

Federal judge clears the way for West Virginia law restricting transgender athletes

By Bianca Quilantan

01/05/2023 07:46 PM EST

A federal judge on Thursday sided with West Virginia's law that restricts transgender girls from playing on sports teams that match their gender identity, finding that the state legislature's definition of "girl" and "woman" is constitutional.

The [lawsuit was filed](#) on behalf of 11-year-old Becky Pepper-Jackson, a middle schooler looking to try out for her school's girls cross-country team. Lawyers on behalf of Pepper-Jackson argued the West Virginia law discriminates on the "basis of sex" and "transgender status" — violating both the 14th Amendment's Equal Protection Clause and Title IX, a federal education law that prevents sex-based discrimination.

Her lawyers also alleged that the law was "targeted at, and intended only to affect, girls who are transgender."

"The record does make clear that, in passing this law, the legislature intended to prevent transgender girls from playing on girls' sports teams," Southern District of West Virginia Judge Joseph R. Goodwin [wrote in the ruling](#). "But acting to prevent transgender girls, along with all other biological males, from playing on girls' teams is not unconstitutional if the classification is substantially related to an important government interest."

Goodwin temporarily blocked the law in July of 2021, but now the state will be able to enforce it. The Clinton-appointed on Thursday conceded that: "I have no doubt that H.B. 3293 aimed to politicize participation in school athletics for transgender students." But Goodwin added that "there is not a sufficient record of legislative animus."

Goodwin boiled down the case to an issue over the state's definitions of "girl" and "woman" as based on biological sex. He also said the law "which largely mirrors Title IX" does not violate Title IX because transgender girls are not entirely excluded from school sports.

"This is not only about simple biology, but fairness for women's sports, plain and simple," Attorney General Patrick Morrisey said in a statement in response to the opinion. "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."

What else is in the ruling: Goodwin's ruling is the latest setback for transgender students and advocates pushing against restrictive state laws passed in the last few years that bar them from playing on women and girls' sports teams. The opinion is also a rebuke to the Biden administration's move to protect transgender girls' rights to play on sports teams.

The administration's first legal action to show its support for transgender student-athlete was a statement of interest supporting the [lawsuit filed on behalf of Pepper-Jackson](#). "A state law that limits or denies a particular class of people's ability to participate in public, federally funded educational programs and activities solely because their gender identity does not match their sex assigned at birth violates both Title IX and the Equal Protection Clause," DOJ wrote in the filing.

Goodwin on Thursday wrote that there were inherent physical differences between females and males, and while Pepper-Jackson was able to take puberty-blocking medication, some transgender girls may

not take those medications or not begin to take medication until after they have completed puberty.

“While sex and gender are related, they are not the same,” Goodwin wrote, but he also acknowledged that “being transgender is natural and is not a choice.”

What’s next: Goodwin’s ruling comes as South Carolina lawmakers could try to [define what it means to be a woman in its constitution](#). Other conservative states may follow as largely conservative-leaning groups are pushing a multistate effort to build support for a nine-point “[Women’s Bill of Rights](#)” that would define several gender-related words, down to “mother” and “father.”

“I will not get into the business of defining what it means to be a ‘girl’ or ‘woman,’” Goodwin wrote. “The courts have no business creating such definitions, and I would be hardpressed to find many other contexts where one’s sex and gender are relevant legislative considerations.”