required all students, including Adams,

to use the school bathrooms corresponding with their biological sex—their sex determined at birth. Id. at 801. The policy also allowed transgender students to use sex-neutral bathrooms under the policy. Id. Therefore, Adams was required to use the girls' bathroom or a sex-neutral bathroom. Id. Dissatisfied with the use of either option, Adams filed suit. Adams claimed that the policy violated the Equal Protection Clause because it unfairly discriminated against him on the basis of sex and gender identity. Id. However, the Eleventh Circuit disagreed and held that the bathroom policy did not unlawfully discriminate against Adams on the basis of sex and that it did not discriminate against transgender students. Id. at 808-809.

In reaching their first conclusion, the court examined whether the bathroom policy unlawfully discriminated on the basis of sex. Id. at 801. The court held that it did not because the discrimination employed by the policy was substantially related to the important governmental interest of protecting students' privacy in bathrooms and that separating the sexes in school bathrooms was substantially related to achieving that purpose. Id. at 805. Thus, the classifications created by the policy were constitutional. Id.

The Eleventh Circuit then addressed the district court's ruling and dissenting opinions. Id. at 807. The Eleventh Circuit stated that the district court found that Adams was a biological boy on the basis of Adams's gender identity, not on the basis of Adams's biological sex. Id. In other words, the district court found that Adams was a "boy" because he identified as one not because he biologically was one. Id. The Eleventh Circuit held that this was improper because the district court's findings should have been based on whether Adams was actually a biological boy not whether he only identified as one. Id. Based on this reasoning, Adams needed to prove that he was a biological boy before the district court's ruling could be proper. Id. In stating this, the Eleventh Circuit ultimately disagreed with the district court but agreed with the district court that

"gender identity is different from biological sex." Id. Further, the two cannot be equated or alike because "sex, like race and national origin, is an immutable characteristic determined solely by the accident of birth," not the interpretation of the courts. Id. Because Adams, a biological girl, could not prove that he was a biological boy, because the policy was only based on biological sex, which does include transgender status, and because the court could not change Adams's sex via their ruling, the Eleventh Circuit held the bathroom policy did not unlawfully discriminate on the basis of sex. Id.

Next, the Eleventh Circuit examined whether the bathroom policy discriminated against transgender students. Id. at 808. They first echoed that the policy facially discriminated on the basis of biological sex not transgender status or gender identity. Id. They then rejected the expansion of "sex" to include gender identity by holding that "a policy can lawfully classify on the basis of biological sex without unlawfully discriminating on the basis of transgender status." Id. at 809. The Eleventh Circuit concluded that the Act did not impermissibly rely on transgender stereotypes. Id. at 809. This is because the policy was based on biological sex, which allows for sex discrimination in certain cases because of the very real biological differences existing between men and women. Id. at 809. Last, the Eleventh Circuit noted that the bathroom policy, at most, had a disparate impact on transgender students, which alone does not automatically amount to a constitutional violation, and did not amount to a constitutional violation in Adams. Id. at 810.

Here, like plaintiff in Adams, A.J.T. conflates gender identity with biological sex. The two are not the same. Plaintiff in Adams could not be a transgender boy and a biological boy. Identically, A.J.T. cannot be a transgender girl and a biological girl, because biological sex does not include gender identity. They are not the same. Because A.J.T., as a transgender girl, cannot

also be a biological girl. Therefore, she must be a biological boy. A.J.T., like plaintiff in Adams, cannot prove otherwise. Logic leads us to this conclusion. If A.J.T. were to be a transgender girl and a biological girl simultaneously, she would simply be a cisgender girl not a transgender girl. In short, although A.J.T. identifies as a transgender girl, she is a biological boy.

As a biological boy, A.J.T. cannot become a biological girl. As stated in Adams, biological sex is an immutable characteristic that is determined solely by birth. This means two things. First, as an immutable characteristic, biological sex cannot be changed. Second, biological sex can only be determined by the accident of birth, which means ~~that~~ courts may not change a person's sex by expanding the definition of biological sex to include gender identity. Because A.J.T. is a biological boy—male at birth—and, as held in Adams, courts may not change A.J.T.'s classification as such, A.J.T. is and will remain a biological boy.

Moreover, as a biological boy, A.J.T. is equipped with innate physiological characteristics that give him a competitive advantage over female athletes in the same way that other biological boys have innate physical advantages over female athletes. Therefore, A.J.T. is biologically alike or similarly situated to biological boys, not biological or cisgender girls. Because A.J.T. is prohibited from joining the girls' volleyball team and the girls' cross-country team, in the same way that other biological boys are, those with whom A.J.T. is similarly situated, the Act does not unlawfully discriminate against A.J.T. on the basis of sex.

Additionally, the Act does not discriminate against transgender students. Like the bathroom policy in Adams, the Act is based on biological sex, as evidenced by its classifications: "male" or "female." The bathroom policy in Adams was held to lawfully discriminate on the basis of biological sex without unlawfully discriminating on the basis of transgender status.

Following precedent, this Court should find that the Act lawfully discriminates on the basis of biological sex without unlawfully discriminating on the basis of transgender status.

B. The act does not violate the equal protection clause because it serves important governmental objectives and is substantially related to the achievement of those objectives.

The Act provides equal athletic opportunities for female athletes. Additionally, it protects the physical safety of female athletes when competing in sports. Courts have repeatedly held that these are important governmental objectives, which are served by and are substantially related to the exclusion of males from female sports teams. Therefore, based on precedent, the Act is constitutional.

Sex classifications promote the legitimate and substantial state interest in providing interscholastic athletic opportunities for girls. Petrie v. Illinois High School Ass'n, 75 Ill.App.3d 980, 989 (Ill.App. 4 Dist., 1979). In Petrie, interscholastic athletic rules prevented high school boys from playing on their schools' volleyball teams, because such teams were exclusively for girls. Id. at 981. The boys subsequently filed suit seeking an injunction against the enforcement of the exclusionary rules. Id. While the boys agreed that the state had a valid interest in "preserving, fostering and increasing athletic opportunities for girls," they "strongly disagreed that there [was] any important state interest in avoiding an imbalance in competition or preventing a male dominance." Id. Therefore, the narrow issue before the court became whether the state had an important interest in avoiding an imbalance in competition or preventing male dominance. Id.

The court answered in the affirmative and held that the state had an important governmental interest in balancing the competition between the sexes and preventing male dominance in female sports. They explained that there were innate physical differences between

the sexes and that these physical differences gave male athletes an innate physical advantage over female athletes. Id. at 987. "In general, high school boys are substantially taller, heavier and stronger than their girl counterparts and have longer extremities," which generally place girls at a substantial physical disadvantage in playing volleyball and other sports. Id. When the court looked at other cases where men dominated commingled sports, they concluded that the physical differences between the sexes accounted for the male dominance on those teams. Id. at 987-988.

The court then considered some objective measures—weight, age, and grade year in school—which may eliminate the physical differences between the sexes. Id. at 988. Height was offered as one such measure for volleyball, however it was ineffective. Id. The court stated that even if female and male volleyball players were the same height, this would "not compensate for the strength differential and would cause great hardship to the taller girls, most of whom would not have the musculature to compete with taller boys." Id. Therefore, female athletes would still be significantly disadvantaged against their male competitors. Because the physical differences between men and women would always place women at a physical advantage against men, women would thereby be displaced by men in sports. For this reason, the court concluded that "having a separate volleyball team and separate tournaments in that sport for girls is substantially related to and serves the achievement of the important governmental objective of maintaining, fostering and promoting athletic opportunities for girls." Id. at 989. In fact, this kind of sex-based classification was "the only feasible classification to promote the legitimate and substantial state interest of providing for interscholastic athletic opportunity for girls." Id.

Like in Petrie, whose boys were equipped with innate physiological differences which made them taller, heavier, and stronger than their female counterparts, A.J.T. is inherently stronger than the female athletes she now wants to compete against. Because the court in Petrie

concluded that these physiological advantages could not be eliminated, unless boys were barred from playing on girls' sports teams. The level of competition between female athletes and A.J.T. cannot be equalized unless A.J.T. is barred from joining the girls' volleyball team. Because A.J.T.'s exclusion from joining the volleyball team serves the purpose of providing athletic opportunities for women, and her exclusion is the only way that this can be achieved, the Act does not violate A.J.T.'s equal protection.

Redressing past discrimination against women in athletics and promoting equal athletic opportunities between the sexes are legitimate governmental interests, achieved by and substantially related to the exclusion of males from female sports teams. Clark, By & Through Clark v. Arizona Interscholastic Ass'n, 695 F.2d 1126, 1131 (9th Cir. 1982). In Clark, By & Through Clark v. Arizona Interscholastic Ass'n, high school boys were prevented from joining their high schools' interscholastic volleyball teams, because such teams were exclusively for girls, as required by a nondiscrimination policy enacted by the Arizona Interscholastic Association (AIA). Id. at 1127. Conversely, under this same policy, girls were permitted to play on boys' athletic teams in non-contact sports. Id. The policy explained the purpose of the discrimination. Id. Girls were allowed to play on boys' sports teams for non-contact sports to compensate them for their historical lack of opportunity in interscholastic sports. Id. Boys were prevented from playing on the girls' volleyball team, and other sports teams solely for girls, because boys historically had ample opportunity to participate on interscholastic sports teams. Id.

Eventually, the boys alleged an equal protection violation by the policy. Id. at 1127-1128. Thus, the court had to determine whether the AIA policy preventing them from playing on the girls' volleyball team violated their equal protection. Id. at 1128. To answer this question, the court reviewed multiple cases which held that the "innate physical differences" between the

sexes warranted the exclusion of males from female sports, because such discrimination furthered the government's objective of offering female athletes opportunities in sports. Honoring the doctrine of stare decisis, the court held that "redressing past discrimination against women in athletics and promoting equality of athletic opportunity between the sexes is an important governmental interest." Id. at 1127-1128.

The court then answered whether the exclusion of boys was substantially related to those interests. Id. at 1131. In doing so, the court explained that the average physiological differences between men and women would substantially displace female athletes if they had to compete against male athletes for the same positions on commingled sports teams. Id. at 1131. "Due to average physiological differences, males would displace females to a substantial extent if allowed to compete for positions on the volleyball team." Id. "Thus, athletic opportunities for women would be diminished." Id. Based on this, the court held that "there is clearly a substantial relationship between the exclusion of males from the team and the goal of redressing past discrimination and providing equal opportunities for women." Id.

Again, physiological differences between men and women have been cited as a legitimate justification for sex-separate athletic teams in interscholastic sports, specifically on volleyball teams, which is one of the teams A.J.T. sought to join. A.J.T., like the boys in Clark and for the same reason, may not join the girls' volleyball team. This is because A.J.T. has physical advantages over women, which would displace them. Protection from this kind of displacement allows for sex discrimination in sports when such discrimination serves the purpose of and is legitimately related to the achievement of those interests. Here, the interests of the Act serve the purpose of preserving athletic opportunities for women and keeping them safe in sports. These

objectives are reflected in the spirit and the language of Clark's policy. Therefore, they have already been protected by the lower courts and should be reaffirmed by this Court.

Gender-based classifications prevent the domination of boys in sporting programs for girls and give girls an equal opportunity to compete in interscholastic sports. O'Connor v. Bd. of Ed. of Sch. Dist. 23, 449 U.S. 1301, 1307 (1980). In O'Connor v. Bd. of Ed. of Sch. Dist. 23, the court held that "[w]ithout a [sex]–based classification in competitive contact sports, there would be a substantial risk that boys would dominate the girls' programs and deny them an equal opportunity to compete in interscholastic events." Id. at 1307. Thereby, the court acknowledged the very real physiological or biological differences between men and women. Further, the court reiterated that these differences cannot exist without discrimination against biological males like A.J.T. Therefore, according to yet another court, the Act is constitutional.

In sum, as repeatedly held, providing equal athletic opportunities for women in sports and protecting their safety in school sports is a legitimate governmental interest that is served by and substantially related to the exclusion of males from female sports. For this reason, A.J.T.'s equal protection has not been violated. Therefore, the Act is constitutional.

CONCLUSION

In conclusion, the Save Women's Sports Act does not violate Title IX, as it adheres to the statute's original intent of protecting discrimination based on biological sex in education. Precedent allows for the segregation of the sexes in competitive sports without violating Title IX. When evaluating a discrimination claim against a similarly situated individual, the Appellant is treated equally and given the same resources as others of the male sex. The argument that sex and gender are so intertwined that you cannot separate the two holds no basis in the Appellant's argument because the Appellant is not allowed to join the women's team because of their sex,

not gender identity. Therefore, compared to others of the male sex, the Appellant, like others of the male sex, is allowed to participate on the mens' team and suffers no harm.

Additionally, the Save Women's Sports Act does not violate the Equal Protection Clause of the Fourteenth Amendment because it provides equal athletic opportunities for female athletes and it protects the safety of female athletes in sports. As has been repeatedly held, these are legitimate governmental objectives, which are served by and are substantially related to the exclusion of boys from female sports teams. Therefore, the save Women's Sports Act does not violate A.J.T.'s equal protection and is constitutional.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on Thursday, September 12, 2024, a true and correct copy of the foregoing document was furnished to all parties listed in this case through the Court's electronic service portal. Furthermore, in compliance with Billings, Exum, & Frye National Moot Court Competition Official Rule IV(C)(1), additional service is made electronically as a PDF file and as a Microsoft Word document via email to Associate Dean Woodlief.

Dated: September 13, 2024

/s/ Team 9
Counsel for Respondents
State of North Green Board of Education, State Superintendent Floyd Lawson, the State of North Greene, and Attorney General Barney Fife.

CERTIFICATE OF COMPLIANCE

This brief complies with the page limitation set forth in the Billing, Exum, & Frye National Moot Court Competition Official Rule IV(B)(2) because this brief contains 30 pages. This page count under Rule IV(B)(2) does not include pages containing the cover page, questions presented, table of contents, table of authorities, or the appendices.

This brief complies with the typeface and typestyle requirements set forth in the Billing, Exum, & Frye National Moot Court Competition Official Rule IV(B)(3) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 12-point Times New Roman font.

Dated: September 13, 2024

/s/ Team 9_____
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