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Gender and School Sports: Federal Action and Legal Challenges to State Laws

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SUMMARY

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Gender and School Sports: Federal Action and Legal Challenges to State Laws

Policymakers have debated how schools should respond when transgender students (students who are assigned one sex at birth but identify with the opposite sex) seek to use facilities or participate in school activities consistent with their gender identity. One prominent area of contention is the participation of transgender athletes in school sports. Some states and local school districts allow student-athletes to compete on teams that align with their gender identity (referred to in this report as "permissive" policies), while many states and localities require students to compete on teams aligned with their sex assigned at birth (referred to as "restrictive" policies). Some of these policies only prohibit transgender women and girls (who were assigned male at birth but identify as female) from participating on teams designated for women or girls by requiring all participants to be "biologically female," though some policies apply to both men's and women's teams. Transgender student-athletes and their parents have contested policies that require participation according to biological sex, claiming that they discriminate on the basis of sex and/or transgender status in violation of Title IX of the Education Amendments of 1972 (Title IX) and the Equal Protection Clause of the Fourteenth Amendment. By contrast, some cisgender athletes (individuals who identify with the sex they were assigned at birth) have used these same laws to challenge policies that permit transgender students to play sports consistent with their gender identity, arguing that such policies deprive them of equal athletic opportunities.

Title IX prohibits sex discrimination in federally funded education programs. Long-standing Title IX regulations permit separation of the sexes in school sports programs provided schools offer equal athletic opportunities. On February 5, 2025, President Trump signed Executive Order 14201, "Keeping Men Out of Women's Sports," which, in part, orders the Secretary of Education to enforce Title IX against "educational institutions" that allow transgender girls and women to participate in girls' sports.

The Fourteenth Amendment's Equal Protection Clause provides that a law may treat groups of people differently only if the government has a sufficient reason to do so. Many laws that draw distinctions between different groups are subject to rational basis review, under which a court will generally uphold a challenged classification if it is reasonably related to a legitimate government purpose. When classifications are based on characteristics that have historically been used to invidiously discriminate, however, the government must provide a more substantial justification for the law. Sex-based classifications are reviewed with an "intermediate" level of scrutiny (as opposed to race-based classifications, which are subject to the highest level of scrutiny). The Supreme Court has not spoken to how classifications based on gender identity should be reviewed under the Equal Protection Clause.

In June 2025, the Supreme Court issued a decision in *United States v. Skrmetti*, a case addressing a Tennessee law banning health care providers from providing minors with certain treatments for gender dysphoria. The Court ruled that the law classifies based on age and medical treatment, neither of which warrant heightened review. The Court did not rule on whether classifications turning on gender identity trigger heightened scrutiny. In addition, another Supreme Court decision interpreting a distinct statutory framework may have relevance for the application of both Title IX and the Equal Protection Clause to transgender athletes. In *Bostock v. Clayton County*, the Court determined that discrimination based on sexual orientation and transgender status is sex discrimination under Title VII of the Civil Rights Act of 1964, which bars sex discrimination in the workplace. Whether the logic of that decision applies to Title IX and the Equal Protection Clause is an important consideration in addressing the participation of transgender students in school sports.

Courts have reached different conclusions when reviewing challenges to limitations on the participation of transgender athletes in school sports under Title IX and the Equal Protection Clause. Some federal courts have ruled that the application of state laws banning transgender athletes from participating in sports consistent with their gender identity can violate these laws. Other courts have interpreted the laws differently, ruling that limiting students to teams consistent with their biological sex does not violate legal protections. The Supreme Court has granted certiorari in two cases on the matter.

As policymakers continue to grapple with this issue, Congress has considered addressing the topic through legislation. For example, in January 2025, the House of Representatives passed H.R. 28, which would restrict the participation of transgender women and girls in school sports.

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Introduction

Policymakers have deliberated over how schools should respond when transgender students (students who are assigned one sex at birth but identify with the opposite sex) seek to use facilities or participate in school activities consistent with their gender identity. In particular, the participation of transgender women (who are assigned male at birth but identify as female) in women's sports has generated debate, raising questions of fairness in contexts ranging from the Olympics[1] to K-12 school sports teams.[2] Some state athletic associations, as well as school districts, allow students to compete on teams that align with their gender identity.[3] This report refers to these policies as "permissive" policies or laws. In contrast, many states have passed laws that categorically ban transgender athletes, often transgender women and girls, from competing on K-12 and collegiate sports teams that align with their gender identities (see laws listed in **Table A-1** below).[4] These laws, which this report refers to as "restrictive" policies or laws, require student-athletes to participate on teams that are consistent with their sex assigned at birth, often referred to as "biological sex." Proponents of restrictive laws express concern that allowing transgender athletes, particularly transgender women, to compete on teams aligned with their gender identity is unfair to cisgender women.[5] ("Cisgender" individuals identify with the sex they were assigned at birth.) For example, some supporters of these laws argue that male physiology confers inherent physical benefits and that "biological females" are at a competitive disadvantage in many sporting events when "biological males" are allowed to play on women's teams.[6]

Transgender student-athletes and their parents have contested restrictive policies and charges of unfairness in several lawsuits across the country. These lawsuits claim that such policies are discriminatory and violate both Title IX of the Education Amendments of 1972 (Title IX)[7] and the Equal Protection Clause of the Fourteenth Amendment.[8] By contrast, some athletes have

[1] Megan Janetsky, *Vitriol About Female Boxer Imane Khelif Fuels Concern of Backlash Against LGBTQ+ and Women Athletes*, ASSOCIATED PRESS (Aug. 3, 2024, 12:12 ET), https://apnews.com/article/olympics-2024-lqbtq-transgender-boxing-ec1b367c5f09a9b4bc59bf684a713c24 [https://perma.cc/HFH5-8SKK].

[2] Terry Spencer, *Mom of Transgender Girl Athlete Says Florida's Investigation Has Destroyed Her Daughter's Life*, ASSOCIATED PRESS (June 18, 2024, 14:46 ET), https://apnews.com/article/transgender-girl-sports-florida-be36fe49a6a4457630107aa56c34dc1e [https://perma.cc/D6MZ-ECB5].

[3] *See, e.g.*, WASH. INTERSCHOLASTIC ATHLETIC CONF., 2024–2025 HANDBOOK 38 (2024), https://assets.wiaa.com/results/handbook/2024-25/handbook.pdf [https://perma.cc/R7XL-M2AH]; CONN. INTERSCHOLASTIC ATHLETIC CONF., 2024–2025 Handbook 65 (2024), https://ciac.fpsports.org/resources/Resources/Handbook.pdf [https://perma.cc/E4WN-89SQ]; RHODE ISLAND INTERSCHOLASTIC LEAGUE, RULES AND REGULATIONS art. 3, § 3 (2024), https://www.riil.org/page/2996 [https://perma.cc/HX6A-FPEZ]; MASSACHUSETTS INTERSCHOLASTIC ATHLETIC ASSOC., RULES AND REGULATIONS GOVERNING ATHLETICS, A HANDBOOK FOR PRINCIPALS AND ATHLETIC DIRECTORS, JULY 1, 2023–JUNE 30, 2025, at 31 (2024), https://www.miaa.net/sites/default/files/2024-04/miaa-handbook-23-25.pdf [https://perma.cc/6W2V-FM42]; LOS ANGELES UNIFIED SCHOOL DISTRICT, GENDER IDENTITY AND STUDENTS – ENSURING EQUITY AND NONDISCRIMINATION 11 (2024), https://www.lausd.org/cms/lib/CA01000043/Centricity/Domain/383/BUL-6224.3%20Gender%20Identity%20and%20Students%20-%20Ensuring%20Equity%20and%20Nondiscrimination.pdf [https://perma.cc/686N-BUV7].

[4] *See* **Table A-1**.

[5] *See, e.g.*, Tara Bahrampour et al., *Most Americans Oppose Trans Athletes in Female Sports, Poll Finds*, WASH. POST (June 14, 2022, 07:00 ET), https://www.washingtonpost.com/dc-md-va/2022/06/13/washington-post-umd-poll-most-americans-oppose-transgender-athletes-female-sports/ [https://perma.cc/Y9BX-Q899].

[6] *See, e.g.*, Press Release, H. Comm. Oversight & Accountability, Hearing Wrap Up: The Biden Administration's Title IX Rule Change Denies Women Opportunities (Dec. 6, 2023), https://oversight.house.gov/release/hearing-wrap-up-the-biden-administrations-title-ix-rule-change-denies-women-opportunities/ [https://perma.cc/MG2S-5AGC].

[7] 20 U.S.C. §§ 1681–89.

[8] U.S. CONST. amend. XIV, § 1. *See* Cong. Rsch. Serv., *Fourteenth Amendment Equal Protection and Other Rights*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/amendment-14/ (last visited July 18, 2025).

challenged permissive policies as violating these laws by depriving them of equal athletic opportunities.[9] On February 5, 2025, the Trump Administration issued Executive Order (EO) 14201, "Keeping Men Out of Women's Sports," which, in part, orders the Secretary of Education to enforce Title IX against "educational institutions" that allow transgender girls and women to participate in girls' sports.[10] On July 3, 2025, the Supreme Court granted certiorari in two federal appellate cases that had ruled against restrictive state laws under Title IX and the Equal Protection Clause.[11]

This report begins by briefly describing the range of approaches that states, school districts, and athletic associations have adopted with respect to the participation of transgender athletes in sports. It continues by examining the background constitutional and statutory bases that transgender students have used to challenge restrictive policies in areas beyond athletics, such as bathroom access, as those legal principles are informing how courts address challenges to policies regarding athletics participation. With these background concepts in mind, the report then discusses legal challenges to policies and laws that address transgender student-athletes' participation in school sports. After the report identifies trends in how federal district and appellate courts have ruled in lawsuits challenging both restrictive and permissive policies, it addresses recent and upcoming Supreme Court cases raising these and closely related questions concerning gender identity. The report concludes by identifying several considerations for Congress. The report is followed by a table of state laws that regulate the participation of transgender students in school sports (see **Table A-1**).

Policies Addressing Transgender Student-Athletes' Participation in School Sports

State legislatures, state athletic associations, and local school boards have passed laws and developed policies that establish separate athletics teams based on sex, sometimes prohibiting transgender students from playing sports consistent with their gender identity. Elite athletic governing associations have also developed rules governing the participation of transgender athletes. This section provides a short overview of how these bodies have generally approached the question.

State Laws and Local Policies

States and localities have taken a range of approaches to the participation of transgender student-athletes in sports competitions. Some states and local school boards permit transgender students to compete in athletics consistent with their gender identities, with no particular requirements or restrictions.[12] Others impose certain conditions.[13] At least twenty-five states have passed laws

[9] Soule *ex rel.* Stanescu v. Conn. Ass'n of Schs., 90 F.4th 34, 40 (2d Cir. 2023) (en banc).

[10] Exec. Order No. 14,201, 90 Fed. Reg. 9279 (Feb. 5, 2025).

[11] West Virginia v. B.P.J., No. 24-43, 2025 WL 1829164, at *1 (U.S. July 3, 2025) (mem.); Little v. Hecox, No. 24-38, 2025 WL 1829165, at *1 (U.S. July 3, 2025) (mem.). The Supreme Court opined on similar issues related to health care for transgender minors in *United States v. Skrmetti*, discussed *infra*. It is not clear if, or how, that opinion will influence legal analysis in the context of transgender athletes.

[12] *See* sources cited *supra* note 3.

[13] *See* ILL. HIGH SCH. ASSOC. HANDBOOK WITH ILLUSTRATIONS, 2024–25 SCHOOL TERM 126 (2024), https://www.ihsa.org/documents/flip/Handbook/2024-25/Handbook%2024-25.html [https://perma.cc/93AF-XLKH] (requiring approval to participate based on consideration of individual circumstances and consideration of "[w]hether (continued...)

requiring student-athletes to participate on teams according to their sex assigned at birth.[14] For instance, some states classify school athletics teams according to biological sex and prohibit transgender girls from participation in athletics consistent with their gender identity in sports sponsored by public high schools and public postsecondary institutions.[15]

Sports Organizations

Elite athletic governing bodies have also adopted policies to determine the eligibility of transgender athletes. National and international sports governing bodies have adopted various policies for different levels of competition: some require transgender athletes to meet certain standards to participate at higher levels of competition,[16] and some permit transgender athletes to compete consistent with their gender identity at lower or non-elite levels.[17] The National Collegiate Athletic Association (NCAA) has adopted policies regarding the eligibility of transgender athletes in sporting events. Between January 19, 2022, and February 6, 2025, the NCAA called for the participation of transgender athletes to be regulated on a sport-by-sport basis.[18] On February 6, 2025, the NCAA's Transgender Student-Athlete Participation Policy

allowing eligibility would be inconsistent with concepts of fairness in competition or present a risk of injury to the participants"); MICHIGAN HIGH SCH. ATHLETIC ASSOC., ELIGIBILITY OF TRANSGENDER STUDENT-ATHLETES, https://cdn.factcheck.org/UploadedFiles/TransgenderPolicy.pdf [https://perma.cc/GZ28-5YX5] (allowing transgender girls to participate consistent with their gender identity on a case by case basis).

[14] *See* Adeel Hassan, *States Passed a Record Number of Transgender Laws. Here's What They Say*, N.Y. TIMES (June 27, 2023), https://www.nytimes.com/2023/06/27/us/transgender-laws-states.html [https://perma.cc/3FN9-FWX6]; Sophia R. Pfander, *Let Them Play Ball: Seeking Solutions to the Recent Spate of Trans Sports Bans*, 2023 WIS. L. REV. 345, 352 (2023).

[15] *See, e.g.*, W. VA. CODE § 18-2-25d (2025) (Save Women's Sports Act); FLA. STAT. § 1006.205 (2025) (Fairness in Women's Sports Act); ARIZ. REV. STAT. ANN. § 15-120.02 (2025) (Save Women's Sports Act). Arizona's law also applies to "a private school whose students or teams compete against a public school." *Id.* § 15-120.02(A.).

[16] *See, e.g.*, *Gender Competition Guidelines (2024–25 Season)*, USAVOLLEYBALL, https://usavolleyball.org/about/gender-guidelines/ [https://perma.cc/YE4J-TBGY] (last visited July 15, 2025) ("Testosterone levels must not exceed the upper limit of the normal male [or female] reference range for their age group."); WORLD TRIATHLON, WORLD TRIATHLON (TRI) GENDER ELIGIBILITY GUIDELINES, INTERNATIONAL ELITE COMPETITIONS 2, https://cms.triathlon.org/assets/b6cc1c5f-d8ab-4bbe-afd4-f46a9eb935e9/TRI_Gender_Eligibility_Guidelines.docx.pdf [https://perma.cc/7N7T-CJNP] ("Those who transition from [male] to Female . . . are eligible to compete in the Female Elite category under the following conditions: . . . (c) Eligibility criteria of testosterone below 2.5nmol/L for 3 years while competing in the Open Category of Age-Group competitions in the TRI calendar."); INT'L ICE HOCKEY FED'N, 2022 IIHF TRANSGENDER POLICY 6, https://blob.iihf.com/iihf-media/iihfmvc/media/downloads/regulations/2022/2022_iihf_transgender_policy.pdf [https://perma.cc/R3T5-MNV8] (A transgender female athlete "must demonstrate to the satisfaction of the Expert Panel . . . that the concentration of testosterone in her serum has been less than 5 nmol/L continuously for a period of at least 12 months.").

[17] *See, e.g.*, USROWING, GENDER IDENTITY POLICY 1 (2023), https://usrowing-craft-storage-production.nyc3.digitaloceanspaces.com/staging/Gender_Identity_Policy_021323.pdf [https://perma.cc/LQ63-3FRL].

[18] *Board of Governors Updates Transgender Participation Policy*, NCAA (Jan. 19, 2022, 20:41 ET), https://www.ncaa.org/news/2022/1/19/media-center-board-of-governors-updates-transgender-participation-policy.aspx [https://perma.cc/B2CR-TPY6]. Under this policy, the NCAA relied heavily on the International Olympic Committee's Framework on Fairness, Inclusion and Non-Discrimination on the Basis of Gender Identity and Sex Variations. That framework states that "it must be in the remit of each sport and its governing body to determine how an athlete may be at a disproportionate advantage against their peers, taking into consideration the nature of each sport. The IOC is therefore not in a position to issue regulations that define eligibility criteria for every sport, discipline or event across the very different national jurisdictions and sports systems." INT'L OLYMPIC COMM., IOC FRAMEWORK ON FAIRNESS, INCLUSION AND NON-DISCRIMINATION ON THE BASIS OF GENDER IDENTITY AND SEX VARIATIONS 1 (2021), https://stillmed.olympics.com/media/Documents/Beyond-the-Games/Human-Rights/IOC-Framework-Fairness-Inclusion-Non-discrimination-2021.pdf [https://perma.cc/D9CZ-8ZER]. The United States Olympic and Paralympic Committee Safety Policy now states that the Committee will work "to ensure that women have a fair and safe competition environment consistent with Executive Order 14201." *United States Olympic and Paralympic Committee* (continued...)

(NCAA Policy) was updated in response to President Trump's EO regarding the participation of transgender women and girls in women's sports.[19] Although Title IX does not apply to the NCAA directly, the law does apply to most of the colleges and universities whose athletes compete in the NCAA. According to the NCAA, a "clear, consistent, and uniform eligibility standard[]" is important, and the EO "provides a clear, national standard."[20]

Under the new NCAA Policy, transgender women student-athletes "may not compete on a women's team" but "may practice on the team consistent with their gender identity and receive all other benefits applicable to student-athletes who are otherwise eligible to practice."[21] All student-athletes "may participate (practice and compete)" with a men's team if they "meet all other NCAA eligibility requirements," though they must complete a medical exception process if they are taking testosterone.[22] In cases where transgender men have begun taking testosterone, they may not compete on a women's team, though they may practice with a women's team.[23] The NCAA Policy notes that "schools are subject to local, state and federal legislation and such legislation supersedes the rules of the NCAA."[24]

Title IX and the Equal Protection Clause

As explained in more detail below, student-athletes have challenged state and local laws and policies regarding gender and sports under the Equal Protection Clause of the Fourteenth Amendment and Title IX of the Education Amendments of 1972. In resolving these legal challenges, courts have sometimes applied caselaw regarding laws and policies that implicate gender identity in other contexts. For instance, federal appellate courts have issued divergent rulings in cases concerning access to school bathrooms for transgender students.[25] They have also decided cases concerning coverage for certain medical care under state employee insurance plans,[26] restrictions on military service,[27] sexual harassment,[28] state bans on certain medical

Policy, USOPC (June 18, 2025), https://assets.contentstack.io/v3/assets/blt9e58afd92a18a0fc/bltf456568858cc9c12/USOPC_Athlete_Safety_Policy.pdf [https://perma.cc/2ZXB-4L67].

[19] *See Participation Policy for Transgender Student-Athletes*, NCAA (*NCAA Policy*) (Feb. 6, 2025), https://www.ncaa.org/sports/2022/1/27/transgender-participation-policy.aspx [https://perma.cc/V69N-Z6KW].

[20] *See NCAA Announces Transgender Student-Athlete Participation Policy Change*, NCAA (Feb. 6, 2025, 15:11 ET), https://www.ncaa.org/news/2025/2/6/media-center-ncaa-announces-transgender-student-athlete-participation-policy-change.aspx [https://perma.cc/T385-WFFX].

[21] *See Transgender Student-Athlete Participation Policy*, *supra* note 18.

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *Compare* Grimm v. Gloucester Cnty. Sch. Bd., 972 F.3d 586, 616 (4th Cir. 2020), *with* Adams *ex rel.* Kasper v. Sch. Bd., 57 F.4th 791, 796 (11th Cir. 2022) (en banc); *see also* CRS Legal Sidebar LSB10953, *Transgender Students and School Bathroom Policies: Title IX Challenges Divide Appellate Courts*, by Jared P. Cole and Madeline W. Donley (2023); CRS Legal Sidebar LSB10902, *Transgender Students and School Bathroom Policies: Equal Protection Challenges Divide Appellate Courts*, by Jared P. Cole (2023).

[26] Kadel v. Folwell, 100 F.4th 122, 134 (4th Cir. 2024), *vacated*, No. 24-99, 2025 WL 1787687 (U.S. June 30, 2025), *and vacated sub nom.*, Crouch v. Anderson, No. 24-90, 2025 WL 1787678 (U.S. June 30, 2025); *see also* CRS Legal Sidebar LSB11092, *Fourth Circuit Holds That Certain Medicaid and State-Funded Health Plans Discriminate by Refusing to Cover Treatments for Gender Dysphoria*, by Madeline W. Donley and Hannah-Alise Rogers (2024).

[27] Karnoski v. Trump, 926 F.3d 1180, 1200–01 (9th Cir. 2019) (per curiam).

[28] Grabowski v. Ariz. Bd. of Regents, 69 F.4th 1110, 1113 (9th Cir. 2023).

treatments for transgender minors,[29] and updated Title IX regulations.[30] As explained further below, a court examining a law or policy concerning transgender athletes may look to prior decisions under Title IX or the Equal Protection Clause that examine related questions about gender identity.[31]

Title IX of the Education Amendments of 1972

Title IX prohibits discrimination "on the basis of sex" in education programs that receive federal financial assistance.[32] Title IX is primarily enforced in two ways: through private litigation in federal court and by federal agencies that distribute funding to education programs.[33] The Department of Education (ED) distributes substantial funding to elementary, secondary, and postsecondary institutions, and its Office for Civil Rights (OCR) plays a lead role in enforcing Title IX.[34] Courts are also often asked to interpret the meaning of Title IX's sex discrimination ban in various contexts, including sexual harassment and athletics.[35]

The statute also contains express carveouts that allow schools to make sex-based distinctions in certain situations. For instance, Title IX allows schools to "maintain[] separate living facilities for the different sexes."[36]

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[29] *Compare* L.W. *ex rel.* Williams v. Skrmetti, 83 F.4th 460, 484 (6th Cir. 2023), *cert. dismissed in part sub nom.*, Doe v. Kentucky, 144 S. Ct. 389 (2023), *and cert. granted sub nom.*, United States v. Skrmetti, 144 S. Ct. 2679 (2024), *and aff'd*, 145 S. Ct. 1816 (2025), *and cert. denied sub nom.*, Doe v. Kentucky, No. 23-492, 2025 WL 1787718 (U.S. June 30, 2025), *and cert. denied sub nom.* L.W. v. Skrmetti, No. 23-466, 2025 WL 1787721 (U.S. June 30, 2025), *with* Brandt *ex rel.* Brandt v. Rutledge, 47 F.4th 661, 667 (8th Cir. 2022); *see also* CRS Legal Sidebar LSB11057, *Appellate Courts Split on Legal Challenges to State Laws Banning Certain Medical Treatments for Transgender Minors*, by Christine J. Back and Jared P. Cole (2024).

[30] Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 33474, 33886 (Apr. 29, 2024) (to be codified at 34 C.F.R. pt. 106).

[31] *See, e.g.*, A.M. *ex rel.* E.M. v. Indianapolis Pub. Sch. (*A.E.M.*), 617 F. Supp. 3d 950, 965–66 (S.D. Ind. 2022) ("Applying *Bostock* and *Whitaker*—both of which are binding on this Court – to the facts of this case leads to a result that is not even a close call: A.M. has established a strong likelihood that she will succeed on the merits of her Title IX claim."), *vacated*, No. 22-cv-01075, 2023 WL 11852464 (S.D. Ind. Jan. 19, 2023).

[32] 20 U.S.C. § 1681(a).

[33] CRS Report R45685, *Title IX and Sexual Harassment: Private Rights of Action, Administrative Enforcement, and Proposed Regulations*, by Jared P. Cole and Christine J. Back (2019). If compliance with the statute cannot be achieved by an agency informally, a referral may be made to the Department of Justice. 20 U.S.C. § 1682 ("Compliance with any requirement adopted pursuant to this section may be effected . . . by any other means authorized by law: *Provided, however*, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means."); 34 C.F.R. § 106.81 (2025) (incorporating the procedural provisions of Title VI); *id.* § 100.8(a)(1).

[34] The Attorney General, under Executive Order 12,250, coordinates implementation and enforcement of Title IX across executive agencies. Exec. Order No. 12,250, 3 C.F.R. pt. 298 (1980).

[35] *See, e.g.*, Davis *ex rel.* LaShonda D. v. Monroe Cnty. Bd. of Ed., 526 U.S. 629, 639 (1999). Courts must interpret Title IX when they consider allegations of sex discrimination in the health care context as well due to the statutory language of the Patient Protection and Affordable Care Act of 2010 (ACA), Pub. L. No. 111-148, 124 Stat. 119 (2010). Section 1557 of the ACA bars discrimination in federally funded health programs "on the ground prohibited under" Title IX. 42 U.S.C. § 18116(a).

[36] 20 U.S.C. § 1686. Courts have rejected challenges to Title IX regulations and ED's Policy Interpretation that permit consideration of sex in the context of athletics and have also indicated that separating bathrooms by sex, as a general matter, is constitutionally permissible. Kelley v. Bd. of Trs., 35 F.3d 265, 272 (7th Cir. 1994) ("To the extent that plaintiffs' argument is that Title IX and the applicable regulation—rather than the actions of the defendants—are unconstitutional, it is without merit. While the effect of Title IX and the relevant regulation and policy interpretation is that institutions will sometimes consider gender when decreasing their athletic offerings, this limited consideration of (continued...)

Courts have treated Title IX as an exercise of Congress's Spending Clause power.[37] The Supreme Court has characterized legislation enacted under the Spending Clause as contractual—in exchange for funds, recipients agree to follow federal obligations.[38] The Court has explained that the "'legitimacy of Congress' power' to enact Spending Clause legislation rests" on whether recipients "'voluntarily and knowingly'" agree to the contract's terms.[39] For Congress to impose enforceable conditions on federal funding, requirements must be "clear" and "unambiguous[]" so that recipients have "notice" of their obligations.[40] The nature of legislation enacted pursuant to the Spending Clause distinguishes it from laws resting on other sources of constitutional authority. For example, Congress often legislates pursuant to its power to regulate interstate commerce.[41] In that context, entities are not agreeing to comply with conditions in exchange for federal funding; instead, Congress imposes requirements on regulated parties whether they agree to those requirements or not.[42]

Title IX, Athletics, and Sex Separation

The statutory text of Title IX does not mention athletics.[43] Two years after Title IX was enacted, Congress passed legislation colloquially known as the Javits Amendment, which directed the Secretary of Health, Education, and Welfare (HEW) to promulgate Title IX regulations "which shall include with respect to intercollegiate athletic activities reasonable provisions considering the nature of particular sports."[44] Following the creation of ED, that agency adopted HEW's Title IX regulations.[45]

Title IX athletic regulations prohibit recipient institutions from discriminating based on sex in "interscholastic, intercollegiate, club or intramural athletics."[46] While schools may operate separate athletics teams based on sex,[47] recipient institutions must provide equal opportunities in athletics programs for both sexes.[48] The regulations provide that if a school has a team for one sex

sex does not violate the Constitution."); Cohen v. Brown Univ., 991 F.2d 888, 901 (1st Cir. 1993); *see* Equity In Athletics, Inc. v. Dep't of Educ., 639 F.3d 91, 105 (4th Cir. 2011) (rejecting Equal Protection claim against ED's Policy Interpretation on Title IX and athletics); *see also* Grimm v. Gloucester Cnty. Sch. Bd., 972 F.3d 586, 618 n.17 (4th Cir.), *as amended* (Aug. 28, 2020) ("Grimm does not think that sex-separated restrooms are unconstitutional, and neither do we.").

[37] *LaShonda D.*, 526 U.S. at 640 (stating that the Supreme Court has "repeatedly treated Title IX as legislation enacted pursuant to Congress' authority under the Spending Clause"). *See generally* CRS Report R47109, *Federal Financial Assistance and Civil Rights Requirements*, by Christine J. Back and Jared P. Cole (2022).

[38] Gebser v. Lago Vista Indep. Sch. Dist., 524 U.S. 274, 286–87 (1998); Pennhurst State Sch. & Hosp. v. Halderman, 451 U.S. 1, 17 (1981).

[39] Cummings v. Premier Rehab Keller, P.L.L.C., 596 U.S. 212, 219 (2022) (quoting Barnes v. Gorman, 536 U.S. 181, 186 (2002)).

[40] *Pennhurst*, 451 U.S. at 17, 25.

[41] *See* Cong. Rsch. Serv., *United States v. Lopez and Interstate Commerce Clause*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/artI-S8-C3-6-1/ALDE_00013418/ (last visited July 16, 2025).

[42] Gebser v. Lago Vista Indep. Sch. Dist., 524 U.S. 274, 286 (1998).

[43] *See* 20 U.S.C. § 1681.

[44] Education Amendments of 1974, Pub. L. No. 93-380, § 844, 88 Stat. 484 (codified at 20 U.S.C. § 1681 note).

[45] In 1979, Congress divided HEW into ED and the Department of Health and Human Services. ED then duplicated the Title IX regulations. McCormick *ex rel.* McCormick v. Sch. Dist., 370 F.3d 275, 287 (2d Cir. 2004).

[46] 34 C.F.R. § 106.41(a), *invalidated by* Carroll Indep. Sch. Dist. v. U.S. Dep't of Educ., No. 24-cv-00461, 2025 WL 1782572 (N.D. Tex. Feb. 19, 2025).

[47] *Id.* § 106.41(b).

[48] *Id.* § 106.41(c). The regulations provide that if a recipient institution awards athletic scholarships, it must "provide (continued...)

and not the other, "and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport."[49] The regulations specify that contact sports include "boxing, wrestling, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact."[50] In deciding whether an institution has provided equal opportunities, ED may consider factors outlined in the regulations, including an institution's support for things like equipment, scheduling, facilities, and publicity.[51] The regulations also provide that athletics options for students must "effectively accommodate the interests and abilities of members of both sexes."[52]

The statutory text of Title IX also allows schools to maintain separate living facilities for the sexes.[53] Likewise, long-standing Title IX regulations allow for "separate toilet, locker room, and shower facilities" as long as they are comparable.[54]

Title IX's statutory text and regulations thus contemplate separation of the sexes in certain circumstances, while simultaneously prohibiting sex discrimination. Neither the statute nor the regulations currently address how Title IX applies to transgender athletes. May a school prohibit a transgender student from participating in sports consistent with their gender identity? Alternatively, could allowing such participation in some circumstances violate Title IX? The following subsections of this report review certain background legal principles relevant to answering these questions.

Title VII and *Bostock v. Clayton County*

Some courts' interpretation of Title IX's sex discrimination ban has been informed by jurisprudence interpreting Title VII of the Civil Rights Act of 1964 (Title VII), which forbids employers to "discriminate against any individual . . . because of . . . sex."[55] In *Bostock v. Clayton County*, the Supreme Court ruled that Title VII's ban on sex discrimination in employment encompasses discrimination based on sexual orientation and gender identity.[56] The majority opinion observed that discrimination occurs when an individual is treated "worse than others who are similarly situated."[57] Thus, treating an employee worse because of their sex is discrimination barred by Title VII. The Court in *Bostock* also reasoned that the phrase "because of" incorporates a "but-for" standard of causation: if an outcome would not have occurred "but-for" the purported

reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics." *Id.* § 106.37(c).

[49] *Id.* § 106.41(b).

[50] *Id.* § 106.41(b).

[51] *Id.* § 106.41(c)(2)–(10).

[52] *Id.* § 106.41(c)(1).

[53] 20 U.S.C. § 1686.

[54] 34 C.F.R. § 106.33.

[55] 42 U.S.C. § 2000e-2(a)(1); *see, e.g.*, Franklin v. Gwinnett Cnty. Pub. Schs., 503 U.S. 60, 75 (1992) ("'[W]hen a supervisor sexually harasses a subordinate because of the subordinate's sex, that supervisor 'discriminate[s]' on the basis of sex.' We believe the same rule should apply when a teacher sexually harasses and abuses a student." (second alteration in original) (quoting Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57, 64 (1986))); Vengalattore v. Cornell Univ., 36 F.4th 87, 103 (2d Cir. 2022); Doe v. Mercy Cath. Med. Ctr., 850 F.3d 545, 564 (3d Cir. 2017); Jennings v. Univ. of N.C., 482 F.3d 686, 695 (4th Cir. 2007); Gossett v. Oklahoma *ex rel.* Bd. of Regents, 245 F.3d 1172, 1176 (10th Cir. 2001).

[56] Bostock v. Clayton Cnty., 590 U.S. 644, 651–52 (2020).

[57] *Id.* at 657 (citing Burlington N. & Santa Fe Ry. Co. v. White, 548 U.S. 53, 59 (2006)).

cause, causation is established.[58] The Court assumed, but did not decide, that the term "sex" in Title VII refers to biological distinctions between females and males.[59] According to the Court, even proceeding on that assumption, an employer cannot discriminate based on sexual orientation or gender identity without considering a person's sex.[60] If an employer fires a man for being attracted to men, but not a woman who is also attracted to men, the employer is treating the first employee differently because of his sex. Likewise, if an employer fires a transgender man for identifying as male, the employer penalizes that person for traits that it would tolerate in a person assigned male at birth.[61] In the Court's view, sex is thus a but-for cause of sexual orientation and gender identity discrimination, rendering such treatment a violation of Title VII.[62]

While the Supreme Court in *Bostock* was clear that discrimination based on sexual orientation or transgender status is sex discrimination under Title VII, it was careful to disclaim any application of its decision broader than necessary to resolve the case before it. The Court explicitly observed that its ruling did not address sex-separated bathrooms or locker rooms under Title VII or the requirements of any other law.[63] *Bostock* thus did not address circumstances where a law bans sex discrimination but permits certain sex separations.

As discussed below, courts and federal agencies under different Administrations have disagreed about the application of *Bostock*'s logic to the Title IX context.[64] Title VII is predicated on Congress's constitutional authority to regulate interstate commerce,[65] while Title IX was enacted pursuant to the Spending Clause.[66] Although the Supreme Court has sometimes drawn on Title VII in determining the meaning of a Spending Clause statute, it has also sometimes distinguished between them based on their different underlying constitutional authorities.[67] Courts and policymakers have observed the express carveouts in Title IX that permit sex separation, as well as the difference between the adult workplace that Title VII concerns and the school context of Title IX.[68]

Biden Administration Updates to Title IX Regulations Following *Bostock*

Following *Bostock*, in 2024, ED updated its Title IX regulations generally and issued another proposal (discussed below) to amend the provisions concerning athletics specifically. The updated regulations defined sex discrimination under Title IX to include sexual orientation and gender identity discrimination.[69] The preamble to the updated regulations relied on *Bostock*'s reasoning.[70]

[58] *Bostock*, 590 U.S. at 656.

[59] *Id*. at 655.

[60] *Id*. at 660.

[61] *Id*. at 660–61.

[62] *Id*. at 662.

[63] *Id*. at 681.

[64] *See* "Department of Education's Attempted Updates to Title IX Regulations Following *Bostock*."

[65] *See* United Steelworkers of Am., AFL-CIO-CLC v. Weber, 443 U.S. 193, 206 n.6 (1979). The authority for damages suits against state governments under Title VII rests on Section 5 of the Fourteenth Amendment, which allows Congress to abrogate state sovereign immunity in certain circumstances. Fitzpatrick v. Bitzer, 427 U.S. 445, 447 (1976).

[66] Gebser v. Lago Vista Indep. Sch. Dist., 524 U.S. 274, 286 (1998).

[67] *Id*. at 286–87.

[68] *See* "Application of Bostock to Title IX in Federal Courts."

[69] Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 33474, 33886 (Apr. 29, 2024) (to be codified at 34 C.F.R. pt. 106).

[70] *Id*. at 33805.

The updated regulations went beyond merely adopting *Bostock*'s logic that discrimination based on sexual orientation and transgender status is sex discrimination. They also contained a provision specifying that, absent an exception, even in situations where differential treatment or separation based on sex is otherwise permitted by Title IX, school policies that prevent individuals from participating in education programs consistent with their gender identity violate the law.[71] Thus, denying transgender students access to the bathrooms or locker rooms consistent with their gender identity generally would violate Title IX, according to ED's updated regulations.[72] Following numerous legal challenges that resulted in various preliminary injunctions against the 2024 regulations,[73] a federal district court vacated them in January 2025.[74]

In addition, ED issued a separate Notice of Proposed Rulemaking (NPRM) that would have amended the agency's Title IX regulations with specific provisions regarding the participation of transgender students in athletics programs.[75] The NPRM proposed to amend ED's Title IX regulations to prohibit categorical bans on transgender students participating in sports consistent with their gender identity but to allow restrictions that—for each grade level, sport, and level of competition—are substantially related to an important educational objective and are aimed to minimize harm to transgender students.[76] The NPRM was never finalized, and ED eventually withdrew it before the Trump Administration took office.[77]

Trump Administration Enforcement of Title IX Against States and Institutions with Permissive Policies

As mentioned above, on February 5, 2025, the Trump Administration issued an EO directing the Secretary of Education to prioritize enforcement of Title IX against "educational institutions" that allow transgender girls and women to participate in girls' sports.[78] The order also adopts the definitions from another EO, "Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government," which defines *sex* to mean "an individual's immutable biological classification as either male or female."[79] That EO also directs the Attorney General to issue guidance to agencies to correct the prior Administration's "misapplication of the Supreme Court's decision in *Bostock* . . . to sex-based distinctions in agency activities."[80]

The Trump Administration has initiated Title IX investigations into various educational entities with athletics policies that allow transgender athletes to compete in sports consistent with their

[71] *Id*. at 22887.

[72] *Id*. at 33818.

[73] *See* Dep't of Educ. v. Louisiana, 603 U.S. 866, 867 (2024) (per curiam) (denying partial stays of preliminary injunctions against the Title IX rule).

[74] Tennessee v. Cardona, 762 F. Supp. (E.D. Ky.), *as amended* (Jan. 10, 2025), *appeal docketed sub nom.*, Tennessee v. McMahon, No. 25-5206 (6th Cir. Mar. 12, 2025).

[75] *See* Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Sex-Related Eligibility Criteria for Male and Female Athletic Teams, 88 Fed. Reg. 22860 (Apr. 13, 2023) (to be codified at 34 C.F.R. pt. 106).

[76] *Id.* at 22891. For more on the details of this proposal, see CRS Legal Sidebar LSB10983, *Transgender Athletes: Education Department Proposes Amendment to Title IX Regulations*, by Jared P. Cole (2023).

[77] Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Sex-Related Eligibility Criteria for Male and Female Athletic Teams; Withdrawal, 89 Fed. Reg. 104936 (Dec. 26, 2024).

[78] Exec. Order No. 14,201, 90 Fed. Reg. 9279 (Feb. 5, 2025).

[79] Exec. Order No. 14,168, 90 Fed. Reg. 8615 (Jan. 30, 2025).

[80] *Id*.

gender identity. For instance, ED OCR has opened investigations into some colleges and state boards of education.[81] Other federal agencies that distribute federal financial assistance to education programs have conducted compliance reviews on the same basis.[82] As explained below, some educational entities have rejected the Administration's position on Title IX and transgender athletes, and some of these disputes are now playing out in courts. By contrast, at least one institution has entered into a resolution agreement with OCR to resolve a noncompliance finding.

On April 2, 2025, the U.S. Department of Agriculture (USDA) issued a letter to the governor of Maine announcing a freeze on certain funding on the grounds that the state's permissive policy for transgender girls participating in athletics was not in compliance with Title IX.[83] It appears that USDA froze certain funds relating to school meals and child nutrition programs that the agency provides to Maine. Maine sued USDA, and a federal district court issued a temporary restraining order (TRO) against the agency, ruling that USDA's actions violated Title IX's enforcement requirements.[84] It observed that USDA did not provide the notice and hearing before termination of funds that the statute requires.[85] Following the TRO, the parties settled; under the settlement terms, USDA agreed to refrain from freezing the state's access to funding based on an alleged Title IX violation unless the state first follows the procedures required under the statute and applicable regulations.[86]

In addition, both the Department of Health and Human Services and ED notified Maine's Department of Education (MDOE) of Title IX compliance reviews based on reports of the state's permissive policy.[87] Both federal agencies subsequently notified the state that it was out of compliance with Title IX and proposed resolution agreements.[88] After determining that compliance could not be obtained through the informal process, the agencies referred the matter to the Department of Justice (DOJ).[89] DOJ sued MDOE in federal district court, arguing that the state's athletics policy "den[ies] girls the opportunity to compete in student sports on a level playing field in which they have the same opportunities as boys" in violation of Title IX.[90] According to DOJ, the state's policy "forces girls to compete against boys—despite the real physiological differences between the sexes," which denies equal athletic opportunities to girls.[91] The case is currently pending.

[81] *President Trump's First 100 Days: Education in America*, Dep't of Educ., https://www.ed.gov/preview-link/node/7799/e78ad0c8-18ed-44cb-bd91-504a8ebd61bf [https://perma.cc/E8CC-CN3K] (last visited July 18, 2025).

[82] Notice of Compliance Review, Office for Civil Rights, Dep't of Health and Human Services (Feb. 21, 2025), https://storage.courtlistener.com/recap/gov.uscourts.med.67828/gov.uscourts.med.67828.1.2.pdf; Notice of Compliance Review, U.S. Department of Agriculture (Feb. 22, 2025), https://www.usda.gov/sites/default/files/documents/maine-notice-of-compliance.pdf [https://perma.cc/XP3M-T3QY].

[83] Letter from Secretary of the Department of Agriculture Brooke Rollins to Governor of Maine Janet Mills (Apr. 2, 2025), https://storage.courtlistener.com/recap/gov.uscourts.med.67828/gov.uscourts.med.67828.1.14.pdf [https://perma.cc/2JFT-NT8A].

[84] Maine v. USDA, No. 25-cv-00131, 2025 WL 1088946, at *23 (D. Me. Apr. 11, 2025).

[85] *Id*.

[86] Settlement Agreement, Maine v. USDA, No. 25-cv-00131 (D. Me. May 2, 2025), https://mainemorningstar.com/wp-content/uploads/2025/05/Settlement-Agreement-executed.pdf [https://perma.cc/L6T8-AWJM].

[87] Complaint at 26, United States v. Maine Dep't of Educ., 25-cv-00173 (D. Me. Apr. 16, 2025), Dkt. No. 1.

[88] *Id*. at 26–27.

[89] *Id*.

[90] *Id*. at 2.

[91] *Id*. at 3.

ED OCR has also concluded a Title IX investigation into the California Department of Education (CDE) and the California Interscholastic Federation (CIF).[92] OCR decided that both entities are violating Title IX by "allowing males in girls' sports."[93] The agency issued a proposed resolution agreement, which the state rejected.[94] DOJ has now sued CDE and CIF for violating Title IX.[95]

By contrast, following an OCR investigation and determination that it violated Title IX, the University of Pennsylvania entered a resolution agreement to resolve the finding of noncompliance in which it committed to certain actions, such as issuing a public statement specifying that "male students" may not compete in athletics programs restricted to "women."[96]

Application of *Bostock* to Title IX in Federal Court

In cases addressing contexts like transgender individuals and bathroom access, harassment, and health care, and in challenges to the updated Title IX regulations described above, courts have examined whether the logic and reasoning of *Bostock* apply to sex discrimination under Title IX. In turn, they have addressed how that reasoning should apply in circumstances the Court did not consider in that case—for instance, circumstances in which Title IX's statutory or regulatory text expressly permits separating the sexes. Courts have considered a variety of factors in this analysis. Considerations have included the similarity between the language of Title VII and Title IX and the frequency with which courts draw on Title VII in interpreting Title IX; the explicit statutory and regulatory carveouts in Title IX that allow sex separation and that are absent in Title VII; potentially relevant differences between the education, health care, and workplace contexts; and the different constitutional authorities upon which these laws rest.

Courts Applying Bostock*'s Reasoning to Title IX*

In contexts including bathroom access, health care, and sexual harassment, a number of federal courts have applied the reasoning of *Bostock* to Title IX, concluding that sex discrimination under Title IX includes discrimination based on sexual orientation and transgender status.[97] Courts have not been uniform in this approach, however.[98] Whether *Bostock*'s reasoning does apply to Title IX in a given jurisdiction can, in turn, shape how a court considers a challenge to policies that

[92] Press Release, U.S. Department of Education Finds California Department of Education and California Interscholastic Federation in Violation of Title IX, Dep't of Educ. (June 25, 2025), https://www.ed.gov/about/news/press-release/us-department-of-education-finds-california-department-of-education-and-california-interscholastic-federation-violation-of-title-ix [https://perma.cc/BU77-E9Y4].

[93] *Id.*

[94] Soumya Karlamangla, *California Rejects Trump Demand to Remove Trans Athletes from Women's Sports*, NY Times (July 8, 2025).

[95] Complaint, United States v. Cal. Interscholastic Fed'n, 25-cv-01485 (C.D. Cal. July 9, 2025).

[96] Resolution Agreement, Univ. of Penn., Dep't of Educ., Office for Civil Rights (June 30, 2025), https://ocrcas.ed.gov/sites/default/files/ocr-letters-and-agreements/03256901-b.pdf [https://perma.cc/3R8D-VXWG].

[97] M.C. *ex rel.* A.C. v. Metro. Sch. Dist., 75 F.4th 760, 769 (7th Cir. 2023), *cert. denied*, 144 S. Ct. 683 (2024); Grabowski v. Ariz. Bd. of Regents, 69 F.4th 1110, 1116 (9th Cir. 2023); Grimm v. Gloucester Cnty. Sch. Bd., 972 F.3d 586, 616 (4th Cir. 2020); Kadel v. Folwell, No. 19CV272, 2022 WL 17415050, at *2 (M.D.N.C. Dec. 5, 2022), *vacated*, No. 24-99, 2025 WL 1787687 (U.S. June 30, 2025); Hammons v. Univ. of Md. Med. Sys. Corp., 649 F. Supp. 3d 104, 113 (D. Md. 2023); Fain v. Crouch, 618 F. Supp. 3d 313, 331 (S.D.W. Va. 2022) ("Transgender status, and thus, this exclusion, cannot be understood without a reference to sex."), *vacated sub nom.*, Crouch v. Anderson, No. 24-90, 2025 WL 1787678 (U.S. June 30, 2025), *and vacated sub nom.*, Folwell v. Kadel, No. 24-99, 2025 WL 1787687 (U.S. June 30, 2025).

[98] Adams *ex rel.* Kasper v. Sch. Bd., 57 F.4th 791, 796 (11th Cir. 2022) (en banc) (holding that "separating school bathrooms based on biological sex passes constitutional muster and comports with Title IX").

prohibit or permit transgender students to participate in athletics consistent with their gender identity.[99]

For example, some courts that have applied the reasoning of *Bostock* to Title IX claims have observed that courts often draw on Title VII caselaw in interpreting the meaning of Title IX's sex discrimination ban.[100] These courts have observed the similarity in statutory language between Title VII and Title IX's prohibition of sex discrimination.[101] Title VII bans discrimination "because of . . . sex" and Title IX bans discrimination "on the basis of sex."[102] Courts have ruled that it would be logically inconsistent with *Bostock* to find that Title IX's ban against sex discrimination allows discrimination against someone for being transgender.[103] For courts that apply *Bostock*'s logic to Title IX, a school policy that treats transgender students worse than similarly situated cisgender students is thus sex discrimination in violation of Title IX.[104]

Bostock ruled that discrimination based on transgender status is sex discrimination under Title VII; that decision was limited to the context of firing an employee based on their sexual orientation or transgender status.[105] The decision did not address how its reasoning would apply in situations in which a sex classification may nonetheless be permissible, such as sex-separated bathrooms or sex-differentiated dress codes that may be permitted under Title IX.[106]

In the context of school bathrooms, the U.S. Courts of Appeals for the Seventh and Fourth Circuits—in *M.C. ex rel. A.C. v. Metro School District*[107] and *Grimm v. Gloucester County School Board*,[108] respectively—have ruled that policies that prohibit access to transgender students consistent with their gender identity violate Title IX. The Fourth and Seventh Circuits ruled that policies prohibiting bathroom access to transgender students consistent with their gender identity violate Title IX despite the fact that the law allows for separation of the sexes in bathrooms and living facilities.[109] The Fourth Circuit, for instance, rejected the argument that the Title IX regulations authorizing sex-separated facilities justified the policy.[110] For the court, those regulations indicated that sex-segregated facilities in and of themselves are not discriminatory, but they did not authorize the school board to "rely on its own discriminatory notions of what 'sex' means" in applying policies to transgender students.[111]

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[99] *See infra* "Legal Challenges to Restrictive Policies."

[100] Kadel v. Folwell, 100 F.4th 122, 164 (4th Cir. 2024), *vacated*, No. 24-99, 2025 WL 1787687 (U.S. June 30, 2025), *and vacated sub nom.*, Crouch v. Anderson, No. 24-90, 2025 WL 1787678 (U.S. June 30, 2025); B.E. v. Vigo Cnty. Sch. Corp., 608 F. Supp. 3d 725, 730 (S.D. Ind. 2022), *aff'd sub nom.*, M.C. *ex rel.* A.C., 75 F.4th 760 (7th Cir. 2023); Doe *ex rel.* Doe v. Snyder, 28 F.4th 103, 114 (9th Cir. 2022).

[101] B.E. v. Vigo Cnty. Sch. Corp., 608 F. Supp. 3d 725, 730 (S.D. Ind. 2022), *aff'd sub nom.*, M.C. *ex rel. A*.C., 75 F.4th 760 (7th Cir. 2023); *Snyder*, 28 F.4th at 114.

[102] 42 U.S.C. § 2000e-2(a)(1); 20 U.S.C. § 1681.

[103] C.P. *ex rel.* Pritchard v. Blue Cross Blue Shield, 536 F. Supp. 3d 791, 796 (W.D. Wash. 2021); Scott v. St. Louis Univ. Hosp., 600 F. Supp. 3d 956, 965 (E.D. Mo. 2022).

[104] *M.C. ex rel. A.C.*, 75 F.4th at 760, 772, *cert. denied sub nom.*, Metro. Sch. Dist. v. A.C., 144 S. Ct. 683 (2024); Grimm v. Gloucester Cnty. Sch. Bd., 972 F.3d 586, 618 (4th Cir. 2020).

[105] Bostock v. Clayton Cnty., 590 U.S. 644, 662 (2020).

[106] *Id*. *See also* Jespersen v. Harrah's Operating Co., 444 F.3d 1104, 1109–10 (9th Cir. 2006) (en banc) ("Grooming standards that appropriately differentiate between the genders are not facially discriminatory.")

[107] 75 F.4th 760 (7th Cir. 2023). References to a particular circuit in this report (e.g., First Circuit) refer to the U.S. Court of Appeals for that circuit.

[108] 972 F.3d 586, 606 (4th Cir.), as amended (Aug. 28, 2020).

[109] *Id.*

[110] *Grimm*, 972 F.3d at 618.

[111] *Id.* at 618.

The relevant comparator, or who a court compares a transgender student to in this context, can drive the outcome. When the Fourth and Seventh Circuits compared access to bathrooms for transgender boys and cisgender boys, for example, they found that transgender boys were treated worse under the challenged policies, and treated worse because of their transgender status, because only they were barred from the bathroom aligning with their gender identity.[112] In contrast, a dissent in the Fourth Circuit would have upheld the restrictive bathroom policy at issue in part because the dissent viewed transgender boys as similarly situated to cisgender girls, and transgender girls as similarly situated to cisgender boys, all of whom are required to use the bathroom that corresponds to their biological sex.[113]

Courts Distinguishing Bostock

Other courts have distinguished the reasoning of *Bostock* from the Title IX context. These courts have emphasized the limited nature of *Bostock*'s holding.[114] They have also taken the position that Title IX's prohibition against sex discrimination applies to "biological sex" as between "males and females" because that is what the bill's authors would have understood in 1972 when the law was passed.[115] Courts have also observed the differences in context between Title VII and Title IX. While the former addresses discrimination in the adult workforce, the latter concerns schools and children.[116] That different context, these courts have reasoned, requires a different analysis.

Some courts have additionally determined that interpreting "sex" under Title IX to include gender identity would render Title IX's carveouts for certain forms of sex separation "meaningless" or "nonsensical."[117] For instance, the Eleventh Circuit Court of Appeals (Eleventh Circuit) ruled in *Adams v. School Board* that a school bathroom policy that separated boys' and girls' bathrooms according to biological sex did not violate Title IX.[118] Pointing to the statutory carveout for living facilities, the court reasoned that if "sex" includes gender identity, transgender individuals could live either in facilities "associated with their biological sex" or their gender identity.[119] If so, the court explained, "it is difficult to fathom why the drafters of Title IX went through the trouble of providing an express carve-out for sex-separated living facilities."[120] This interpretation, in the court's view, "would thereby establish dual protection under Title IX based on both sex and gender identity when gender identity does not match sex."[121]

Courts distinguishing *Bostock* from Title IX have focused on the different constitutional authorities that Congress relied on in passing Title VII and Title IX as well. As mentioned above, Title VII generally rests on Congress's authority to regulate interstate commerce, while Title IX is

[112] *M.C. ex rel. A.C.*, 75 F.4th at 772; *Grimm*, 972 F.3d at 618.

[113] *Grimm*, 972 F.3d at 628 (Niemeyer, J., dissenting).

[114] Texas v. Becerra, 739 F. Supp. 3d 522, 535 (E.D. Tex.), *modified on reconsideration*, No. 24-CV-211, 2024 WL 4490621 (E.D. Tex. Aug. 30, 2024); Neese v. Becerra, 640 F. Supp. 3d 668, 676 (N.D. Tex. 2022), *vacated*, 123 F.4th 751 (5th Cir. 2024).

[115] Adams *ex rel.* Kasper v. Sch. Bd., 57 F.4th 791, 812 (11th Cir. 2022) (en banc); *Becerra*, 739 F. Supp. 3d at 534; Tennessee v. Cardona, No. 24-072, 2024 WL 3019146, at *9 (E.D. Ky. June 17, 2024); *Becerra*, 640 F. Supp. 3d at 684.

[116] *Adams*, 57 F.4th at 808; *Becerra*, 739 F. Supp. 3d at 535.

[117] *Adams*, 57 F.4th at 812; *Becerra*, 640 F. Supp. 3d at 680; Florida v. Dep't of Health & Hum. Servs., 739 F. Supp. 3d 1091, 1105 (M.D. Fla. 2024).

[118] *Adams*, 57 F.4th at 815.

[119] *Id*. at 813.

[120] *Id*.

[121] *Id*. at 814.

a Spending Clause statute.[122] The Supreme Court requires obligations under Spending Clause laws to be "clear" and "unambiguous[]."[123] Some courts have determined that interpreting "sex" under Title IX to include sexual orientation and gender identity would not meet that standard.[124] As the Eleventh Circuit determined in *Adams*, Title IX's Spending Clause origins mean that a restrictive bathroom policy could violate the statute only if "sex" under Title IX unambiguously means something other than biological sex.[125] However, the panel reasoned, "schools across the country separate bathrooms based on biological sex and colleges and universities across the country separate living facilities based on biological sex."[126] For the *Adams* court, the idea that "separating male and female bathrooms violates Title IX" was "untenable."[127]

Numerous courts have also ruled, in the posture of issuing preliminary injunctions, that ED overstepped when, in 2024, it updated its Title IX regulations to define sex discrimination to include sexual orientation and gender identity and to require schools to largely treat students consistent with their gender identities.[128] Like the decisions discussed above, some courts ruled that Title IX does not unambiguously condition a prohibition against gender identity discrimination upon the receipt of federal funding.[129] Likewise, these courts have concluded that the updated regulatory requirements undermined Title IX's allowances for sex separation.[130] Courts also emphasized the different contexts of Title VII and Title IX (the adult workplace versus schools).[131] As mentioned previously, a federal district court ultimately vacated the 2024 regulations in January 2025.[132]

Equal Protection Clause of the Fourteenth Amendment

In addition to federal antidiscrimination statutes, the Equal Protection Clause of the Fourteenth Amendment may be relevant to policies that address the participation of transgender student-athletes in school sports. Courts have disagreed over how equal protection principles apply in this

[122] Gebser v. Lago Vista Indep. Sch. Dist., 524 U.S. 274, 286 (1998).

[123] Pennhurst State Sch. & Hosp. v. Halderman, 451 U.S. 1, 17 (1981).

[124] Adams *ex rel.* Kasper v. Sch. Bd. of St. Johns Cnty., 57 F.4th 791, 815–16 (11th Cir. 2022) (en banc); M.K. *ex rel.* Koepp v. Pearl River Cnty. Sch. Dist., No. 22-CV-25, 2023 WL 8851661, at *8 (S.D. Miss. Dec. 21, 2023), *appeal filed*, No. 24-60035, 2024 WL 8851661 (5th Cir. Jan. 22, 2024).

[125] *Adams*, 57 F.4th at 815–16.

[126] *Id.* at 816.

[127] *Id*. at 816.

[128] *See, e.g.*, Dep't of Educ. v. Louisiana, 603 U.S. 866, 867 (2024) (per curiam) (denying motions to partially stay preliminary injunctions); Alabama v. Sec'y of Educ., No. 24-12444, 2024 WL 3981994, at *5 (11th Cir. Aug. 22, 2024); Louisiana v. Dep't of Educ., No. 24-30399, 2024 WL 3452887, at *1 (5th Cir. July 17, 2024) (per curiam); Tennessee v. Cardona, No. 24-5588, 2024 WL 3453880, at *3 (6th Cir. July 17, 2024); *see also* Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 33474, 33886 (Apr. 29, 2024) (to be codified at 34 C.F.R. pt. 106).

[129] *Cardona*, 2024 WL 3453880, at *3; Kansas v. Dep't of Educ., No. 24-4041, 2024 WL 3273285, at *13 (D. Kan. July 2, 2024), *appeal dismissed*, No. 24-3097, 2025 WL 1914861 (10th Cir. Mar. 13, 2025); Tennessee v. Cardona, No. 24-072, 2024 WL 3019146, at *15 (E.D. Ky. June 17, 2024), *appeal dismissed sub nom.* Tennessee v. McMahon, No. 24-5588, 2025 WL 848197 (6th Cir. Mar. 18, 2025); Oklahoma v. Cardona, No. CIV-24-00461, 2024 WL 3609109, at *9 (W.D. Okla. July 31, 2024).

[130] *Alabama v. Sec'y of Educ.*, 2024 WL 3981994, at *5; *Kansas v. Dep't of Educ.*, 2024 WL 3273285, at *10; Louisiana v. Dep't of Educ., 737 F. Supp. 377, 398–99 (W.D. La. 2024); *Cardona*, 2024 WL 3019146, at *13.

[131] *Alabama v. U.S. Sec'y of Educ.*, 2024 WL 3981994, at *5; *Kansas v. U.S. Dep't of Educ.*, 2024 WL 3273285, at *9 (D. Kan. July 2, 2024); *Louisiana v. U.S. Dep't of Educ.*, 737 F. Supp. at 399–400.

[132] Tennessee v. Cardona, 762 F. Supp. 3d 615, 626–27 (E.D. Ky.), *as amended* (Jan. 10, 2025).

context, including the level of scrutiny courts should apply when reviewing challenges to these policies.

Levels of Scrutiny

The Fourteenth Amendment's Equal Protection Clause provides that "no state shall . . . deny to any person within its jurisdiction the equal protection of the laws."[133] Courts interpret this to mean that laws cannot treat groups of people differently without a sufficient reason. Whether a governmental classification survives an equal protection challenge depends on the basis for the classification (i.e., who the law treats differently), the government's rationale for the classification, and the fit between the classification and the rationale. Courts apply one of three tiers of scrutiny depending on the type of classification at issue. The first and most deferential standard of equal protection review is *rational basis*, under which courts uphold a challenged classification if it is reasonably related to a legitimate government purpose.[134] Because nearly "all laws classify,"[135] rational basis review acts as the default standard that courts apply to laws challenged under the Equal Protection Clause.

Some laws classify people based on characteristics that have historically been used to discriminate between groups. When this occurs, the government must provide a more substantial justification for making that classification. Under the second tier of judicial scrutiny, called *intermediate scrutiny*,[136] a *quasi-suspect* classification[137]—including classifications based on sex—must be supported by an "exceedingly persuasive justification"[138] that the classification is "substantially related" to "an important governmental objective."[139] The third tier, known as *strict scrutiny*, applies to classifications that the Court has determined to be inherently "suspect."[140] To withstand strict scrutiny, a law that involves a suspect classification must be "narrowly tailored to further compelling governmental interests."[141]

There are few suspect or quasi-suspect classifications. The Supreme Court has held that a classification is suspect in nature only if

- the group at issue has historically been subject to discrimination;
- the classification is not related to the group's ability to contribute to society;
- the group is discrete with immutable characteristics; and
- the group is a minority that lacks political power.[142]

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[133] U.S. CONST. amend. XIV, § 2. The Equal Protection Clause of the Fourteenth Amendment applies only to state action by state and local governments. However, courts have held that the same principles apply to the federal government through the Due Process Clause of the Fifth Amendment. *See*, *e.g.*, Buckley v. Valeo, 424 U.S. 1, 93 (1976) (per curiam).

[134] Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 440 (1985).

[135] Toll v. Moreno, 458 U.S. 1, 39 (1982) (Rehnquist, J., dissenting); *see* Clements v. Fashing, 457 U.S. 957, 967 (1982) ("Classification is the essence of all legislation, and only those classifications which are invidious, arbitrary, or irrational offend the Equal Protection Clause of the Constitution.").

[136] Craig v. Boren, 429 U.S. 190, 197 (1976).

[137] *See* Cong. Rsch. Serv., *Equal Protection and Rational Basis Review Generally*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/amdt14-S1-8-1-2/ALDE_00000817/ (last visited July 18, 2025).

[138] Mississippi Univ. for Women v. Hogan, 458 U.S. 718, 724 (1982).

[139] United States v. Virginia, 518 U.S. 515, 533 (1996).

[140] *See* Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1, 551 U.S. 701, 720 (2007).

[141] Grutter v. Bollinger, 539 U.S. 306, 326 (2003).

[142] *See*, *e.g.*, Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 442–46 (1985).

The Supreme Court has called sex-based classifications "quasi-suspect" because they are often based upon "outdated misconceptions" or "loose-fitting characterizations" about the abilities of men and women.[143] For example, in 1984 the Court ruled in *Mississippi University for Women v. Hogan* that a female-only admissions policy at a public nursing school violated the Equal Protection Clause.[144] The state argued that the policy remedied discrimination against women, but the Court rejected this argument because the state failed to show that women lacked opportunities in the nursing field.[145] Rather, the Court found that the school's policy perpetuated the stereotype of nursing as a "woman's job."[146] The Court determined that the state failed to show that the classification was substantially and directly related to its objective of remedying discrimination against women.[147] The school had a policy permitting men to audit classes, which the Court found to contradict the claim that women were harmed by having men in class.[148] Therefore, the Court held that the record did not show that "excluding men from [admissions] was necessary to reach any of [the school's] educational goals."[149]

Sex-based distinctions are subject to only intermediate, not strict, scrutiny, because the Supreme Court has held that there are instances where the sexes are not similarly situated. In its 1981 decision *Michael M. v. Superior Court*, the Court upheld a state criminal law that punished males, but not females, for statutory rape.[150] The plurality opinion accepted the state's justification for the statute—prevention of illegitimate teenage pregnancies—as an important government interest.[151] The plurality also held that the statute's sex-based punishment scheme was sufficiently related to this purpose, reasoning that females already bear the harmful consequences of teenage pregnancy.[152] Therefore, the Court held that criminal sanctions for males alone could help balance the deterrents to teenage pregnancy between the sexes.[153]

Gender Identity and Transgender Status

When a law or policy is challenged under the Equal Protection Clause for discriminating against transgender individuals, courts must determine what level of scrutiny to apply. To do so, courts must consider two issues:

- First, does the policy classify on the basis of sex? If so, intermediate scrutiny presumably applies.
- Second, does the policy classify on the basis of transgender status? If so, is transgender status a suspect or quasi-suspect classification?
    - If transgender status is not a suspect or quasi-suspect classification, rational basis scrutiny presumably applies.

[143] *See* Craig v. Boren, 429 U.S. 190, 199 (1976).

[144] 458 U.S. 718 (1982).

[145] *Id*. at 729.

[146] *Id*. at 743.

[147] *Id*. at 730.

[148] *Id*. at 731.

[149] *Id*.

[150] Michael M. v. Superior Ct., 450 U.S. 464 (1981).

[151] *Id*. at 470.

[152] *Id*. at 472–73.

[153] *Id*. at 473.

- If transgender status is a suspect or quasi-suspect classification, heightened scrutiny applies.

Once a court has identified the applicable level of scrutiny, it must determine whether the government has supported the policy with an appropriate justification. Different courts have reached different conclusions when analyzing similar policies under this framework. This section examines their reasoning.

Determining the Level of Scrutiny

Federal appellate courts have confronted the question of what the appropriate level of scrutiny is when reviewing equal protection challenges to policies that classify on the basis of gender identity or transgender status. While this report focuses on challenges to policies addressing the participation of transgender student-athletes in school sports, many of the cases involving the question of appropriate level of scrutiny involve policies in other contexts. To date, relatively few federal courts have squarely addressed equal protection challenges to restrictive athletics policies for transgender students. Consequently, cases that address the proper level of scrutiny in other contexts that implicate gender identity may be instructive. In some federal circuits, opinions determining the level of scrutiny for classifications based on gender identity or transgender status in contexts other than school sports may determine the level of scrutiny applied in a sports-related challenge.

The Fourth, Seventh, Ninth, Tenth, and Eleventh Circuits have held that at least some laws and policies that allegedly discriminate against transgender people employ sex-based classifications that are subject to intermediate scrutiny in contexts including changing gender markers on birth certificates,[154] participation of transgender student-athletes in school sports,[155] and restricting school bathroom access based on biological sex.[156] In challenges to bathroom policies that restrict access according to a student's sex assigned at birth, several courts have determined that such classifications are inherently sex-based and should be reviewed under intermediate scrutiny. For example, the Seventh Circuit held in both *Whitaker v. Kenosha Unified School District*[157] and *A.C. v. Metropolitan School District of Martinsville*[158] that a school bathroom policy requiring students to use a bathroom aligned with their biological sex was inherently sex-based, reasoning that the policy "cannot be stated without referencing sex."[159]

Courts have not uniformly concluded that every law that mentions sex assigned at birth or gender identity employs a sex-based classification subject to intermediate scrutiny, however. For example, federal courts of appeals were split as to the level of scrutiny in challenges to laws that restrict access to medical treatments for transgender minors. In 2022, the Eighth Circuit held in *Brandt ex rel. Brandt v. Rutledge* that a state law banning "gender transition procedures" relied on

[154] Fowler v. Stitt, 104 F.4th 770 (10th Cir. 2024).

[155] Hecox v. Little, 104 F.4th 1061, 1079 (9th Cir. 2024), *as amended* (June 14, 2024), *cert. granted*, No. 24-38 (S. Ct. July 3, 2025) (mem.).

[156] Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ., 858 F.3d 1034 (7th Cir. 2017), *abrogated by* Kluge v. Brownsburg Cmty. Sch. Corp., 64 F.4th 861 (7th Cir.), *vacated*, No. 21-2475, 2023 WL 4842324 (7th Cir. July 28, 2023); Grimm v. Gloucester Cnty. Sch. Bd., 972 F.3d 586, 608–10 (4th Cir. 2020); Adams *ex rel.* Kasper v. Sch. Bd. of St. Johns Cnty, 57 F.4th 791, 801 (11th Cir. 2022) (en banc); A.C. v. Metro. Sch. Dist., 75 F.4th 760 (7th Cir. 2023), *cert. denied*, 144 S. Ct. 683 (2024) (mem.).

[157] 858 F.3d 1034 (7th Cir. 2017), *abrogated by Brownsburg Cmty. Sch. Corp.*, 64 F.4th 861.

[158] 75 F.4th 760.

[159] *Whitaker*, 858 F.3d at 051; *accord Grimm*, 972 F.3d at 608–10 (school bathroom policy); *Adams*, 57 F.4th at 801 (same).

a sex classification and thus was subject to intermediate scrutiny.[160] By contrast, the Sixth Circuit ruled that bans on certain medical treatments for transgender minors did not discriminate based on sex because they limited access to such treatments for all children equally, meaning that rational basis review applied.[161] The Supreme Court affirmed the Sixth Circuit in *United States v. Skrmetti*, holding the ban at issue classified on the basis of age and medical treatment rather than sex.[162] Following the Court's decision in *Skrmetti*, the en banc Eighth Circuit changed course and upheld the law at issue in *Brandt* on the merits, applying only rational basis review.[163] Similar arguments have been made to support policies requiring student-athletes to participate on teams aligned with their sex assigned at birth, though the Supreme Court has not addressed the proper standard of review for that context.[164]

Courts have also disagreed over whether transgender individuals constitute a quasi-suspect class in their own right to which heightened scrutiny applies, regardless of whether a law that distinguishes based on gender identity is considered sex-based. The Fourth and Ninth Circuits have determined that, regardless of context, transgender individuals are a quasi-suspect class, and as a result, classifications based on gender identity trigger intermediate scrutiny.[165] In *Grimm*, the Fourth Circuit considered factors that have been used to determine whether a class is suspect and found that transgender individuals have historically faced discrimination based on their characteristics, but not based upon their ability to contribute to society, and are a minority group.[166] The Sixth Circuit, on the other hand, has held that neither gender identity nor transgender status are suspect classifications, in part because neither is "definitively ascertainable at the moment of birth."[167]

Bostock and the Equal Protection Clause

Courts have divided over whether the Supreme Court's logic in *Bostock*, a Title VII case, is an appropriate tool to determine whether a law or policy is a sex classification in the equal protection context.[168] As with Title IX, some federal appellate courts have applied the reasoning in *Bostock* to equal protection claims to determine that policies that classify based on transgender status are sex-based and therefore subject to intermediate scrutiny. An example is *Fowler v. Stitt*, where the

[160] Brandt *ex rel.* Brandt v. Rutledge, 47 F.4th 661, 670 (8th Cir. 2022).

[161] L.W. *ex rel.* Williams v. Skrmetti, 83 F.4th 460, 484 (6th Cir. 2023), *cert. dismissed in part sub nom.*, Doe v. Kentucky, 144 S. Ct. 389 (2023), *and cert. granted sub nom.*, United States v. Skrmetti, 144 S. Ct. 2679 (2024), *and aff'd*, 145 S. Ct. 1816 (2025), *and cert. denied sub nom.*, Doe v. Kentucky, No. 23-492, 2025 WL 1787718 (U.S. June 30, 2025), *and cert. denied sub nom.* L.W. v. Skrmetti, No. 23-466, 2025 WL 1787721 (U.S. June 30, 2025).

[162] United States v. Skrmetti, 145 S. Ct. 1816, 1830–31 (2025).

[163] Brandt *ex rel*. Brandt v. Griffin, No. 23-2681 (8th Cir. Aug. 12, 2025).

[164] *See* sources cited *supra* note 6.

[165] *See Grimm*, 972 F.3d at 610–13 (explaining why transgender individuals are, in the view of the Fourth Circuit, a quasi-suspect class), *and Hecox*, 104 F.4th at 1079 (stating that the circuit considers transgender status to be "at least" a quasi-suspect class).

[166] *Grimm*, 972 F.2d at 611–13 (citing Bowen v. Gilliard, 483 U.S. 587 (1987); Cleburne v. Cleburne Living Ctr., 473 U.S. 432 (1985)). *See also supra* "Equal Protection Clause of the Fourteenth Amendment" and "Levels of Scrutiny."

[167] L.W. v. Skrmetti, 83 F.4th at 487. On appeal, the Supreme Court did not address the question of whether transgender status is a quasi-suspect class, holding that the disputed law "does not classify on the basis of transgender status." *Skrmetti*, 145 S. Ct. at 1832–33.

[168] *Compare* Fowler v. Stitt, 104 F.4th 770, 793 (10th Cir. 2024), *vacated*, No. 24-801, 2025 WL 1787695 (U.S. June 30, 2025); Kadel v. Folwell, 100 F.4th 122, 153–54 (4th Cir. 2024), *vacated*, No. 24-99, 2025 WL 1787687 (U.S. June 30, 2025), *and vacated sub nom.* Crouch v. Anderson, No. 24-90, 2025 WL 1787678 (U.S. June 30, 2025); *and Hecox*, 104 F.4th at 1079, *with* L.W. v. Skrmetti, 83 F.4th at 484–85; Eknes-Tucker v. Governor Ala., 80 F.4th 1205, 1228–29 (11th Cir. 2023), *cert. dismissed*, 145 S. Ct. 2290 (2025), *and cert. dismissed sub nom.*, United States v. Att'y Gen. Ala., 145 S. Ct. 838 (2025).

Tenth Circuit held that a state policy against amending birth certificates upon request to reflect an individual's gender identity discriminated on the basis of sex. The Tenth Circuit determined that *Bostock* was instructive because the Supreme Court had not "indicate[d] that its logic concerning the intertwined nature of transgender status and sex was confined to Title VII."[169] The *Fowler* court held that "because the [p]olicy intend[ed] to discriminate based on transgender status, it necessarily intend[ed] to discriminate on the basis of sex."[170]

Other courts have refused to extend *Bostock*'s reasoning to the Equal Protection Clause. The Sixth Circuit in *L.W. ex rel. Williams v. Skrmetti* determined that *Bostock* was not applicable to the equal protection analysis of a state law prohibiting health care providers from providing minors with some treatments for gender dysphoria. There, the court stated that *Bostock*'s "text-driven reasoning applies only to Title VII."[171] In the Sixth Circuit's view, applying *Bostock* to the Equal Protection Clause context would equate to "importing the Title VII test for liability into the Fourteenth Amendment[,]" which would "require adding Title VII's many defenses to the Constitution."[172] Instead, the court held that because the law "regulate[d] sex transition treatments for all minors, regardless of sex," it did not create a sex-based classification and was subject only to rational basis scrutiny.[173] The Supreme Court granted review in *Skrmetti* and affirmed that the Sixth Circuit was correct to apply rational basis review to the law.[174] However, the Court did not decide whether *Bostock* applies to the equal protection context, leaving the question open for future litigation.[175]

Satisfying Intermediate Scrutiny

Courts applying intermediate scrutiny to policies that allegedly discriminate against transgender individuals (either on the view that such policies are sex-based or that transgender status is a quasi-suspect class in its own right) have reached varying conclusions about whether the policies at issue meet the standard. As explained previously, to satisfy intermediate scrutiny, the government must present an exceedingly persuasive justification that a policy is substantially tailored to an important government interest.[176] Different courts may disagree as to whether similar policies satisfy intermediate scrutiny. In the context of policies that classify based on gender identity or transgender status, such disagreement is illustrated by a circuit split regarding government justifications for school bathroom policies. The Fourth and Seventh Circuits have both held that the government was unable to show an exceedingly persuasive justification for school bathroom policies requiring students to use facilities aligned with their biological sex. In *Whitaker v. Kenosha Unified School District*, the Seventh Circuit acknowledged that the government "has a legitimate interest in ensuring bathroom privacy rights are protected"[177] but

[169] *Fowler*, 104 F.4th at 789.

[170] *Id.* at 793 (citing *Bostock*, 590 U.S. at 661–62). Following the Supreme Court's opinion in *United States v. Skrmetti*, the Court granted certiorari in *Fowler*, vacated the judgment, and remanded the case for consideration consistent with *Skrmetti*. Stitt v. Fowler, No. 24-801, 2025 WL 1787695, at *1 (U.S. June 30, 2025).

[171] L.W. *ex rel.* Williams v. Skrmetti, 83 F.4th 460, 484–85 (6th Cir. 2023), *cert. dismissed in part sub nom.*, Doe v. Kentucky, 144 S. Ct. 389 (2023), *and cert. granted sub nom.*, United States v. Skrmetti, 144 S. Ct. 2679 (2024), *and aff'd*, 145 S. Ct. 1816 (2025), *and cert. denied sub nom.*, Doe v. Kentucky, No. 23-492, 2025 WL 1787718 (U.S. June 30, 2025), *and cert. denied sub nom.* L.W. v. Skrmetti, No. 23-466, 2025 WL 1787721 (U.S. June 30, 2025).

[172] *Id.* at 485.

[173] *Id*. at 480.

[174] United States v. Skrmetti, 145 S. Ct. 1816, 1877 (2025).

[175] *Id*. at 19.

[176] United States v. Virginia, 518 U.S. 515, 533 (1996).

[177] Whitaker v. Kenosha Unified Sch. Dist., 858 F.3d 1034, 1052 (7th Cir. 2017).

did not find anything in the record showing that transgender students would violate those privacy rights by using bathrooms aligned with their gender identity.[178] In *Grimm v. Gloucester County School Board*, the Fourth Circuit similarly determined that the government had not sufficiently shown that a challenged bathroom policy was substantially related to an important government objective of privacy given there was no evidence transgender students invaded the privacy of their peers "rather than minding their own business like any other students."[179] By contrast, the Eleventh Circuit in *Adams ex rel. Kasper v. School Board of St. Johns County* held that a similar bathroom policy did satisfy intermediate scrutiny.[180] The *Adams* court determined that the government's proffered objective of "protecting students' privacy interests in school bathrooms" from students of the opposite sex was an important one, and that the policy of requiring students to use bathrooms aligned with their biological sex was "clearly related to" this objective.[181]

Legal Challenges to Restrictive Policies

To date, most federal lawsuits addressing the participation of transgender students in school sports have challenged policies that restrict transgender athletes from competing on teams consistent with their gender identities. In the majority of these lawsuits, transgender women have challenged laws or policies preventing them from playing on women's sports teams. At least one lawsuit involved a transgender boy who challenged a state law barring him from playing on a boys' team.

As mentioned above, decisions addressing these claims are often shaped by caselaw interpreting Title IX and the Equal Protection Clause in the context of related, but distinct, questions about gender identity. Generally speaking, courts appear more likely to rule for plaintiffs challenging restrictive laws or policies where there is a prior controlling court decision holding that, in one of these other contexts, it is discriminatory to prevent transgender individuals from accessing services consistent with their gender identity. Courts ruling for plaintiffs challenging policies that do not allow transgender athletes to participate on teams consistent with their gender identity have tended to bar their application to the particular plaintiffs in the case rather than striking them down entirely.

Title IX

In a Title IX challenge to a restrictive state law or school board policy addressing transgender athlete participation in school sports, the existence of a prior controlling decision on whether *Bostock*'s reasoning applies to Title IX can indicate how a court might rule. In the context of challenges brought by transgender girls, successful plaintiffs have also tended to be students receiving medical treatment to block puberty.

For instance, the Fourth Circuit, in a decision subsequent to its ruling in *Grimm v. Gloucester County School Board* that *Bostock*'s logic applies to Title IX, ruled that application of a restrictive state law to a transgender girl violated Title IX. In *B.P.J. ex rel. Jackson v. West Virginia State Board of Education*,[182] the Fourth Circuit reviewed a Title IX challenge to West Virginia's "Save Women's Sports Act," which prohibits transgender girls from playing on teams consistent with

[178] *Id*.

[179] *Grimm*, 972 F.3d at 613–14.

[180] Adams *ex rel.* Kasper v. Sch. Bd. of St. Johns Cnty., 57 F.4th 791, 803–05 (11th Cir. 2022) (en banc).

[181] *Id.* at 805.

[182] 98 F.4th 542 (4th Cir.), *cert. granted*, 145 S. Ct. 568 (2024) (mem.).

their gender identity.[183] The state law provides that only "biological females" can participate in women's sports in all public interscholastic, intercollegiate, intramural, or club sports teams at the secondary or postsecondary level.[184] The plaintiff was a middle school transgender girl taking puberty blocking medication who had publicly identified as a girl since third grade.[185] As a result of her treatment for gender dysphoria, the plaintiff "never experienced elevated levels of circulating testosterone" and wanted to compete in cross country and track and field events.[186]

The Fourth Circuit ruled that application of the West Virginia law to the plaintiff violated Title IX, because it treated her worse than those similarly situated based on her sex and caused her harm.[187] The court reasoned that the law discriminated based on gender identity, which under its prior decision in *Grimm* constituted sex discrimination.[188] In addition, according to the court, because the law categorically prohibits only transgender girls from participating in sports consistent with their gender identity, regardless of whether a particular student has any genuine athletic advantages, the law treated students differently even when they were similarly situated.[189] Finally, in the court's view, application of the law to the plaintiff would cause harm by preventing her from participating in sports consistent with her gender identity.[190] The court emphasized that its opinion did not question the general authority of schools to separate sports teams based on sex.[191] The panel also observed that it was not ruling that "Title IX requires schools to allow every transgender girl to play on girls teams, regardless of whether they have gone through puberty and experienced elevated levels of circulating testosterone."[192] Instead, the Fourth Circuit ruled only that application of the state law to this plaintiff violated Title IX.[193] The Supreme Court granted certiorari to review the Fourth Circuit's decision on July 3, 2025.[194]

Likewise, a district court in the Fourth Circuit determined that application of a school board policy barring transgender students from participating in sports consistent with their gender identity violated the rights of a middle school transgender girl seeking to play on the tennis team. Citing *B.P.J.* and *Grimm*, the court determined that gender identity discrimination is sex discrimination under Title IX,[195] and the school board policy treated the transgender student worse than other similarly situated students because of her gender identity. The court reasoned that cisgender girls and transgender girls are similarly situated, but under the policy, the former may play sports consistent with their gender identity while the latter may not.[196] That different treatment turned on a student's sex assigned at birth, which the court determined was sex discrimination. The court observed that the student was excluded despite the fact that she

[183] *Id.* at 556.

[184] W. VA. CODE § 18-2-25d (2024).

[185] B.P.J. *ex rel.* Jackson v. W. Va. State Bd. of Educ., 98 F.4th 542, 550 (4th Cir. 2024).

[186] *Id.* at 551, 560.

[187] *Id.* at 563.

[188] *Id.*

[189] *Id.*

[190] *Id.* at 564.

[191] The panel also reversed the district court's grant of summary judgment for the defendants on the plaintiff's equal protection claim. However, the court declined to enter summary judgment for the plaintiff, instead remanding for further evidentiary proceedings. *Id.* at 562.

[192] *Id.* at 565.

[193] *Id.*

[194] West Virginia v. B.P.J., No. 24-43, 2025 WL 1829164, at *1 (U.S. July 3, 2025) (mem.).

[195] Doe *ex rel.* Doe v. Hanover Cnty. Sch. Bd., No. 24CV493, 2024 WL 3850810, at *9 (E.D. Va. Aug. 16, 2024).

[196] *Id.* at *7.

received medical treatment to suppress puberty.[197] Like the categorical ban in *B.P.J.*, the court viewed the policy as treating transgender girls differently on a categorical basis, regardless of any specific athletic advantages.[198] The court emphasized the similarity of the plaintiff to the plaintiff in *B.P.J.*: both were middle school transgender girls who wanted to play on non-contact sports teams, and both were diagnosed with gender dysphoria and took puberty-delaying treatments that curbed changes caused by increased testosterone circulation.[199] The court concluded that the school board policy operated to exclude the student from participating in school sports on the basis of sex.[200] Like the decision in *B.P.J.*, the district court limited its ruling to application of the policy to the particular plaintiff in the case.

By contrast, courts have reached different decisions where controlling circuit precedent rejects the application of *Bostock* to Title IX.[201] For instance, a district court in the Eleventh Circuit applied the reasoning of *Adams ex rel. Kasper v. School Board*, an earlier Eleventh Circuit ruling that rejected a Title IX challenge to a school board's policy that prohibited transgender students from accessing the restroom consistent with their gender identity, and rejected a challenge to a restrictive policy. In that case, a transgender girl challenged Florida's Fairness in Women's Sports Act, which limits participation in public secondary and postsecondary women's sports teams to women whose gender identity corresponds to the sex they were assigned at birth.[202] In its decision, the district court explained that *Adams* was binding precedent requiring a ruling that "Title IX prohibits discrimination on the basis of biological sex—*not* gender identity."[203] In the court's view, that interpretation meant that the plaintiff's sex for Title IX purposes was male and foreclosed the plaintiff's argument that treating her differently than cisgender girls was discriminatory.[204]

Similarly, a district court in the Sixth Circuit found determinative the Sixth Circuit's prior ruling in *L.W. ex rel. Williams v. Skrmetti*, which rejected an equal protection challenge to a state law barring certain medical treatments for transgender minors,[205] in a challenge to a Tennessee ban on transgender students participating in sports consistent with their gender identity.[206] Tennessee's law prohibits both transgender girls and boys from competing on sports teams consistent with their gender identity.[207] The plaintiff in the case challenging the law was a transgender boy who wanted to participate on the boys' golf team. On the Title IX issue, the district court noted that

[197] *Id*. at *8.

[198] *Id*.

[199] *Id*. at *9.

[200] *Id*. at *11.

[201] D.N. *ex rel.* Jessica N. v. DeSantis, 701 F. Supp. 3d 1244, 1248 (S.D. Fla. 2023).

[202] FLA. STAT. § 1006.205 (2024).

[203] *D.N. ex rel. Jessica N.*, 701 F. Supp. 3d at 1263–64 (emphasis added).

[204] *Id*. at 1264.

[205] *See* L.W. *ex rel.* Williams v. Skrmetti, 83 F.4th 460, 484 (6th Cir. 2023), *cert. dismissed in part sub nom.*, Doe v. Kentucky, 144 S. Ct. 389 (2023), *and cert. granted sub nom.*, United States v. Skrmetti, 144 S. Ct. 2679 (2024), *and aff'd*, 145 S. Ct. 1816 (2025), *and cert. denied sub nom.*, Doe v. Kentucky, No. 23-492, 2025 WL 1787718 (U.S. June 30, 2025), *and cert. denied sub nom.*, L.W. v. Skrmetti, No. 23-466, 2025 WL 1787721 (U.S. June 30, 2025). The Supreme Court affirmed the Sixth Circuit's decision in *United States v. Skrmetti*. 145 S. Ct. 1816 (2025). However, the Supreme Court did not address whether *Bostock* applies to contexts other than Title VII. *See supra* "Bostock and the Equal Protection Clause"; *see also* CRS Legal Sidebar LSB11329, *United States v. Skrmetti: Supreme Court Affirms State Ban Against Certain Medical Treatments for Transgender Minors*, by Jared P. Cole and Madeline W. Donley (2025).

[206] L.E. *ex rel.* Esquivel v. Lee, 728 F. Supp. 3d 806, 839 (M.D. Tenn. 2024).

[207] The law applies to public middle and high school interscholastic athletic activities. TENN. CODE § 49-6-310 (2024).

various appellate courts had applied the reasoning of *Bostock* to Title IX.[208] However, the court looked to *L.W. ex rel. Williams v. Skrmetti* and read it to "explicitly and conclusively cabin[]" the reasoning of *Bostock* to Title VII.[209] Bound by the reasoning of the Sixth Circuit, the court thus rejected the Title IX claim.[210]

Finally, at least one district court has reviewed a challenge to a state law barring transgender girls from participating in sports consistent with their gender identity in the absence of any controlling Title IX opinion from a circuit court.[211] In that case, two transgender girls who did not intend to undergo male puberty challenged a New Hampshire law prohibiting transgender girls from participating in sports consistent with their gender identity.[212] A district court in the First Circuit granted an injunction against the law as applied to the plaintiffs,[213] observing that although the First Circuit had not considered whether the reasoning of *Bostock* applies to Title IX, the appellate court regularly interprets Title IX consistently with Title VII in general.[214] The district court also found it significant that multiple other federal appellate courts had applied *Bostock* to Title IX claims.[215] As such, extending *Bostock* to Title IX, the district court reasoned that application of the New Hampshire law necessarily required knowledge of students' biological sex at the time of birth, and the law therefore discriminated on the basis of sex.[216] As a result, the court concluded that the law likely violated Title IX as applied to the two plaintiffs.[217]

Equal Protection Clause

As described above, courts have addressed questions about the application of the Equal Protection Clause of the Fourteenth Amendment to laws and policies implicating gender identity in a variety of contexts, such as school bathroom use and restrictions on certain medical treatments for transgender minors. In cases raising equal protection challenges to restrictive laws or policies regarding transgender athlete participation in school sports, some courts have turned to these prior decisions in different contexts in order to determine the appropriate level of scrutiny. For example, in *Hecox v. Little*, two students challenged Idaho's Fairness in Women's Sports Act.[218] The act (1) categorically bans transgender women from participation in women's sports; (2) requires physical examinations in the event of a dispute as to an athlete's sex; and (3) creates a private cause of action against a school for any student who suffers any harm because a transgender woman participated on a women's team.[219] The plaintiffs in *Hecox* were a transgender woman who intended to try out for her university's female track and cross country teams and a cisgender woman who played on her high school soccer team but was concerned that

[208] *L.E.*, 728 F. Supp. 3d at 839.

[209] *Id.*

[210] *Id.*

[211] Tirrell v. Edelblut, 748 F. Supp. 3d 19, 27–28 (D.N.H. 2024).

[212] N.H. REV. STAT. ANN. § 193:41 (2024).

[213] *Tirrell*, 748 F. Supp. 3d at 44–45.

[214] *Id.* at 42–44.

[215] *Id*.

[216] *Id*. at 36–37.

[217] *Id*. at 44–45.

[218] Hecox v. Little, 479 F. Supp. 3d 930 (D. Idaho 2020), *aff'd*, No. 20-35813, 2023 WL 1097255 (9th Cir. Jan. 30, 2023), *and aff'd*, 79 F.4th 1009 (9th Cir. 2023), *and aff'd in part, vacated in part, remanded*, 104 F.4th 1061 (9th Cir. 2024), *as amended* (June 14, 2024), *cert. granted*, No. 24-38 (2025).

[219] IDAHO CODE §§ 33-6203, 6205 (2024).

competitors might question her sex due to her "masculine" appearance.[220] The students sought a preliminary injunction—a court order preventing the challenged law from going into effect pending the resolution of the litigation—on equal protection and Title IX grounds.[221]

Plaintiffs alleged that the law violated the Equal Protection Clause as applied to them (*as-applied* challenge) and that it would be unconstitutional no matter who it was applied to (*facial* challenge). The district court dismissed the facial challenge[222] but held that both plaintiffs had a strong likelihood of succeeding on their as-applied equal protection claim.[223] The court granted a preliminary injunction preserving the "status quo" prior to the law, thus prohibiting the law from being enforced against anyone while the litigation continued.[224]

The Ninth Circuit upheld the preliminary injunction on appeal.[225] Pointing to a prior decision holding that transgender status is a quasi-suspect classification in the context of military service,[226] the Ninth Circuit reviewed the equal protection claim under intermediate scrutiny. The court reasoned that, based on the pleadings, the state had categorically banned transgender women from participating in school sports consistent with their gender identity without evidence that the ban was substantially related to the state's proffered interest in equal opportunity in women's sports.[227] In response to new Supreme Court precedent about the scope of injunctive relief, the Ninth Circuit later narrowed the injunction to apply only to the plaintiffs and remanded to the district court to consider whether any further relief was warranted.[228] Idaho sought Supreme Court review, which was granted on July 3, 2025.[229]

Similarly, in *Doe ex rel. Doe v. Hanover County School Board*, a district court in the Fourth Circuit preliminarily enjoined enforcement of a Virginia school district's decision to prohibit a transgender girl from playing on a girls' tennis team and later-adopted policy that did not allow transgender athletes to participate in sports consistent with their gender identity.[230] Relying on Fourth Circuit decisions applying intermediate scrutiny to policies addressing school bathroom use, the court determined that intermediate scrutiny applied to the school district's policy.[231] Applying that standard, the district court reasoned that the policy was unlikely to satisfy intermediate scrutiny because it was not substantially related to the important governmental

[220] *Hecox*, 479 F. Supp. 3d at 930, 946.

[221] *Id*. at 949.

[222] *Id*. at 968–69.

[223] *Id*. at 985, 987.

[224] *Id*. at 988 ("In making this determination, it is not just the constitutional rights of transgender girls and women athletes at issue but, as explained above, the constitutional rights of every girl and woman athlete in Idaho. Because the Court finds Plaintiffs are likely to succeed in establishing the Act is unconstitutional as currently written, it must issue a preliminary injunction at this time pending trial on the merits."). On appeal, the Ninth Circuit affirmed the district court's decision to enjoin enforcement of the act against anyone, stating "that Lindsay's case involves an as-applied challenge does not undermine the district court's findings that the Act is unconstitutional as applied to all women." Hecox v. Little, 79 F.4th 1009, 1037 (9th Cir. 2023), *withdrawn*, 99 F.4th 1127 (9th Cir. 2024) (citing John Doe 1 v. Reed, 561 U.S. 186, 194 (2010)), *cert. granted*, No. 24-38 (S. Ct. July 3, 2025).

[225] *Hecox*, 79 F.4th at 1009.

[226] *Id*. at 1026 (citing Karnoski v. Trump, 926 F.3d 1180, 1200–01 (9th Cir. 2019) (per curiam)).

[227] *Id*. at 1030–34.

[228] Hecox v. Little, 104 F.4th 1061, 1089–90 (9th Cir.), *as amended* (June 14, 2024), *cert. granted*, No. 24-38 (S. Ct. July 3, 2025).

[229] Petition for Writ of Certiorari, *Little v. Hecox*, No. 24-38 (S. Ct. July 3, 2025).

[230] Doe *ex rel*. Doe v. Hanover Cnty. Sch. Bd., No. 24cv493, 2024 WL 3850810, at *11 (E.D. Va. Aug. 16, 2024).

[231] *Id*. at *12.

interest in "fairness in competition for all participants."[232] Among other things, the court pointed out that the policy did "nothing to ensure fairness . . . for *transgender* student-athletes and in fact directly undermines their ability to compete at all."[233]

In contrast, in *D.N. ex rel. Jessica N. v. DeSantis*, a district court in the Eleventh Circuit dismissed a plaintiff's equal protection challenge to Florida's Fairness in Women's Sports Act, which limits participation in public secondary and postsecondary women's sports teams to women whose gender identity corresponds to the sex they were assigned at birth.[234] Relying on the Eleventh Circuit's decision in *Adams ex rel. Kasper v. School Board* that a restrictive school bathroom policy satisfied intermediate scrutiny, the district court determined that the Florida law was subject to intermediate scrutiny as an explicit classification on the basis of biological sex and concluded that the law met that standard.[235] The court determined that "promoting women's equality in athletics is an important governmental interest"[236] and that the plaintiff had not shown that the law was motivated by an intent to discriminate against transgender women and girls.[237] The court also emphasized that while discrimination based on gender stereotypes is generally impermissible, sex-based classifications may be lawful if they are due to "biological differences between males and females" (as it viewed the law at issue to be).[238]

Not all courts have viewed equal protection decisions regarding gender identity in other contexts as determinative with respect to restrictive laws or policies addressing school sports, however. For example, in *L.E. ex rel. Esquivel v. Lee*, a district court in the Sixth Circuit held that a Tennessee law prohibiting both transgender girls and boys from competing on teams consistent with their gender identity would survive neither intermediate scrutiny nor rational basis review.[239] The court rejected the state's argument that the law applied to all students equally and instead stated that it "categorically banned transgender students from the opportunity to participate on sports teams consistent with their gender identity."[240] The court distinguished the case before it from *Skrmetti*, a Sixth Circuit decision upholding state laws prohibiting certain treatments for gender dysphoria in minors.[241] The *Skrmetti* court held that such laws classified on the basis of a diagnosis, not sex or gender identity, and subjected them to rational basis review.[242] The *Esquivel* court determined that a different analysis applied to laws regulating the sex of athletes on sports teams. Finding that the plaintiff was prevented from playing golf solely because of his sex assigned at birth, the court determined that the law distinguished on the basis of sex and thus should be subject to intermediate scrutiny.[243] The court then analyzed the state's justifications for the law, which included arguments that it

[232] *Id*.

[233] *Id*.

[234] FLA. STAT. § 1006.205 (2024).

[235] D.N. *ex rel.* Jessica N. v. DeSantis, 701 F. Supp. 3d 1244, 1253 (S.D. Fla. 2023).

[236] *Id*. at 1254.

[237] *Id*. at 1255–57.

[238] *Id*., at 1257–58 (quoting Adams *ex rel.* Kasper v. Sch. Bd., 57 F.4th 791, 809 (11th Cir. 2022) (en banc)).

[239] L.E. *ex rel.* Esquivel, 728 F. Supp. 3d 806, 831 (M.D. Tenn. 2024).

[240] *Id*. at 831.

[241] *Id*. at 833–34.

[242] L.W. *ex rel.* Williams v. Skrmetti, 83 F.4th 460, 484 (6th Cir. 2023), *cert. dismissed in part sub nom.*, Doe v. Kentucky, 144 S. Ct. 389 (2023), *and cert. granted sub nom.*, United States v. Skrmetti, 144 S. Ct. 2679 (2024), *and aff'd*, 145 S. Ct. 1816 (2025), *and cert. denied sub nom.*, Doe v. Kentucky, No. 23-492, 2025 WL 1787718 (U.S. June 30, 2025), *and cert. denied sub nom.* L.W. v. Skrmetti, No. 23-466, 2025 WL 1787721 (U.S. June 30, 2025).

[243] *Id*. at 830, 836.

> (1) clarifies the meaning of "gender" in Tennessee interscholastic sports; (2) constitutes government speech; (3) "ensure[s] that boys cannot displace girls in athletics simply by claiming a female gender identity"; and (4) "reduce[s] the risk of injury when girls compete against boys and by enabling interscholastic sports to be conducted in a safer manner to promote continued participation and equitable opportunities for children."[244]

The court rejected all of these justifications. The court remarked that the first two justifications were "invented" after the law was passed and for the purpose of litigation, a practice the Supreme Court has held inadequate to justify laws subject to heightened scrutiny.[245] The other two justifications were inapplicable to the particular plaintiff, in the court's view—the plaintiff was seeking to join a boys' golf team, which would not displace any girls from the sport and which did not present any safety concerns.[246] Therefore, because the court did not find any of the government's proffered justifications to be legitimate, the court held that the law did not survive intermediate scrutiny and would not survive rational basis review.[247]

In jurisdictions lacking appellate precedent regarding application of the Equal Protection Clause to laws that allegedly discriminate on the basis of gender identity, some district courts have written on a clean slate to address challenges to laws restricting transgender athlete participation in school sports. For instance, in *Tirrell v. Edelblut*, a district court in the First Circuit determined that plaintiffs challenging a state law barring transgender girls from participating in sports consistent with their gender identity were likely to succeed on the merits of their equal protection claim.[248] The district court first determined that the law facially discriminated against transgender girls.[249] The court enumerated a number of reasons why it viewed the law as discriminating on the basis of sex and thus subject to intermediate scrutiny.[250] For example, the court found that the law denied transgender girls, but not transgender boys, the opportunity to play on girls' teams "based on their failure to conform to stereotypes about the physical attributes or sexual anatomy that a girl must possess."[251] The court went on to hold that the state had not shown an important government interest or, assuming it had, that the law was substantially related to that interest. The court rejected the state's argument that the law promoted fairness and safety in women's sports, noting that the state had not shown that the participation of transgender girls impacted fairness or safety of athletes on girls' sports teams.[252] The court also held that even if there was a safety or fairness risk, neither of the plaintiffs had undergone male puberty, invalidating the state's alleged reason for barring them from participation.[253]

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[244] *Id*. at 834 (citations omitted) (quoting State Defendants' Motion for Summary Judgment at 14–16, *L.E.*, 728 F. Supp. 3d 806 (M.D. Tenn. 2024) (No. 21-cv-00835).

[245] *Id*. at 31 (citing United States v. Virginia, 518 U.S. 515, 533 (1996)).

[246] *Id*. at 31–32.

[247] *Id*. at 31, 47.

[248] Tirrell v. Edelblut, 748 F. Supp. 3d 19, 27–28 (D.N.H. 2024). On February 12, 2024, in response to Exec. Order No. 14,168, *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*; Exec. Order No. 14,168, 90 Fed. Reg. 8615 (Jan. 20, 2025); and Exec. Order No. 14,201, *Keeping Men Out of Women's Sports*, 90 Fed. Reg. 9279 (Feb. 5, 2025), plaintiffs filed a motion to amend their complaint and include President Trump, along with certain other executive branch officials and agencies, as defendants.

[249] Tirrell, 748 F. Supp. 3d. at 31–33.

[250] *Id*. at 32–40.

[251] *Id*. at 37–38 (citing *Frontiero v. Richardson*, 411 U.S. 677 (1973), for the proposition that stereotypes about the abilities of the sexes are often pernicious).

[252] *Id*. at 40–41.

[253] *Id*. at 41–42.

Legal Challenges to Permissive Policies

As mentioned above, some states allow transgender athletes to compete in sports consistent with their gender identity without restrictions. Some athletes have challenged such policies in court, arguing that they violate Title IX and/or the Equal Protection Clause by reducing the odds of success for a "cisgender" woman, or a woman whose gender identity is aligned with her sex assigned at birth. These plaintiffs typically argue that biological males have inherent physical advantages over biological females, that transgender women retain those advantages regardless of gender-affirming treatments, and that allowing biological males into spaces designated for females is inherently harmful. These cases are still in the preliminary stages.

For example, in *Gaines v. NCAA*, cisgender women who participated in competitive collegiate swimming sued the NCAA and a number of Georgia universities, claiming that the NCAA's former policy allowing transgender women to, in some circumstances, participate on women's teams violated Title IX[254] and the Equal Protection Clause.[255] The athletes argued that the policy "upended and undermined the competitive seasons, mental and emotional health and well-being, bodily privacy, and academic and athletic experiences of hundreds of female swimmers and their families."[256] The case is pending before the District Court for the Northern District of Georgia. Similarly, in *Slusser v. Mountain West Conference*, plaintiffs sued the Mountain West Conference (MWC) regarding its policy on the participation of transgender student-athletes.[257] The plaintiffs, cisgender women on volleyball teams in the conference, objected to the participation of a transgender woman in competitions and argued that the MWC's policy violated Title IX and the Equal Protection Clause. The court denied an emergency motion for a preliminary injunction in November 2024.[258] The court observed that various federal appellate courts have applied the reasoning of *Bostock* to Title IX, and that the Tenth Circuit had recently applied *Bostock*'s logic in the equal protection context.[259] Given this caselaw, the district court ruled that the plaintiffs failed to meet their burden of establishing a likelihood of success on the merits of their Title IX and equal protection claims.[260] The court reasoned that the plaintiffs' "Title IX theory . . . directly conflicts with Title IX's prohibition on discrimination against trans individuals."[261]

At least one federal court of appeals has weighed in on whether allowing transgender women to participate in women's sports causes any legally cognizable harm to biological women competing

[254] Second Amended Complaint at 40, Gaines v. NCAA, No. 24-cv-01109 (N.D. Ga., Oct. 23, 2024), Dk. No. 94 (arguing that Title IX covers the NCAA because covered institutions "expressly cede [their] controlling authority to the NCAA to conduct . . . aspects of each member's education program and educational experience regarding intercollegiate athletics."). In *NCAA v. Smith*, 525 U.S. 459 (1999), the Supreme Court held that the fact that the NCAA collected dues from institutions covered by Title IX (covered institutions) was insufficient to extend Title IX's coverage to the NCAA. *Smith* did not decide whether Title IX's coverage extends when a covered institution "cedes controlling authority over a federally funded program to another entity." *Id.* at 469–70.

[255] Second Amended Complaint at 184, 188, Gaines v. NCAA, No. 24-cv-01109 (N.D. Ga., Oct. 23, 2024). In *NCAA v. Tarkanian*, 488 U.S. 179 (1988), the Supreme Court rejected the contention that the NCAA was subject to suit under the Equal Protection Clause as a state actor where a public university suspended a basketball coach in order to comply with the NCAA's rules and recommendations. *Id.* at 193, 196.

[256] Second Amended Complaint at 178, Gaines v. NCAA, No. 24-cv-01109 (N.D. Ga., Oct. 23, 2024).

[257] Slusser v. Mountain W. Conf., No. 24-cv-03155, 2024 WL 4876221, at *1 (D. Colo. Nov. 25, 2024), *appeal dismissed sub nom.* Van Kirk v. Mountain W. Conf., No. 24-1461, 2025 WL 1489927 (10th Cir. May 19, 2025).

[258] *Id*. at *12.

[259] *Id*. at *10. *See* Bostock v. Clayton Cnty., 590 U.S. 644, 662 (2020).

[260] The court assumed, without deciding, that the "MWC is a federal funds recipient for purposes of Title IX and a state actor for purposes of the Equal Protection Clause." *Slusser*, No. 24-cv-03155, 2024 WL 4876221 at *9 n.9.

[261] *Id*. at *25.

in the same sports. In *Soule ex rel. Stanescu v. Connecticut Association of Schools*, four cisgender members of a high school girls' track team challenged the Connecticut Interscholastic Athletic Conference's policy of allowing students to participate on sports teams consistent with their gender identity under Title IX, arguing that it limited their ability to succeed in athletics or obtain the benefits of excellent athletic ability, like scholarships.[262] The student-plaintiffs sought monetary damages and to remove records set by transgender girls who had participated in the conference.[263] The district court initially dismissed the case, finding that the plaintiffs lacked *standing*, or were not eligible to seek relief in federal court.[264] The court held that the plaintiffs did not have standing because the claim, in its view, was based on speculation,[265] and because the monetary damages sought were unavailable under Spending Clause jurisprudence. Courts have interpreted the Spending Clause to require federal grantees to have "clear notice" of all conditions to those grants, and the court held that the conference did not have clear notice that their policy potentially violated Title IX.[266] A panel of the U.S. Court of Appeals for the Second Circuit affirmed on the standing issue.[267] The en banc Second Circuit changed course in December 2023 and held that the plaintiffs did have standing to challenge the policy.[268] The court said that, assuming that allowing transgender girls to race on girls' track teams violated Title IX, it was plausible that changing public athletic records could provide relief for the plaintiffs.[269] On remand, in November 2024, the district court determined that the plaintiffs' allegations were sufficient to claim discrimination under Title IX and that such a claim was not precluded by the Spending Clause notice requirement.[270] A final decision on the merits has not yet been made.

Supreme Court Consideration of Policies Related to Transgender Minors

On June 18, 2025, the Supreme Court decided *United States v. Skrmetti*, a case addressing whether a Tennessee law banning health care providers from providing minors with certain treatments for gender dysphoria[271] violates the Equal Protection Clause. The Sixth Circuit, in a decision discussed previously in this report, held that it does not.[272] The Supreme Court affirmed, holding that the law classifies based on age (i.e., whether an individual is a minor) and medical treatment (i.e., whether a treatment is for gender dysphoria, gender identity disorder, or gender incongruence), neither of which warrant heightened review.[273] The Court rejected the argument

[262] Soule *ex rel.* Stanescu v. Conn. Ass'n of Schs., 90 F.4th 34 (2d Cir. 2023) (en banc).

[263] *Id.*

[264] Soule *ex rel.* Stanescu v. Conn. Ass'n of Schs., No. 20-cv-00201, 2021 WL 1617206, at *10 (D. Conn. Apr. 25, 2021), *aff'd*, 57 F.4th 43 (2d Cir. 2022), *and vacated*, 90 F.4th 34 (2d Cir. 2023).

[265] *Id*. at *5 (explaining that the possibility that transgender students may attempt to join a sports team is insufficient to develop a legally cognizable injury).

[266] *Id*. at *8–10; *see* Pennhurst State Sch. & Hosp. v. Halderman, 451 U.S. 1, 17 (1981); *see also supra* "Spending Clause."

[267] Soule *ex rel.* Stanescu v. Conn. Ass'n of Schs., 57 F.4th 43 (2d Cir. 2022).

[268] *Soule*, 90 F.4th at 45–51.

[269] *Id*. at 48.

[270] Soule *ex rel.* Stanescu v. Conn. Ass'n of Schs., No. 20-cv-00201, 2024 WL 4680533, at *18 (D. Conn. Nov. 5, 2024).

[271] United States v. Skrmetti, 145 S. Ct. 1816, 1841–42 (2025).

[272] L.W. *ex rel.* Williams v. Skrmetti, 83 F.4th 460, 489 (6th Cir. 2023).

[273] United States v. Skrmetti, 145 S. Ct. 1816, 1841–42 (2025). *See supra* "Equal Protection Clause of the Fourteenth

(continued...)

that the law classifies based on sex. While the Court acknowledged that the "excluded diagnoses" necessarily involve some reference to sex, in the majority's view, "[t]he application of that prohibition does not turn on sex."[274]

The Supreme Court decision in *Skrmetti* was limited to the Tennessee law at issue, leaving open questions about whether and how it applies to laws and policies addressing transgender athlete participation in school sports. The majority opinion did not, for example, address whether transgender status constitutes a quasi-suspect class subject to intermediate scrutiny, nor did the Court decide whether *Bostock* applies beyond the context of Title VII.[275]The Supreme Court may have an opportunity to address these questions in the context of school sports in its upcoming term, however. The Court granted review in two cases, *Hecox* and *B.P.J.*, as mentioned above. The Ninth Circuit in *Hecox* ruled that an Idaho law prohibiting transgender athletes from participating on teams consistent with their gender identity likely violated the Equal Protection Clause when applied to the two plaintiffs. In *B.P.J.*, the Fourth Circuit held that application of a restrictive West Virginia law to a particular plaintiff violated Title IX.

Considerations for Congress

The statutory and legal landscape of addressing the participation of transgender student-athletes in sports is in flux. The various challenges to state laws and policies have resulted in conflicting court decisions, and many of the cases remain pending. Some courts have ruled that restrictive state laws or policies can violate both Title IX and the Equal Protection Clause as applied to certain plaintiffs, but other courts have rejected such challenges. As mentioned above, recent presidential Administrations have also taken divergent positions on these questions.[276]

Congress has several options if it seeks to address this subject. One option could be to restrict participation in school sports based on the biological sex of athletes. The House passed H.R. 28, the Protection of Women and Girls in Sports Act, in January 2025.[277] That bill would amend Title IX by providing that it violates the statute to permit "a person whose sex is male," defined "solely on a person's reproductive biology and genetics at birth," to participate in athletics programs designated for women or girls. That said, it would allow "males to train or practice" with programs designated for women or girls subject to certain conditions. If such legislation restricting sports participation on the basis of biological sex ultimately were to become law, it could be affected by a possible future Supreme Court decision addressing the level of scrutiny that applies to laws that classify based on gender identity. A decision that such laws are subject to intermediate scrutiny could raise the question of whether such legislation comports with the Equal Protection Clause. A ruling that rational basis scrutiny applies would make it more difficult for an equal protection challenge against such a law to succeed.

Alternatively, if Congress seeks to supersede state legislation, or executive branch interpretations of Title IX, restricting participation on sports teams based on an athlete's biological sex, it could amend Title IX to explicitly require recipients to allow students to participate on teams that match

Amendment" for discussion of the equal protection analysis in the context of classifications based on sex and transgender status.

[274] *Id*. at 1831-33.

[275] *Id*. at 1832-34. In concurring opinions, three Justices indicated that transgender status does not constitute a suspect class subject to heightened scrutiny. *See id*. at 1849–50 (Barrett, J., joined by Thomas, J., concurring.); *id*. at 1860 (Alito, J., concurring in part and concurring in the judgment). In dissent, three Justices would have applied heightened scrutiny to the law. *Id*. at 1872 (Sotomayor, J., joined by Jackson, J., and Kagan, J. in part, dissenting).

[276] *See supra* "Biden Administration Updates to Title IX Regulations Following Bostock."

[277] H.R. 28, 119th Cong. (as passed by House, Jan. 14, 2025).

their gender identities. Congress could also pass legislation taking an approach similar to ED's now-withdrawn proposed rule, which would have allowed some limitations on the participation of certain student-athletes but would not have created or allowed categorical bans.[278] A proposal could create separate provisions for athletics at K-12 and intercollegiate levels, if desired.

[278] *See supra* "Biden Administration Updates to Title IX Regulations Following Bostock."

Appendix. Relevant State Statutes

Table A-1. State Laws Restricting the Participation of Transgender Student-Athletes in School Sports

State	Citation	Education Institution Level Where Law Applies				Participation Restrictions		Excerpted Text
		Elementary	Middle	High	College or University	Female Designated Sports	Male Designated Sports	
AL	ALA. CODE § 16-1-52 (2025)	Yes	Yes	Yes	Yes	Yes	Partial	(b)(1) Except as provided in subsection (c), a public K-12 school may not participate in, sponsor, or provide coaching staff for interscholastic athletic events within this state that are either scheduled by or conducted under the authority of any athletic association of the state that permits or allows participation in athletic events within the state conducted exclusively for males by any individual who is not a biological male or participation in athletic events within the state conducted exclusively for females by any individual who is not a biological female. (2) A public K-12 school may not allow a biological female to participate on a male team if there is a female team in a sport. A public K-12 school may not allow a biological male to participate on a female team. (c) Subsection (b) does not apply to athletic events at which both biological males and biological females are permitted or allowed to participate. (d)(1) An intercollegiate athletic team or sport sponsored by a public two-year or four-year institution of higher education that is designated for females, women, or girls shall not be open to a biological male. (2) An intercollegiate athletic team or sport sponsored by a public two-year or four-year institution of higher education that is designated for males, men, or boys shall not be open to a biological female. (3) Nothing in this subsection shall be construed to restrict the eligibility of any student to participate on any intercollegiate or intramural athletic team or sport designated as coed or mixed.
AK	ALASKA ADMIN CODE tit. 4, § 06.115 (b)(5)(D) (2025)	No	No	Yes	No	Yes	No	(b) A school or school district may join and, to the extent authorized by its budget, may pay dues to the Alaska School Activities Association, Inc., or any other voluntary, nonprofit association whose purpose is to administer and promote interscholastic activities in Alaska so long as the association . . . (5) administers interscholastic activities in a manner that . . .

State	Citation	Education Institution Level Where Law Applies				Participation Restrictions		Excerpted Text
		Elementary	Middle	High	College or University	Female Designated Sports	Male Designated Sports	
								(D) ensures fairness, safety, and equal opportunity for female students in high school athletics by providing, in consideration of responses to a school survey under 4 AAC 06.520, that if a separate high school athletics team is established for female students, participation shall be limited to females who were assigned female at birth; in this subparagraph, "athletics" means competitive or contact sports, as determined by the association. . . .
AZ	ARIZ. REV. STAT. ANN. § 15-120.02 (2025)	Yes	Yes	Yes	Yes	Yes	No	A. Each interscholastic or intramural athletic team or sport that is sponsored by a public school or a private school whose students or teams compete against a public school shall be expressly designated as one of the following based on the biological sex of the students who participate on the team or in the sport: 1. "Males," "men" or "boys." 2. "Females," "women" or "girls." 3. "Coed" or "mixed." B. Athletic teams or sports designated for "females," "women" or "girls" may not be open to students of the male sex. C. This section does not restrict the eligibility of any student to participate in any interscholastic or intramural athletic team or sport designated as being for "males," "men" or "boys" or designated as "coed" or "mixed." . . . I. For the purposes of this section, "school" means either: 1. A school that provides instruction in any combination of kindergarten programs or grades one through twelve. 2. An institution of higher education.
AR	ARK. CODE §§ 6-1-107, 16-130-103, 16-130-104 (2025)	Yes	Yes	Yes	Yes	Yes	No	**ARK. CODE § 6-1-107** . . . (b)(1) As used in this section, "school" means: (A) A public elementary or secondary school; (B) An open-enrollment public charter school; and (C) A public two-year or four-year institution of higher education.

State	Citation	Education Institution Level Where Law Applies				Participation Restrictions		Excerpted Text
		Elementary	Middle	High	College or University	Female Designated Sports	Male Designated Sports	(2) "School" includes a private educational institution whose interscholastic, intercollegiate, intramural, or club athletic teams or sports compete against a public school. (c) Interscholastic, intercollegiate, intramural, or club athletic teams or sports that are sponsored by a school shall be expressly designated as one (1) of the following based on biological sex: (1) "Male," "men's," or "boys"; (2)(A) "Female," "women's," or "girls." (B) An interscholastic, intercollegiate, intramural, or club athletic team or sport that is expressly designated for females, women, or girls shall not be open to students of the male sex; or (3) "Coed" or "mixed." . . . **ARK. CODE § 16-130-103** (1) "Covered entity" means: (A) An elementary school, high school, secondary school, or postsecondary school that is located in Arkansas and receives state funds; (B) Any other school or institution that is located in Arkansas whose students or teams compete in interscholastic, intercollegiate, intramural, or club athletic teams or sports against an entity defined in subdivision (1)(A) of this section; and (C) An entity that receives membership fees or any other funds from an entity defined in subdivision (1)(A) or subdivision (1)(B) of this section; and (2) "Sex" means a person's immutable biological sex as objectively determined by anatomy and genetics existing at the time of birth. **ARK. CODE § 16-130-104** (a) Any interscholastic, intercollegiate, intramural, or club athletic teams or sports that are sponsored by a covered entity shall be expressly designated for one (1) of the following groups based on sex: (1) Males, men, or boys; (2) Females, women, or girls; or (3) Coed or mixed.

State	Citation	Education Institution Level Where Law Applies				Participation Restrictions		Excerpted Text
		Elementary	Middle	High	College or University	Female Designated Sports	Male Designated Sports	
								(b) Members of the male sex are prohibited from an interscholastic, intercollegiate, intramural, or club athletic team or sport that is expressly designated for females, women, or girls.
FL	FLA. STAT. § 1006.205 (2025)	Yes	Yes	Yes	Yes	Yes	No	(3) Designation of athletic teams or sports.— (a) Interscholastic, intercollegiate, intramural, or club athletic teams or sports that are sponsored by a public secondary school or public postsecondary institution must be expressly designated as one of the following based on the biological sex at birth of team members: 1. Males, men, or boys; 2. Females, women, or girls; or 3. Coed or mixed, including both males and females. (b) Athletic teams or sports designated for males, men, or boys may be open to students of the female sex. (c) Athletic teams or sports designated for females, women, or girls may not be open to students of the male sex. (d) For purposes of this section, a statement of a student's biological sex on the student's official birth certificate is considered to have correctly stated the student's biological sex at birth if the statement was filed at or near the time of the student's birth. . . .
GA	GA. CODE § 20-2-316 (2025)	No	Partial[b]	Yes	No	Yes	Partial[c]	(c)(1) No high school which receives funding under this article shall participate in, sponsor, or provide coaching staff for interscholastic sports events which are conducted under the authority of, conducted under the rules of, or scheduled by any athletic association unless the athletic association complies with the provisions of this subsection by having a charter, bylaws, and other governing documents which provide for governance and operational oversight by an executive oversight committee as follows: . . . (E) The authority and duties of the executive oversight committee shall include: . . . (v) If the athletic association determines that it is necessary and appropriate to prohibit students whose gender is male from participating in athletic events that are designated for students whose gender is female, then the athletic association may adopt a policy to that

State	Citation	Education Institution Level Where Law Applies				Participation Restrictions		Excerpted Text
		Elementary	Middle	High	College or University	Female Designated Sports	Male Designated Sports	
								effect; provided, however, that such policy shall be applied to all of the athletic association's participating public high schools; and. . .
ID	IDAHO CODE § 33-6203 (2025)	Yes	Yes	Yes	Yes[d]	Yes	No	(1) Interscholastic, intercollegiate, intramural, or club athletic teams or sports that are sponsored by a public primary or secondary school, a public institution of higher education, or any school or institution whose students or teams compete against a public school or institution of higher education shall be expressly designated as one (1) of the following based on biological sex: (a) Males, men, or boys; (b) Females, women, or girls; or (c) Coed or mixed. (2) Athletic teams or sports designated for females, women, or girls shall not be open to students of the male sex. . . .
IN	IND. CODE § 20-33-13-4 (2025)	Yes	Yes	Yes	No[e]	Yes	No	(a) A school corporation, public school, nonpublic school, or association that organizes, sanctions, or sponsors an athletic team or sport described in section 1 of this chapter shall expressly designate the athletic team or sport as one (1) of the following: (1) A male, men's, or boys' team or sport. (2) A female, women's, or girls' team or sport. (3) A coeducational or mixed team or sport. (b) A male, based on a student's biological sex at birth in accordance with the student's genetics and reproductive biology, may not participate on an athletic team or sport designated under this section as being a female, women's, or girls' athletic team or sport. . . .
IA	IOWA CODE §§ 2611.1, 2611.2 (2025)	Yes	Yes	Yes	Yes	Yes	No	**IOWA CODE § 2611.1** . . . 3. "Sex" means a person's biological sex as either female or male. The sex listed on a student's official birth certificate or certificate issued upon adoption may be relied upon if the certificate was issued at or near the time of the student's birth. . . .

State	Citation	Education Institution Level Where Law Applies				Participation Restrictions		Excerpted Text
		Elementary	Middle	High	College or University	Female Designated Sports	Male Designated Sports	
								IOWA CODE § 261I.2 1. a. An interscholastic athletic team, sport, or athletic event that is sponsored or sanctioned by an educational institution or organization must be designated as one of the following, based on the sex at birth of the participating students: (1) Females, women, or girls. (2) Males, men, or boys. (3) Coeducational or mixed. b. Only female students, based on their sex, may participate in any team, sport, or athletic event designated as being for females, women, or girls. . . .
KS	KAN. STAT. § 60-5603 (2025)	Yes	Yes	Yes	Yes	Yes	No	(a) Interscholastic, intercollegiate, intramural or club athletic teams or sports that are sponsored by a public educational entity or any school or private postsecondary educational institution whose students or teams compete against a public educational entity shall be expressly designated as one of the following based on biological sex: (1) Males, men or boys; (2) females, women or girls; or (3) coed or mixed. (b) Athletic teams or sports designated for females, women or girls shall not be open to students of the male sex. (c)(1) The Kansas state high school activities association shall adopt rules and regulations for its member schools to implement the provisions of this section. (2) The state board of regents and the governing body for each municipal university, community college and technical college shall adopt rules and regulations for the postsecondary educational institutions governed by each such entity, respectively, to implement the provisions of this section.
KY	KY. REV. STAT. §§ 156.070, 164.2813 (2025)	Yes	Yes	Yes	Yes	Yes	No	**KY. REV. STAT. § 156.070** . . . (g) The state board or any agency designated by the state board to manage interscholastic athletics shall promulgate administrative regulations or bylaws that provide that:

State	Citation	Education Institution Level Where Law Applies				Participation Restrictions		Excerpted Text
		Elementary	Middle	High	College or University	Female Designated Sports	Male Designated Sports	
								1. A member school shall designate all athletic teams, activities, and sports for students in grades six (6) through twelve (12) as one (1) of the following categories: a. "Boys"; b. "Coed"; or c. "Girls"; . . . 3. a. An athletic activity or sport designated as "girls" for students in grades six (6) through twelve (12) shall not be open to members of the male sex. b. Nothing in this section shall be construed to restrict the eligibility of any student to participate in an athletic activity or sport designated as "boys" or "coed"; and 4. Neither the state board, any agency designated by the state board to manage interscholastic athletics, any school district, nor any member school shall entertain a complaint, open an investigation, or take any other adverse action against a school for maintaining separate interscholastic or intramural athletic teams, activities, or sports for students of the female sex. . . . **KY. REV. STAT. § 164.2813** (1) (a) A public postsecondary education institution or private postsecondary education institution that is a member of a national intercollegiate athletic association shall designate all intercollegiate and intramural athletic teams, activities, sports, and events that are sponsored or authorized by the institution as one (1) of the following categories: 1. "Men's"; 2. "Coed"; or 3. "Women's." (b) 1. A public postsecondary education institution or private postsecondary education institution that is a member of a national intercollegiate athletic association shall prohibit a member of the male sex from competing in any intercollegiate or intramural athletic team, activity, sport, or event designated as "women's." 2. Nothing in this section shall be construed to restrict the eligibility of any student to participate in an athletic activity or sport designated as "men's" or "coed." . . .

State	Citation	Education Institution Level Where Law Applies				Participation Restrictions		Excerpted Text
		Elementary	Middle	High	College or University	Female Designated Sports	Male Designated Sports	
LA	LA. STAT. §§ 4:443, 4:444 (2025)	Yes	Yes	Yes	Yes	Yes	No	**LA. STAT. § 4:443** In this Chapter, unless otherwise indicated, the following definitions shall apply: (1) "Biological sex" means a statement of a student's biological sex on the student's official birth certificate which is entered at or near the time of the student's birth. . . . (8) "Schools" means all of the following: (a) A public elementary or secondary school. (b) A nonpublic elementary or secondary school that receives state funds. (c) A public postsecondary educational institution. (d) A nonpublic postsecondary educational institution that receives state funds. . . . **LA. STAT. § 4:444** A. Each intercollegiate or interscholastic athletic team or sporting event that is sponsored by a school and that receives state funding shall be expressly designated, based upon biological sex, as only one of the following: (1) Except as provided in Subsection C of this Section, a male, boys, or mens team or event shall be for those students who are biological males. (2) A female, girl's, or women's team or event shall be for those students who are biological females. (3) A coeducational or mixed team or event shall be open for participation by biological females and biological males. B. Athletic teams or sporting events designated for females, girls, or women shall not be open to students who are not biologically female. C. Nothing in this Chapter shall be construed to restrict the eligibility of any student to participate in any intercollegiate or interscholastic athletic team or sport designated as "male," "mens," or "boys," or designated as "coed" or "mixed."

State	Citation	Education Institution Level Where Law Applies				Participation Restrictions		Excerpted Text
		Elementary	Middle	High	College or University	Female Designated Sports	Male Designated Sports	
MS	MISS. CODE § 37-97-1 (2025)	Yes	Yes	Yes	Yes	Yes	No	(1) Interscholastic or intramural athletic teams or sports that are sponsored by a public primary or secondary school or any school that is a member of the Mississippi High School Activities Association or public institution of higher education or any higher education institution that is a member of the NCAA, NAIA or NJCCA shall be expressly designated as one of the following based on biological sex: (a) "Males," "men" or "boys"; (b) "Females," "women" or "girls"; or (c) "Coed" or "mixed." (2) Athletic teams or sports designated for "females," "women" or "girls" shall not be open to students of the male sex. . . .
MO	MO. STAT. § 163.048 (2025)	Yes	Yes	Yes	Yes	Yes	Partial[f]	1. As used in this section, the following terms mean: (1) "Athletics," any interscholastic athletic games, contests, programs, activities, exhibitions, or other similar competitions organized and provided for students; (2) "Sex," the two main categories of male and female into which individuals are divided based on an individual's reproductive biology at birth and the individual's genome. . . . 3. (1) Except as provided under subdivision (2) of this subsection, no private school, public school district, public charter school, or public or private institution of postsecondary education shall allow any student to compete in an athletics competition that is designated for the biological sex opposite to the student's biological sex as correctly stated on the student's official birth certificate as described in subsection four of this section or, if the student's official birth certificate is unobtainable, another government record. (2) A private school, public school, public charter school, or public or private institution of postsecondary education may allow a female student to compete in an athletics competition that is designated for male students if no corresponding athletics competition designated for female students is offered or available. . . .
MT	MONT. CODE § 20-7-1306 (2025)	Yes	Yes	Yes	Yes[g]	Yes	No	(1) Interscholastic, intercollegiate, intramural, or club athletic teams or sports that are sponsored by a public elementary or high school, a public institution of higher education, or any school or institution whose students or teams compete against a public school or institution of higher education must be expressly designated as one of the following based on biological sex:

State	Citation	Education Institution Level Where Law Applies				Participation Restrictions		Excerpted Text
		Elementary	Middle	High	College or University	Female Designated Sports	Male Designated Sports	
								(a) males, men, or boys; (b) females, women, or girls; or (c) coed or mixed. (2) Athletic teams or sports designated for females, women, or girls may not be open to students of the male sex. . . .

NC	N.C. GEN. STAT. §§ 115C-407.55, 115C-407.59, 115C-407.70, 116-401 (2025)	Not Found	Yes	Yes	Yes	Yes	No	**N.C. GEN. STAT. § 115C-407.55** The State Board of Education shall adopt rules governing high school interscholastic athletic activities conducted by public school units that include the following: (1) Student participation rules.—These rules shall govern student eligibility to participate in interscholastic athletic activities. The adoption of these rules shall not be delegated to an administering organization, and student participation rules shall not be altered or expanded by an administering organization. The rules shall include, at a minimum, the following: . . . e. Biological participation requirements as required by G.S. 115C-407.59. . . . **N.C. GEN. STAT. § 115C-407.59** (a) All teams participating in interscholastic or intramural athletic activities shall comply with the following: (1) Each team shall be expressly designated by the biological sex of the team participants as one of the following: a. Males, men, or boys. b. Females, women, or girls. c. Coed or mixed. (2) Athletic teams designated for females, women, or girls shall not be open to students of the male sex. (3) For purposes of this sub-subdivision, a student's sex shall be recognized based solely on the student's reproductive biology and genetics at birth. **N.C. GEN. STAT. § 115C-407.70** (a) The State Board of Education shall adopt rules governing middle school interscholastic athletic activities conducted by public school units consistent with the requirements of G.S.115C-407.55 for student participation rules, student health and safety rules, penalty rules, appeals rules, administrative rules, gameplay rules, fee rules, and reporting rules. . . . **N.C. GEN. STAT. § 116-401** (a) All teams that are part of an intercollegiate athletic program of an institution of higher education shall comply with the following: (1) Each team shall be expressly designated by the biological sex of the team participants as one of the following: a. Males, men, or boys.

State	Citation	Education Institution Level Where Law Applies				Participation Restrictions		Excerpted Text
		Elementary	Middle	High	College or University	Female Designated Sports	Male Designated Sports	
								b. Females, women, or girls. c. Coed or mixed. (2) Athletic teams designated for females, women, or girls shall not be open to students of the male sex. (b) For the purposes of this section, sex shall be recognized based solely on a person's reproductive biology and genetics at birth.
ND	N.D. CENT. CODE §§ 15-10.6.02, 15.1-41-02 (2025)	Yes	Yes	Yes	Yes	Yes	No	**N.D. CENT. CODE § 15-10.6-02** 1. An intercollegiate or intramural athletic team or sport sponsored by an institution must be expressly designated as one of the following based on the sex of the intended participants: a. "Males," "men," or "boys"; b. "Females," "women," or "girls"; or c. "Coed" or "mixed." 2. An athletic team or sport designated for "females," "women," or "girls" may not be open to students of the male sex. 3. This section may not be construed to restrict the eligibility of a student to participate in interscholastic or intramural athletic teams or sports designated as "males," "men," or "boys" or designated as "coed" or "mixed." **N.D. CENT. CODE § 15.1-41-02** 1. An interscholastic or intramural athletic team or sport sponsored by a school must be expressly designated as one of the following based on the sex of the intended participants: a. "Males," "men," or "boys"; b. "Females," "women," or "girls"; or c. "Coed" or "mixed." 2. An athletic team or sport designated for "females," "women," or "girls" may not be open to students of the male sex. 3. This section may not be construed to restrict the eligibility of a student to participate in interscholastic or intramural athletic teams or sports designated as "males," "men," or "boys" or designated as "coed" or "mixed."

State	Citation	Education Institution Level Where Law Applies				Participation Restrictions		Excerpted Text
		Elementary	Middle	High	College or University	Female Designated Sports	Male Designated Sports	
NH	N.H. REV. STAT. ANN. § 193:41 (2025)	No	Yes	Yes	No	Yes	No	I. In this subdivision, "school" means a public high school in which any combination of grades 9 through 12 are taught or a public middle school in which any combination of grades 5 through 8 are taught. This shall not apply to students in any grade kindergarten through fourth grade. II. (a) An interscholastic sport activity or club athletic team sponsored by a public school or a private school whose students or teams compete against a public school must be expressly designated as one of the following based on the biological sex at birth of intended participants: (1) Males, men, or boys; (2) Females, women, or girls; or (3) Coed or mixed. (b) Athletic teams or sports designated for females, women, or girls shall not be open to students of the male sex. . . .
OH	OHIO REV. CODE §§ 3313.5320, 3345.562 (2025)	Yes	Yes	Yes	Yes	Yes	No	**OHIO REV. CODE § 3313.5320** (A) Each school that participates in athletic competitions or events administered by an organization that regulates interscholastic athletic conferences or events shall designate interscholastic athletic teams based on the sex of the participants as follows: (1) Separate teams for participants of the female sex within female sports divisions; (2) Separate teams for participants of the male sex within male sports divisions; (3) If applicable, co-ed teams for participants of the female and male sexes within co-ed sports divisions. (B) No school, interscholastic conference, or organization that regulates interscholastic athletics shall knowingly permit individuals of the male sex to participate on athletic teams or in athletic competitions designated only for participants of the female sex. (C) Nothing in this section shall be construed to restrict the eligibility of any student to participate on any athletic teams or in athletic competitions that are designated as male or co-ed. . . . **OHIO REV. CODE § 3345.562** . . . (B) Each state institution of higher education or private college that is a member of the national collegiate athletics association, the national association of intercollegiate athletics, or the national

State	Citation	Education Institution Level Where Law Applies				Participation Restrictions		Excerpted Text
		Elementary	Middle	High	College or University	Female Designated Sports	Male Designated Sports	
								junior college association shall designate intercollegiate athletic teams and sports based on the sex of the participants as follows: (1) Separate teams for participants of the female sex within female sports divisions; (2) Separate teams for participants of the male sex within male sports divisions; (3) If applicable, co-ed teams for participants of the female and male sexes within co-ed sports divisions. (C) No state institution or private college to which division (B) of this section applies shall knowingly allow individuals of the male sex to participate on athletic teams or in athletic competitions designated for only participants of the female sex. (D) Nothing in this section shall be construed to restrict the eligibility of any student to participate on any athletic teams or in athletic competitions that are designated as male or co-ed. . . .
OK	OKLA. STAT. tit. 70, § 27-106 (2025)	Yes	Yes	Yes	Yes	Yes	No	B. As used in this section: 1. "School" means a public school district or public charter school in this state or an institution within The Oklahoma State System of Higher Education; 2. "School athletic association" shall have the same meaning as provided for in Section 27-102 of Title 70 of the Oklahoma Statutes; and 3. "Intercollegiate association" shall mean a national association that sets eligibility requirements for participation in sports at the collegiate level and that provides the coordination, supervision and regulation of the intercollegiate competitions. C. Athletic teams that are sponsored by a school or sponsored by a private school whose students or teams compete against a school shall be expressly designated as one of the following based on biological sex: 1. "Males," "men" or "boys"; 2. "Females," "women" or "girls"; or 3. "Coed" or "mixed." . . . E. 1. Athletic teams designated for "females," "women" or "girls" shall not be open to students of the male sex. . . .

State	Citation	Education Institution Level Where Law Applies				Participation Restrictions		Excerpted Text
		Elementary	Middle	High	College or University	Female Designated Sports	Male Designated Sports	
SC	S.C. CODE § 59-1-500 (2025)	Yes	Yes	Yes	Yes	Yes	Partial[h]	(A) For purposes of this section, a statement of a student's biological sex on the student's official birth certificate is considered to have correctly stated the student's biological sex at birth if the statement was filed at or near the time of the student's birth. (B)(1) Interscholastic, intercollegiate, intramural, or club athletic teams or sports that are sponsored by a public elementary or secondary school or public postsecondary institution must be expressly designated as one of the following based on the biological sex at birth of team members: (a) males, men, or boys; (b) females, women, or girls; or (c) coed or mixed, including both males and females. (2) Athletic teams or sports designated for males, men, or boys shall not be open to students of the female sex, unless no team designated for females in that sport is offered at the school in which the student is enrolled. (3) Athletic teams or sports designated for females, women, or girls shall not be open to students of the male sex. (4) A private school or a private institution sponsoring an athletic team or sport in which its students or teams compete against a public school or institution must also comply with this section for the applicable team or sport. . . .
SD	S.D. CODIFIED LAWS § 13-67-1 (2025)	Yes	Yes	Yes	Yes	Yes	No	Any interscholastic, intercollegiate, intramural, or club athletic team, sport, or athletic event that is sponsored or sanctioned by an accredited school, school district, an activities association or organization, or an institution of higher education under the control of either the Board of Regents or the Board of Technical Education must be designated as one of the following, based on the biological sex at birth of the participating students: (1) Females, women, or girls; (2) Males, men, or boys; or (3) Coeducational or mixed. Only female students, based on their biological sex, may participate in any team, sport, or athletic event designated as being for females, women, or girls. . . .

State	Citation	Education Institution Level Where Law Applies				Participation Restrictions		Excerpted Text
		Elementary	Middle	High	College or University	Female Designated Sports	Male Designated Sports	
TN	TENN. CODE §§ 49-6-310, 49-7-180, 49-50-805 (2025)	No	Yes	Yes	Yes	Yes	Partial[i]	**TENN. CODE § 49-6-310** (a) A student's gender for purposes of participation in a public middle school or high school interscholastic athletic activity or event must be determined by the student's sex at the time of the student's birth, as indicated on the student's original birth certificate. If a birth certificate provided by a student pursuant to this subsection (a) does not appear to be the student's original birth certificate or does not indicate the student's sex upon birth, then the student must provide other evidence indicating the student's sex at the time of birth. The student or the student's parent or guardian must pay any costs associated with providing the evidence required under this subsection (a). . . . (d) As used in this section: (1) "High school" means a school in which any combination of grades nine through twelve (9-12) are taught; and (2) "Middle school" means a school in which any combination of grades five through eight (5-8) are taught. (e) This section does not apply to students in any grade kindergarten through four (K-4). . . . **TENN. CODE § 49-7-180** (a)(1) Intercollegiate or intramural athletic teams or sports that are designated for "females," "women," or "girls" and that are sponsored, sanctioned, or operated by a public institution of higher education or by a private institution of higher education whose students or teams compete against public institutions of higher education shall not be open to students of the male sex. (2) Subdivision (a)(1) does not restrict the eligibility of a student to participate in an intercollegiate or intramural athletic team or sport designated for "males," "men," or "boys" or designated as "coed" or "mixed." (b) For purposes of this section, an institution of higher education shall rely upon the sex listed on the student's original birth certificate, if the birth certificate was issued at or near the time of birth. If a birth certificate provided by a student is not the student's original birth certificate issued at or near the time of birth or does not indicate the student's sex, then the student must provide other evidence indicating the student's sex. . . .

State	Citation	Education Institution Level Where Law Applies				Participation Restrictions		Excerpted Text
		Elementary	Middle	High	College or University	Female Designated Sports	Male Designated Sports	
								TENN. CODE § 49-50-805 (a) In connection with an interscholastic athletic activity or event where membership in the Tennessee Secondary School Athletic Association is required, a student enrolled in a private school in this state is eligible to participate in such athletic activity or event only in accordance with the student's sex, as defined in § 49-2-802. (b) This section does not prohibit a student whose sex, as defined in § 49-2-802, is female from participating on a team designated for male students if the school does not offer a separate team for female students in that sport.
TX	TEX. EDUC. CODE §§ 33.0834, 51.980 (2025)	Yes	Yes	Yes	Yes	Yes	Partiali	**TEX. EDUC. CODE § 33.0834** (a) Except as provided by Subsection (b), an interscholastic athletic team sponsored or authorized by a school district or open-enrollment charter school may not allow a student to compete in an interscholastic athletic competition sponsored or authorized by the district or school that is designated for the biological sex opposite to the student's biological sex as correctly stated on: (1) the student's official birth certificate, as described by Subsection (c); or (2) if the student's official birth certificate described by Subdivision (1) is unobtainable, another government record. (b) An interscholastic athletic team described by Subsection (a) may allow a female student to compete in an interscholastic athletic competition that is designated for male students if a corresponding interscholastic athletic competition designated for female students is not offered or available. (c) For purposes of this section, a statement of a student's biological sex on the student's official birth certificate is considered to have correctly stated the student's biological sex only if the statement was: (1) entered at or near the time of the student's birth; or (2) modified to correct any type of scrivener or clerical error in the student's biological sex. (d) The University Interscholastic League shall adopt rules to implement this section, provided that the rules must be approved by the commissioner in accordance with Section 33.083(b). The rules must ensure compliance with state and federal law regarding the confidentiality of student medical information, including Chapter 181, Health and Safety Code, and the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.).

State	Citation	Education Institution Level Where Law Applies				Participation Restrictions		Excerpted Text
		Elementary	Middle	High	College or University	Female Designated Sports	Male Designated Sports	
								TEX. EDUC. CODE § 51.980 (a) In this section: (1) "Athletic competition" means any athletic display between teams or individuals, such as a contest, exhibition, performance, or sport. (2) "Institution of higher education" has the meaning assigned by Section 61.003. (b) Except as provided by Subsection (c), an intercollegiate athletic team sponsored or authorized by an institution of higher education may not allow: (1) a student to compete on the team in an intercollegiate athletic competition sponsored or authorized by the institution that is designated for the biological sex opposite to the student's biological sex; or (2) a male student to compete on the team in a mixed-sex intercollegiate athletic competition sponsored or authorized by the institution in a position that is designated by rule or procedure for female students. (c) An intercollegiate athletic team described by Subsection (b) may allow a female student to compete in an intercollegiate athletic competition that is designated for male students if a corresponding intercollegiate athletic competition designated for female students is not offered or available. . . .
UT[k]	UTAH CODE § 53G-6-902 (2025)	Yes	Yes	Yes	No	Yes	No	(1) Notwithstanding any state board rule: (a) a public school or LEA, or a private school that competes against a public school or LEA, shall expressly designate school athletic activities and teams as one of the following, based on sex: (i) designated for students of the male sex; (ii) designated for students of the female sex; or (iii) "coed" or "mixed"; (b) a student of the male sex may not compete, and a public school or LEA may not allow a student of the male sex to compete, with a team designated for students of the female sex in an interscholastic athletic activity; and

State	Citation	Education Institution Level Where Law Applies				Participation Restrictions		Excerpted Text
		Elementary	Middle	High	College or University	Female Designated Sports	Male Designated Sports	
								(c) a government entity or licensing or accrediting organization may not entertain a complaint, open an investigation, or take any other adverse action against a school or LEA described in Subsection (1)(a) for maintaining separate school athletic activities for students of the female sex. (2) Nothing in this section prohibits an LEA or school from allowing a student of either gender from participating with a team designated for students of the female sex, consistent with school policy, outside of competition in an interscholastic athletic activity, in accordance with Subsection (1)(b).
WV[l]	W. VA. CODE § 18-2-25D (2025)	No	Yes	Yes	Yes	Yes	No	(b) Definitions.—As used in this section, the following words have the meanings ascribed to them unless the context clearly implies a different meaning: (1) "Biological sex" means an individual's physical form as a male or female based solely on the individual's reproductive biology and genetics at birth. (2) "Female" means an individual whose biological sex determined at birth is female. As used in this section, "women" or "girls" refers to biological females. (3) "Male" means an individual whose biological sex determined at birth is male. As used in this section, "men" or "boys" refers to biological males. (c) Designation of Athletic Teams.— (1) Interscholastic, intercollegiate, intramural, or club athletic teams or sports that are sponsored by any public secondary school or a state institution of higher education, including a state institution that is a member of the National Collegiate Athletic Association (NCAA), National Association of Intercollegiate Athletics (NAIA), or National Junior College Athletic Association (NJCAA), shall be expressly designated as one of the following based on biological sex: (A) Males, men, or boys; (B) Females, women, or girls; or (C) Coed or mixed. (2) 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. (3) Nothing in this section shall be construed to restrict the eligibility of any student to participate in any interscholastic, intercollegiate, or intramural athletic teams or sports designated as "males," "men," or "boys" or designated as "coed" or "mixed": Provided, That selection for a team may still be based on those who try out and possess the requisite skill to make the team. . . .

State	Citation	Education Institution Level Where Law Applies				Participation Restrictions		Excerpted Text
		Elementary	Middle	High	College or University	Female Designated Sports	Male Designated Sports	
WY	WYO. STAT. §§ 21-25-101, 21-25-102 (2025)	No	Yes	Yes	No	Yes	No	**WYO. STAT. § 21-25-101** (a) As used in this chapter: (i) "Coed" or "mixed" means that a team is composed of members of both sexes who traditionally compete together; (ii) "Interscholastic athletic activity" means that a student represents the student's school in a Wyoming high school activities association sanctioned sport; (iii) "School" means a school consisting of grades seven (7) through 12 (twelve), or any combination of grades within this range, as determined by the plan of organization by the school district board of trustees; (iv) "Sex" means the biological, physical condition of being male or female, determined by an individual's genetics and anatomy at birth. **WYO. STAT. § 21-25-102** (a) A public school or a private school that competes against a public school shall expressly designate school athletic activities and teams as one (1) of the following based on sex: (i) Designated for students of the male sex; (ii) Designated for students of the female sex; or (iii) Coed or mixed. (b) A student of the male sex shall not compete, and a public school shall not allow a student of the male sex to compete, in an athletic activity or team designated for students of the female sex. (c) A government entity or licensing or accrediting organization shall not entertain a complaint, open an investigation or take any other adverse action against a school described in subsection (a) of this section for maintaining separate school athletic activities and teams for students of the female sex. . . .

Source: CRS.

a. The law provides that "[a] public K-12 school may not allow a biological female to participate on a male team if there is a female team in a sport."

b. According to the Georgia High School Association's Bylaws, some eighth-grade students may participate in sub-varsity competition in high schools., *Constitution By-Laws* 1.45, GEORGIA HIGH SCHOOL ASSOCIATION (Aug. 1, 2024), https://www.ghsa.net/constitution-section-2024-2025-law-100-student#1.40 [https://perma.cc/7ANH-2ULY].

c. The Georgia statute provides that athletic associations may prohibit students whose gender is male from participating in athletic events that are designated for students whose gender is female. The Georgia High School Association's Bylaws provide, "Girls may participate on boys' teams when there is no girls' team offered in that sport or activity by the school (exception: wrestling). Boys may not participate on girls' teams even when there is no corresponding boys' sport or activity." They also specify that a "student's sex is determined by the sex noted on his/her certificate at birth." *Constitution By-Laws* 1.45, GEORGIA HIGH SCHOOL ASSOCIATION (Aug. 1, 2024), https://www.ghsa.net/constitution-section-2024-2025-law-100-student#1.40 [https://perma.cc/7ANH-2ULY].

d. The statute is preliminarily enjoined against application to the plaintiff in *Hecox v. Little*, 104 F.4th 1061, 1090 (9th Cir. 2024), *as amended*, (June 14, 2024), but is still appliable to other college student-athletes. *See* "Legal Challenges to Restrictive Policies."

e. Indiana's law amends Title 20 of the state code, which concerns elementary and secondary education. The ban applies to a "school corporation, public school, nonpublic school, or association that organizes, sanctions, or sponsors an athletic team or sport." The law does not amend Title 21 of its state code, which concerns public universities.

f. Subsection 3, paragraph 2 provides that "a private school, public school, public charter school, or public or private institution of postsecondary education may allow a female student to compete in an athletics competition that is designated for male students if no corresponding athletics competition designated for female students is offered or available."

g. The Montana Supreme Court ruled that the law was unconstitutional as applied to the Montana University System. Barrett v. State, 547 P.3d 630 (Mont. 2024).

h. Paragraph B(2) states that "athletic teams or sports designated for males, men, or boys shall not be open to students of the female sex, unless no team designated for females in that sport is offered at the school in which the student is enrolled."

i. The statute does not designate who may participate in male designated sports at the college or university level.

j. At interscholastic and intercollegiate levels, female students may be permitted to compete in sports designated for males if a corresponding competition is not offered for female students.

k. A Utah state court has enjoined enforcement of the Utah law. Roe v. Utah High School Activities Ass'n, No. 220903262, 2022 WL 3907182 (Utah Dist. Ct. Aug. 19, 2022).

l. The Fourth Circuit held in *B.P.J. ex rel. Jackson v. W. Va. State Bd. of Educ.*, 98 F.4th 542 (4th Cir. 2024), that the law was not applicable to the plaintiff in the case.

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Table A-1 was created with assistance from CRS Law Librarian Jason Hawkins.

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