Access for Transgender Athletes After *West Virginia v. B.P.J.*

What the Supreme Court Decided and What It Left Unresolved

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On June 30, 2026, the U.S. Supreme Court issued a final decision in *West Virginia v. B.P.J.* and *Little v. Hecox*,[1] two consolidated cases challenging state bans on transgender girls' and women's participation in athletics aligned with their gender identity rather than their sex assigned at birth.[2] The Court held that Title IX of the Education Amendments of 1972 (Title IX) and the Equal Protection Clause (EPC) of the 14th Amendment of the U.S. Constitution *allow* states to restrict students' access to athletics based on "biological sex."[3] The Court's ruling did not resolve whether Title IX and the EPC *require* states to do so as a matter of law, recognizing that this separate question is the subject of ongoing litigation in lower courts.[4]

B.P.J. marks the first time the Court has addressed Title IX's and the EPC's application to sex-separate athletics and, more particularly, to transgender student athletes. In the Title IX section of the majority opinion, the Court relies heavily on the language of Title IX and the unique considerations underlying the federal statutory framework that allows for sex-separate athletics. The narrow holding does not address other Title IX issues of top concern for the Trump Administration, including the permissibility of state, school district, and institutional policies that permit students to use restrooms and locker rooms that align with their gender identity.

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[1] *West Virginia v. B.P.J.*, No. 24-43, slip op. at __ (U.S. June 30, 2026), https://www.supremecourt.gov/opinions/25pdf/24-43_2b35.pdf.

[2] "Transgender" or "trans" describes people whose sex assigned at birth differs from their gender identity. It is an umbrella term that can include trans women, trans men, nonbinary people, and more. "Cisgender" or "cis" describes people whose sex assigned at birth aligns with their gender identity. *See* American Psychological Association, Glossary of Gender and Transgender Terms, *Monitor on Psychology* (Sept. 2018), https://www.apa.org/monitor/2018/09/ce-corner-glossary.

[3] Title IX does not include a statutory definition of "sex." In addition, the sexual harassment regulations promulgated in 2020 under the first Trump Administration emphasize that "[a]ny individual—irrespective of sexual orientation or gender identity—may be victimized by the type of conduct defined as sexual harassment to which a recipient must respond under these final regulations." Efforts by the Biden Administration to clarify statutory protections under Title IX on the basis of sexual orientation and gender identity were struck down in federal court and later abandoned by the second Trump Administration. See *Tennessee v. Cardona*, No. 24-0072-DCR, 2025 WL 63795 (E.D. Ky. Jan. 9, 2025); U.S. Dep't of Educ., Office for Civ. Rts., Dear Colleague Letter: Title IX Enforcement Directive (Feb. 4, 2025), https://www.ed.gov/media/document/title-ix-enforcement-directive-dcl-109477.pdf.

[4] The current Administration has sought to implement a binary definition of "sex" through executive orders and enforcement actions by various federal agencies, but it has not yet adopted any regulations codifying this definition into law. *See Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 97 (2015); *see also Kisor v. Wilkie*, 588 U.S. 558, 609 (2019) (Gorsuch, J., concurring in judgment) (noting an "agency's opinion about what an existing rule means" is "not binding in a court of law or on the American people"). However, the Administration's 2026 Unified Agenda and Regulatory Plan indicates that the U.S. Department of Education is planning to amend its Title IX regulations to "clarify[] that implementation of Title IX is to be based on sex, which shall refer exclusively to an individual's immutable biological classification as either male or female." U.S. Dep't of Educ., Office for Civ. Rts., Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, RIN 1870-AA23, Unified Agenda of Federal Regulatory and Deregulatory Actions (Spring 2026), https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202510&RIN=1870-AA23.

However, the EPC section of the majority opinion raises significant new questions around how courts should analyze the constitutionality of sex-based distinctions going forward. Fairly read, the Court's ruling appears to lower the bar for governments to justify treating people—whether cisgender or transgender—differently on the basis of their sex in a departure from longstanding precedent.[5]

This resource provides an overview of the Title IX statutory framework permitting sex-separate teams, outlines the facts and history of the *B.P.J.* and *Hecox* cases, and offers a deeper analysis of the Court's decision (including a number of significant questions that the Court did *not* address). Finally, it concludes with a discussion of the implications for students, school districts, states, and institutions of higher education (IHEs), as well as recommended best practices while navigating this new legal landscape.[6]

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I. Title IX's General Application to Sex-Separate Sports Teams

After Congress passed Title IX in 1972, there was a great deal of debate about the law's application to athletics.[7] In general, Title IX's prohibition against sex discrimination made coeducation the default rule: K-12 schools and IHEs receiving federal funding generally could not separate students by sex without a legal exception. The statute and the implementing regulations that Congress directed the U.S. Department of Health, Education, and Welfare (HEW) (the U.S. Department of Education's predecessor agency) to create contained many such exceptions, including allowing for sex distinctions in the admissions policies of private undergraduate programs[8] and allowing schools to offer sex-separate housing facilities,[9] restrooms,[10] and sex education programs.[11] Although they allowed sex separation in these instances, nothing in the statute or regulations required it.[12]

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[5] See Sec. III(B), below, for an analysis of the Court's treatment of intermediate scrutiny.

[6] This resource is meant to provide general guidance and does not constitute specific legal advice.

[7] Title IX provides that "no person…shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a). Title IX applies to all education programs of a recipient of federal financial assistance. This includes all operations of a school district or IHEs.

[8] 20 U.S.C. § 1681(a)(1); Nondiscrimination on Basis of Sex, Education Programs and Activities Receiving or Benefiting from Federal Financial Assistance, 40 Fed. Reg. 24127, 24139 (June 4, 1975) (HEW 1975 Regulation), (then codified at 45 C.F.R. § 86.15(d) and now codified at 34 C.F.R. § 106.15(d)).

[9] 20 U.S.C. § 1686; HEW 1975 Regulation at 24141 (then codified at 45 C.F.R. § 86.32(b)(1) and now codified at 34 C.F.R. § 106.32(b)(1)).

[10] HEW 1975 Regulation at 24141 (then codified at 45 C.F.R. § 86.33 and now codified at 34 C.F.R. § 106.33).

[11] HEW 1975 Regulation at 24141 (then codified at 45 C.F.R. § 86.34(e) and now codified 34 C.F.R. § 106.34(a)(3)).

[12] In other words, a school that offered these programs or facilities on a coeducational basis would not run afoul of Title IX, and no student has a right under Title IX to demand that they be separated by sex.

Contrary to popular understanding, Title IX itself did not include an exemption for athletics that would permit sex separation for sports, but Congress later directed HEW to clarify the parameters for ensuring sex equity in athletics.[13] The resulting regulation—which remains in effect—requires schools to provide all students with "equal athletic opportunity," regardless of their sex.[14] Because it had to account for the unique nature of team sports and schools' limitations in offering athletic opportunities, the regulation sets out a framework for analyzing equity that is singular to athletics; nothing else is analyzed the same way under Title IX.

Under this framework, "equal athletic opportunity" does not mean "identical" or "universal" athletic opportunity. The U.S. Department of Education's Office for Civil Rights has historically used a three-part test to determine whether school districts and IHEs are effectively accommodating the overall athletic interests and abilities of their students.[15] The Three-Part Test is intended to allow institutions to maintain flexibility and control over their athletic programs consistent with Title IX's nondiscrimination requirements. Schools do not have to guarantee every student a spot on a sports team or the chance to play even if they do make the team. They do not have to offer the same sports to male and female athletes[16] and can spend different amounts of funding on their teams, so long as the overall athletic program remains equitable.[17]

The framework also permitted schools to offer sex-separate teams, "where selection for such teams is based upon competitive skill or the activity involved is a contact sport."[18] But as contemporaneous documents confirm, HEW's 1975 regulation *allowed* but did not *require* schools to offer sex-separate

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[13] In 1974, Congress passed the Javits Amendment instructing HEW to issue regulations that included "reasonable provisions considering the nature of particular sports." Section 844 of the Education Amendments of 1974, P.L. 93-380, 88 Stat. 612, (Aug. 21, 1974).

[14] HEW 1975 Regulation at 24142–43 (then codified at 45 C.F.R. § 86.41) (now codified 34 C.F.R. § 106.41).

[15] *See, e.g.*, Title IX of the Education Amendments of 1972; a Policy Interpretation; Title IX and Intercollegiate Athletics, 44 Fed. Reg. 71413, 71418 (December 11, 1979) (1979 Policy Interpretation), https://www.ed.gov/laws-and-policy/civil-rights-laws/federal-register-notices-and-regulations/policy-interpretation-title-ix-and-intercollegiate-athletics; U.S. Dep't of Educ., Office for Civ. Rts., Dear Colleague Letter: Guidance on Accommodating Students' Athletic Interests and Abilities: Standards for Part Three of the Three-Part Test, 3 (Apr. 20, 2010), https://www.ed.gov/media/document/dear-colleague-letter-guidance-accommodating-students-athletic-interests-and-abilities-standards-part-three-of-three-part-test-april-20-2010-35030.pdf.

[16] 1979 Policy Interpretation at 71417–18.

[17] 34 C.F.R. § 106.41(c).

[18] HEW 1975 Regulation at 24142–43 (then codified at 45 C.F.R. § 86.41) (now codified 34 C.F.R. § 106.41). The regulation defines contact sports as "boxing, wrestling, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact."

sports teams, even in contact sports.[19] And critically, students may try out for a non-contact-sport team designated for the other sex when opportunities for that student's sex have been historically limited.[20]

Taken together, this framework makes clear that federal law never guaranteed anyone the right to play on a sex-separate team. Rather, Title IX focused on ensuring that interscholastic and intercollegiate athletic opportunities were available to all students, without subjecting them to discrimination based on sex.

Applicability of Antidiscrimination Laws to Transgender People

B.P.J. follows the first U.S. Supreme Court decision to address transgender rights, *Bostock v. Clayton County*. In 2020, the Court held in a 6–3 decision that a group of employers violated Title VII of the Civil Rights Act of 1964 (prohibiting sex discrimination in employment) when they terminated employees for being gay or transgender. Writing for the Court, Justice Gorsuch reasoned that sexual orientation and "transgender status are inextricably bound up with sex…because to discriminate on these grounds requires an employer to intentionally treat individual employees differently because of their sex."[21] Its analysis was straightforward: the Court applied a "simple test" that concluded that if one were to change the sex of each employee, they would not have been fired.[22]

Thus, *Bostock* clarified that where the law requires that people be treated the same way, regardless of their sex, they must also be treated the same way regardless of their sexual orientation or gender identity. But the case stopped short of deciding how the law applies to gender identity discrimination when sex distinctions are *permitted*, as they are in athletics under Title IX.

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[19] In a September 1975 memo to chief state school officers, superintendents of local education agencies, and college and university presidents, HEW explained that "[c]ontact sports and sports for which teams are chosen by competition may be offered either separately or on a unitary basis." U.S. Dep't of Health, Educ. & Welfare, Office for Civ. Rts., Elimination of Sex Discrimination in Athletic Programs: Memorandum to Chief State School Officers, Superintendents of Local Educational Agencies and College and University Presidents, 6 (Sept. 1975), https://files.eric.ed.gov/fulltext/ED119583.pdf. And a June 1975 Fact Sheet articulated Title IX's application to, and goals for, sex-separate teams: "Where selection is based on competitive skill or the activity involved is a contact sport, athletics may be provided through separate teams for males and females or through a single team open to both sexes. If separate teams are offered, a recipient institution may not discriminate on the basis of sex in provision of necessary equipment or supplies, or in any other way, but equal aggregate expenditures are not required. The goal of the final regulation in the area of athletics is to secure equal opportunity for males and females while allowing schools and colleges flexibility in determining how best to provide such opportunity." U.S. Dep't of Health, Educ. & Welfare, Title IX—Civil Rights: HEW Fact Sheet, 7 (June 1975), https://files.eric.ed.gov/fulltext/ED108299.pdf.

[20] 34 C.F.R. § 106.41(b).

[21] *Bostock v. Clayton Cty.*, 590 U.S. 644, 660–61 (2020).

[22] *Id.* at 664.

II. Background on the *West Virginia v. B.P.J.* and *Little v. Hecox* Cases

West Virginia v. B.P.J. arose out of the experiences of Becky Pepper-Jackson (B.P.J.), a fifteen-year-old high school student, track and field athlete, and transgender girl from West Virginia.[23] Beginning in 2016, West Virginia permitted trans students to compete in athletics consistent with their gender identity on a case-by-case basis if their schools "determined that 'fair competition' would not be impacted by the student[s'] participation."[24] But in 2021, when Pepper-Jackson was eleven years old, the state enacted a law excluding all trans girls and women from secondary and collegiate teams designated for girls and women.[25]

In the five years since, Pepper-Jackson is the only transgender girl in West Virginia who has publicly sought to participate in girls' sports.[26] Her mother, Heather Jackson, sued the state on her behalf, asserting that excluding her daughter—despite the fact that she was receiving gender-affirming care that included puberty blockers and hormone replacement therapy—constituted sex discrimination under Title IX and the EPC.[27] The family secured a preliminary injunction against West Virginia in June 2021 that prevented the state from implementing the ban against Pepper-Jackson while the case proceeded but allowed it to be enforced against other trans girls and women.[28] However, in January 2023, the same federal district judge issued a final opinion in the state's favor.[29]

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[23] Becky, who has identified herself publicly after first filing her lawsuit under her initials, began identifying as a girl at the age of three and takes medicine to prevent male puberty as well as estrogen therapy. John Raby, Transgender High School Athlete Focuses on What May Be Her Last Track Season as Supreme Court Ruling Looms, Associated Press (Apr. 20, 2026), https://www.12onyourside.com/2026/04/20/transgender-high-school-athlete-focuses-what-may-be-her-last-track-season-supreme-court-ruling-looms/.

[24] In her dissenting opinion, Justice Sotomayor discussed the details of this case-by-case analysis, noting that an opposing school could contest a specific student's participation by appealing the determination to the West Virginia Secondary Schools Athletic Commission's board of directors. The board would then assess whether allowing the student to play "'would adversely affect competitive equity or [the] safety of teammates or opposing players,'" considering the student's "'age,'" "'athletic experience,'" "'strength, size, and speed,'" as well as "'the nature of the sport'" and "'the degree to which fair competition among high school teams would be impacted.'" *B.P.J.*, slip op. at 3 (Sotomayor, J., concurring in the judgment in part and dissenting in part).

[25] HB 3293 is known as the "Save Women's Sports Act." W. Va. Code § 18-2-25d (2021), https://www.wvlegislature.gov/bill_status/bills_text.cfm?billdoc=HB3293%20SUB%20ENR.htm&yr=2021&sesstype=RS&i=3293.

[26] *B.P.J.*, slip op. at 2 (Sotomayor, J.).

[27] Title IX provides that "no person…shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a). Title IX applies to all education programs of a recipient of federal financial assistance. This includes all operations of a school district or IHE.

[28] *B.P.J. v. W. Va. State Bd. of Educ.*, No. 2:21-cv-00316, 2021 WL 3081883, at *1 (S.D. W. Va. July 21, 2021). The 4th Circuit would go on to emphasize the narrowness of Pepper-Jackson's Title IX claim, writing that "whether other transgender girls undergo different 'medical intervention[s]' that prevent them from being 'similarly situated' to cisgender girls for purposes of participating in sports…is irrelevant to B.P.J.'s individual case. B.P.J. has shown that applying the Act to her would treat her worse than people to whom she is similarly situated, deprive her of any meaningful athletic opportunities, and do so on the basis of sex. That is all Title IX requires." *B.P.J. v. W. Va. State Bd. of Educ.*, 98 F.4th 542, 565 (4th Cir. 2024).

[29] *B.P.J. v. W. Va. State Bd. of Educ.*, 649 F. Supp. 3d 220 (S.D. W. Va. 2023).

In April 2024, the U.S. Court of Appeals for the 4th Circuit reversed this decision on appeal, holding that West Virginia's law violates Title IX by discriminating against Pepper-Jackson on the basis of sex.[30] Notably, the 4th Circuit did not reach a final decision on Pepper-Jackson's claims under the EPC, concluding that there remained a "genuine dispute of material fact" about whether "even without undergoing Tanner 2 stage puberty,...people whose sex is assigned as male at birth enjoy a meaningful competitive athletic advantage over cisgender girls."[31] Because this aspect of her challenge remained unresolved, the 4th Circuit rejected the lower court's summary judgment in favor of West Virginia. This factual question had still not been answered when the Supreme Court agreed to hear the case.

Little v. Hecox was originally brought by Lindsay Hecox, a student at Boise State University, track and cross-country athlete, and transgender woman from Idaho.[32] In 2020, Idaho passed its own law categorically excluding transgender girls and women from elementary through collegiate athletics that align with their gender identity as opposed to their sex assigned at birth.[33] Hecox challenged the law on the basis that it violated the EPC. (She did not make an argument under Title IX.) In August 2020, a federal district court issued a temporary restraining order in Hecox's favor that prevented Idaho from implementing the law against any trans student-athlete in the state.

The U.S. Court of Appeals for the 9th Circuit agreed on appeal, concluding that Idaho's law discriminates based on transgender status—and, by extension on the basis of sex—in violation of the EPC because the state law likely would not survive the heightened scrutiny applied under the EPC to distinctions drawn by the government on the basis of sex.[34] The court wrote that "the Act's sweeping prohibition on transgender female athletes in Idaho—encompassing all students, regardless of whether they have gone through puberty or hormone therapy, without any evidence of transgender athletes displacing female athletes in Idaho, and enforced through a mechanism that subjects all participants in female athletics to the threat of an invasive physical examination—is likely too unrelated to the State's legitimate objectives" to overcome a constitutional challenge.[35]

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[30] The 4th Circuit built on its own precedent in *Grimm v. Gloucester County School Board*, 972 F.3d 586 (4th Cir. 2020), which recognized a trans boy's right to use the male bathroom in his high school, writing, "this Court has already held that discrimination based on gender identity is discrimination 'on the basis of sex' under Title IX…and this Act discriminates based on gender identity…. The Act also discriminates based on sex assigned at birth by forbidding transgender girls—but not transgender boys—from participating in teams consistent with their gender identity. The Act thus goes beyond even what this Court concluded was impermissible in *Grimm*: Under this Act, a transgender boy like Gavin Grimm may play on boys teams but a transgender girl like B.P.J. may not play on girls teams." *B.P.J.*, 98 F.4th at 563 (4th Cir. 2024).

[31] *B.P.J.*, 98 F.4th at 561.

[32] While at Boise State, Hecox, who has also identified herself publicly, played club sports after failing to make the NCAA teams. In 2025, she made the decision to stop playing sports in Idaho for personal reasons and dismissed her claims against Idaho in district court. In September 2025, she requested that the U.S. Supreme Court dismiss her case on the basis that it was moot but the state opposed her motion. However, the Court indicated it would not address Hecox's motion until after oral arguments. In its ultimate decision, the majority of the Court declined to dismiss her case as moot because she remains an enrolled student at Boise State. *B.P.J.*, slip op. at 14 n.3.

[33] HB 500 is known as the "Fairness in Women's Sports Act." Idaho Code §§ 33-6201 to -6206 (2020), https://legiscan.com/ID/text/H0500/id/2173429.

[34] *Hecox v. Little*, Nos. 20-35813 & 20-35815, slip op. at __, 37 (9th Cir. June 7, 2024), https://cdn.ca9.uscourts.gov/datastore/opinions/2024/06/07/20-35813.pdf.

[35] *Id.* at 43.

On January 13, 2026, the Supreme Court heard oral arguments in both cases (consolidated and referred to going forward solely as *West Virginia v. B.P.J.*, shortened further to *B.P.J.* below).[36] Pepper-Jackson did not challenge Title IX's underlying framework that allows for sex-separate athletics and did not argue that "sex" under Title IX includes gender identity. Her Title IX argument asserted that the West Virginia ban violates Title IX's prohibition on sex discrimination because it does not provide allowances for those transgender women and girls receiving certain types of gender-affirming care. Additionally, both Pepper-Jackson and Hecox argued that their respective states' laws impose sex-based classifications that violate the EPC.

III. The Supreme Court's Holdings Under Title IX and the Equal Protection Clause

The Supreme Court's narrow decision in *B.P.J.* focused exclusively on the legality of state laws limiting girls' and women's athletic teams based on sex assigned at birth.[37] The 6–3 majority opinion, authored by Justice Kavanaugh, held that such laws are consistent with both Title IX and the Equal Protection Clause. Three justices—Sotomayor, Kagan, and Jackson—agreed with the majority as to Title IX but disagreed, in a dissenting opinion written by Justice Sotomayor, with the majority's application of the EPC to the West Virginia and Idaho laws.[38]

As noted above and discussed in greater detail in Section IV below, the majority opinion expressly declined to resolve several broader questions concerning the rights of transgender students under federal law, leaving many issues to future litigation and the judgment of state and institutional leaders.

A. The Court Held that Title IX Permits States to Limit Girls' and Women's Teams Based on Sex Assigned at Birth

All nine justices concluded that Title IX does not require states or educational institutions to permit transgender girls and women to participate on girls' and women's athletic teams. The Court interpreted Title IX as permitting states to distinguish among athletes based on "biological sex" in the context of sex-separate sports, writing that "[t]he term 'sex' in the 1972 Title IX statute, the 1974 Javits Amendment, and the 1975 Title IX regulations cannot plausibly be interpreted to refer to anything other than biological sex."[39]

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[36] *Oral Argument* at __, *West Virginia v. B.P.J.*, No. 24-43 (U.S. argued Jan. 13, 2026), https://www.supremecourt.gov/oral_arguments/audio/2025/24-38.

[37] Both the West Virginia and Idaho laws restrict team participation based on "biological sex." However, as noted in Section IV of this resource below, the Court focuses exclusively on trans girls and women athletes and does not address legal questions related to applying these bans to trans boys and men or nonbinary people.

[38] Regarding their votes about the Title IX issue, the dissent emphasized that Justices Sotomayor, Kagan, and Jackson concurred in that judgment in part because "B.P.J. does not dispute that, for the purposes of this case, 'sex' in Title IX means 'biological sex,' or sex identified at birth. Nor does she dispute that "sex" is used in the same way in the 1974 Javits Amendment and its accompanying regulations, which expressly authorize, but do not require, sex-separated sports." *B.P.J.*, slip op. at 30 (Sotomayor, J.) (internal citations omitted).

[39] *B.P.J.*, slip op. at 10. Justice Jackson, in a solo dissent, accepted that B.P.J. did not contest that "sex" in the text of Title IX is limited to sex assigned at birth. However, she went on to describe the Court's past precedent around sex stereotyping—the practice of making assumptions about how a person should should look, behave, or live based on their sex—to conclude that "Title IX makes room for individuals to live in the gender they choose; it cares not

To reach this conclusion, the majority opinion relied heavily on Title IX's allowance for schools to maintain sex-separate teams where selection is based upon competitive skill or the activity is a contact sport. Reasoning that Congress's authorization of sex-separate athletic teams reflects an understanding that physiological differences between males and females may be relevant to athletic competition, the opinion concluded that Title IX permits states to define eligibility for girls' and women's teams by reference to biological sex.

The majority further refused to recognize an exception for transgender women and girls in Title IX's requirements as this subgroup is not addressed in the texts of Title IX, the Javits Amendment, or the Title IX regulations. B.P.J. made a number of arguments in favor of an exception, among them the assertion that a blanket ban does not meet the Javits Amendment's "reasonableness" requirement. On that point, the decision referenced the "inherent physical differences between the sexes" to conclude that the state laws at issue are, in fact, reasonable (without addressing the particular considerations motivating an exception for transgender women and girls receiving gender-affirming treatment that has a direct bearing on these "differences").

The *B.P.J.* majority also expressly rejected the argument that *Bostock* should control the outcome in these athletics cases. In concluding that Title VII employment discrimination and Title IX's regulation of sex separate athletics raised "very different" legal and factual questions, the Court ruled that *Bostock* was "not relevant" to the issues presented.[40] "Sports," the Court wrote, "are different from, say, a typical employment or educational opportunity where equal protection often may require that the government generally treat an individual *without regard to the individual's sex.*"[41]

As a result, under the Court's ruling, state laws that categorically exclude transgender girls and women from female sports teams, including those who have undergone puberty suppression and/or hormone therapy, do not violate Title IX's prohibition on discrimination "on the basis of sex."[42]

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just about sex assigned at birth but also about individuals' ability to match (or not) their gender presentation to their gender identity." *B.P.J.*, slip op. at 3 (Jackson, J., concurring in the judgment in part and dissenting in part). In her principal dissent, Justice Sotomayor also argued that "[t]here was no reason" in this case, given B.P.J's arguments, for the majority "to go that far." *B.P.J.*, slip op. at 31 n.14 (Sotomayor, J.).

[40] Although Justice Gorsuch, *Bostock*'s original author, provided a gloss on that decision in his *B.P.J.* concurrence, *B.P.J.*, slip op. at 2–4 (Gorsuch, J., concurring), the majority's opinion in *B.P.J.* effectively affirmed *Bostock*'s holding that Title VII prohibits sex-based discrimination against gay and transgender employees, *B.P.J.*, slip op. at 13.

[41] *B.P.J.*, slip op. at 19 (emphasis in original). As a result of this distinction, nondiscrimination protections for transgender people may be clearer in some arenas than others under federal law. When and how the Supreme Court will resolve these open questions remains a matter for future litigation.

[42] The majority further rejects Pepper-Jackson's argument that the state's policy effectively excludes her from any competitive sports teams. "While it is an unhappy occasion whenever a student who wants to play school sports cannot do so…the Title IX regulations guarantee 'equal athletic opportunity.' The regulations cannot and do not guarantee every student a spot on a team's roster." *Id*. at 13.

B. The Court Concluded that the Challenged Laws Do Not Violate the Equal Protection Clause

Despite all nine justices agreeing that the state laws do not violate Title IX, a smaller 6–3 majority rejected the plaintiffs' equal protection challenges. Under longstanding precedent, sex-based classifications by the government may be constitutional only when the classification is "substantially related" to achieving an "important" government objective, an analysis characterized as intermediate scrutiny.[43] The majority first identified that the states' purported interests in the safety of cisgender women and girls and in competitive fairness qualify as important objectives for the purpose of this equal protection analysis. Categorically restricting participation based on sex assigned at birth, the Court further concluded, is substantially related to those interests. Accordingly, the Court held that the state laws survive constitutional review under the EPC.

Both the majority and the dissenting opinions agree that sex-separate athletics are permissible under the EPC (though the dissent took a far more skeptical approach to the states' particular claims around their interests in cisgender athletes' safety and competitive fairness). However, the opinions contend differently with whether the states' categorical bans are "substantially related" to those interests because they also exclude the "relatively small subclass" of transgender girls and women who "have taken puberty blockers or hormones" and seek to participate in girls' and women's sports.[44] In response to what it characterizes as an "as-applied" challenge to a sex-based classification, the majority noted that a sizable subclass that does not fit the government's classification might indicate that the classification is not sufficiently related to the important government interest enough to satisfy intermediate scrutiny. "But," the opinion continued, "as long as the relationship is sufficient as a general matter, the State is not *constitutionally* required to grant individualized exemptions to specific athletes or subclasses."[45] Under that framing of Pepper-Jackson's and Hecox's arguments, the majority held that the state bans do not amount to sex discrimination against them individually or against trans athletes as a subclass.[46]

In contrast, writing in dissent, Justice Sotomayor drew attention to the Court's past treatment of such subclasses in EPC cases, observing that existing precedent does not require there to be an "especially large subclass" to prove that a sex-based classification is not substantially related to an important objective. For example, pointing to the Court's opinion striking down the male-only admissions policy for Virginia Military Institute (VMI), Justice Sotomayor noted that a sex-based classification rooted in generalizations about the interests and physical abilities of *most* women did not justify excluding *all* women. In that case, the Court concluded that even a small subclass of women were entitled to a remedy under the EPC.[47]

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[43] *See United States v. Virginia*, 518 U. S. 515, 532–533 (1996); *Miss. Univ. for Women v. Hogan*, 458 U. S. 718, 724–25 (1982).

[44] *B.P.J.*, slip op. at 17.

[45] *Id.* at 21 (emphasis in original).

[46] Despite variation in the attributes and abilities of athletes regardless of their sex assigned at birth, the majority noted, "[s]tates are not required to conduct an individual by individual comparison of the physical and athletic capabilities…in order to satisfy intermediate scrutiny." *Id.* at 20.

[47] *B.P.J.*, slip op. at 14–15 (Sotomayor, J.). In a 7–1 decision, the Court ruled against Virginia because the state could not provide an "exceedingly persuasive justification" for VMI's male-only admission policy to satisfy intermediate scrutiny. *United States v. Virginia*, 518 U.S. 515, 545 (1996).

In the context of *B.P.J.*, Justice Sotomayor wrote, it is "inconsistent with intermediate scrutiny [for the majority] to dismiss out of hand the existence of classification errors that may show the State has in fact rested on exactly the kind of overbroad generalizations based on sex the Equal Protection Clause is supposed to root out."[48] As a result, the dissent would have sent the plaintiffs' EPC claims back to the lower courts for additional fact-finding to resolve the still-pending question of the accuracy of Pepper-Jackson's claim that trans girls and women who received gender-affirming care that prevented them from undergoing male puberty do not possess a competitive advantage over or pose a safety risk to cisgender girls and women.[49]

IV. Several Important Issues Unresolved by the Court

As noted above, the Court did not decide whether Title IX or the EPC *requires* states to limit girls' and women's sports based on sex assigned at birth. Rather, it holds only that states *may* adopt such policies consistent with federal law.

The Court acknowledged that legal challenges about *allowing* transgender student athletes to participate in sports consistent with their gender identity are still pending in lower courts. But the Court also emphasized that establishing policies around transgender athletes remains principally within the authority of legislatures and educational institutions. The majority observed that "the legislatures and the schools are better equipped—and, under the Constitution, are more appropriate entities—to assess the competing medical and scientific considerations and draw appropriate lines."[50]

In addition, the majority opinion did not answer other open questions in a number of areas, any one of which might come before the Court in future cases under Title IX or the EPC:

- The Court expressly confined its analysis to athletics and did not address transgender students' access to restrooms, locker rooms, overnight accommodations, or other sex-separate educational facilities or programs. Those questions remain governed by federal court decisions that have reached different—and opposing—conclusions.[51]

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[48] *B.P.J.*, slip op. at 21 (Sotomayor, J.). For instance, despite their focus on physical attributes, the state laws do not address concerns about "fairness" or "safety" raised by cisgender female athletes who are outliers in height and relative strength nor do they contend with instances where an athlete may be at a disadvantage because of these attributes (such as in gymnastics, diving, and horseback riding—sports in which small stature can present an advantage).

[49] Justice Sotomayor concluded by saying that "[I]n the end, to the Court, the facts do not matter, even though the consequences are serious. The ban is absolute, so B.P. J. cannot practice on girls' teams, even if she would not take anyone's spot in an eventual competition, even if everyone who tries out for the team makes it, and even if having the chance to participate could aid immensely in treating B.P.J.'s gender dysphoria. Sports, of course, are often zero sum, but the law need not and should not be. " *Id*. at 33.

[50] *B.P.J.*, slip op. at 22. This language may forecast that the Court believes that federal law allows for variation in state and institutional policies around transgender girls' and women's participation in school athletics.

[51] The 4th and 7th Circuits have held that policies excluding trans students from restrooms and other facilities aligned with their gender identity violate federal law. *See Grimm v. Gloucester County School Board*, 972 F.3d 586 (4th Cir. 2020) (discussed above in footnote 30); *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034 (7th Cir. 2017). The 11th Circuit has held that such policies are permissible. *See Adams v. Sch. Bd. of St. Johns*

- The Court did not address whether transgender boys and men may participate on male teams.[52]
- The Court analyzed the challenged state laws as drawing distinctions based on biological sex and concluded that they satisfied the intermediate scrutiny standard applied to classifications by sex.[53] This allowed the Court to sidestep deciding what level of constitutional scrutiny should apply to classifications based on transgender status itself. Portions of the opinion suggest that the majority is reluctant to recognize transgender status as another quasi-suspect classification meriting intermediate scrutiny. But the majority ultimately found it unnecessary to decide whether classifications based on transgender status should be reviewed under rational basis scrutiny, intermediate scrutiny, or another standard.
- The majority asserted that "as-applied" EPC challenges are "not entertained" under rational basis or intermediate scrutiny.[54] Pointing to multiple past precedents, the dissenting justices disagree, leaving it unclear how future litigants might challenge the "fit" between the government's stated interest(s) and its classification.[55]
- Similarly, in the VMI case, the Court required the government to present an "exceedingly persuasive justification" for restricting admissions on a single-sex basis.[56] The majority in *B.P.J.* did not mention that standard (instead referring to an "important" government objective[57]), which creates ambiguity as to whether it remains an aspect of intermediate scrutiny going forward.

Cnty., 57 F.4th 791 (11th Cir. 2022). At the same time, the Trump Administration has aggressively enforced its position that such exclusionary policies are not only permissible but required under Title IX. *See, e.g.*, U.S. Dep't of Educ., U.S. Department of Education Marks End of Second Annual Title IX Month with Major Enforcement Recap (July 1, 2026), https://www.ed.gov/about/news/press-release/us-department-of-education-marks-end-of-second-annual-title-ix-month-major-enforcement-recap.

[52] *B.P.J.*, slip op. at 3 n.1.

[53] The Court drew on its recent decision in *United States v. Skrmetti*, 605 U.S. 495 (2025), in which a 6–3 majority held that a Tennessee law restricting minors' access to gender-affirming care did not violate the EPC because it focused on medical regulation (meriting rational basis review) rather than utilizing a classification based on sex or transgender status. The Court in that case declined to establish a uniform national rule and instead left states with substantial authority to adopt differing policy approaches. Similarly, the *B.P.J.* majority considered West Virginia's and Idaho's laws as classifying athletes "based on biological sex" rather than on the basis of their gender identity or transgender status. Justice Kavanaugh contrasted these restrictions with a hypothetical policy that prohibits transgender athletes' participation in co-ed athletics saying "that would be a distinct transgender classification and, unlike today's cases, would presumably not be analyzed and justified as a classification based on biological sex." *B.P.J.*, slip op. at 23.

[54] *B.P.J.*, slip op. at 21 n.5.

[55] *B.P.J.*, slip op. at 15 (Sotomayor, J.).

[56] *Virginia*, 518 U.S. at 545.

[57] *B.P.J.*, slip op. at 15.

V. Implications for States and Educational Institutions

Recent polling shows that roughly 3.3% young people ages 13–17 and 2.7% of young people ages 18–24 identify as transgender.[58] And for various reasons, transgender students participate in athletics at significantly lower rates than their cisgender peers.[59] Out of more than 500,000 NCAA athletes, for example, fewer than 10 identify as transgender.[60] Yet, between 2020 and 2024, 27 states (including Idaho and West Virginia) passed laws prohibiting transgender student athletes from participating in sports aligned with their gender identity.[61] Most, but not all, of these bans apply to elementary through college-level sports. Common components include:

- Requiring elementary, secondary, and/or postsecondary schools in the state to explicitly designate teams as "male," "female," or "coed" based on "biological sex";
- Prohibiting student athletes assigned male at birth from participating in female sports and teams regardless of gender identity;
- Providing a cause of action for individuals who feel they have been harmed by a trans woman or girl's participation in female sports; and
- Attempting to protect compliant schools from adverse actions from a governmental entity, licensing or accrediting organization, or athletic association or organization that maintains a different policy.

Many of these state laws tie an athlete's "biological sex" to their birth certificate; a smaller number codify procedures for addressing a challenge raised to an individual's participation in a female sport.[62]

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[58] Reliable data is not available on youth ages 12 and under that identify as transgender. Williams Institute, *How Many Adults and Youth Identify as Transgender in the United States?* (Aug. 2025), https://williamsinstitute.law.ucla.edu/publications/trans-adults-united-states/.

[59] Among other reasons given for lower participation rates, LGBTQ+ youth reported high levels of harassment on playing fields and in locker rooms with low levels of intervention. Trans and nonbinary students reported participating in sports at even lower rates than their cisgender LGB peers. The Trevor Project, *LGBTQ Youth Sports Participation* (June 2020), https://www.thetrevorproject.org/wp-content/uploads/2021/08/June-2020-Brief-LGBTQ-Youth-Sports-Participation-Research-Brief.pdf.

[60] Brooke Migdon, *NCAA President Says There Are "Less Than 10" Transgender Athletes in College Sports*, The Hill (Dec. 18, 2024), https://thehill.com/homenews/lgbtq/5046662-ncaa-president-transgender-athletes-college-sports/.

[61] In addition to Idaho and West Virginia, those states include: Alabama, Arizona, Arkansas, Florida, Georgia, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, and Wyoming. Movement Advancement Project, *Equality Maps: Bans on Transgender Youth Participation in Sports*, https://mapresearch.org/equality-map/bans-on-transgender-youth-participation-in-sports/ (last visited July 8, 2026).

[62] For example S.B. 2536, known as the "Mississippi Fairness Act," provides that "[i]f disputed, a student may establish his or her sex by presenting a signed physician's statement" attesting to the student's internal and external reproductive anatomy, their endogenously produced levels of testosterone, and genetic makeup. Opponents of this and similar laws note that student-athletes must submit to invasive and potentially costly

By contrast, as of May 2026, 23 states, five territories, and the District of Columbia allow trans athletes to play sports consistent with their gender identity.[63] Yet at least eight of those same states have implemented policies that limit transgender student athletes' participation.[64] For instance, the Wisconsin Interscholastic Athletic Association allows trans athletes assigned male at birth to practice with female teams but prohibits them from competing against other teams.[65] And in California, the California Interscholastic Federation recently piloted for the second year a policy requiring any trans medal recipient to share the podium with a cisgender competitor at the girls' state track and field championships.[66] Fewer than a dozen states allow trans athletes to compete in athletics consistent with their gender identity without additional restrictions.[67]

As a practical matter, *B.P.J.* preserves the existing state-by-state framework governing transgender student-athlete participation. School districts' and IHEs' compliance obligations will therefore continue to depend principally on state law and, where applicable, lower federal courts' decisions unless and until Congress or the Supreme Court provides additional guidance. Despite this nuance, high-ranking members of the Trump Administration have asserted that the *B.P.J.* decision effectively bars states from maintaining laws and policies that permit transgender athletes to compete based on their gender identity.[68] This claim is an inaccurate reading of the Court's opinion, but it likely indicates that the Administration will continue to bring federal civil rights investigations into school districts, colleges, and universities that allow transgender students to participate in athletics consistent with their gender identity.

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physical examinations and medical testing to satisfy this requirement. 2021 Leg., Reg. Sess. (Miss. 2021), https://legiscan.com/MS/text/SB2536/id/2271648.

[63] Notably, Alaska and Virginia have not passed statewide bans into law but prohibit participation under regulation or policy. As of this writing, guidance issued to school districts under former governor Glenn Younkin has been removed from the Virginia Department of Education's website but has not been formally rescinded. Va. Dep't of Educ., *Model Policies on Ensuring Privacy, Dignity, and Respect for All Students and Parents in Virginia's Public Schools* (2023), https://www.doe.virginia.gov/home/showpublisheddocument/46509/638252918535370000.

[64] GLSEN, Trans and Nonbinary Athletic Inclusion Policies, GLSEN Navigator, https://maps.glsen.org/trans-and-nonbinary-athletic-inclusion-policies/.

[65] Wis. Interscholastic Athletic Ass'n, *Participation Policy for Transgender Student-Athletes* (2024), https://www.wiaawi.org/Portals/0/PDF/Eligibility/WIAAtransgenderpolicy.pdf.

[66] Katie DeBenedetti, *California Quietly Brings Back Controversial Scoring Policy for Trans Student Athletes*, KQED (May 19, 2026), https://www.kqed.org/news/12084083/california-quietly-brings-back-controversial-scoring-policy-for-trans-student-athletes.

[67] Some states, such as Hawaii, have no laws or athletic association policies in place that specifically address transgender athletes. The Hawaii Department of Education has issued guidance on support for transgender students, including access to restrooms and locker rooms consistent with their gender identity, but it has remained silent on athletics. *See* Haw. Dep't of Educ., *Guidance on Supports for Transgender Students*, 10 (2016), https://hawaiipublicschools.org/wp-content/uploads/Guidance-TransgenderStudents-Supports.pdf.

[68] President Trump announced a "BIG WIN: The United States Supreme Court just RULED AGAINST MEN PLAYING IN WOMEN'S SPORTS." Donald J. Trump (@realDonaldTrump), Truth Social (June 30, 2026), https://truthsocial.com/@realDonaldTrump/posts/116839596876971289. And Assistant Attorney General for Civil Rights Harmeet Dhillon posted, "Thanks to the SCOTUS ruling, we have new tools in [the Department of Justice] cases in MN & CA re boys in girls' sports. It is ILLEGAL to force girls to compete against boys and we [in the Civil Rights Division] are on it!" Harmeet Dhillon (@AAGDhillon), X (formerly Twitter) (Jul. 1, 2026), https://x.com/AAGDhillon/status/2072325200901816442).

The Court's decision should not be understood as requiring schools to retreat from broader efforts to ensure that every student can learn in a safe, welcoming, and nondiscriminatory educational environment. States and school districts retain substantial authority to adopt policies that promote equal educational opportunity for all students—including transgender students—provided those policies comply with applicable federal and state law.

Furthermore, nothing in the Court's opinion calls into question legal obligations and longstanding best practices such as:

- Maintaining comprehensive anti-bullying and anti-harassment policies that protect students from discrimination based on all characteristics protected under federal and state law, including protecting transgender students from sex-based harassment;[69]
- Ensuring that every student has meaningful access to educational programs, extracurricular activities, counseling services, and academic supports;
- Providing staff with training on their obligations to prevent discrimination, respond to harassment, and foster respectful learning environments;
- Developing policies that treat students with dignity and respect while balancing privacy, safety, and the requirements of applicable laws; and
- Continuing efforts to improve school climate, student belonging, and family engagement through programs that are open to all students and designed to improve educational outcomes.

Many of these practices are independently required or strongly supported by a mix of existing federal, state, and local civil rights statutes. They are also consistent with schools' longstanding responsibility to provide learning environments in which all students–including transgender students–can learn free from discrimination.

[69] Nothing in the *B.P.J.* opinion suggests that schools may ignore harassment directed at transgender students or any other protected group. Schools remain subject to their existing obligations to address discriminatory harassment that denies students equal access to educational opportunities under applicable federal and state law.