



MECHANISMS FOR ADVANCING HEALTH EQUITY
Fact Sheet

Trends in Legal Challenges to Anti-Transgender Youth Sports Bans

Introduction


Beginning in March 2020 with Idaho's HB 500¹ states across the country have introduced and passed bills that prohibit or significantly limit participation by students who are transgender – especially female students – in school sports teams that align with their gender identity.² Curtailing participation in school sports restricts access not only to healthful activities, but also to the physical, psychological, and academic benefits associated with them. Involvement in school sports is linked to higher levels of self-esteem, lower levels of depression, greater school belonging, better grades, and higher educational and occupational aspirations.³ These benefits have the potential to offset the high rates of mental health issues⁴ such as depression, anxiety, and suicidal ideation experienced by students who are transgender, possibly due to minority stress caused by discrimination and oppression.⁵ Although these laws would permit a transgender student to participate in sports that do not align with their gender identity, requiring a girl who is transgender to participate in single-sex activities with boys can cause additional harm to her well-being, hinder her ability to transition, and sometimes even raise concerns for her physical safety.⁶

According to the Movement Advancement Project,⁷ as of November 20, 2023, twenty-four states had passed such bills. Of these laws, at least eight have been challenged in state or federal court on constitutional grounds. Conversely, there has been at least one lawsuit challenging a state law *protecting* transgender students' ability to participate in school sports.⁸

This fact sheet provides an overview of key trends in legal challenges to states' restriction of transgender students' participation in sports.

Methods

This fact sheet is based on lawsuits identified as of November 20, 2023, regardless of whether a decision had been issued at that time. We compiled a list of all states in which the legislature passed a bill banning or limiting the participation of students who are transgender, primarily using data published by the Movement Advancement Project. Then, for each state and accompanying law, we conducted searches on Westlaw and Google to identify cases challenging the law.⁹ Eight cases were identified based on this search. One state court case, *Barrett v. Montana*, was



eliminated from this review because the case's complaint is not available online.¹⁰ The remaining seven cases are included in this fact sheet. One case that is included, *A.M. v. Indianapolis Public Schools*,¹¹ was dismissed by stipulation of the parties based on mootness after a preliminary injunction was issued. Due to this dismissal, the court's decision granting a preliminary injunction has limited precedential value.¹² Nonetheless, we reviewed the complaint and the court's reasoning for the preliminary injunction.

We reviewed the complaint in each of the seven cases to determine which claims were being asserted. In the six cases where the court had issued a significant decision as of November 20, 2023 (all except *L.E. v. Lee*¹³), we reviewed the decision and related filings necessary to understand it. In the overview that follows, we describe legal theories alleged in plaintiffs' complaints. Where available, we describe court decisions and document the success or failure of plaintiffs' claims.

Overview of Legal Challenges to Anti-Transgender Youth Sports Bans¹⁴

There are three main categories of claims that have arisen so far, including challenges based on: (1) the Equal Protection¹⁵ and (2) the Due Process¹⁶ Clauses of the Fourteenth Amendment and (3) Title IX of the Education Amendments of 1972.¹⁷ Two less common but notable claims assert violations of constitutional protections against unreasonable search and seizure¹⁸ and violation of the Americans with Disabilities¹⁹ and the Rehabilitation²⁰ Acts. For six of the seven cases we reviewed, the bill was challenged on federal grounds; the seventh case, *Roe v. Utah HSAA*,²¹ involves challenges based on the Utah constitution.


Equal Protection

Included in all seven cases we reviewed, equal protection claims were the most common and the most effective challenges to anti-transgender youth sports ban laws. Of the seven cases, six complaints included federal Equal Protection claims, arguing that the sports ban laws violate the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution. The seventh case, *Roe v. Utah HSAA*,²² included a challenge based on the Utah Constitution's Uniform Operation of Laws provision, which the presiding court recognized as a state counterpart to the federal Equal Protection Clause. In general, plaintiffs asserted that the sports ban laws treat individuals differently based on sex or transgender identity, that distinctions based on sex or transgender identity are subject to intermediate scrutiny,²³ and that anti-transgender youth sports ban laws are not substantially related to legitimate governmental interests.

Of the six cases in which a court has issued a decision, three courts ruled in favor of the plaintiff based on Equal Protection grounds (*Hecox v. Little*,²⁴ *Roe v. Utah HSAA*,²⁵ and *Doe v. Horne*²⁶), two courts ruled in favor of the state (*BPJ v. WV State Board of Education*²⁷ and *D. N. v. DeSantis et al.*²⁸), and the final court did not discuss the claim because it ruled in favor of the plaintiff under a different claim (*A.M. v. Indianapolis Public Schools*²⁹).

For example, in *Hecox v. Little*,³⁰ a federal district court granted a preliminary injunction,^{30F}³¹ finding that the law likely constitutes discrimination based on transgender identity. The court found that Idaho's sports ban law is not necessary for ensuring equality and opportunities for female athletes because it is not clear that there are physiological differences between transgender and cisgender females. Finally, the court held that the law was likely unconstitutional because it places a significant burden on women and girls to prove their biological sex that is not required for boys and men. On appeal, the ninth circuit affirmed the district court's preliminary injunction.

Similarly, in *Roe v. Utah HSAA*,³² a state court cited the U.S. Supreme Court's 2020 decision in *Bostock v. Clayton County*³³ to decisively state that transgender identity is a sex-based classification subject to heightened scrutiny. The court concluded that the Utah sports ban law does not withstand heightened scrutiny because it does not further a



legitimate legislative purpose. The Court further found that the ban treats transgender girls less favorably than other girls because it categorically bans transgender girls from competing on sports teams aligned with their gender identity. The Court underscored that the law does not redress historical discrimination against women and girls in sports, in part because transgender girls have likewise been the subject of historical discrimination. Furthermore, transgender girls would not otherwise have a meaningful opportunity to play sports and make up a small minority that would not displace cisgender girls from participating in athletics.

In both cases where the Equal Protection claims were dismissed, *BPJ v. WV State Board of Education*³⁴ and *D. N. v. DeSantis et al.*,³⁵ the courts found that the State has an important interest in providing equal athletic opportunities to girls and boys and that excluding transgender girls from school sports aligning with their gender identity is a legitimate means toward promoting women's equality in sports. In *D. N. v. DeSantis et al.*, the Court went on to clarify that the law does not categorically exclude transgender girls from sports, as alleged in the Complaint, because they may play on co-ed and boys' teams.³⁶

Due Process


Three challenges to youth sports ban laws assert that the laws violate the due process clause of the Fourteenth Amendment of the US Constitution, or the equivalent state statute. Specifically, plaintiffs claimed that the laws violate affected students' right to privacy and/or their right to be free from compelled disclosure of personal, sensitive information. Although this legal theory was raised in *Hecox v. Little*³⁷ and *Roe v. Utah HSAA*³⁸ and both courts granted preliminary injunctions, the Courts did not discuss the due process challenges in their decisions. In the third case where a due process claim was raised, *D. N. v. DeSantis et al.*,³⁹ the court dismissed the claim because the plaintiff did not satisfy the injury-in-fact requirement to establish standing for the issue of being compelled to disclose sensitive medical information. The court added that, even if a plaintiff had standing, the due process claim would fail because an impacted person could negotiate a protective order to guard sensitive information. Therefore, it is unclear whether this claim alone would be sufficient to establish that a sports ban law is unconstitutional.

Title IX

Another common challenge to youth sports ban laws asserts that these laws violate Title IX of the Education Amendments of 1972. Title IX protects people from sex-based discrimination in educational programs or activities.⁴⁰ These challenges claim that sports ban laws are discriminatory because requiring tests and proof of sex or gender is exclusionary, the laws effectively deny students who are transgender the opportunity to participate in sports teams by prohibiting their participation on teams that align with their gender identity, and/or the laws treat girls differently from boys because boys' sex or gender cannot be challenged.

In 2021, the Biden Administration issued an Executive Order⁴¹ stating that discrimination based on gender identity or sexual orientation constitutes unconstitutional sex discrimination. In the Executive Order, President Biden specified that these principles of anti-discrimination apply to Title IX, along with other anti-discrimination laws. Similarly, the U.S. Department of Justice (DOJ) published a memorandum⁴² in 2021 to clarify and affirm the application to Title IX of the above referenced Executive Order and the U.S. Supreme Court's decision in *Bostock v. Clayton County*⁴³ holding that discrimination related to sexual orientation and transgender identity constitutes discrimination on the basis of sex. The DOJ explicitly concluded that Title IX's protection against sex-based discrimination encompass discrimination based on sexual orientation and gender identity.

Courts were less likely to rule on the Title IX claims as compared to equal protection claims. Of the six cases that included a Title IX claim in their complaint, a court has ruled in five cases. Of those, two courts that ruled in favor of the plaintiff discussed Title IX (*A.M. v. Indianapolis Public Schools* and *Doe v. Horne*), two courts ruled in favor of the state (*BPJ v.*



WV State Board of Education and *D. N. v. DeSantis et al.*), and one did not discuss the claim (*Hecox v. Little*). For example, in *A.M. v. Indianapolis Public Schools*,⁴⁴ the court granted a preliminary injunction blocking enforcement of Indiana's ban on transgender girls' participation in school athletics, concluding that discrimination based on sex includes discrimination based on transgender identity. Accordingly, the court found that prohibiting transgender females from playing with female sports teams is discrimination based on sex prohibited by Title IX. Later, this case was dismissed by joint stipulation of the parties based on mootness. Conversely, the court in *BPJ v. WV State Board of Education*.⁴⁵ held that the West Virginia law does not violate Title IX because it does not completely exclude transgender girls from school athletics, but instead designates on which team they are allowed to play.

Other

In addition to the three types of claims summarized above, there have been two noteworthy but less common claims. One of these claims, asserted in *Doe v. Horne*,^{45F46} argued that the Arizona sports ban violates the Americans with Disabilities Act (ADA)^{46F47} and Rehabilitation Act,^{47F48} both of which protect people with disabilities from discrimination. Plaintiff Doe argued that Arizona's law violates these Acts by discriminating against students with gender dysphoria, a clinically recognized disability.^{48F49} The District Court granted a preliminary injunction, preventing the enforcement of the ban, but did not discuss the ADA claim in the decision. The second claim, raised in *Hecox v. Little*,^{49F50} asserted that the Idaho law violates the Fourth Amendment's protection against unreasonable search and seizure by compelling medically unnecessary tests, examination, and disclosure. The *Hecox v. Little* court also granted a preliminary injunction, but did not discuss the Fourth Amendment claim.

Conclusion

For many transgender students across the country, schools are increasingly becoming sites of discrimination, harm, and exclusion as the students must navigate legal issues on top of typical teenage stresses. As new legislation emerges both protecting and restricting sports participation opportunities for youth who are transgender, there will no doubt be continued litigation involving the common Fourteenth Amendment and Title IX claims described above as well as creative and novel theories and applications of law. In response, legislatures may adjust the provisions of these laws to continue excluding transgender students from sports teams aligning with their gender identity. For example, legislation currently differs across states regarding to whom the law applies (e.g. does it apply to girls before they have begun puberty? does it matter if a student has begun hormone replacement therapy? how long is long enough to be on hormone replacement therapy?). Anti-transgender litigation has not slowed down; further research comparing sports ban challenges to related issues, such as bathroom laws and youth access to gender affirming care, may help advocates better advance students' rights and opportunities.



CASE	STATE LAW	LEGAL THEORY	CURRENT STATUS
<p><i>Hecox v. Little</i></p> <p>Complaint filed 4/15/20⁵¹</p> <p>State Idaho</p> <p>Court where cased filed United States District Court, D. Idaho</p>	<p>HB 500⁵² – all athletic teams must be designated as male, female, or co-ed; girls and women who are transgender may not play on female teams; if a student’s sex is disputed, the student may establish sex by presenting a signed physician’s statement that indicates the student’s sex based on internal and external reproductive anatomy, endogenous levels of testosterone, and analysis of student’s genetic makeup</p>	<p>Theories contributing to decision</p> <p><i>Equal Protection</i> - HB 500 singles out women, individuals who depart from sex stereotypes, transgender people, and intersex people for discriminatory treatment compared to students who do not possess these identities. The law departs from pre-existing laws within the State as well as sister states. This discrimination does not substantially relate to a legitimate state interest.</p> <hr/> <p>Theories raised, but not dispositive</p> <p><i>Due Process</i> - The law violates Plaintiff’s right to privacy and right to avoid disclosure of sensitive, personal information by requiring women and girls to undergo an invasive internal and external reproductive examination and to turn over sensitive information to the government to participate in athletic activities.</p> <p>The law also violates Plaintiff’s right to privacy because it lacks safeguards to prevent unauthorized disclosure by school officials of the sensitive information obtained through the intrusive and offensive testing.</p> <p><i>Title IX</i> - Under Title IX, sex-based discrimination encompasses discrimination against individuals because they are transgender, because they are women and girls, and because they depart from stereotypes associated with sex. Title IX does not define “sex” based on endogenous hormone levels, internal or external reproductive</p>	<p>On 8/17/23, the 9th Circuit Court of Appeals⁵³ affirmed the preliminary injunction previously granted by the District Court.⁵⁴</p> <p>Decided on Equal Protection grounds; the State did not demonstrate a sufficient governmental interest to justify implementation of the “sex verification process” which applies to women and girls only or in the overbroad categorical ban on transgender women and girls.</p>



anatomy, or chromosomes. Barring transgender girls from sports and subjecting them to invasive, expensive, and unnecessary medical testing discriminates against transgender girls in educational programs and activities based on sex.

Other (Fourth Amendment) - HB 500 legally compels medically unnecessary pelvic examinations, transvaginal pelvic ultrasounds, blood tests, genetic tests, and disclosure of private medical information, which all constitute searches under the Fourth Amendment. The government has no legitimate basis for such “invasive and offensive intrusions on the bodies of girls and women.”

Roe v. Utah HSAA

Complaint filed
5/31/22⁵⁵

State
Utah

Court where case filed
Third District Court of Utah⁵⁶

HB 11⁵⁷ – athletic activities must be designated male, female, or co-ed; girls and women who are transgender may not compete on a team designated for female students; a student of any gender may participate with a female team outside of competition; sex is determined based on genetics and anatomy at birth⁵⁸

Theories contributing to decision

Uniform Operation of Laws (“state-law counterpart to the federal Equal Protection Clause)- The ban violates the equal rights clause of the Utah Constitution because it singles out and categorically bars transgender girls from competing on girls’ teams.

Theories raised, but not dispositive

Equal Rights – Article IV, Section 1 of the Utah Constitution provides that “both male and female citizens...shall enjoy equally all civil, political and religious rights and privileges.” By singling out and categorically barring Plaintiffs because they are transgender, the ban discriminates based on their transgender status, which is a sex-based determination, and, thus, discrimination on account of sex. The ban is not reasonable or necessary to further a legitimate legislative goal.

Due Process - The ban violates the due process clause in Article I, Section 7 of the Utah Constitution. The law deprives Plaintiffs of their fundamental right to be

On 8/19/22, the District Court granted a preliminary injunction.⁵⁹

Decided on Equal Protection grounds; the law creates a group classification, treats the group less favorably than any other similarly situated groups, and this disparate treatment does not further a legitimate legislative goal.



free from discrimination based on sex by categorically banning transgender girls from competing on girls' sports team.

BPJ v. WV State Board of Education

Complaint filed
5/31/22⁶⁰

State
West Virginia

Court where case was filed
United States District Court, Southern District of West Virginia

HB 3293⁶¹ – athletic teams or sports must be designated as male, female, or co-ed; male or female status is determined based on biological sex at birth based solely on reproductive biology and genetics; girls and women who are transgender may not participate in competitive or contact sports on a team designated for female students; any student may bring an action against the county board or school for failing to enforce this law

Theories raised and dismissed

Equal Protection – The law discriminates against girls who are transgender by singling them out for different treatment as compared to cisgender girls and by preventing them from equally accessing the benefits of participating in school activities based on sex and transgender identity. Excluding girls based on reproductive anatomy and genetics at birth is not substantially related to an important state interest.

The law places girls, but not boys, at risk of having their biological sex challenged, which prevents girls from accessing school athletics on an equal basis to boys. The law was based on unfounded stereotypes, false scientific claims, and baseless fear and misunderstanding, meaning it could not withstand any level of scrutiny.

Title IX – The law treats girls who are transgender differently from cisgender girls, preventing them from accessing school athletics on an equal basis as other students.

The law also discriminates against girls by subjecting them (but not boys) to potential challenges to their “biological sex.”

On 1/5/23, the District Court ruled in favor of the State.⁶²

Dismissed Equal Protection claim stating that excluding transgender girls from the legislature’s definition of “girl” is related to the State’s legitimate interest in providing equal athletic opportunities.

Dismissed Title IX claim because Title IX authorizes and even endorses sex separation in sports, including the separation codified in the law.

On 2/22/23, the 4th Circuit Court of Appeals upheld a preliminary injunction, preventing enforcement of the law pending appeal.⁶³

On 4/6/2023, the Supreme Court denied defendants’ motion to vacate the preliminary injunction.⁶⁴

On 10/27/23, the 4th Circuit Court of Appeals heard arguments on



			<p>whether to affirm the District Court’s decision to uphold the law. As of 11/26/2023, there was no published decision.</p>
<p><i>D. N. v. DeSantis et al.</i></p> <p>Complaint filed 6/29/21⁶⁵</p> <p>State Florida</p> <p>Court where case was filed US District Court, Southern District of Florida</p>	<p>SB 1028⁶⁶ - athletic activities must be designated male, female, or co-ed; teams designated as male may be open to female students; teams designated as female may not be open to male students; sex is determined by sex listed on birth certificate</p>	<p>Theories raised and dismissed</p> <p><i>Equal Protection</i> - The law treats transgender girls and women differently from cisgender girls and women and from transgender boys and men without a legitimate, important, or compelling interest.</p> <p>Although the law does not explicitly refer to transgender girls and women, the only individuals impacted by the law, i.e. denied athletic opportunities, are transgender girls and women.</p> <p><i>Due Process</i> - Substantive due process protects an individual’s “right not to have the state compel disclosure of personal, sensitive information.” Enforcement of the sports ban law would compel some female students to disclose sensitive medical information and legal documents, such as a birth certificate.</p> <p><i>Title IX</i> - Excluding transgender individuals from school programs, including athletic opportunities within school, is sex-based discrimination. The law further violates Title IX by creating different rules for transgender girls than it does for transgender boys.</p>	<p>On 11/6/23, the District Court granted the State’s motion to dismiss the case and granted Plaintiff leave to amend the Equal Protection claim on the issue of animus and the Title IX claim.⁶⁷</p> <p>Dismissed Equal Protection claim because promoting women’s equality in sports is an important government interest, and the law does not “categorically exclude transgender girls from school sports” because they may play on co-ed teams and boys’ teams.</p> <p>Dismissed Due Process claim, stating that Plaintiff does not satisfy the injury-in-fact requirement to establish standing because the injury, i.e. being forced to disclose sensitive medical information, is speculative. Even where Plaintiff has standing, she would</p>



			<p>not suffer concrete injury because she may negotiate a protective order to guard the sensitive information. Additionally dismissed claim because there is no relevant right to privacy.</p> <p>Dismissed Title IX claim because Eleventh circuit held in <i>Adams v. Sch. Bd. of St. Johns Cnty.</i>⁶⁸ that Title IX's reference to sex does not apply to gender identity and sex-separated sports are appropriate under the law.</p>
<p>L.E. v. Lee</p> <p>Complaint filed 11/4/21⁶⁹</p> <p>State Tennessee</p> <p>Court where case was filed US District Court, Middle District of Tennessee</p>	<p>SB 228⁷⁰— a student's gender for purposes of participating in athletic activities must be determined by the sex listed on their original birth certificate</p>	<p>Theories raised</p> <p><i>Equal Protection</i>⁷¹ - The law constitutes a sweeping exclusion of all transgender students from participation on any athletic team consistent with their gender identity and, therefore, discriminates based on sex and based on transgender identity. The law is based on a desire to harm a politically unpopular group, which is an impermissible government purpose.</p> <p><i>Title IX</i> - The law constitutes discrimination against students because they are transgender, which is discrimination based on sex.</p>	<p>No update since complaint filed.</p>
<p>A.M. v. Indianapolis Public Schools</p> <p>Complaint filed 5/24/22⁷²</p>	<p>HB 1041⁷³— athletic teams need to be designated as male, female, or co-ed; a student assigned male at birth in accordance with genetics and reproductive biology may not participate</p>	<p>Theories contributing to decision</p> <p><i>Title IX</i> - The law discriminates based on sex by denying transgender girls the ability to participate in the same sports as other girls.</p>	<p>On 1/19/23, the parties filed a joint stipulation to dismiss the case because of mootness after Plaintiff enrolled in a charter school and,</p>



<p>State Indiana</p> <p>Court where case was filed US District Court, Southern District of Indiana</p>	<p>on athletic teams designated as female</p>	<p>Theories raised, but not dispositive</p> <p><i>Equal Protection</i> - The ban improperly discriminates against transgender female students because of their sex and transgender identity.</p>	<p>thus, no longer attended a school within Defendant's school system.⁷⁴ Accordingly, the 7th Circuit Court of Appeals dismissed the case, vacating the District Court's preliminary injunction.⁷⁵</p> <p>District Court granted Plaintiff's motion for preliminary injunction on 7/26/22.⁷⁶</p> <p>Decided based on Title IX claim, adopting <i>Bostock's</i> finding that exclusion on the basis of transgender status is on the basis of sex. Because the law specifically bans transgender girls from playing on sports teams that conform to their gender identity, it constitutes discrimination based on sex.</p>
<p><i>Doe v. Horne</i></p> <p>Complaint filed 4/17/23⁷⁷</p> <p>State Arizona</p> <p>Court where case was filed US District Court, District of Arizona Tucson Division</p>	<p>SB 1165⁷⁸ – athletic teams must be designated as male, female, or co-ed based on participants' biological sex; legislative history suggests that students assigned male at birth cannot compete on female teams</p>	<p>Theories contributing to decision</p> <p><i>Equal Protection</i> - The law discriminates against female students who are transgender by categorically banning them from competing on girls' sports teams. The ban also constitutes discrimination based on sex because being transgender is a sex-based trait. The law is not substantially related to any important state interest.</p> <p><i>Title IX</i> - A law that bars girls from playing on a girls' sports teams because</p>	<p>District Court granted motion for preliminary injunction 7/20/23⁷⁹</p> <p>Decided based on Equal Protection and Title IX claims; the State created a classification that necessarily excludes transgender girls and the law is not substantially related</p>



they are transgender is excluding them from, denying the benefits of, and subjecting them to discrimination in education activities on the basis of sex.

to any important government interest; discriminating against individuals because they are transgender is discrimination based on sex, which is prohibited under Title IX.

Theories raised, but not dispositive

Other (Americans with Disabilities Act) - Plaintiffs have a disability as defined in the Americans with Disabilities Act (ADA) based on a diagnosis of gender dysphoria.⁸⁰ Therefore, the sports ban law violates the ADA and Section 504 of Rehabilitation Act because it denies students access to sports programs based on their gender dysphoria, a disability protected under the ADA.

This fact sheet was produced by Marisa London, Law Clerk, Network for Public Health Law – Mid-States Region and J.D./M.P.H. Candidate, University of Michigan (2025), under the supervision of Colleen Healy-Boufides, JD, Co-Director, Network for Public Health Law – Mid-States Region. The Network for Public Health Law provides information and technical assistance on issues related to public health. The legal information and assistance provided in this document does not constitute legal advice or legal representation. For legal advice, please consult legal counsel.

March 7, 2024

SUPPORTERS

Support for the Network provided by the Robert Wood Johnson Foundation. The views expressed in this document do not necessarily reflect the views of the Foundation.



Robert Wood Johnson
Foundation

¹ H.B. 500, 65th Leg. 2d Reg. Sess. (Idaho 2020), <https://legislature.idaho.gov/sessioninfo/2020/legislation/h0500/>.

² In the majority of bills and laws, it is specifically transgender girls who are restricted from participation on teams that align with their gender identity. There is one case included in this fact sheet that challenges a law banning all transgender students from playing on teams that match their gender identities, *L.E. v. Lee*, No. 3:21-cv-00835 (M.D. Tenn. Nov. 4, 2021), <https://www.aclu.org/cases/le-v-lee>.

³ Stuart J. H. Biddle & Mavis Asare, *Physical activity and mental health in children and adolescents: a review of reviews*, 45 *BRITISH J. OF SPORTS MEDICINE* 886 (2011), <https://bjsm.bmj.com/content/45/11/886.info>; Christopher J. Wretman, *School Sports Participation and Academic Achievement in Middle and High School*, 8 *J. OF THE SOC'Y FOR SOC. WORK AND RSCH.* 399 (2017), <https://doi.org/10.1086/693117>.

⁴ *2022 National Survey on LGBTQ Youth Mental Health*, TREVOR PROJECT, <https://www.thetrevorproject.org/survey-2022/>.

- 5 Michael J. Pellicane & Jeffrey A. Ciesla, *Associations between minority stress, depression, and suicidal ideation and attempts in transgender and gender diverse (TGD) individuals: Systematic review and meta-analysis*, 91 *Clinical Psychology Review* 1, <https://doi.org/10.1016/j.cpr.2021.102113>.
- 6 SHOSHANA K. GOLDBERG, FAIR PLAY (Feb. 8, 2021), <https://www.americanprogress.org/article/fair-play/>.
- 7 *Bans on Transgender Youth Participation in Sports*, MOVEMENT ADVANCEMENT PROJECT, https://www.lgbtmap.org/equality-maps/youth/sports_participation_bans.
- 8 In 2020, Connecticut’s “Transgender Participation” policy was challenged in *Soule by Stanescu v. Conn. Ass’n of Sch., Inc.*, claiming that the trans-inclusive policy was a violation of Title IX. In the Second Circuit Court of Appeals’ opinion to uphold the law, the court discussed the Office of Civil Right’s position in support of transgender students’ participation in athletics. The Court also cited the *Bostock v. Clayton Cnty., Georgia.*, 140 S. Ct. 1731 (2020) decision that interprets the Title VII prohibition of discrimination on the basis of sex to include discrimination based on one’s transgender identity. The Court further underscores this point by citing other Courts of Appeal that have held that treating transgender students consistent with their sex assigned at birth, opposed to their gender identity is a violation of Title IX. 57 F.4th 43 (2d Cir. 2022), <https://www.aclu.org/cases/soule-et-al-v-ct-association-schools-et-al?document=Opinion#legal-documents>.
- 9 The most recent search was conducted on November 20, 2023.
- 10 *Barrett v. Montana*, No. DV-21-581B (Mont. Dist. Sept. 14, 2022), <https://apps.montanafreepress.org/montana-legislature-lawsuit-tracker/filings/18-DV-21-0581/2022-09-14-order.pdf>. In *Barrett*, the Court granted the plaintiff’s Motion for Summary Judgment because it concluded the bill was an inappropriate use of the legislature’s authority. The Court held that the bill infringed on the authority of the Board of Regents and the Montana University System. Specifically, the Court determined that the law contradicts the Board’s policy that sport regulations would comply with NCAA rules. Additionally, the Court held that the law targets collegiate athletics and includes provisions aimed directly at the Board.
- 11 *Joint Stipulation to Dismiss Case Because of Mootness, A.M. by E.M. v. Indianapolis Pub. Sch.*, 617 F. Supp. 3d 950 (S.D. Ind. 2022) <https://drupal-files-delivery.s3.amazonaws.com/public/2023-01/AM-v-Indianapolis-Public-Schools-2023-01-18-Dismissal.pdf>.
- 12 See *United States v. Munsingwear, Inc.*, 340 U.S. 36, 39-40 (1950).
- 13 *L.E. v. Lee*, No. 3:21-cv-00835 (M.D. Tenn. Nov. 4, 2021), <https://www.aclu.org/cases/le-v-lee>.
- 14 Throughout this fact sheet, we use the phrase “sports ban” to mean laws that ban youth who are transgender from participating in school sports teams that align with their gender identity. Although these laws may permit a transgender student to participate in sports that do not align with their gender identity, the limitation to inappropriate single-sex sports teams may undermine the student’s well-being. Thus, the effect of the laws is to ban transgender students’ meaningful, healthy, and equal participation in school sports.
- 15 The Fourteenth Amendment’s Equal Protection Clause requires states to treat individuals in the same manner as others in similar conditions and circumstances. Where the law delineates based on gender, the state is allowed to treat individuals differently if the different treatment is relevant to a legitimate governmental objective. *Craig v. Boren*, 429 U.S. 190 (1976), <https://supreme.justia.com/cases/federal/us/429/190/>.
- 16 The Due Process Clause of the Fourteenth Amendment protects individuals from deprivation of life, liberty, or property without due process of law, which, in practice, guarantees the protection of fundamental rights. Rights protected under this clause include the rights guaranteed in the Bill of Rights, restrictions on the political process, and the rights of discrete and insular minorities. *U.S. v. Carolene Products*, 304 U.S. 144 (1938), <https://supreme.justia.com/cases/federal/us/304/144/>.
- 17 Title IX of the Education Amendments of 1972 protects people from discrimination based on sex in education programs or activities that receive federal financial assistance, including in athletics. 20 U.S.C.A. § 1681, <https://www.justice.gov/crt/title-ix-education-amendments-1972>.
- 18 The Fourth and Fourteenth Amendments of the US Constitution require that any search of a person or their premises and any seizure must be reasonable. U.S. Const. amend. IV, <https://constitution.congress.gov/constitution/amendment-4/>; U.S. Const. amend. XIV, <https://constitution.congress.gov/constitution/amendment-14/>.
- 19 42 U.S. Code § 12101, <https://www.ada.gov/law-and-regs/ada/>.
- 20 29 U.S.C.A. § 720 et seq, <https://www.eeoc.gov/statutes/rehabilitation-act-1973>.
- 21 No. 220903262, 2022 WL 3907182 (Utah Dist. Ct. Aug. 19, 2022), <https://attorneygeneral.utah.gov/wp-content/uploads/2022/08/249-Order-Granting-Plaintiffs-Mtn-for-PI-8.19.22.pdf>.
- 22 No. 220903262, 2022 WL 3907182 (Utah Dist. Ct. Aug. 19, 2022), <https://attorneygeneral.utah.gov/wp-content/uploads/2022/08/249-Order-Granting-Plaintiffs-Mtn-for-PI-8.19.22.pdf>.
- 23 Intermediate or heightened scrutiny is required here because (1) transgender people have experienced a history of discrimination; (2) being transgender does not limit or affect one’s ability to contribute to society; (3) transgender people are a discrete and insular minority who lack the political power to protect themselves through the legislative process; and (4) gender identity and being transgender are a core part of one’s identity so fundamental to one’s identity and conscience that a person cannot be required to abandon it as a condition of equal treatment. Intermediate scrutiny requires that the government action is presumptively unconstitutional until the government shows the discrimination is substantially related to an important state interest. *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, <https://supreme.justia.com/cases/federal/us/473/432/>.
- 24 79 F.4th 1009 (9th Cir. 2023), <https://cdn.ca9.uscourts.gov/datastore/opinions/2023/08/17/20-35813.pdf>.
- 25 No. 220903262, 2022 WL 3907182 (Utah Dist. Ct. Aug. 19, 2022), <https://attorneygeneral.utah.gov/wp-content/uploads/2022/08/249-Order-Granting-Plaintiffs-Mtn-for-PI-8.19.22.pdf>.
- 26 No. CV-23-00185-TUC-JGZ, 2023 WL 4661831 (D. Ariz. July 20, 2023), <https://casetext.com/case/does-v-horne-6>.
- 27 649 F. Supp. 3d 220 (S.D.W. Va. 2023), <https://www.aclu.org/cases/bpj-v-west-virginia-state-board-education?document=Memorandum-Opinion-and-Order>

²⁸ No. 21-CV-61344, 2023 WL 7323078 (S.D. Fla. Nov. 6, 2023), <https://casetext.com/case/dn-v-governor-ronald-desantis>

²⁹ A.M. by E.M. v. Indianapolis Pub. Sch., 617 F. Supp. 3d 950 (S.D. Ind. 2022), <https://storage.courtlistener.com/recap/gov.uscourts.insd.200573/gov.uscourts.insd.200573.61.0.pdf>.

Because this case was dismissed for mootness, the preliminary injunction is not binding and its precedential value is limited.

³⁰ 79 F.4th 1009 (9th Cir. 2023), <https://cdn.ca9.uscourts.gov/datastore/opinions/2023/08/17/20-35813.pdf>.

³¹ A preliminary, or temporary, injunction is a court order requiring a party to do or cease doing a specific action, to preserve the status quo before a final judgement is passed. In the context of a law or bill that has been challenged, this would mean that the law cannot be enforced until the Court has had an opportunity to determine whether the law is constitutional. A preliminary injunction is issued in instances where a party shows that they will suffer irreparable harm unless the injunction is issued. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7 (2008), <https://supreme.justia.com/cases/federal/us/555/7/>.

³² No. 220903262, 2022 WL 3907182 (Utah Dist. Ct. Aug. 19, 2022), <https://attorneygeneral.utah.gov/wp-content/uploads/2022/08/249-Order-Granting-Plaintiffs-Mtn-for-PI-8.19.22.pdf>.

³³ The Supreme Court decision in *Bostock v. Clayton Cnty., Georgia* protects employees against discrimination based on sexual orientation or transgender identity under Title VII of the Civil Rights Act of 1964. Specifically, the Court held that discrimination related to sexual orientation and transgender identity constitutes discrimination on the basis of sex. 140 S. Ct. 1731 (2020); https://www.supremecourt.gov/opinions/19pdf/17-1618_hfci.pdf.

³⁴ 649 F. Supp. 3d 220 (S.D.W. Va. 2023), <https://www.aclu.org/cases/bpj-v-west-virginia-state-board-education?document=Memorandum-Opinion-and-Order>

³⁵ No. 21-CV-61344, 2023 WL 7323078 (S.D. Fla. Nov. 6, 2023), <https://casetext.com/case/dn-v-governor-ronald-desantis>

³⁶ No. 21-CV-61344, 2023 WL 7323078 (S.D. Fla. Nov. 6, 2023), <https://casetext.com/case/dn-v-governor-ronald-desantis>

³⁷ 79 F.4th 1009 (9th Cir. 2023), <https://cdn.ca9.uscourts.gov/datastore/opinions/2023/08/17/20-35813.pdf>.

³⁸ No. 220903262, 2022 WL 3907182 (Utah Dist. Ct. Aug. 19, 2022), <https://attorneygeneral.utah.gov/wp-content/uploads/2022/08/249-Order-Granting-Plaintiffs-Mtn-for-PI-8.19.22.pdf>.

³⁹ No. 21-CV-61344, 2023 WL 7323078 (S.D. Fla. Nov. 6, 2023), <https://casetext.com/case/dn-v-governor-ronald-desantis>

⁴⁰ 20 U.S.C.A. § 1681 et seq.

⁴¹ Exec. Order No 13988, 86 Fed. Reg. 7023 (Jan. 20, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-preventing-and-combating-discrimination-on-basis-of-gender-identity-or-sexual-orientation/>.

⁴² Memorandum from Principle Deputy Assistant Attorney General Pamela S. Karlan Civil Rights Division to the Federal Agency Civil Rights Directors and General Counsels, <https://www.justice.gov/crt/page/file/1383026/download>.

⁴³ 140 S. Ct. 1731 (2020); https://www.supremecourt.gov/opinions/19pdf/17-1618_hfci.pdf.

⁴⁴ A.M. by E.M. v. Indianapolis Pub. Sch., 617 F. Supp. 3d 950 (S.D. Ind. 2022),

<https://storage.courtlistener.com/recap/gov.uscourts.insd.200573/gov.uscourts.insd.200573.61.0.pdf>. Because this case was dismissed for mootness, the preliminary injunction is not binding and its precedential value is limited.

⁴⁵ No. 23-1078, 2023 WL 2803113 (4th Cir. Feb. 22, 2023), <https://www.aclu.org/cases/bpj-v-west-virginia-state-board-education?document=Memorandum-Opinion-and-Order>.

⁴⁶ No. CV-23-00185-TUC-JGZ, 2023 WL 4661831 (D. Ariz. July 20, 2023), <https://casetext.com/case/doi-v-horne-6>.

⁴⁷ 42 U.S. Code § 12101, <https://www.ada.gov/law-and-regs/ada/>.

⁴⁸ 29 U.S.C.A. § 720 et seq, <https://www.eeoc.gov/statutes/rehabilitation-act-1973>.

⁴⁹ Jack Turban, *What is Gender Dysphoria?*, AM. PSYCHIATRIC ASS'N, (August 2022), <https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria>.

⁵⁰ 79 F.4th 1009 (9th Cir. 2023), <https://cdn.ca9.uscourts.gov/datastore/opinions/2023/08/17/20-35813.pdf>.

⁵¹ Complaint at *Hecox v. Little*, 79 F.4th 1009 (9th Cir. 2023), <https://www.aclu.org/cases/hecox-v-little?document=Complaint#legal-documents>.

⁵² H.B. 500, 65th Leg. 2d Reg. Sess. (Idaho 2020), <https://legislature.idaho.gov/sessioninfo/2020/legislation/h0500/>.

⁵³ *Hecox v. Little*, 79 F.4th 1009 (9th Cir. 2023), <https://cdn.ca9.uscourts.gov/datastore/opinions/2023/08/17/20-35813.pdf>.

⁵⁴ *Hecox v. Little*, 479 F. Supp. 3d 930 (D. Idaho 2020), <https://casetext.com/case/hecox-v-little>.

⁵⁵ Complaint at *Roe v. Utah High School Activities Ass'n*, No. 220903262, 2022 WL 3907182 (Utah Dist. Ct. Aug. 19, 2022), <https://clearinghouse.net/doc/133323/>.

⁵⁶ The claims raised in this case refer to the Utah Constitution, not to the US Constitution.

⁵⁷ H.B. 11, 2022 Gen. Sess. (Utah 2022), <https://le.utah.gov/~2022/bills/static/HB0011.html>.

⁵⁸ HB 11 also enacted Part 10, which created a default to go into effect if Part 9, i.e. the restrictions challenged here, is either invalidated or enjoined. Part 10 establishes a commission to assess each student's eligibility based on their individual circumstances. Utah Code §§ 53G-6-1001-07, https://le.utah.gov/xcode/Title53G/Chapter6/C53G-6-P10_2022050420220701.pdf.

⁵⁹ On September 12, 2023, a District Court judge granted the State access to Plaintiffs' medical records related including any of their counseling and mental health reports and specifically any documents about when they started puberty. No. 220903262, 2022 WL 3907182 (Utah Dist. Ct. Aug. 19, 2022), <https://attorneygeneral.utah.gov/wp-content/uploads/2022/08/249-Order-Granting-Plaintiffs-Mtn-for-PI-8.19.22.pdf>.

⁶⁰ Complaint at *Roe v. Utah High School Activities Ass'n*, No. 220903262, 2022 WL 3907182 (Utah Dist. Ct. Aug. 19, 2022), <https://clearinghouse.net/doc/133323/>.

- 61 H.B. 3293, 2021 Reg. Sess. (W. Va. 2021), https://www.wvlegislature.gov/Bill_Status/bills_text.cfm?billdoc=HB3293%20SUB%20ENR.htm&yr=2021&sesstype=RS&billtype=B&houseorig=H&i=3293.
- 62 B.P.J. v. W. Virginia State Bd. of Educ., 649 F. Supp. 3d 220 (S.D.W. Va. 2023), <https://www.aclu.org/cases/bpj-v-west-virginia-state-board-education?document=Memorandum-Opinion-and-Order>
- 63 B.P.J. v. W. Virginia State Bd. of Educ., No. 23-1078, 2023 WL 2803113 (4th Cir. Feb. 22, 2023), <https://www.courthousenews.com/wp-content/uploads/2023/03/pepper-jackson-west-virginia-fourth-circuit-stay.pdf>
- 64 Supreme Court denied defendants' motion to vacate preliminary injunction on 4/6/23. W. Virginia v. B. P. J., by Jackson, 143 S. Ct. 889 (2023), https://www.supremecourt.gov/opinions/22pdf/22a800_e1p3.pdf.
- 65 Complaint at D.N. v. DeSantis, No. 21-CV-61344, 2023 WL 7323078 (S.D. Fla. Nov. 6, 2023), <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/Litigation.pdf?mtime=20210630085703&focal=none>
- 66 Comm. Substitute for Comm. Substitute for S.B. 1028, 2021 Leg. (Fla. 2021) <https://www.flsenate.gov/Session/Bill/2021/1028>
- 67 D.N. v. DeSantis, No. 21-CV-61344, 2023 WL 7323078 (S.D. Fla. Nov. 6, 2023), <https://casetext.com/case/dn-v-governor-ronald-desantis>.
- 68 57 F.4th 791 (11th Cir. 2022)
- 69 L.E. v. Lee, No. 3:21-cv-00835 (M.D. Tenn. Nov. 4, 2021), <https://www.aclu-tn.org/sites/default/files/Trans-Student-Athlete-Complaint-For-Filing190917273.2.pdf>.
- 70 S.B. 228, 112th Gen. Assemb. (Tenn. 2021) <https://wapp.capitol.tn.gov/apps/BillInfo/default.aspx?BillNumber=SB0228&ga=112>.
- 71 Later, in a Motion for Summary Judgment, Plaintiff incorporated the finding in *Bostock v. Clayton Cnty., Ga.*, 140 S. Ct. 1731 (2020), asserting that exclusion of transgender girls' participation is sex-based because the law affects transgender girls differently than it affects transgender boys and discrimination based on transgender identity constitutes discrimination based on sex. Plaintiff's Mot. For Summ. J., <https://www.aclu.org/cases/le-v-lee?document=le-v-lee-complaint>.
- 72 Complaint at A.M. by E.M. v. Indianapolis Pub. Sch. & Superintendent, A.M. by E.M. v. Indianapolis Pub. Sch., 617 F. Supp. 3d 950 (S.D. Ind. 2022), https://www.aclu-in.org/sites/default/files/field_documents/dkt_1_-_complaint_10.pdf.
- 73 H.B. 1041, 122d Gen. Assemb., 2d Reg. Sess. (Ind. 2022) <https://iga.in.gov/legislative/2022/bills/house/1041/details>.
- 74 Joint Stipulation to Dismiss Case Because of Mootness, A.M. by E.M. v. Indianapolis Pub. Sch., 617 F. Supp. 3d 950 (S.D. Ind. 2022) <https://drupal-files-delivery.s3.amazonaws.com/public/2023-01/AM-v-Indianapolis-Public-Schools-2023-01-18-Dismissal.pdf>.
- 75 A.M. by E.M. v. Indianapolis Pub. Sch. & Superintendent, No. 22-2332, 2023 WL 371646 (7th Cir. Jan. 19, 2023).
- 76 A.M. by E.M. v. Indianapolis Pub. Sch., 617 F. Supp. 3d 950 (S.D. Ind. 2022), <https://storage.courtlistener.com/recap/gov.uscourts.insd.200573/gov.uscourts.insd.200573.61.0.pdf>
- Because this case was dismissed for mootness, the preliminary injunction is not binding and its precedential value is limited.
- 77 Complaint at <https://www.nclrights.org/wp-content/uploads/2023/06/2023.04.17.-Dkt.-1.-Complaint.pdf>.
- 78 S.B. 1165 55th Leg., 2d Reg. Sess. (Ariz. 2022) <https://www.azleg.gov/legtext/55leg/2R/bills/SB1165P.pdf>.
- 79 Doe v. Horne, No. CV-23-00185-TUC-JGZ WL 4661831 (D. Ariz. Jul. 20, 2023), <https://casetext.com/case/doe-v-horne-6>.
- 80 In June 2023, the Supreme Court of the United States declined to review a ruling from the Fourth Circuit Court of Appeals that found people with gender dysphoria are protected under the Americans with Disabilities Act in *Kincaid v. Williams*, 143 S. Ct. 2414 (2023). In his dissent from the denial, Justice Alito acknowledged that the decision will "raise a host of important and sensitive questions regarding such matters as participation in women's and girls' sports...". Many advocates for transgender rights celebrated the Supreme Court's denial as an implicit acknowledgement that the ADA protects people who experience gender dysphoria from discrimination on that basis. However, others believe that a diagnosis of gender dysphoria pathologizes gender incongruence and gender variance.