
LEGAL UPDATE

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UNITED STATES SUPREME COURT DECISION — ELIGIBILITY FOR FEMALE SPORTS BASED ON BIOLOGICAL SEX

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West Virginia v. B.P.J.

Decided June 30, 2026

No. 24-43

www.supremecourt.gov/opinions/25pdf/24-43_2b35.pdf

Factual and Procedural Background. B.P.J. was born a male but identifies as female. In third-grade, B.P.J. socially transitioned and adopted a new name. At roughly nine years old, B.P.J. was diagnosed with gender dysphoria. A year after the diagnosis, B.P.J. began receiving puberty-delaying treatment to prevent an endogenous male puberty. Two years later, B.P.J. began to take a form of estrogen to facilitate a typical female hormonal puberty. In 2021, West Virginia passed the Save Women's Sports Act, which prohibits male students from playing on sports teams designated for females. Under the Act, "male" means "an individual whose biological sex determined at birth is male" Further, "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."

B.P.J.'s principal informed B.P.J.'s mother that B.P.J. would not be able to participate on the sixth-grade girls cross-country or track-and-field teams. B.P.J. sued State officials and agencies for alleged violations of Title IX of the federal Education Amendments of 1972 (Title IX) and the Equal Protection Clause of the Fourteenth Amendment. The district court granted summary judgment for the State on the claims. B.P.J. appealed, and the United States Court of Appeals for the Fourth Circuit reversed the district court's grant of summary judgment on the Title IX claim and remanded for further fact finding on the Equal Protection claim. The State filed a petition for a writ of certiorari with the United States Supreme Court (Court), which the Court granted.

Issue. Whether Title IX or the Equal Protection Clause prohibits schools from determining eligibility for women's and girls' sports based on biological sex.

Holding. The Court held that neither Title IX nor the Equal Protection Clause prohibits schools from determining eligibility for women's and girls' sports based on biological sex.

Analysis. Title IX provides that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity" that receives federal funding. The Javits Amendment directed the then-Department of Health,

Education, and Welfare (HEW) to issue regulations implementing the provisions of Title IX and specified that these regulations “shall include with respect to” “athletic activities reasonable provisions considering the nature of particular sports.” In response to that directive, in 1975, HEW adopted regulations that required schools to provide “equal athletic opportunity for members of both sexes” and authorized “separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport.” 34 C.F.R. §§106.41(b), (c) (1975). The Court determined that the text of Title IX allows the State to limit women’s and girls’ sports teams to biological females because the term “sex” in the Title IX statute, the Javits Amendment, and the 1975 Title IX regulations “cannot plausibly be interpreted to refer to anything other than biological sex” because the ordinary meaning of “sex” at that time “was biological sex and not gender identity”

B.P.J. argued that the text of the Javits Amendment directing HEW to adopt “reasonable provisions considering the nature of particular sports” means that the regulations cannot be “reasonable”, and are unlawful, if the regulations authorize a school to limit women’s and girls’ sports teams to biological females. The Court disagreed, stating that separate sports teams are reasonable because “[g]iven the inherent physical differences between the sexes, allowing only biological females to play on women’s and girls’ teams can reduce the risk of physical injury and ensure fair competition.” B.P.J. also argued that the school’s policy prohibiting B.P.J. from playing sports violated Title IX because it effectively excludes B.P.J. from any competitive sports teams at the school due to receiving puberty-delaying treatment and taking a form of estrogen. The Court rejected this argument, stating that the Title IX regulations guarantee “equal athletic opportunity,” not a spot on a team’s roster. In addition, B.P.J. argued that Title VII of the Civil Rights Act of 1964 (Title VII), and *Bostock v. Clayton County*, 590 U.S. 644 (2020), support the idea that Title IX requires schools to allow biological males on female teams. The Court rejected this argument as well, indicating that neither Title VII nor *Bostock* were relevant in the context of this case.

The Equal Protection Clause provides that no state shall deny “to any person within its jurisdiction the equal protection of the laws.” Because West Virginia’s Save Women’s Sports Act limits women’s and girls’ sports to biological females, the Act makes a sex-based classification that triggers application of the intermediate scrutiny standard. Under this standard, sex-based classifications are permissible when the classification at issue is “substantially related” to achieving an “important” government objective. *United States v. Skrametti*, 605 U.S. 495, 510 (2025). The Court determined that the Equal Protection Clause does not prohibit schools from determining eligibility for women’s and girls’ sports based on biological sex. The objectives pursued by the Act, preventing serious physical injuries to female athletes and preserving opportunities for female athletes to compete and succeed, are important government objectives. This is because of the “inherent physical advantages in sports” that men generally have and the zero-sum nature of sports. Further, limiting women’s and girls’ sports to biological females is substantially related to those objectives.

B.P.J. argued that the State had not established a substantial relationship between the objectives related to safety and competitive fairness and limiting women’s and girls’ sports to biological females because the objectives do not justify excluding *all* biological males from such participation, “including those who identify as female and have taken puberty blockers or hormones” The Court rejected this argument because the Court’s prior cases allow for general classifications like these so long as “there is at least a substantial relationship between the classification and the State’s” objectives. Under the intermediate scrutiny standard, “the validity of the regulation depends on the relation it bears to the overall problem the government seeks to correct, not on the extent to which it furthers the government’s interest in an individual case.” *Ward v. Rock Against Racism*, 491 U.S. 781, 801 (1989). B.P.J. also argued that the State’s sex-based classification is not permissible when applied to biological males who identify as female and have taken puberty blockers or hormones. In other words, according to B.P.J., the State’s objectives must justify the Save Women’s Sports Act’s application to a specific individual or subclass. The Court rejected this argument, stating that “as long as the relationship is sufficient as a general matter, the State is not constitutionally required to grant individualized exceptions to specific athletes or subclasses.” Additionally, B.P.J. argued that the Act unconstitutionally discriminates against transgender individuals. The Court rejected this argument, asserting that the Act does not classify based on transgender status, it classifies on the basis of biological sex.

Concurrences. Justice Thomas wrote a concurring opinion to argue that transgender status is not a suspect class that requires the Court to apply any heightened scrutiny under the Equal Protection Clause because, according to Justice Thomas, “[t]he class of people who claim transgender status could more accurately be described as people who are experiencing ‘gender dysphoria,’ which is not a ‘discrete group.’”

In another concurring opinion, Justice Gorsuch analyzed this case through the lens of Congress’ power under the Spending Clause and argued that nothing in Title IX alerts funding recipients that they may not

restrict school-sponsored sports teams to biological women or girls. Justice Gorsuch emphasized that the Court's holding in *Bostock* supports the Court's holding in this case.

Dissents. Justice Sotomayor, in a dissenting opinion joined by Justices Kagan and Jackson, argued that the Court should have affirmed the United States Court of Appeals for the Fourth Circuit's decision to remand this case for further fact finding on the Equal Protection claim. Justice Sotomayor's main argument focused on prior cases in which the Court had held that laws establishing a sex-based classification violated the Equal Protection Clause when there was an incongruity between the sex-based classification in general and the sex-based classification's application to a discrete subclass. According to Justice Sotomayor, in order to properly analyze this case under the Equal Protection Clause, the Court needs to know whether prohibiting transgender girls who have never experienced an endogenous puberty, and who receive gender-affirming treatment, from participating in women's and girls' sports actually furthers a state's objectives, preventing serious physical injuries to female athletes and preserving opportunities for female athletes to compete and succeed, or if those transgender girls are so similar to cisgender girls that such a ban does not further such objectives.

In another dissenting opinion, Justice Jackson asserted that the Court erred in determining that the term "sex" in Title IX "cannot plausibly be interpreted to refer to anything other than biological sex" because of the broad way in which the Court has construed discrimination under Title IX in the past. According to Justice Jackson, the Court should have left "open the possibility that Title IX's definition of 'sex' is more capacious."

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