

No. 24-43

IN THE
Supreme Court of the United States

STATE OF WEST VIRGINIA, ET AL.,
Petitioners,

v.

B.P.J., BY NEXT FRIEND AND MOTHER,
HEATHER JACKSON,
Respondent.

**On Writ of Certiorari to the United States Court
of Appeals for the Fourth Circuit**

**BRIEF OF THE NATIONAL EDUCATION
ASSOCIATION AS *AMICUS CURIAE* IN
SUPPORT OF RESPONDENT**

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	iii
INTEREST OF <i>AMICUS CURIAE</i>	1
INTRODUCTION	2
SUMMARY OF ARGUMENT.....	4
ARGUMENT.....	5
I. Laws that prevent transgender students from participating in K–12 team sports deprive them of valuable educational opportunities that Title IX guarantees to each student.	5
A. School-sponsored sports are an important aspect of K–12 educational programming that can foster students’ academic and personal development.	6
B. Title IX protects every person from discrimination on the basis of sex, including transgender students.	10
1. Title IX’s antidiscrimination mandate is individualized and broad.	10
2. Laws like H.B. 3293 that prevent transgender girls from joining girls’ sports teams due to their sex assigned at birth contain sex-based distinctions within the meaning of Title IX.....	12
C. Excluding transgender students from sports teams that align with their gender identity constitutes harmful discrimination under Title IX that is not justified by the permissibility of sex-based distinctions. ...	14

1. Prohibiting transgender students from participating in team sports diminishes the value of their K–12 educational experience and creates broad stigmatization.	15
2. Laws restricting transgender girls’ participation in sports can have harmful spillover effects on all girls.....	18
3. Allowing sex-based distinctions does not justify sex-based exclusion.	19
II. Laws categorically excluding transgender students are untethered from the reality of K–12 athletics and demonstrate the targeting of a politically marginalized group.	21
III. Educators may experience harm when they work in schools that exclude transgender students through team-sports bans.	26
A. Working in schools that exclude transgender students from school programming can place educators in ethical and moral peril.	26
B. Official discrimination against transgender students can have a marginalizing effect on their LGBTQ+ teachers and coaches.	28
C. Laws like H.B. 3293 may drive educators out of the profession.	29
CONCLUSION	30

TABLE OF AUTHORITIES

Page(s)

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<i>Ames v. Ohio Dep't of Youth Servs.</i> , 605 U.S. 303 (2025).....	11, 20
<i>Bostock v. Clayton Cnty.</i> , 590 U.S. 644 (2020).....	11, 13, 14
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<i>Peltier v. Charter Day Sch.</i> , 37 F. 4th 104 (4th Cir. 2022)	11
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20 U.S.C. § 1681	5, 11, 12, 19
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INTEREST OF *AMICUS CURIAE*

The National Education Association (“NEA”) submits this brief to share the perspective of educators on the protection against sex discrimination that federal law affords every person in K–12 public education—including transgender students and staff—and to stress the importance of inclusivity in school-sponsored sports.¹

NEA is the nation’s largest professional association, representing three million members, the majority of whom serve as teachers, coaches, counselors, and education support professionals in our nation’s K–12 public schools. NEA seeks to advance a great public education for every student.

NEA’s members, through their highest governing body, have formally resolved that “all persons, regardless of sexual orientation or gender identity, should be afforded equal opportunity and guaranteed a safe and inclusive environment within the public education system.” To that end, NEA’s members believe that schools must be inclusive, welcoming, and responsive to the needs of students who are lesbian, gay, bisexual, transgender, non-binary, queer/questioning, or intersex (LGBTQ+). All students, no matter their sex or gender identity, must have the chance to enjoy the full range of school programming, including physical education and team sports. NEA also is committed to preventing discrimination and harassment against LGBTQ+ educators and to ensuring that they have equal opportunity in the workplace.

¹ No party’s counsel authored this brief in whole or in part; no party’s counsel contributed money that was intended to fund preparing or submitting this brief; and no person—other than NEA—contributed money that was intended to fund preparing or submitting this brief.

INTRODUCTION

The past several years have brought an onslaught of legislation and policies that seek to restrict LGBTQ+ people from living their lives with the freedom and dignity that this country’s Constitution and laws offer to all. Many of these efforts have targeted LGBTQ+ children, families, and K–12 schools. Children who already may struggle to find acceptance with peers, in school, or even at home, are increasingly faced with acts of official hostility in educational settings that are supposed to welcome and foster the development of every student. These include the erasure of LGBTQ+ people from classroom discussions and library shelves, restrictions on school bathroom use, and bans on displaying symbols of LGBTQ+ support.

Barring transgender students from joining the same sports teams as peers who express their same gender is just one of the ways in which legislators have made it harder for every student to partake in the promise of public education and in one of the defining features of American childhood.

In 2021, West Virginia became one of the now-29 states to adopt such a policy.² West Virginia’s law, H.B. 3293, “clarified” that the State’s longstanding designation of secondary-school (and college) sports teams as “[f]emale,” “[m]ale,” or “[c]oed or mixed” was premised on students’ “biological sex,” meaning their “reproductive biology and genetics at birth”—not their “gender identity.” W. Va. Code §§ 18-2-25d(a)(4), (b)(1), (c)(1). Under H.B. 3293, “female”-designated teams that are selected based on “competitive skill” or in

² Movement Advancement Project (MAP), *Bans on Transgender Youth Participation in Sports*, https://www.lgbtmap.org/equality-maps/youth/sports_participation_bans (last visited Nov. 12, 2025).

“contact” sports are not “open to students of the male sex” (as designated at birth), while anyone may seek to join “male” or “coed”-designated teams. *Id.* §§ (c)(2)–(3). Thus, H.B. 3293 restricts girls’ teams to girls whose sex assigned at birth was female, relegating transgender girls to boys’ teams that conflict with their gender identity, or to coed teams—if they exist. All other students may play on teams that match their gender identity (and/or sex assigned at birth), including transgender boys.

Although H.B. 3293 cites concerns about “[b]iological males” displacing “females” if allowed to join “teams designated for biological females,” W. Va. Code §§ 18-2-25d(a)(3)–(4), there is no record of any such problem in West Virginia. In fact, for the five years prior to H.B. 3293’s passage, West Virginia students could join teams matching their gender identity so long as this did not impact “fair competition.” Pet. App. 14a. And West Virginia operated under that policy without generating evidence of transgender girls making girls’ team sports unfair or unsafe, or receiving any formal complaints. Pet. App. 83a. Even the State’s governor, after signing the bill into law, disclaimed awareness of any transgender student seeking an unfair advantage and denied that the issues the bill addressed were a priority for him. J.A. 2763–2764.

This case is about whether West Virginia may apply H.B. 3293 to B.P.J., a transgender student known publicly as a girl since third grade, whose medical treatment prevents male puberty and promotes her development as girl. Pet. App. 40a. B.P.J. wanted to try out for the girls’ cross-country and track teams when she started middle school. J.A. 580. Under H.B. 3293, however, she could participate as a boy or not at all, as there is no coed team. J.A. 2758.

The only student known to be affected by H.B. 3293 (J.A. 2764), B.P.J. sued to enjoin the State from enforcing it with respect to her. The Fourth Circuit concluded that, as applied to B.P.J., the law violated Title IX’s guarantee against sex discrimination, and that it also discriminated on the basis of quasi-suspect classifications that require application of heightened scrutiny under the Equal Protection Clause. Pet. App. 22a–43a.

NEA urges this Court to affirm. The Fourth Circuit’s conclusion was legally correct and is supported by the expertise and experience of educators across the country.³

SUMMARY OF ARGUMENT

This brief offers the Court the perspective of educators—who teach, coach, and counsel students of all backgrounds on a daily basis—in assessing the impact and function of a law that categorically excludes transgender children like B.P.J. from school sports teams.

First, this brief explains the importance of athletic programming and team sports to students’ K–12 educational experience. Title IX entitles each and every student to enjoy these benefits, regardless of their sex, but laws like West Virginia’s treat transgender students differently based on their gender identity (which is a sex-based classification) and sex assigned at birth. Preventing transgender girls from joining teams that match their gender identity stigmatizes them and forces them either to forego team sports or to forego

³ In addition to other sources cited within this brief, NEA conducted interviews with members who have worked in a variety of roles in public schools around the country. Their experiences are reflected throughout the brief.

their true identity and play on a boys' team, risking bullying and even violence. This is a unique and damaging consequence to impose on an already-marginalized group of children. The fact that schools may sponsor sex-segregated teams without violating Title IX does not mean that they may exclude and discriminate against these students on the basis of their sex.

Second, categorical restrictions on transgender students' participation, like H.B. 3293, do not solve any real problem in K–12 athletics. Instead, they form part of a wave of state-sponsored discrimination and political isolation of transgender people, which has been particularly pronounced in the public-school setting. Educators' experiences underscore this reality.

Finally, educators themselves may experience harm when they must work in schools that are subject to discriminatory laws like West Virginia's. Having to abide by or even effectuate students' exclusion based on their gender identity may place educators in a position of ethical peril and moral distress, and advocating for these students may prompt retaliation. Moreover, educators who are LGBTQ+ themselves may experience the hostility that these laws convey. Ultimately, laws like H.B. 3293 may drive some educators out of the profession.

ARGUMENT

I. Laws that prevent transgender students from participating in K–12 team sports deprive them of valuable educational opportunities that Title IX guarantees to each student.

Title IX guarantees equal opportunity in education to every student, regardless of sex. 20 U.S.C. § 1681(a). Excluding some students from school-sponsored sports because they are transgender violates this mandate. Moreover, such exclusions stigmatize these children

and deprive them of an important aspect of their educational experience.

A. School-sponsored sports are an important aspect of K–12 educational programming that can foster students’ academic and personal development.

Although unmentioned in Title IX’s text, ensuring equal opportunity in athletics is a core element of the statute’s prohibition on sex discrimination, as codified in regulations promulgated at Congress’s direction three years after the statute’s 1972 passage. *See* Education Amendments of 1974, Pub. L. No. 93-380, § 844, 88 Stat. 484, 612; 45 C.F.R. § 86.41(a) (now codified at 34 C.F.R. § 106.41(a)). As the preamble to those regulations acknowledged, “athletics constitute an integral part of the educational processes of schools and colleges, and, as such, are fully subject to the requirements of [T]itle IX.” 40 Fed. Reg. 24128, 24134 (June 4, 1975).

1. School-sponsored teams are an undeniable highlight of the “integral” athletics component of K–12 programming. Playing on teams carries well-established benefits for students’ development—physically, emotionally, academically, and socially—to which every student must have access.

Participation in organized sports is associated with improved physical-health outcomes and practices, including cardiovascular fitness, strength, coordination, eating habits, and physical activity levels.⁴ Studies

⁴ *See, e.g.,* Kelsey Logan et al., Am. Acad. of Pediatrics Council on Sports Med. & Fitness, *Organized Sports for Children, Preadolescents, and Adolescents*, 143 *Pediatrics* 4–5, 7 (2023); Jared D. Ramer et al., *Childhood Predictors of High School Sport Participation and Effects of Participation on Young Adult Activity and Mental Health*, 57 *Annals of Med.* 7–8 (2025).

show superior mental-health outcomes for team athletes, too, including higher self-esteem and lower rates of hopelessness and suicidality.⁵ These mental health benefits can be lasting,⁶ even for students who experience adversity in childhood.⁷

Team-sports participation also corresponds to better academics, life skills, and social skills. Adolescents who play team sports are more likely to earn good grades than those who do not,⁸ and are shown to have higher math and verbal performance.⁹ High-school athletes are also more likely to attend college.¹⁰ Playing on sports teams promotes life skills, such as emotional regulation, goal-orientation, and leadership.¹¹ Team-sports participation also is associated with positive social outcomes, such as feeling accepted and developing social skills like communication and relationship-building.¹²

All of these benefits may be especially significant for students who identify as LGBTQ+. These students often experience hostility and discrimination in school,

⁵ Logan, *supra* note 4, at 6–7; Ramer, *supra* note 4, at 7–8.

⁶ Ramer, *supra* note 4, at 7–8.

⁷ Molly Easterlin et al., *Association of Team Sports Participation With Long-term Mental Health Outcomes Among Individuals Exposed to Adverse Childhood Experiences*, 173 JAMA Pediatrics 681–88 (2019).

⁸ Ryan D. Burns et al., *Sports Participation Correlates With Academic Achievement*, 127 Perceptual & Motor Skills 448–67 (2020).

⁹ Logan, *supra* note 4, at 5.

¹⁰ *Ibid.*; Dara Shifrer et al., *College-Going Benefits of High School Sports Participation*, 47 Youth & Soc’y 295–318 (2015).

¹¹ Logan, *supra* note 4, at 5–6.

¹² *Ibid.*

increasing the likelihood of negative academic and health trajectories.¹³ As a general matter, LGBTQ+-inclusive policies are associated with an increased sense of belonging and safety at school among LGBTQ+ students, as well as lower suicide risks.¹⁴ There is evidence, as well, that transgender and non-binary students who are athletes have substantially superior academic performance and a lower incidence of depression than those who are not.¹⁵

2. The experiences of NEA members confirm that the overwhelming purpose and benefit of sports in K–12 schools is to enrich and supplement the educational program—and not, as is sometimes suggested, to develop elite athletes. As one former math teacher/coach from Wyoming put it: “I don’t expect your kid to get an athletic scholarship from playing on my team. I want them to get healthy and to build some character.” A social-studies teacher/coach from New Hampshire explained that sports “give kids a greater sense of purpose and the opportunity to pursue a personal passion” that they may not find in the classroom. Student-

¹³ See Joseph G. Kosciw et al., GLSEN, *The 2021 National School Climate Survey* xv-xx (2022), <https://www.glsen.org/sites/default/files/2022-10/NSCS-2021-Full-Report.pdf>.

¹⁴ Shoshana K. Goldberg, Ctr. For Am. Progress, *Fair Play: The Importance of Sports Participation for Transgender Youth* 21-22 (Feb. 8, 2021), <https://www.americanprogress.org/wp-content/uploads/sites/2/2021/02/Fair-Play-correction2.pdf>; GLSEN, *Gender Affirming and Inclusive Athletics Participation* 1 (April 2022), https://www.glsen.org/sites/default/files/2022-05/GLSEN_Transathlete_Policies_Issue_Brief-04-2022.pdf.

¹⁵ Goldberg, *supra* note 14, at 21; The Trevor Project, *The Well-Being of LGBTQ Youth Athletes* (Aug. 2020), <https://www.thetrevorproject.org/wp-content/uploads/2020/08/LGBTQ-Youth-Sports-and-Well-Being-Research-Brief.pdf>.

athletes gain assets like “camaraderie, teamwork, sharing, problem-solving, and self-esteem,” said one student-success dean/coach from Washington. And as a special-education teacher/coach from Colorado observed, sports “give kids a sense of internal motivation that can transfer over to other areas of life.”

Educators also observe that team sports provide students with a crucial sense of belonging in school. Sports are “an avenue [for students] to find people they fit in with,” as one Colorado science teacher/coach explained. Other teachers observed that sports can provide a “special bond” and “build long-lasting friendships” that underpin students’ “sense of belonging in their school community.” This connection to school can yield academic and behavioral benefits, especially as preserving sports eligibility is a reason that many students maintain their attendance, grades, and clean disciplinary records, some educators observed.

Participating in sports can be especially helpful to students who face challenges outside school, as several educators noted. An athletic director/coach from New York explained that “when kids don’t have a good home life, their team becomes their family.” As several coaches pointed out, being on a sports team creates an opportunity not just to connect with peers, but also to engage with supportive adults with whom students can build trusting relationships. Notably, LGBTQ+ students who feel that school staff care about them have lower rates of anxiety, depression, and suicidality.¹⁶

¹⁶ The Trevor Project, *Research Brief: The Relationship Between Caring Teachers and the Mental Health of LGBTQ Students* 1–2 (May 2023), <https://storage.googleapis.com/trevor-web-public/2023/05/May-2023-Research-Brief-Final.pdf>.

Students who are transgender just want the chance to “be a part of the team and have that sense of camaraderie,” a Rhode Island physical-education teacher/coach explained, and other educators echoed. Educators also noted that the opportunity to play on a team that is consistent with a student’s gender—to be “one of the girls,” or boys—may be uniquely validating. Illustrating this, an educator from California described one transgender girl’s pride going “through the roof” when she made a girls’ team and was accepted by her teammates. As the physical-education teacher/coach remarked, “I’ve seen how trans students light up and are so relieved of stress when they are accepted. It’s like night and day.”

B. Title IX protects every person from discrimination on the basis of sex, including transgender students.

A flawed theme of West Virginia’s position here is that Title IX’s purpose is little more than a balancing of the sexes, essentially pitting “one biological sex” against “the other.” *See* Pet’r’s Br. 17–18. Of course, remedying discrimination against women was a driving force behind Title IX’s passage—and is one of its core successes. But one need look no further than the statutory text to see that Title IX guarantees *each student* equal opportunity to reap the benefits just described, and does so broadly. It easily reaches students who are excluded because they are transgender.

1. Title IX’s antidiscrimination mandate is individualized and broad.

Title IX’s mandate against sex discrimination is both individualized and broad, providing that “[n]o person . . . shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be

subjected to discrimination under” a federally funded “education program or activity.” 20 U.S.C. § 1681(a).

Through its prohibition on discrimination against a “person,” Title IX’s anti-discrimination mandate centers the rights and treatment of individuals. Its person-focused language creates an individualized entitlement to be free of discrimination on the basis of sex—just as this Court has held with the similar prohibition on employment discrimination against “any individual” in Title VII of the Civil Rights Act of 1964. *See Ames v. Ohio Dep’t of Youth Servs.*, 605 U.S. 303, 309–10 (2025); *Bostock v. Clayton Cnty.*, 590 U.S. 644, 658–59 (2020) (same). Importantly, this Court has long construed Title IX’s antidiscrimination mandate with reference to precedents interpreting Title VII. *See, e.g., Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 651 (1999); *Franklin v. Gwinnett Cnty. Pub. Schs.*, 503 U.S. 60, 75 (1992). Like Title VII, then, “Title IX protects the rights of ‘individuals, not groups,’” asking courts to consider the treatment of an individual and not only the treatment of one sex vis-à-vis the other. *Peltier v. Charter Day Sch.*, 37 F. 4th 104, 130 (4th Cir. 2022) (quoting *Bostock*, 526 U.S. at 658), *cert. denied* 143 S. Ct. 2657 (2023).

Additionally, Title IX’s antidiscrimination mandate is capacious as to whom and what it covers. The statute’s “broad directive” that “no person” be subject to discrimination in a federally funded education program reaches not just students (the statute’s obvious target), but also school employees—*i.e.*, many of NEA’s members, whose rights this Court’s decision may impact. *See North Haven Bd. of Educ. v. Bell*, 456 U.S. 512, 520–36 (1982). This Court also has construed the statute expansively as to the conduct it addresses, observing that it “is a broadly written general prohibition on discrimination, followed by specific, narrow

exceptions.” *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 175 (2005) (construing the statute’s antidiscrimination mandate to encompass an unwritten prohibition on retaliation).¹⁷

These “narrow exceptions” pertain to certain institutions and activities—*i.e.*, religious organizations and beauty-pageant scholarships—whose specific enumeration makes clear that inclusion regardless of sex is otherwise required. 20 U.S.C. §§ 1681(a)(1)–(9). Important here, there is no statutory exception for school-sponsored sports, specific forms of sex discrimination, or individuals who belong to particular sex- or gender-based minorities.

2. Laws like H.B. 3293 that prevent transgender girls from joining girls’ sports teams due to their sex assigned at birth contain sex-based distinctions within the meaning of Title IX.

Understanding Title IX’s prohibition on sex discrimination to be both individualized and capacious makes it easy to reach the same conclusion as the circuit court below: that applying H.B. 3293 to a transgender girl like B.P.J. discriminates against her on the basis of her sex. This is so because the law conditions participation in school sports on sex in two

¹⁷ In *Jackson*, this Court described Title VII as a “vastly different” statute from Title IX. 544 U.S. at 168. It was specifically addressing the fact that while Title VII delineates specific actions that constitute discrimination, the broad antidiscrimination mandate of Title IX lacks such definition. Silence about whether specific conduct constitutes discrimination under Title VII, therefore, might be telling, but not so under Title IX. *Ibid.* This reasoning does not disrupt other ways in which the two statutes are similar, including their shared prohibition on sex-based employment discrimination.

pertinent ways that exclude girls like B.P.J. In sorting girls and boys into separate sports teams—which itself is a permissible and unchallenged sex classification—the law (1) prohibits transgender girls from joining girls’ sports teams because of the incongruence between their gender identity and birth-assigned sex, and (2) restricts students whose birth-assigned sex is male to playing on boys’ or coed teams while allowing students whose birth-assigned sex is female to play on *any* team. Pet. App. 39a; *see also* Pet. App. 23a–27a.

Common sense alone dictates that these are sex-based exclusions, but this Court’s precedent in *Bostock* also illuminates how H.B. 3293’s treatment of girls who are transgender is discrimination “on the basis of” sex. In *Bostock*, this Court considered whether Title VII’s similar prohibition on discrimination “because of” an employee’s sex reached differential treatment based on transgender status. The Court concluded that it does, because “it is impossible to discriminate against a person for being . . . transgender without discriminating against that individual based on sex.” 590 U.S. at 660. As here, the treatment of a person “who now identifies as a female,” hinges on whether she “was identified as female at birth” or instead “as male at birth.” *Ibid.* Sex is a “but-for cause” of the outcome, which is all that the “because of” language—devoid of a “sole” cause requirement—asks. *Id.* at 656–57, 671.

There is good reason to apply *Bostock*’s reasoning about Title VII’s antidiscrimination mandate to Title IX’s similar one. As noted above, this Court long has looked to Title VII’s bar on discrimination in order to interpret Title IX’s—despite distinctions in the authority under which Congress passed them and certain aspects of their framing. *See supra* pp.11–12 & n.17. The two statutes also have overlapping coverage for sex-

based employment discrimination in the education setting. *Ibid.*

This Court should not accept West Virginia’s strained effort to resist *Bostock*’s application on causation grounds. The State claims that Title IX’s phrase “on the basis of sex” requires sex (and not gender identity) to be the “sole” cause of differential treatment, whereas Title VII’s prohibition on such treatment “because of” sex requires only “but for” causation. See Pet’r’s Br. 19–20, 29. But that should be news to this Court, which in *Bostock* used the phrase “on the basis of,” or the similar formulation “based on,” almost interchangeably with “because of” in describing Title VII. See, e.g., 590 U.S. at 662–69. This is unsurprising, as the phrase “on the basis of” is “suggestive of a but-for causation standard.” *Comcast Corp. v. Nat’l Ass’n of Afr. Am.-Owned Media*, 589 U.S. 327, 335 (2020) (quotation omitted).

C. Excluding transgender students from sports teams that align with their gender identity constitutes harmful discrimination under Title IX that is not justified by the permissibility of sex-based distinctions.

Applying H.B. 3293 to a transgender girl like B.P.J. not only treats her differently on the basis of her sex in relation to similarly situated peers, but also causes harm. That is because a transgender girl may not join her cisgender peers on the girls’ team, and because every other student—except for a transgender girl—may participate on a team that matches their gender identity. She, by contrast, must somehow play with the boys or not play at all (absent a coed option, which does not exist in B.P.J.’s sports). As the court of appeals explained, H.B. 3293’s application harms B.P.J. in at least two ways: it marginalizes her by preventing her

from joining a team with her friends, and it allows her to play sports only if she foregoes the identity that she, her family, doctors, and teachers have spent years affirming. Pet. App. 40a–41a. Indeed, forcing B.P.J. to play with the boys would be, as she puts it, “isolating, stigmatizing, and publicly humiliating.” Resp’t’s Br. 33. This “choice,” the court below rightly observed, is “no real choice at all.” Pet. App. 41a.

1. Prohibiting transgender students from participating in team sports diminishes the value of their K–12 educational experience and creates broad stigmatization.

Research and experience in the K–12 educational environment confirm that laws restricting all transgender students from playing sports that match their gender identity are harmful—a point that West Virginia does not and could not meaningfully contest. These harms include effectively barring an already-underrepresented and marginalized group of children from the numerous physical, emotional, academic, and social benefits of teams sports identified in Part I.A.¹⁸ Pediatricians who serve transgender youth also have expressed concern about the health effects of laws like H.B. 3293 because they reinforce discrimination against and stigmatization of transgender students (athletes and non-athletes alike), and they also increase the risk of physical inactivity and other

¹⁸ See also Hum. Rts Campaign, *Play to Win: Improving the Lives of LGBTQ Youth in Sports* (2018), <https://assets2.hrc.org/files/assets/resources/PlayToWin-FINAL.pdf>.

negative health outcomes to which transgender youth may be susceptible.¹⁹

Teachers within NEA's membership report transgender students being dissuaded from participating or becoming dispirited due to uncertainty arising from mounting restrictions. Others worry about students returning to the closet or delaying transition so that they can continue to play when faced with either restrictions or related negative attention around transgender athletes. Students may experience a "depressing amount of isolation" if they feel forced to stop playing, one special-education teacher/coach from Colorado observed. But she also pointed out that if they instead repress their true identity, they may suffer adverse health consequences, too.

Several educators worried that losing the opportunity to play sports further marginalizes students who already may struggle to find acceptance. The New Hampshire social-studies teacher/coach opined that sports bans are particularly harmful because "LGBTQ kids especially need an opportunity to join an activity where they can feel welcomed and embraced because of the social trauma they endure from bullying and harassment." The student-success dean/coach in Washington noted the injustice of telling kids that "they have to go to school but can't even participate in something they could be successful in." The message, as the Colorado special-education teacher/coach said, is "not only that they don't belong, but that there is no space for them and they *can't* belong." The New

¹⁹ Landon D. Hughes et al., *Pediatric Provider Perspectives on Laws and Policies Impacting Sports Participation for Transgender Youth*, 9 LGBT Health 249-51 (2022); see also Ellis Barrera et al., *The Medical Implications of Banning Transgender Youth From Sport Participation*, 176 JAMA Pediatrics 223 (2022).

Hampshire social-studies teacher/coach explained that being told everyone “except you gets to join sports”—which hold an important place in American culture—“causes huge social and psychological harm.” Indeed, what happens in sports can put “a child’s entire wellbeing at risk,” noted a Rhode Island music teacher and band director. And many educators expressed that the stakes of exclusion are high given how discrimination and hostility elevate suicide risk among transgender youth.

An especially damaging aspect of bans on transgender students’ participation is that they reflect a broad statement of exclusion from state and school authorities, creating an official stigma that may extend into the rest of the educational and social experience. As an Iowa teacher noted, broad exclusions show that “discrimination is being not only allowed but may even be *enforced* by law, which opens the door to harassment and discrimination in other areas.” Similarly, the former Wyoming teacher/coach observed, “when [transgender] kids see spaces that are excluding them, it tells them that they won’t be accepted more broadly”; even transgender kids who “don’t play sports” receive a “message that the whole school isn’t a safe place for them.” At bottom, said an administrator in North Carolina, sports bans “set the precedent that if you are queer, you are not wanted.” This “not only undermines children’s development,” a Kansas para-educator explained, “but also increases their vulnerability to bullying from peers and even the adults who should be their protectors.”

2. Laws restricting transgender girls' participation in sports can have harmful spillover effects on all girls.

Notably, laws like H.B. 3293 not only harm transgender girls (and non-binary students) by stigmatizing and excluding them from valuable educational experiences, but also may adversely impact other girls who are cisgender—the very population the law's proponents claim to protect.²⁰ Girls whose appearance defies sex stereotype may face unwanted scrutiny, including girls who are very tall or muscular.²¹ The same harm may befall girls whose bodies simply do not conform to this society's expectations of femininity—expectations that are influenced by race.²² This obviously does not comport with Title IX's aim of remedying the effects of discrimination arising from stereotype. *See Cohen v. Brown Univ.*, 101 F.3d 155, 178–79 (1st Cir. 1996).

Illustrating this, several coaches interviewed for this brief described troubling incidents where both students and adults critically speculated about whether certain athletes on girls' teams were transgender because their bodies were larger or perceived to be masculine. A Utah health teacher recounted an incident in which a state school board member publicly shamed a high school athlete for supposedly being transgender,

²⁰ Nat'l Women's L. Ctr. (NWLC), *Fulfilling Title IX's Promise: Let Transgender & Intersex Students Play* 2 (June 2022), https://nwlc.org/wp-content/uploads/2019/09/NWLC_Trans50th_FactSheet.pdf; *see also* Barrera, *supra* note 20, at 223.

²¹ NWLC, *supra* note 20, at 2.

²² *Ibid.*

causing the student (who is in fact cisgender) distress and harassment that necessitated police protection.²³ The former Wyoming teacher/coach expressed dismay about this increased scrutiny, since “most teen girls are self-conscious about their bodies, and some even have eating disorders as a result.”

Other coaches noted that the premise of these laws—that a transgender girl has an inherent ability to outperform a cisgender girl—reinforces stereotypes about women’s inferior athletic abilities that are “offensive,” as the Wyoming coach put it. That coach found implausible the idea “that any boy who failed out of the boys’ team could just walk onto the women’s team and get a scholarship.” The Rhode Island physical-education teacher/coach made a similar observation and noted that she is aware of many boys who could not beat their female peers in sports.

3. Allowing sex-based distinctions does not justify sex-based exclusion.

These harmful discriminatory effects cannot be justified by the fact that Title IX allows sex-based distinctions in certain contexts. The permissibility of some sex segregation does not negate the statute’s express directive: that “[n]o person” be excluded, denied benefits, or discriminated against based on sex in a federally funded education program. 20 U.S.C. § 1681(a).

Starting with the statute itself, Section 1681(a)’s antidiscrimination mandate in education “broadly” applies to every “person” and contains “narrow”

²³ See Jenny Gross, *Utah School Board Member Is Censured After Questioning Student’s Gender*, N.Y. Times (Feb. 16, 2024), <https://www.nytimes.com/2024/02/16/us/utah-natalie-cline-censored.html>.

exceptions for specific institutions and activities. *Jackson*, 544 U.S. at 175. These exceptions do not include team sports or reference transgender individuals, leaving the statutory antidiscrimination mandate intact in the context where this case arises. *See supra* p. 12.

The Title IX regulation allowing sex-segregated sports teams is likewise unavailing to the position that some sex-based exclusion or discrimination is acceptable. That regulation permits schools to “operate or sponsor 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). This regulation does not *require* sex segregation, however, or even address how transgender students should be treated when teams are segregated by sex. Nor does it reduce the sexes to monoliths or mandate exclusion of students whose sex differs from their gender. Rather, it reiterates the individualized statutory mandate that schools must “provide equal athletic opportunity for *members* of both sexes.” 34 C.F.R. § 106.41(c) (emphasis added).

Even to the extent that permitting some sex segregation is a measure to secure equal opportunity for girls and women in particular, this cannot narrow the statute’s protection of every person, regardless of sex—including transgender people. The fact that Congress may have intended Title IX to advance equal opportunity for women specifically does not alter this Court’s obligation to give force to the undifferentiated and individualized antidiscrimination mandate that Congress enacted. *Cf. Ames*, 605 U.S. at 309–11 (rejecting an additional “background circumstances” requirement for majority-group plaintiffs in Title VII cases).

II. Laws categorically excluding transgender students are untethered from the reality of K–12 athletics and demonstrate the targeting of a politically marginalized group.

Excluding transgender girls from girls’ sports teams because their sex assigned at birth was male is discrimination on the basis of sex and transgender status. The court of appeals correctly concluded that heightened scrutiny applies to both of those classifications, and H.B. 3293 should not pass muster under the Equal Protection Clause once that scrutiny is applied. The circumstances of H.B. 3293’s enactment—as with similar laws across the county—reflect an irrational response to the benign reality of transgender students’ participation in K–12 athletics.

Indeed, as the district court in West Virginia put it, H.B. 3293 reflects the legislature’s work “to politicize participation in school athletics for transgender students.” Pet. App. 95a. Within the broader context of a mounting slew of anti-LGBTQ+ laws across all aspects of public life—and especially in K–12 schools—laws like H.B. 3293 are premised upon, and codify, an “irrational prejudice” against transgender people. *Cf. City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 450 (1985). They do not solve real problems, as educators’ experiences confirm.

1. H.B. 3293 is a quintessential example of a solution seeking a problem. While transgender athletes in West Virginia were allowed to play sports consistent with their gender identity on a case-by-case basis for five years prior to H.B. 3293’s enactment, this created no problems: there were no known instances of unfair or unsafe conditions, much less complaints. Pet. App. 14a, 83a; J.A. 2763–2764. Nor is there even evidence that transgender students’ participation is anything but rare in West Virginia, as B.P.J. remains the only

transgender girl known to be impacted by H.B. 3293. J.A. 2764. Despite now invoking extra-record evidence to claim that B.P.J. has somehow personally “displaced” hundreds of girls through the track-and-field standings, the only West Virginia girls the State actually identifies here as having stopped competing because of B.P.J.’s inclusion are those who have done so by choice. *See* Pet’r’s Br. 14. The notion that transgender athletes must be kept off girls’ teams to save women’s sports in West Virginia simply does not hold up.

To the extent the State claims that events outside its borders—*i.e.*, the handful of openly transgender girls and adult women whose athletic successes have generated news—necessitated excluding all transgender girls in West Virginia (Pet’r’s Br. 6–8), that justification also founders. There is evidence that high-school girls’ participation in sports has held steady in jurisdictions with policies that include transgender athletes, but *decreased* in jurisdictions with policies that exclude transgender athletes.²⁴ In some states with inclusive policies, girls’ participation has actually *increased*.²⁵ Indeed, participation in high-school sports was at an all-time high in the 2024–2025 school year—both overall and by sex—with the greatest gains in girls’ sports.²⁶ If anything, the march of progress in women’s sports that West Virginia hails (Pet’r’s Br. 2) has continued alongside the emergence

²⁴ Goldberg, *supra* note 14, at 14–15.

²⁵ *Ibid.*

²⁶ Nat’l Fed’n of State High Sch. Ass’ns, *Participation in High School Sports Hits Record High With Sizable Increase in 2024-25* (Sept. 9, 2025), <https://nfhs.org/stories/participation-in-high-school-sports-hits-record-high-with-sizable-increase-in-2024-25>.

of a few highly talented transgender athletes on whom West Virginia fixates.

Rather than addressing real, localized problems, then, laws like H.B. 3293 are part of a political galvanization effort that is trained on the LGBTQ+ community, seemingly bent on diminishing recent progress toward acceptance in public life. The bill in this case was one of more than 200 targeting LGBTQ+ people that were introduced in 42 states in the 2021 legislative session alone—a trend that has tripled in subsequent years.²⁷

The upswing is pronounced when it comes to transgender children specifically. In the context of K–12 schools alone in the past several years, 29 states have adopted transgender sports bans like West Virginia’s; 20 have barred transgender students from using restrooms consistent with their gender identity; and 15 have adopted laws that target transgender students with intrusive administrator and family notification requirements about gender identity.²⁸ Indeed, one searching for “evidence of *de jure* discrimination against transgender individuals . . . need look no further than the present.” *United States v. Skrmetti*, 605 U.S. 495, 602 (2025) (Sotomayor, J., dissenting).

²⁷ ACLU, *Past Legislation Affecting LGBTQ Rights Across the Country 2021*, <https://www.aclu.org/legislation-affecting-lgbtq-rights-across-country-2021>; ACLU, *Mapping Attacks on LGBTQ Rights in U.S. State Legislatures in 2025*, <https://www.aclu.org/legislative-attacks-on-lgbtq-rights-2025> (last visited Nov. 12, 2025).

²⁸ MAP, *supra* n. 2; MAP, *Bans on Transgender People Using Public Bathrooms and Facilities According to Their Gender*, https://www.lgbtmap.org/equality-maps/youth/school_bathroom_bans (last visited Nov. 12, 2025); MAP, *Forced Outing of Transgender Youth in Schools*, https://www.lgbtmap.org/equality-maps/youth/forced_outing (last visited Nov. 12, 2025).

2. Educators' experiences echo and elaborate on the reality that transgender students are a tiny portion of the student-athlete population, and that bans "are trying to solve a problem that does not actually exist," as one Michigan secondary-school educator put it. Indeed, the group of coaches and educators interviewed for this brief knew of only a handful of transgender students (if any) who sought to join team sports. Those students participated without incident under policies that were fully inclusive or allowed for individualized assessments—as had been the case in West Virginia. Coaches said that in the rare instances where transgender students played on teams, they generally did not dominate the competition or even necessarily excel. They "were just happy to be there," the Colorado special-education teacher/coach observed, while another coach explained that for her students, "it was about the experience and being able to show up as your authentic self."

In this context, educators observed that categorical bans are not the product of community problem-solving, but instead the project of outside forces targeting a vulnerable minority. Arguments about rigorous sex segregation, student safety, and unfair competitive advantage simply lack foundation in the reality of K–12 sports that many educators know.

For example, coaches noted the inconsistency of barring transgender students when cisgender students have sometimes been allowed to play on teams designated for the other sex or to participate in sports despite special physical advantages. The athletic director/coach in New York observed that no one complains when cisgender boys played on a girls' volleyball team in the absence of a boys' team, while other coaches noted that no one minds when a girl plays on the boys' football team. As for unusual physical

attributes, the New York coach noted that a girl who grows to 6'8" is not kicked off the girls' basketball team, while the former teacher/coach from Wyoming pointed out that athletes with extreme size disparities play alongside each other in boys' football without concern for anyone's safety.

Regarding unfair advantage, coaches consistently remarked that these concerns largely miss the purpose of K–12 sports: to be engaged and included. By and large, children do not participate in K–12 sports to become elite athletes—a path available only to extremely few, uniquely talented students. Moreover, coaches were consistently baffled by the narrative that students—particularly boys—would manipulate their gender identity to win. One Colorado physical-education teacher/coach put it bluntly: “for those of us on the ground doing the actual work of coaching, this debate is ludicrous and a non-issue.” The former teacher/coach from Wyoming remarked: “Have you ever met a teenage boy? They would not want to be called a girl for any reason! To suggest that they would then just *become* a girl for sports betrays a total lack of comprehension.” The Colorado special-education teacher/coach found absurd the notion that any student would take on the costs of being transgender in society simply for “sports glory.”

The irrationality of these laws is further underscored by educators' observations, described in Part I.C.2, *supra*, that these laws can harm the very students they purport to protect—cisgender girls—by subjecting their bodies to scrutiny and perpetuating harmful sex stereotypes. This again underscores the truth of transgender sports bans like H.B. 3293: they are not about safety and equality in sports, but instead are about trying to legislate transgender people out of normal American childhood and public life.

III. Educators may experience harm when they work in schools that exclude transgender students through team-sports bans.

The impact of discriminatory laws like H.B. 3293 extends to the educators who must enforce or abide by them—often in conflict with professional ethics standards and personal values. Further, educators who themselves may be transgender must go to work every day within the climate of official hostility and marginalization that these laws create.

A. Working in schools that exclude transgender students from school programming can place educators in ethical and moral peril.

Laws barring transgender students from accessing school-sponsored sports may force educators to violate ethical codes and professional conduct standards. Athletic directors, coaches, and physical-education teachers may be called upon to enforce these exclusionary rules; others, like counselors, GSA advisors, and classroom teachers may have to convey and validate policies that single out and stigmatize certain students.

The Code of Ethics to which NEA holds its three million members, for example, contains several obligations that run in conflict with transgender sports bans: to “protect the student from conditions harmful to learning or to health and safety”; to prevent intentionally exposing any student to “embarrassment or disparagement”; and not to discriminate or exclude a student from educational programming on the basis of characteristics that include sex and sexual orientation.²⁹ Likewise, the Model Code of Ethics for

²⁹ Nat’l Educ. Ass’n, “*Code of Ethics for Educators*” (2020), <https://www.nea.org/resource-library/code-ethics-educators>.

Educators requires educators to “promote the health, safety and wellbeing of all students” and to demonstrate care through respecting the “dignity, worth, and uniqueness” of each student, including with regard to their gender identity or expression.³⁰ And in West Virginia, at the heart of this case, the State’s Employee Code of Conduct prescribes that all “school employees shall: maintain a safe and healthy environment, free from harassment, intimidation, bullying, . . . and from bias and discrimination,” and “create a culture of caring through understanding and support.” W. Va. Code R. §§ 126-162-4.2.3–.4.

It is hard to say how an educator may comply with these standards—which require protecting and respecting every student—when the law demands excluding some students from school programming. Having to enforce or abide by anti-LGBTQ+ policies that violate ethical principles and harm students may diminish “the moral rewards” of teaching that were “previously available in ever-challenging work,” leading to educators’ “demoralization.”³¹ Further, taking part in anti-LGBTQ+ discrimination has been linked to negative health outcomes for the perpetrators.³²

Indeed, the Iowa teacher, for example, expressed that having to enforce her state’s ban on transgender girls’ sports participation would violate the state’s code of ethics for educators, which prohibits educators from

³⁰ Model Code of Ethics for Educators §§ III & III.B.2, Nat’l Ass’n of State Dirs. of Teacher Educ. & Certification (2023).

³¹ Doris A. Santoro, *Good Teaching in Difficult Times: Demoralization in the Pursuit of Good Work*, 118 Am. J. Educ. 1, 3 (2011); see also *id.* 19–20.

³² *E.g.*, Mark L. Hatzenbuehler et al., *Anti-Gay Prejudice and All-Cause Mortality Among Heterosexuals in the United States*, 104 Am. J. Pub. Health 332, 335 (2014).

excluding students based on gender identity. The New York athletic director/coach expressed the heartbreak of having to “destroy a kid’s dream” when making cuts from a roster, and decried the possibility of coaches having to do so “just based on identity.” Another social-studies teacher/coach from New Hampshire remarked that “teachers don’t decide to coach (or teach) in order to bully kids,” which is exactly what sports bans would require them to do. “These are children,” the Iowa teacher said. “Just let them play.”

Resisting discriminatory laws, however, can come at a cost. Advocating for LGBTQ+ students can prompt pushback from administrators, discipline, and even acts of career-altering retaliation, as several NEA members have observed or, unfortunately, experienced.

B. Official discrimination against transgender students can have a marginalizing effect on their LGBTQ+ teachers and coaches.

While laws excluding transgender students may cause distress for any educator, LGBTQ+ educators may be doubly burdened by the hostility that these policies project on the school community, including staff.³³ This is especially significant given that educators are protected against workplace sex discrimination under Title VII—which *Bostock* already held to prohibit discrimination based on gender identity—and also under Title IX, as noted in Part I.B.1, *supra*.

³³ Michael Hansen & Alex Hubbard, Brookings Inst., *Actions Against LGBTQ+ Students Also Threaten K–12 Teachers* (Mar. 6, 2025), <https://www.brookings.edu/articles/actions-against-lgbtq-students-also-threaten-k-12-teachers/>.

Official stigmatization of transgender students in athletics may contribute to a discriminatory workplace for transgender educators. In contemplating the possibility of restrictions on transgender students in sports, the Colorado special-education teacher/coach shared that even “being a trans coach is an exercise in courage for myself,” as she already faces hostility from some parents. Another teacher in Virginia questioned whether he could even take advantage of a professional opportunity like coaching, because “as an open trans man, I feel unwelcome trying to coach sports” in a hostile environment where he may face scrutiny and violence. “I try to counsel my students who are afraid” in this climate, he explained, “while also managing my own fears,” which imposes a “high tax on my own mental health.”

C. Laws like H.B. 3293 may drive educators out of the profession.

Forcing educators to violate their ethical and moral obligations and to work in an atmosphere of official hostility toward the LGBTQ+ community runs the risk of worsening the shortage of teachers around the country.³⁴

Educators worry about what laws like H.B. 3293 mean for the future of their profession. As the social-studies teacher/coach in New Hampshire explained: “Nobody goes into education because it is a lucrative career. You want to help kids and make things better for them. But being legislated away from being able to do that will drive an exodus from the profession.” The Iowa teacher echoed this prediction, observing that

³⁴ See generally Tiffany Tan et al., Learning Pol’y Inst., *State Teacher Shortages 2025 Update* (July 15, 2025), https://learning-policyinstitute.org/media/4746/download?inline&file=State_Vacancy_2025_RESOURCE.pdf (describing shortages).

“many of the people entering Iowa’s teaching programs are blatantly saying they will not stay in the state, even if they were born and raised in Iowa, because of all these laws and policies.” Were it not for her own family in the state, she, too, “probably would leave.”

Indeed, some of the best teachers—including an NEA member who was Kentucky’s 2022 Teacher of the Year—already have.³⁵

CONCLUSION

For these reasons, this Court should affirm the judgment below.

Respectfully submitted,

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³⁵ Madeline Will, ‘*I’m Afraid to Return to the Classroom:’ A Gay Teacher of the Year Speaks Out*, Educ. Wk. (May 12, 2022), <https://www.edweek.org/teaching-learning/im-afraid-to-return-to-the-classroom-a-gay-teacher-of-the-year-speaks-out/2022/05>.

