

Practice Update

Supreme Court Upholds Biological-Sex Eligibility for Women's College and School Sports

July 23, 2026

By LaKeisha C. Marsh, Montoya M. Ho-Sang, Jamel A.R. Greer, and Sommer Sharpe

Bottom Line

- **Schools may limit women's and girls' sports teams to biological females.** The Court held, 6–3 on the equal protection question (and unanimously on the narrower Title IX question), that this is consistent with both Title IX and the Equal Protection Clause.
- **27 state laws are now constitutionally validated.** If your state has a biological-sex eligibility statute, that statute has now been upheld against federal Title IX and Equal Protection challenges.
- **No case-by-case assessment required.** States and schools may draw categorical biological-sex lines without individualized evaluation of transgender athletes' physical capabilities.
- **NCAA, USOPC, and IOC policies confirmed.** The decision aligns with and validates the NCAA's 2025 transgender-athlete participation policy.
- **Critical open question:** The Court expressly did *not* decide whether schools may *voluntarily* allow transgender athletes on women's teams. That question remains in active litigation.
- **Act now:** Update eligibility policies, coordinate with your conference, and document the legal basis for all eligibility decisions.

Related People

Jamel A.R. Greer
Montoya M. Ho-Sang
LaKeisha C. Marsh
Sommer Sharpe

Related Work

Government Strategies
Higher Education and
Collegiate Athletics

Related Offices

Atlanta
Chicago
Los Angeles

In Brief

On June 30, 2026, the Supreme Court decided *West Virginia v. B.P.J.* (consolidated with *Little v. Hecox*), holding that schools may determine eligibility for women's and girls' sports based on biological sex under both Title IX and the Equal Protection Clause. Justice Kavanaugh delivered the majority opinion, joined by the Chief Justice and Justices Thomas, Alito, Gorsuch, and Barrett. Justice Sotomayor, joined by Justices Kagan and Jackson, concurred in the judgment in part and dissented in part; Justice Jackson also filed a separate opinion concurring in the judgment in part and dissenting in part. All nine Justices agreed that B.P.J.'s Title IX claim failed, while the Court divided 6–3 on the equal protection question. The Court reversed the Fourth Circuit (98 F.4th 542) and the Ninth Circuit (104 F.4th 1061) and remanded both cases.

Background and Legal Context

Title IX (1972) prohibits sex discrimination in federally funded education but originally did not address athletics. The 1974 Javits Amendment directed HEW to issue regulations for athletics including “reasonable provisions considering the nature of particular sports.” In 1975, HEW promulgated regulations — still in force today — requiring “equal athletic opportunity for members of both sexes” while authorizing “separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport” (34 C.F.R. § 106.41(b)–(c)). Those regulations transformed women's sports: participation grew from roughly 300,000 high school girls in 1972 to 3.5 million today, with college women athletes now numbering 235,000.

In recent years, 27 states enacted laws limiting women's/girls' sports teams to biological females. In 2025, the NCAA adopted a Participation Policy for Transgender Student-Athletes restricting women's-category competition to biological females; the USOPC followed with its Athlete Safety Policy (§ 3.3,

June 2025); and the IOC adopted its Policy on the Protection of the Female (Women's) Category in Olympic Sport (March 2026), citing performance-advantage data showing a 20%-plus male advantage in throwing and jumping events, a 10–12% advantage in running and swimming events, and a greater than 100% advantage in explosive-power events, even after hormone treatment.

The two cases. West Virginia enacted the Save Women's Sports Act in 2021 (W. Va. Code Ann. §§ 18–2–25d). B.P.J., a biological male who identifies as female, sued after being excluded from the girls' cross-country and track teams. The district court ruled for the State; the Fourth Circuit reversed on Title IX. Idaho enacted the Fairness in Women's Sports Act in 2020 (Idaho Code Ann. § 33–6203). Lindsay Hecox, a biological male who identifies as female and attends Boise State, challenged the law under the Equal Protection Clause. The district court enjoined the law and the Ninth Circuit affirmed. The Supreme Court consolidated the cases and reversed both circuits.

What the Court Held

Title IX. The term “sex” in Title IX, the Javits Amendment, and the 1975 regulations means biological sex. The regulations' authorization of sex-separated teams is “reasonable” given inherent physical differences and the safety and competitive-fairness concerns that arise when biological females are forced to compete against biological males. The Court rejected B.P.J.'s argument that Title IX guarantees a roster spot (it guarantees “equal athletic opportunity,” not a place on any particular team), and rejected the attempt to import *Bostock v. Clayton County*'s Title VII reasoning into the “vastly different” context of sex-separated sports.

Equal Protection. Applying intermediate scrutiny (*United States v. Virginia*; *United States v. Skarmetti*), the Court held that safety and competitive fairness are important government interests, and that

limiting women's teams to biological females is substantially related to those interests. Critically, the Court held that intermediate scrutiny does not require individualized, athlete-by-athlete assessment — states may apply categorical biological-sex rules without carving out exceptions for transgender athletes who have taken puberty blockers or hormones. The Court characterized the alternative as an unworkable “judicial quagmire” and deferred to legislative judgment on the medical and scientific uncertainty regarding whether hormone treatment eliminates male performance advantages.

The separate opinions are notable but narrow. Thomas and Gorsuch concurred (Thomas on rational-basis-only for transgender classifications; Gorsuch on Spending Clause clarity). Sotomayor, joined by Kagan and Jackson, agreed the Title IX claim failed but dissented on equal protection, arguing unresolved factual questions about athletes who never underwent endogenous male puberty warranted remand. Jackson wrote separately to caution against limiting Title IX's definition of “sex” to biology outside the sports context.

What the Court Did Not Decide

The majority was emphatic about the boundaries of its ruling (Op. at 4 n.1):

- Whether schools may *voluntarily allow* transgender athletes on women's teams — “currently the subject of litigation in some lower courts”
- Participation by biological females on male or co-ed teams
- Bathrooms, locker rooms, or any facility-access questions

What This Means for College Sports Going Forward

Immediate certainty in 27 states. Institutions in states with biological-sex eligibility statutes now

operate under clear Supreme Court authority confirming those statutes are constitutional under federal law. Institutions should confirm that internal policies mirror the precise statutory language of their state's law.

Full alignment with NCAA policy. The Court's reasoning validates the NCAA's February 2025 Participation Policy, the USOPC's Athlete Safety Policy, and the IOC's March 2026 policy. Institutions complying with NCAA rules are now on constitutionally firm ground. Document reliance on both state law and NCAA policy to support future eligibility decisions.

Continued risk in states without legislation. In the 23 states without a biological-sex eligibility statute, the legal picture is more nuanced. The decision permits — but does not require — such policies. Institutions that adopt biological-sex eligibility rules have strong constitutional backing but may face challenges under state anti-discrimination laws. Conversely, institutions that voluntarily include transgender athletes on women's teams may face Title IX challenges from biological female athletes alleging denial of equal opportunity — a theory the Court's reasoning arguably supports.

The “voluntary inclusion” question is the next battleground. By expressly reserving whether schools may choose to include transgender athletes, the Court signaled that this issue will return. Institutions exercising discretion on either side of this question should expect litigation and should build a documented record supporting their chosen policy.

Ancillary issues remain live. The Court disclaimed any ruling on locker rooms, bathrooms, travel accommodations, or other facility-access issues. Institutions must continue navigating those questions under existing circuit precedent, state law, and institutional policy.

Title IX's broader obligations are unchanged. The decision addresses who may play on a women's team, not how institutions must fund, support, and resource men's and women's programs. Title IX's equal-opportunity requirements — facilities, scholarships, scheduling, coaching — remain fully in force.

Recommended Next Steps

1. **Audit eligibility policies immediately.** Compare your institution's written athletic-eligibility criteria against your state statute (if any), NCAA bylaws, and conference rules. Identify and close any gaps.
2. **Adopt or update a written biological-sex eligibility policy.** If your state has enacted such a law, ensure internal policy language mirrors the statute. If your state has not, determine whether to adopt a biological-sex eligibility policy and document the legal basis (this decision, NCAA policy, safety/fairness rationale).
3. **Engage your conference compliance office.** Conferences may issue updated model policies or guidance. Proactive coordination avoids misalignment between institutional and conference-level rules.
4. **Document eligibility decisions.** Maintain records of the legal and policy bases for all eligibility determinations. In the event of a challenge, a contemporaneous record of reasoned decision-making is your strongest defense.
5. **Monitor lower-court developments on voluntary inclusion.** The Court flagged that whether schools may choose to permit transgender athletes on women's teams is actively being litigated. Track these cases; the answer will affect institutional discretion in states without legislation.
6. **Review ancillary policies (locker rooms, travel, housing).** The Court's ruling is limited to team eligibility. Facility-access and accommodation policies remain governed by existing law and are

likely the next contested terrain. Ensure your institution's approach is defensible under current circuit and state law.

For questions about this decision or its implications for your institution, please contact a member of our Higher Education & Collegiate Athletics Practice.

This information is intended to inform firm clients and friends about legal developments, including recent decisions of various courts and administrative bodies. Nothing in this Practice Update should be construed as legal advice or a legal opinion, and readers should not act upon the information contained in this Practice Update without seeking the advice of legal counsel. Prior results do not guarantee a similar outcome.