

***West Virginia v. B.P.J.*: Supreme Court Upholds State Laws Restricting Eligibility of Transgender Girls to Compete in Athletics Competitions**

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On June 30, 2026, the Supreme Court in *West Virginia v. B.P.J.* [upheld](#) West Virginia and Idaho laws that restrict the eligibility of transgender girls to participate in female athletics competitions. In an opinion consolidating two cases, the Court rejected claims that such laws were unlawfully discriminatory under [Title IX of the Educational Amendments of 1972](#) (Title IX) and the [Equal Protection Clause of the Fourteenth Amendment](#).

This Sidebar begins by briefly describing how states have approached the issue of athletics participation for transgender athletes. It continues by describing the requirements of the Equal Protection Clause and Title IX, which form the legal background for these cases. The Sidebar then examines the Supreme Court’s consolidated decision in *West Virginia v. B.P.J.* upholding state laws that restrict transgender girls from competing in female athletics, including the majority, concurring, and dissenting opinions. The Sidebar then briefly surveys an issue the Supreme Court did not resolve—the validity of state policies that *permit* transgender athletes to participate in sports consistent with their gender identity. The Sidebar concludes with some considerations for Congress.

State Laws and Policies: Restrictive and Permissive Approaches

States and localities have taken a range of approaches to regulating the participation of transgender student-athletes in sports competitions. Some states and local school boards take what might be called a “permissive” approach, [allowing](#) transgender students to compete in athletics consistent with their gender identities with no requirements or restrictions. Others impose certain [conditions on participation](#). More than twenty-five states have taken what might be referred to as a more “restrictive” position and passed laws requiring student-athletes to participate on teams according to their sex assigned at birth. Among states that have passed such restrictive laws, a common approach is to [classify](#) school athletics teams according to biological sex and restrict transgender girls from participating in girls’ and women’s sports sponsored by public high schools and/or postsecondary institutions.

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Courts have addressed [challenges](#) to both restrictive and permissive laws and policies. Transgender student-athletes and their parents have contested restrictive laws and policies in various lawsuits across the country. These challenges often claim that restrictive laws and policies [violate](#) Title IX and the Equal Protection Clause [because](#) they discriminate based on sex. By contrast, some athletes have challenged permissive policies, [arguing](#) that they violate Title IX by depriving biological women of equal athletic opportunities.

Equal Protection Clause: Levels of Scrutiny and Gender Identity

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.” 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., whom the law treats differently), the government’s rationale for the classification, and the fit between the classification and the rationale. Courts apply different levels 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. Most classifications are subject to rational basis review, including [income](#) and [disability](#). Quasi-suspect classifications, which include classifications based on sex, are reviewed under the more stringent standard of [intermediate scrutiny](#), under which the law at issue [must](#) be supported by an “exceedingly persuasive justification” that the classification is “substantially related” to “an important governmental objective.” (Laws that classify based on race, color, or national origin trigger [strict scrutiny](#) and are to be upheld only if narrowly tailored to meet a compelling government interest.)

Gender Identity and Sex Classifications

Federal appellate courts have confronted the question of what level of scrutiny to use for equal protection review of policies that classify on the basis of gender identity or transgender status. [Several](#) federal [appellate](#) courts have [held](#) that at least some laws and policies that allegedly discriminate against transgender people are subject to intermediate scrutiny, either because the classifications are sex-based or because the court views transgender status as a quasi-suspect classification in its own right. On the other hand, [other](#) federal [appellate](#) courts have held that laws that classify based on transgender status are subject only to rational basis review. As discussed in more detail below, both before and after its decision in *B.P.J.*, the Supreme Court has not [addressed](#) the appropriate standard of review to classifications based on transgender status or gender identity.

Title IX: Athletics Requirements, Clear Notice, and Application of *Bostock v. Clayton County*

Title IX and Athletics

Title IX [prohibits](#) sex discrimination in federally funded education programs, including athletics. All K-12 public school districts, and almost all colleges and universities, [receive](#) federal funding and must comply with its requirements. Federal agencies that distribute funds to education programs are [responsible](#) for promulgating regulations to implement Title IX. Given the substantial funding the Department of Education (ED) distributes to schools, its Office for Civil Rights (OCR) plays a [lead](#) role in enforcing the law (though ED and the Department of Justice have a recent [interagency agreement](#) to transfer some of these day-to-day functions away from OCR). Title IX does not explicitly mention athletics, but two years

after its enactment, Congress passed legislation, known as the Javits Amendment, [specifically requiring](#) implementing regulations “which shall include with respect to intercollegiate athletic activities reasonable provisions considering the nature of particular sports.”

ED’s long-standing [regulations](#) implementing Title IX thus provide that recipient schools may not discriminate based on sex in athletics programs or activities. This prohibition does not mean all sex-based distinctions are banned. According to ED’s [regulations](#), schools may offer separate athletics teams for each sex where selection is based on competitive skill or the activity is a contact sport. Schools also do not need to offer the same sports for each sex, but they must provide [equal athletic opportunity](#) for members of both sexes overall. Title IX is generally [enforced](#) in two ways: (1) through private lawsuits brought directly against funding recipients in federal court, and (2) by the federal agencies that distribute funding to recipients. Federal agencies that distribute funds to recipients may terminate or suspend funding in cases of noncompliance.

Title IX and the Clear Notice Requirement

Courts interpreting the requirements of Title IX for schools are often called upon to consider the law’s Spending Clause basis. The Supreme Court has [characterized](#) legislation enacted under the Spending Clause as contractual in nature—in [exchange](#) for funds, recipients agree to follow federal obligations. 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. For Congress to [impose](#) conditions on federal funding, requirements must be “clear” and “unambiguous[.]” so that recipients [have](#) “notice” of their obligations. This contrasts with “ordinary legislation,” which can [impose](#) requirements on regulated parties without their consent.

Bostock v. Clayton County

In addition to the Spending Clause basis for the law, judicial analysis of Title IX is also sometimes informed by how courts interpret [Title VII of the Civil Rights Act of 1964](#), which forbids sex discrimination in employment. A Supreme Court decision interpreting that law’s application to gender identity discrimination has, in turn, affected how lower courts have [interpreted](#) Title IX’s application to transgender athletes. In its 2020 decision in *Bostock v. Clayton County*, the Court ruled that Title VII’s ban on sex discrimination [encompasses](#) discrimination based on sexual orientation and gender identity. Prior to the Court’s decision in *B.P.J.*, a number of lower federal courts had [applied](#) the reasoning of *Bostock* to Title IX, concluding that sex discrimination under Title IX similarly includes discrimination based on transgender status.

Supreme Court Decision in *West Virginia v. B.P.J.*

The Supreme Court’s decision in *B.P.J.* consolidated two cases. In the first, the U.S. Court of Appeals for the Fourth Circuit [ruled](#) that the application of a restrictive West Virginia law prohibiting transgender girls from participating in female sports to the plaintiff in the case—a transgender girl who had not experienced puberty and was taking puberty blockers—violated Title IX. The circuit court pointed to one of its earlier decisions applying *Bostock*’s reasoning to Title IX, [observing](#) that it had already ruled that gender identity discrimination is sex discrimination under the law and that West Virginia’s law treated the plaintiff worse than others to whom she was similarly situated, which deprived her of equal athletic opportunities. The court also [remanded](#) the case for further fact-finding on the plaintiff’s equal protection challenge to the West Virginia law. In the second case, the U.S. Court of Appeals for the Ninth Circuit [ruled](#) that application to another plaintiff of a restrictive Idaho law that similarly prohibits transgender girls from participating in female sports likely violated the Equal Protection Clause; following the

Supreme Court's grant of review, the plaintiff [filed](#) a suggestion of mootness, explaining that they would not participate in athletics contexts covered by the law any longer.

The Supreme Court [rejected](#) the argument that the challenge to Idaho's law was moot and [disagreed](#) with both the lower courts' Title IX and equal protection rulings. Justice Kavanaugh wrote for the majority, joined by Chief Justice Roberts and Justices Alito, Barrett, Gorsuch, and Thomas. Justices Thomas and Gorsuch wrote separate concurrences. Justice Sotomayor, joined by Justices Kagan and Jackson, concurred in the judgment as to Title IX and dissented as to the Equal Protection Clause (the dissenters [concluded](#) that the challenge to Idaho's law was moot and thus focused on West Virginia's law). Justice Jackson also filed a separate opinion concurring in part and dissenting in part.

Majority Opinion

Justice Kavanaugh began by addressing the Title IX question, [holding](#) that Title IX and its implementing regulations do not require schools to allow transgender girls who take puberty blockers or hormones to participate on girls' sports teams. The Court [ruled](#) that the ordinary meaning of the term "sex" at the time of Title IX's passage was biological sex, not gender identity, "particularly in the sports context." The Court [rejected](#) the plaintiff's argument that limiting women's athletics teams to biological females violates the requirement that implementing regulations contain "reasonable provisions" for sports. Instead, the Court held that regulations allowing for teams to be separated on the basis of biological sex are entirely [reasonable](#) given "inherent physical differences between the sexes" in the context of sports.

The plaintiff, who had been taking puberty blockers and hormones, also argued that this interpretation limited her own athletic opportunity, alleging that she was "no longer [] strong or fast enough to compete successfully against boys." The Court expressed sympathy for the plaintiff, but [held](#) that "the Title IX regulations guarantee 'equal athletic opportunity[.]'" not that all students can play on the team they desire. The Court also [rejected](#) the plaintiff's argument that the Supreme Court's decision in [Bostock v. Clayton County](#) supported an interpretation of Title IX that requires schools to permit transgender girls and women to play on female sports teams. The Court ruled that the Title VII context of employment is "vastly different" from sports. While Title VII generally requires that men and women be treated without regard to their sex at work, Title IX allows for separate men's and women's athletic teams. Thus, the Court ruled, *Bostock* and Title VII are not relevant to this very different context.

On the constitutional question, the Court [held](#) that the challenged laws did not violate the Equal Protection Clause. The Court began its analysis by [determining](#) that the West Virginia and Idaho laws classified on the basis of sex in that they allow for separate male and female sports teams and restricted women's and girls' sports teams to biological females. Accordingly, the Court analyzed the laws using the intermediate scrutiny framework and held that the states had satisfied that test: the Court [held](#) that states have an important interest in "safety and competitive fairness," and that the policy of limiting girls' sports to biological girls was substantially related to that interest. The Court rejected the argument that, while the state laws may be generally permissible, they are unconstitutional as applied to transgender girls who take puberty blockers and hormones. The plaintiffs [argued](#) that these treatments mitigated the states' concerns about safety and fairness such that there was no substantial relationship between those interests and the policy as applied to them. In the Court's view, plaintiff's argument [might](#) show that the fit between the policy and the state's objectives was not close enough if "a State's interests do not apply to an especially large subclass[.]" In the current case, though, the Court [stated](#) that it would be "an almost impossible task" for courts to determine, case-by-case, whether the abilities of a transgender athlete on hormones and puberty blockers are more like those of a biological male or female, and that states and schools are better equipped to draw an appropriate line.

Finally, the Court separately [rejected](#) the argument that the state laws unconstitutionally discriminated based on transgender status. The Court reasoned that under its decision in [United States v. Skrmetti](#)—

which ruled that a state law limiting the medical treatments available to minors to treat gender dysphoria drew classifications based on age and medical use, not transgender status—the laws in the *B.P.J.* case drew classifications based on biological sex, not gender identity or transgender status. As an illustrative example of what could qualify as a gender identity classification, the Court [explained](#) that if a school had a co-ed sports team but excluded all transgender students from the team, that would be a classification based on gender identity. Given its conclusion that the West Virginia and Idaho laws did not classify on this basis, the Court declined to decide what standard of review would apply to such a classification.

The Court [concluded](#) by stating that “[n]o student athlete on either side of the issue, whether a biological female or transgender, deserves to be ostracized or vilified.”

Concurring Opinions

Justice Thomas [wrote](#) a brief concurrence emphasizing his view that “transgender status is not a suspect class requiring heightened equal-protection scrutiny” and that sex is binary.

Justice Gorsuch also [wrote](#) separately “to add two observations about Title IX.” First, Justice Gorsuch pointed to the requirement in Spending Clause legislation that states have clear notice of the obligations that flow from accepting federal dollars. Here, according to Justice Gorsuch, states did not have clear notice that they could not separate sports teams according to biological sex without violating Title IX. [Second](#), Justice Gorsuch stressed that the Court’s opinion in *B.P.J.* was supported by *Bostock*. There, in an opinion authored by Justice Gorsuch, the Court assumed that the term “sex” referred to biological sex and held that employment discrimination based on sexual orientation or gender identity was based, at least in part, on biological sex. In *B.P.J.*, Justice Gorsuch explained, the Court applied the same understanding that “sex” refers to biological sex in the context of Title IX, which includes specific carveouts for sex-segregated school sports teams.

Dissenting Opinions

In the principal [dissent](#), Justice Sotomayor, joined by Justices Kagan and Jackson, agreed with the Court’s holding on Title IX, [albeit](#) “on a narrower basis” than the majority. However, the dissent disagreed with the majority’s equal protection assessment. In particular, the dissent [stated](#) that it would have allowed the district court to address the factual questions about transgender girls’ physical abilities before reaching a conclusion on the merits. Justice Sotomayor also stated that the Court’s intermediate scrutiny precedent requires the Court to “[closely scrutinize\[\]](#)” the differences between subclasses within a sex classification (here, transgender girls and other girls) and to [analyze](#) the “nature of the burdens imposed” on those subclasses to achieve the state’s objective. Justice Sotomayor explained that the Court has considered subclasses in other sex classifications, such as unwed fathers who have a relationship with their children and those who do not, in deciding whether a sex-based rule is overbroad. Justice Sotomayor also [noted](#) her view that transgender status constitutes a quasi-suspect class in its own right.

As to the Title IX claim, Justice Sotomayor [agreed](#) with the majority that the state law was permissible. Separating sports teams according to one’s sex identified at birth is a sex classification that Title IX allows. She also [agreed](#) with the majority that the *Bostock* decision did not require ruling that the case involved a Title IX violation.

Justice Jackson also wrote separately to [argue](#) that “the Court did not need to hold that Title IX protects discrimination solely on the basis of ‘biological sex,’ even if only ‘in the sports context.’” In her view, the Court should have only assumed for the sake of argument that ‘sex’ in Title IX refers to biological sex because that question was not before the court.

Permissive State Policies: Trump Administration Position and Judicial Challenges

The Supreme Court's decision ultimately concluded that states may prohibit transgender girls from female athletics without violating Title IX and the Equal Protection Clause. The decision does not, however, resolve the related question as to whether other states may nonetheless permit transgender athletes to participate consistent with their gender identity under those laws. In a footnote, the majority opinion made this point expressly, [observing](#) that its decision did not resolve the question. Before the Supreme Court's decision, on February 5, 2025, the Trump Administration issued [E.O. 14201](#), directing the Secretary of Education to prioritize enforcement of Title IX against educational institutions that allow transgender girls and women to participate in girls' and women's sports. The order also adopts the [definitions](#) from another E.O., "Defending Women from Gender Ideology Extremism and Restoring Truth to the Federal Government," which defines "sex" to mean "an individual's immutable biological classification as either male or female." That E.O. [directs](#) the Attorney General to issue guidance to agencies to address the prior Administration's "misapplication" of Supreme Court precedent "to sex-based distinctions in agency activities."

The Trump Administration has [initiated](#) Title IX investigations into [various](#) educational [entities](#) that [allow](#) transgender student-athletes to compete in sports consistent with their gender identity. After federal agencies, such as ED, determined that several institutions would not voluntarily comply with the Administration's position on Title IX and transgender athletes, the Department of Justice (DOJ) sued some of them in federal court. DOJ-initiated lawsuits to enforce Title IX on these bases are currently pending in [California](#), [Maine](#), and [Minnesota](#).

Prior to the Court's decision in *B.P.J.*, two federal appellate decisions have addressed claims that states must ban transgender athletes from girls' and women's sports. The en banc Court of Appeals for the Second Circuit [ruled](#) that plaintiffs had standing to challenge a state's permissive policy, though it did not weigh in on the merits. The Eighth Circuit rejected a Title IX challenge to a permissive state approach, [ruling](#) that the allegations against the facially neutral policy did not show discriminatory intent (as is required for plaintiffs to bring a Title IX claim).

Considerations for Congress

Congress has several options if it seeks to address the participation of transgender athletes in school sports. One option could be to restrict participation in school sports based on the biological sex of athletes. For example, the House passed [H.R. 28](#), the Protection of Women and Girls in Sports Act, in January 2025. 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. Given the Court's holding in *B.P.J.*, such legislation would likely satisfy constitutional scrutiny.

If Congress chose instead to expressly address gender identity or transgender status in its legislation, the legislation may face equal protection challenges. The outcome would be less clear because *B.P.J.* did not resolve outstanding legal questions regarding what level of scrutiny to apply to laws that expressly treat people differently based on gender identity or transgender status, as opposed to making classifications based on biological sex. As a result, the varying approaches that appellate courts have used to address this question could result in different results across jurisdictions.

Alternatively, if Congress wished to authorize participation in school sports consistent with one's gender identity, it could amend Title IX to explicitly require recipients to allow students to participate on teams that match 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 certain student-athletes

without creating, or allowing, categorical bans on participation. As the Supreme Court observed in a footnote, however, the *B.P.J.* case did not resolve [whether](#) the Equal Protection Clause allows states to adopt permissive policies. As a result, permissive legislation may still face legal challenges on these grounds.

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