



Written by [Michael Tennant](#) on January 9, 2023

## Federal Judge Finds West Virginia Law Barring Transgenders From Girls' Sports Constitutional

A federal judge upheld a West Virginia law requiring student athletes to compete with other members of their biological sex, dealing a blow to both the transgender movement and the Biden administration, which had supported the lawsuit challenging the statute.

Southern District of West Virginia Judge Joseph Goodwin [ruled](#) Thursday that the Mountain State's "Save Women's Sports Act" (H.B. 3293), which requires athletic teams "sponsored by any public secondary school or a state institution of higher education" that are designated as female-only to deny entry to biological males, does not violate either the 14th Amendment or Title IX of the Education Amendments of 1972.



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The lawsuit was filed by attorneys from the American Civil Liberties Union on behalf of Becky Pepper-Jackson (known as "B.P.J." in court documents), an 11-year-old boy whose long-standing belief that he is a girl, which was indulged by his family to the point of obtaining puberty blockers for him, led him to apply to his school's girls' cross-country and track teams. When his request was denied because of H.B. 3293, he and his family sued the state.

Initially, Goodwin, an appointee of President Bill Clinton whose opinion reveals his sympathy toward the transgender cause, issued a preliminary injunction against the law on the belief that B.P.J. was likely to prevail in court.

Nevertheless, he had the integrity to follow the law and the Constitution and to carefully weigh the arguments presented by both sides in the case. In the end, he found B.P.J.'s arguments unconvincing, contradictory, and self-serving.

"B.P.J. does not challenge, on a broad basis, sex-separation in sports. B.P.J. wants to play on a girls' team. And she admits that there are benefits associated with school athletics, 'including when such athletics are provided in a sex-separated manner,'" penned Goodwin. "Ultimately, B.P.J.'s issue here is not with the state's offering of girls' sports and boys' sports. It is with the state's definitions of 'girl' and 'boy.'"

The defendants, on the other hand, "argue that the state's classification based on 'biological sex' is substantially related to its important interest in providing equal athletic opportunities," reads the decision.

"On average, males outperform females athletically because of inherent physical differences between the sexes," noted Goodwin. "Given B.P.J.'s concession that circulating testosterone in males creates a



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biological difference in athletic performance, I do not see how I could find that the state's classification based on biological sex is not substantially related to its interest in providing equal athletic opportunities for females."

B.P.J. further argued that puberty blockers could mitigate biological males' advantage, so H.B. 3293 still unconstitutionally discriminates against transgender girls. Goodwin saw through this ruse. First he pointed out that "the social, medical, and physical transition of each transgender person is unique," with some undergoing the full gamut of interventions and others merely declaring they are transgender. Then he observed that although it is also possible for biological males, under certain circumstances, to have the same level of testosterone as biological females,

B.P.J. denies that [these males] "would be similarly situated [to cisgender girls] for purposes of Title IX and the Equal Protection Clause," and does not argue that they should be allowed to play on girls' teams.... This is inconsistent with her argument that the availability of hormone therapies makes transgender girls similarly situated to cisgender girls.... It appears that B.P.J. really argues that transgender girls are similarly situated to cisgender girls for purposes of athletics at the moment they verbalize their transgender status, regardless of their hormone levels.

B.P.J. also claimed that H.B. 3293 violates Title IX, which forbids sex discrimination in school sports, by excluding transgenders from sports altogether. Besides noting that Title IX is clearly intended to protect women's sports, Goodwin wrote that B.P.J.'s argument was patently false because "transgender girls are not excluded from school sports entirely. They are permitted to try out for boys' teams, regardless of how they express their gender."

H.B. 3293, Goodwin declared, is "constitutionally permissible."

West Virginia Attorney General Patrick Morrissey applauded Goodwin's decision, saying in a statement: "This is not only about simple biology, but fairness for women's sports, plain and simple. Opportunities for girls and women on the field are precious and we must safeguard that future. Protecting these opportunities is important, because when biological males compete in a women's event women and girls lose their opportunity to shine."



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