CLIENT ALERTS & INSIGHTS

SCOTUS Rules That States May Limit Women's and Girls' Sports to Biological Females - Another Chapter in the Delicate Legislative Balance Between Title IX and the Equal Protection Clause

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Key Takeaways

- In a 6-3 decision authored by Justice Kavanaugh, the Court held that Title IX and the Equal Protection Clause permit states to maintain women's and girls' sports teams exclusively for biological females.
- The decision resolves a circuit split and upholds the validity of laws in 27 states that limit female athletic eligibility based on biological sex. The Court did not hold that Title IX requires states to exclude transgender athletes, nor did it resolve the applicable level of scrutiny for transgender classifications generally.
- Educational institutions, athletic organizations, and employers should review their eligibility and participation policies in light of this ruling.

I. Background and Procedural History

The Supreme Court consolidated two cases challenging state laws that restrict participation in women's and girls' sports teams to biological females. West Virginia's Save Women's Sports Act (2021)[1] and Idaho's Fairness in Women's Sports Act (2020)[2] both prohibit biological males from competing on female athletic teams, with sex determined by biological criteria.

In *West Virginia v. B.P.J.*, the plaintiff, a biological male who identifies as female, socially transitioned in third grade and later took puberty blockers and estrogen, challenged the West Virginia law after being banned from girls' cross-country and track teams.[3] The District Court granted summary judgment for the State and the Fourth Circuit reversed on Title IX grounds.[4]

In *Little v. Hecox*, a biological male who identifies as female and attends Boise State University challenged Idaho's law.[5] The District Court issued a preliminary injunction and the Ninth Circuit affirmed.[6] The Court reversed and remanded both cases after oral argument on January 13, 2026.[7]

II. What About Title IX?

The Court held that Title IX permits schools to provide separate women's and men's sports teams defined by biological sex.[8] Justice Kavanaugh, writing for the majority, reasoned that the text of Title IX, the Javits Amendment (1974), and implementing regulations do not require schools to allow biological males to participate on women's teams.[9]

The Court emphasized that maintaining separate teams for biological males and females is "reasonable… [g]iven the inherent physical differences between the sexes," and that "safety and competitive-fairness concerns" support such classifications.[10] The majority noted that "27 states, the NCAA, the US Olympic & Paralympic Committee, and the International Olympic Committee (IOC) have all drawn the same line."[11] The IOC specifically "found that biological males possess a 'performance advantage in all sports and events that rely on strength, power, and/or endurance,' including advantages of '20+ percent' in most throwing and jumping events."[12]

The Court rejected arguments that this policy violates Title IX by effectively excluding transgender athletes from competitive sports, holding that Title IX regulations guarantee "equal athletic opportunity," not a roster spot on a particular team.[13] The Court also rejected reliance on *Bostock v. Clayton County,* distinguishing Title VII employment discrimination from the sports context.[14]

III. The Court's Holding on the Equal Protection Clause

The Court held that the West Virginia and Idaho laws do not violate the Equal Protection Clause. Applying intermediate scrutiny to these sex-based classifications, the majority found that safety and competitive fairness constitute important governmental objectives, and that limiting women's sports to biological females is "substantially related" to those objectives.[15]

Importantly, the Court held that states do not need to conduct individual-by-individual assessments of each biological male's athletic capabilities to satisfy intermediate scrutiny. Justice Kavanaugh wrote that "[s]ports are highly competitive and generally zero sum," and that "[a]llowing a biological male to compete on a girls' team necessarily displaces or disadvantages a female athlete."[16]

The Court further held that the laws classify based on biological sex, not gender identity or transgender status.[17] The Court, however, expressly declined to resolve whether rational basis or heightened scrutiny applies to transgender classifications generally, finding that the laws satisfy either standard.[18] The Court advised that courts should use judicial restraint amid "medical and scientific uncertainty" regarding the effects of hormone therapy on physical advantages.[19]

IV. Concurrences and the Partial Dissent

Concurrences. Justice Thomas wrote separately to state that transgender status is not a suspect class requiring heightened scrutiny.[20] Justice Gorsuch concurred to distinguish the reach of *Bostock* in a sports context as opposed to an employment one.[21]

Partial Dissent. Justice Sotomayor, joined by Justices Kagan and Jackson, concurred that *B.P.J.'s* Title IX claim fails (on narrower grounds) but dissented from the equal protection holding.[22] The dissent argued that the majority applied "a form of heightened scrutiny divorced from this Court's cases" and that unresolved factual questions, particularly whether a transgender girl who never underwent male puberty retains any physical advantage, should have been remanded for factfinding.[23]

The dissent noted that for nearly five years before West Virginia's ban, the state allowed transgender participation on a case-by-case basis without documented competitive-fairness or safety issues.[24] Justice Jackson also wrote briefly on the Title IX claim, disagreeing that the definition of "sex" under Title IX should include "only sex assigned at birth."[25]

V. What Comes Next

The decision provides clear constitutional and statutory authority for states with existing biological sex eligibility laws to enforce those laws with confidence. Institutions in the 27 states that have enacted such laws now have definitive legal cover.

Considerations for affected organizations include:

- **Policy Review.** Schools, colleges, and athletic associations should review and, as necessary, update athletic eligibility policies to align with state law under this decision. The Court's holding aligns with existing NCAA, USOPC, and IOC policies restricting women's categories to biological females.
- **Scope of the Decision.** The Court did not hold that Title IX affirmatively requires exclusion of transgender athletes. States that choose to permit transgender participation may continue to do so. Litigation may continue in the 23 states without bans and over the federal executive's Title IX enforcement posture.
- **Facilities and Other Policies.** The decision addressed athletic competition only. The Court did not address locker rooms, restrooms, or other facility-access questions, which remain subject to separate legal frameworks and Title IX regulations.
- **Scrutiny for Transgender Classifications.** The Court expressly left open the level of scrutiny applicable to transgender/gender-identity classifications outside the sports context, leaving *Skrmetti* as the key precedent. This question will continue to be litigated.
- **Mootness and Future Litigation.** Justice Sotomayor observed that Hecox's claim may be moot, signaling potential vehicle and standing challenges in future cases.

If your college or university is struggling to navigate the playing field between Title IX compliance, the Equal Protection Clause, and recent SCOTUS decisions, reach out to Benesch's White Collar, Government Investigations & Regulatory Compliance Practice for a consultation. We look forward to meeting the needs of the collegiate sports industry seeking to navigate the world of compliance in an ever-changing landscape.

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[1] W. Va. Code Ann. §§18-2-25d(c)(2)-(3) (2022).

[2] Idaho Code Ann. §33- 6203

[3] *West Virginia, et al. v. B.P.J. by Her Next Friend and Mother, Heather Jackson*, No. 24-43, slip op. at 6-7 (U.S. June 30, 2026).

[4] 98 F.4th 542 (4th Cir. 2024).

[5] *B.P.J.*, No. 24-43, slip op. at 7-8.

[6] 104 F.4th 1061 (9th Cir.).

[7] *B.P.J.*, No. 24-34, slip op. at 1, 29.

[8] *Id.* at 9.

[9] *Id.* at 10-11.

[10] *Id.* at 10.

[11] *Id.* at 11.

[12] *Id.* at 5.

[13] *Id.* at 13.

[14] *Id.*; *see* 590 U.S. 644 (2020).

[15] *Id.* at 17; *See United States v. Skrmetti*, 605 U.S. 495, 510.

[16] *Id.* at 12.

[17] citing *Skrmetti*, 605 U.S. at 517.

[18] *Id.* at 23.

[19] *Id.* at 24.

[20] *Id.* at 1-2 (Thomas, J., concurring).

[21] *Id.* at 3-4 (Gorsuch J., concurring).

[22] *Id.* at 1 (Sotomayor, J., joined by Kagan, E.J., and Jackson, K.J., dissenting).

[23] *Id.* at 2-8 (Sotomayor, J., joined by Kagan, E.J., and Jackson, K.J., dissenting).

[24] *Id.* at 3 (Sotomayor, J., joined by Kagan, E.J., and Jackson, K.J., dissenting).

[25] *Id.* at 1-3 (Jackson, J., concurring in judgment in part and dissenting in part).