

Trinity College

Trinity College Digital Repository

Senior Theses and Projects

Student Scholarship

Spring 2021

The Evolution of Title IX and Transgender Rights- A Comparative Study of Title IX Debates with Recommendations for Integrating Transgender Rights into Title IX Legislation

Jaymie Bianca

Trinity College, Hartford Connecticut, jaymie.bianca@trincoll.edu

Follow this and additional works at: <https://digitalrepository.trincoll.edu/theses>



Part of the [Human Rights Law Commons](#), and the [Lesbian, Gay, Bisexual, and Transgender Studies Commons](#)

Recommended Citation

Bianca, Jaymie, "The Evolution of Title IX and Transgender Rights- A Comparative Study of Title IX Debates with Recommendations for Integrating Transgender Rights into Title IX Legislation". Senior Theses, Trinity College, Hartford, CT 2021.

Trinity College Digital Repository, <https://digitalrepository.trincoll.edu/theses/872>

**The Evolution of Title IX and Transgender Rights- A Comparative Study of Title IX
Debates with Recommendations for Integrating Transgender Rights into Title IX
Legislation**

A Human Rights Senior Project

Presented to

The Faculty of the Human Rights Program

Trinity College

In Partial Fulfillment

of the Requirements for the Degree of

Bachelor of Arts

by

Jaymie Dawn Bianca

Fall 2020

Acknowledgments

My first acknowledgement may seem a bit odd, but, I need to thank my American Girl doll as a child, Julie. Julie's story dates back to the 1970s, when Title IX legislation was first introduced. Julie desired to play basketball, but only a boys team existed at her school. She was not allowed to play on the same team as the boys at first, however, once Title IX was announced, they could not deny her a spot on the team. Julie, thank you for igniting my interest in Title IX and my fight for change.

This past summer, I was invited to be one of two students on the Title IX Working Group, where I helped write Trinity's Title IX Interim Policy. After hearing stories from my fellow students about the importance of Title IX, and the justice they wished to see, I knew that I wanted to do more research and work with Title IX. Thank you to this cohort for allowing me to learn an abundance of knowledge to guide this very project.

Thank you to my advisor, Professor Benjamin Carbonetti for overseeing my project and working through my ideas with me. Thank you to Professor Adrienne Fulco for also helping to guide my project, and introducing me to Title IX and its relation to transgender rights, which sparked my thesis and ideas for this project. Thank you to the following people for supporting my interest with human rights work and for always believing in me- Laura Lockwood, Judy Dworin, Lisa Matias, and my family and friends. This project is a culmination of all you have taught me.

This year has proven to be a tumultuous time, but just remember- the fight for change is never over.

Table of Contents

Introduction- 4

Sex vs. Gender- 5

The Bathroom Debate and Title IX- 10

The Athletics Debate and Transgender Rights- 15

The Plaintiffs- *Soule v. CT Association of Schools*- 15

The Defendants- *Soule v. CT Association of Schools*- 19

Implications for Title IX- 23

Separative State Policies- 26

Recommendations for Inclusion- 31

Relation to Other Documents- 34

Conclusion- 38

Works Cited- 40

Introduction

Considered one of the most monumental documents in regards to granting equality and equity for women, it is hard to believe that the premise of Title IX is summed up in one sentence, or 37 words to be exact (Busch 1)-“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.” Because of this document, approved by the U.S. Congress on June 23rd, 1972, women gained increasingly more opportunities to receive advanced degrees, more employment opportunities, especially in politics and higher education, and more chances to participate in athletics (Busch 16). Title IX’s mission to eliminate discrimination “on the basis of sex” has remained the same, but its scope has continued to expand. Title IX includes stipulations regarding fairness and equality in athletics, as well as methods for handling sexual misconduct on college campuses. Each of these facets of Title IX received criticism from members of Congress, however, one of Title IX’s most recent contentions that this paper will delve into is the inclusion of transgender rights into the document. Beginning with the 2016 “Dear Colleague Letter” issued by the Obama administration, the letter expanded upon rights they deemed necessary for transgender students (Melnick 225). While the Trump administration rescinded this document, it is important to note that this letter sparked a nationwide debate regarding the rights of transgender students in schools. The initial implementation of the aforementioned 2016 DCL and the controversy following it prompts a vital question that this paper will attempt to answer- how far should the scope of Title IX extend to include the rights of people who are transgender? This paper will

analyze the bathroom debate in regards to transgender students, as well as the athletics debate by analyzing the arguments outlined in the court case *Soule v. CT Association of Schools*. I will also discuss in great detail the contentions regarding the definitions of sex versus gender as well as differing policies across states, and how these factors have played a huge role in Title IX and transgender rights debates. Ultimately, I argue that Title IX must include the rights of transgender students in all aspects like facilities and athletics; however, further clarifications and recommendations must be addressed. This includes a clearer definition regarding the difference between sex and gender, and a more unified national policy on the issue as opposed to leaving the inclusion of transgender rights into Title IX up to each U.S. state.

Sex vs. Gender

First, it is important to compare and contrast the definitions of sex and gender, particularly in law and the court systems, since this contention plays a huge role in various debates regarding transgender rights and Title IX. Throughout the Title IX document, sex and gender are used interchangeably. While it is true that in today's society, our understanding of the differences between sex and gender has expanded, for many years, the difference between the two terms remained uncontested. According to R. Shep Melnick, Professor of American Politics, on page 227 of *The Transformation of Title IX*, "from 1972 through 2010-neither OCR nor federal courts interpreted Title IX to address discrimination on the basis of gender identity." Additionally, Melnick addresses the fact that "almost no one had given any thought to the difference between "sex"—that is, the anatomical differences between male and female—and "gender identity"—that is, "an individual's internal sense of gender" (227). Prior court decisions,

particularly in the 1980s and 1990s, tended to prioritize the definition of sex as opposed to gender identity. During these years, Melnick says that “the courts heard a handful of cases pertaining to Title VII (of the 1964 Civil Rights Act which prohibited employment discrimination, and is considered a precedent to Title IX). These “employment discrimination cases were brought by transgender plaintiffs, but judges invariably held that federal law bans only discrimination based on sex, not gender identity” (Melnick 227).

However, Melnick explains that around the year 2000, a shift occurred within the federal courts. Instead of relying solely on a rigid definition of sex, the federal courts “held that firing or refusing to hire an individual because that person’s gender identity diverges from his or her biological sex constitutes a form of “sexual stereotyping” prohibited by Title VII” (Melnick 227). This decision emerged from a “plurality opinion” that the “Supreme Court announced in 1989” (Melnick 227). The plurality opinion stems from the court case *Price Waterhouse v. Hopkins*. In this case, “four members of the Court agreed that failure to promote a woman for not acting in a sufficiently “lady-like” fashion constitutes sex discrimination” (Melnick 227). Therefore, rather than merely determining if discrimination occurred on the basis of an individual’s biological sex, the term sexual stereotyping emerged as a way to prohibit discrimination based on traits or characteristics. This case concluded that an employer would violate Title VII “if that employer’s decisions were the product of sex stereotyping or were likely influenced by sex stereotyping” (Melnick 227). Melnick says on page 227 of *The Transformation of Title IX* that “Congress intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes.” The case itself made no mention of sexual

orientation or gender identity, yet, the wording of the plurality opinion suggests that gender nonconforming employees cannot be subject to adverse employment action simply because they refuse to conform to “sex stereotypes” (Melnick 227). These sex stereotypes include, but are not limited to, a man wearing a dress, or desiring to use she/her pronouns (Melnick 227).

This was only the beginning of the sex versus gender debate in the court system. On page 228 of *The Transformation of Title IX*, Melnick addresses key moments in Title IX history as it relates to transgender students-

Table 12-1 Transgender Chronology

- 1975** The Department of Health, Education, and Welfare’s Title IX regulations authorize schools to provide “separate toilet, locker room, and shower facilities on the basis of sex” as long as they are of comparable quality
- 1980s** Most federal courts find that Title VII does not cover gender identity or sexual orientation
- 1989** Plurality decision in *Price Waterhouse v. Hopkins* holds that employers violate Title VII if their decisions are “the product of sex stereotyping”
- 2000s** Relying on language in *Price Waterhouse*, most federal courts find that Title VII prohibits employment discrimination based on gender identification and sexual orientation
- 2007** Rep. Barney Frank introduces the Employment Non-Discrimination Act, which would amend Title VII to cover discrimination based on sexual orientation or gender identity
- 2010** Dear Colleague Letter on bullying covers bullying based on gender identity; OCR begins to investigate complaints about schools’ treatment of transgender students

2012 Equal Employment Opportunity Commission rules that Title VII covers employment discrimination against transgender applicants (*Macy v. Holder*)

2013 OCR's agreement with Acadia Unified School District allows transgender students to use bathrooms matching their gender identity

2014 President Obama issues executive order prohibiting discrimination on the basis of gender identity by federal contractors I

n two sets of "Questions and Answers" OCR states that Title IX covers some forms of discrimination based on transgender status

Attorney General Holder changes the position of the Department of Justice (DOJ), declaring that Title VII prohibits employment discrimination based on gender identity

2015 Ferg-Cadima letter states that OCR policy with regard to sex-segregated facilities is that schools must "treat transgender students consistent with their gender identity"

2016 Fourth Circuit defers to OCR's transgender policy in *G. G. v. Gloucester County School Board*

OCR and DOJ issue their transgender DCL

DOJ sues North Carolina over its bathroom bill; North Carolina countersues, challenging the legality of the DCL Supreme Court grants certiorari in *G. G. v. Gloucester County School Board* Federal district court in Texas rules that the DCL violates Title IX and issues nationwide injunction stopping its enforcement

2017 DOJ withdraws DCL; Supreme Court sends *G. G.* back to the Fourth Circuit Seventh Circuit finds that both Title VII and Title IX cover discrimination based on gender identity, and

require schools to allow students to choose sex-segregated facilities that match their gender identity

Thus, the competing definitions of sex and gender have been heavily contested throughout time. But, these debates allowed transgender rights to be addressed, and the term “sex stereotyping” to prevail as a means of employment discrimination. While Title VII originally did not protect transgender individuals, Congress worked to add legislation to Title VII that would protect individuals based on gender identity. However, this protection did not come to fruition until June 15th 2020, where “the Supreme Court ruled in *Bostock v. Clayton County, Georgia* that Title VII of the Civil Rights Act of 1964 protects employees from discrimination based on their sexual orientation and gender identity” ([scotusblog.com](https://www.supremecourt.gov/scotusblog.com)). Despite multiple attempts to add protections for transgender individuals, this decision was still met with disagreements and contentions from various different outlets. This is particularly seen with the bathroom and athletics debates, which are particularly highlighted in the Obama administration’s 2016 Dear Colleague Letter.

As mentioned previously, nationwide discussions about Title IX were particularly heightened with the Obama administration’s 2016 Dear Colleague Letter, which was “issued by OCR and the Department of Justice (DOJ)” and specifically addressed the rights of transgender students (Melnick 226). This letter called for various expansions for transgender students, which included “access to bathrooms, locker rooms, showers, and overnight accommodations on the basis of students’ gender identity as opposed to their biological sex” (Melnick 226). This DCL really focused on respecting a student’s gender identity, and, according to Melnick, “insisted that

respecting the identity of transgender students must take priority over responding to other students' concerns about privacy and safety" (226). Despite concerns with safety and privacy, the DCL said that these concerns "cannot justify a policy that denies transgender students the right to choose the sex-segregated facilities they will use, the sports teams on which they will play, and their preferred names and pronouns" (Melnick 226). Even though the intent of the OCR involved creating a safe space for transgender students, anger and discontent still surrounded the core tenants of the 2016 DCL.

The Bathroom Debate and Title IX

An important example of the bathroom debate to analyze happened in North Carolina, which occurred only a couple months prior to the announcement of the 2016 DCL. In March of 2016, the North Carolina General Assembly passed the "Public Facilities Privacy and Security Act, which was the first state law in the United States to address transgender access to restrooms" (Barnett 2). This law prioritized biological sex over gender identity, emphasizing "that individuals must use the restroom that corresponds with the designated sex listed on their birth certificates when in government buildings, such as schools" (Barnett 2). The Public Facilities Privacy and Security Act was actually a response to Ordinance 7056, which was passed only a month earlier. This ordinance was quite the opposite of the act since it "prohibited discrimination against homosexual and transgender individuals within the city (Charlotte, North Carolina)" (Barnett 2). This ordinance prioritized gender over sex since it "allowed individuals to use the restrooms that correspond to their gender identity, rather than their biological sex" (Barnett 2).

The passing of the Public Facilities Privacy and Security Act gained nationwide attention since the Justice Department said that North Carolina's law "violated federal civil-rights laws" (Gersen 1). However, North Carolina's governor, Pat McCrory, "responded with a lawsuit, asking a court to declare that the state's law doesn't violate those federal laws. Meanwhile, in a suit filed on the same day, the Justice Department asked a court to say that it does" (Gersen 1). This issue then became exasperated by the 2016 DCL because it explicitly stated that "transgender students must be allowed to use restrooms that are consistent with their gender identity" (Gersen 1). If schools did not comply, then they risked losing their federal funding from Title IX (Gersen 1). When making its case against North Carolina, "the Justice Department explained that if non-transgender people may use bathrooms consistent with their gender identity, then denying transgender people access consistent with their gender identity constitutes discrimination on the basis of sex" (Gersen 1). This is also highlighted in the Dear Colleague Letter, which emphasizes how important it is that schools "treat a student's gender identity as a student's sex for the purposes of Title IX" (Gersen 1). This ultimately prompts an intriguing question that relates to the definitions of sex and gender- if, by society's definitions of these terms, they are not the same, then should they be treated as the same? If they are not the same, is it fair for the 2016 DCL to conflate the terms for the purposes of Title IX? While I argue that the scope of Title IX should expand to include the rights of all transgender individuals in order for their human rights to be fully realized, further clarifications regarding the definitions of sex and gender must be addressed. Merely conflating the two for policy reasons is not sufficient because it gives room for schools or other venues to argue that since sex and gender are different, then

why should they treat them as the same? The 2016 DCL should have defined both sex and gender, and explained why it is important that schools use gender identity to determine which bathroom students should use.

At the time, there were two ways schools could comply with the bathroom policy under Title IX. The first method is simply allowing students to choose which bathrooms, locker rooms, or other facilities they desired to use (Gersen 2). Schools would also be in compliance if they chose to desegregate some, if not all of their bathrooms (Gersen 2). The desegregation of bathrooms evolved into a common practice at certain colleges, with some universities making “every bathroom on campus open to any gender” (Gersen 2). Gersen, a professor at Harvard Law School, believes that “this solution could well become a practical choice at K-12 public schools” (2). Nevertheless, these methods of inclusion were met with concerns, particularly from female students. Gersen explains how there is “a growing sense that some females will not feel safe sharing bathrooms, shower rooms, or locker rooms with males (2). Gersen discusses that this is not a hypothetical concern, since this kind of situation happened at Brandeis University. The school “found a male student responsible for sexual misconduct for looking at his boyfriend’s genitals while both were using a communal school shower” (Gersen 2). After this incident, “the disciplined student then sued the school for denying him basic fairness in its disciplinary process, and a federal court recently refused to dismiss the suit” (Gersen 2). While a situation like this one can occur, I do not believe it is related specifically to transgender individuals. Is it not possible that this situation could occur with male identifying or even female identifying students that are not transgender? Regardless of biological sex or gender identity, the

situation is still abhorrent and wrong. However, I believe it is unfair to discriminate against a transgender individual for a situation that has to do with the morale of a person, not necessarily their gender identity. Brian Barnett, a psychiatrist, analyzed this exact issue regarding the bathroom debate and subsequently wrote an article about it for *The Journal of the American Academy of Psychiatry and the Law*. He concluded that he was “unaware of any studies assessing the relationship between transgender identity and perpetration of sexual crimes” (Barnett 15). But it is important to note that “studies have consistently replicated the finding that transgender individuals are often victims of sexual assault” (Barnett 15). The statistic is that, in 2015, about half of transgender individuals were assaulted at one point in their lives (Barnett 15). Therefore, even though there are no existing studies about the correlation between gender identity and sexual crimes, if almost half of transgender individuals have been assaulted, does that not point to a much larger problem of safety for transgender individuals, as opposed to worrying if they will commit a sexual crime?

Another issue that Barnett addresses in his work is the question of sexual predators- will they take advantage of desegregated bathrooms to harm others, including minors? While this question pervaded the media, Barnett explains that studies “revealed that only a small number of cases actually involved perpetrators who were transgender, perpetrators who falsely claimed to be transgender, or perpetrators who attempted to disguise themselves as a member of the opposite sex to gain restroom access” (16). Again, while sexual misconduct cannot occur under any circumstances, the aforementioned studies show that desegregated bathrooms will not cause a huge uprising in sexual crimes.

North Carolina's Public Facilities Privacy and Security Act sparked national debates not only about bathrooms, but regarding what sex and gender truly meant, as well as the scope of Title IX policy. Based on the aforementioned statistics and evidence, I believe it is important for Title IX to extend all rights to transgender individuals, including the right to choose facilities based on gender identity. However, as I previously stated, the 2016 DCL only said schools should use gender identity in these matters, without giving a clear explanation of the difference between biological sex and gender identity, and why the use of gender identity should prevail. Even though the Trump administration ultimately rescinded the 2016 DCL, I believe that during its inception, it should have specified the difference between sex and gender, as well as sexual stereotyping which, according to Melnick, "can include virtually all conventional thinking about sex and gender" (240). Melnick agrees that there is a difference between sex and gender. However, he also argues that there needs to be a better understanding regarding this difference when he says "outmoded stereotypes about "masculinity and femininity"—based as they are on a mistaken bimodal, biological understanding of gender—should be replaced by an understanding that recognizes both the fluidity and the socially constructed nature of gender" (Melnick 240). Therefore, Title IX policy needs to include the understanding society has now of sex and gender, and allow these definitions to guide its legislation. The 2016 DCL had good intentions for the inclusion of transgender rights and to shut down discriminatory laws, like the one from North Carolina. Alas, it failed to provide a clear understanding of the importance of gender identity, which is vital for the concept of transgender rights. Even though the bathroom debate became heavily contested, my opinion still stands that desegregated bathrooms are important to include

in Title IX legislation, since, in the words of former OCR Assistant Secretary Catherine Lhamon “The bathroom question never was just about a bathroom. It is about who that child is at school and how that child will be perceived and seen” (Melnick 240).

The Athletics Debate and Transgender Rights

Another key Title IX issue that is vital to analyze in the context of transgender rights is athletics. This is another heavily debated area in regards to Title IX and its scope. Some individuals say that, based on the language in Title IX policy, transgender students are covered under it, and should be allowed to play on a team or compete in a category that is consistent with their gender identity. However, others say that allowing transgender athletes to compete in categories consistent with their gender identity is actually a violation of Title IX because it takes away opportunities from biological females. These were the arguments of the plaintiffs and defendants respectfully in the court case *Soule v. CT Association of Schools*. I took particular interest in this case because not only does it highlight the various contentions with transgender athletes, but, as a lifelong Connecticut resident, I thought I could analyze it with a unique lens. I knew I would have an understanding of the geographic area, as well as information regarding the people, socio-economic background of the era, and other factors that could help inform my analysis.

The Plaintiffs- *Soule v. CT Association of Schools*

First, I will analyze the arguments of the Plaintiffs in the Soule case. The premise of the case concerns three girls (born female) in high school, who compete in track and field in the girls category. The three girls took issue with the new Connecticut Interscholastic Athletic Conference

(CIAC) policy, which “is permitting boys who are male in every biological respect to compete in girls’ athletic competitions if they claim a female gender identity” (2). The Plaintiffs argue that this policy has allowed biological males to “displace” them at track competitions in Connecticut, which has excluded them “from honors, opportunities to compete at higher levels, and public recognition critical to college recruiting and scholarship opportunities that should go to those outstanding female athletes” (2). The Plaintiffs concluded that CIAC’s new policy actually discriminates against girls and violates Title IX, since Title IX promotes equal opportunities for females, and this situation allows transgender females to prevail more often than biological females (3). The Plaintiffs focus heavily on the biological differences between males and females, saying on page 12 of the court brief that “victory over comparably talented and trained male athletes is impossible for girls and women in the vast majority of athletic competitions, because of inherent and biologically dictated differences between the sexes.” This includes the testosterone levels of males who hit puberty as well, which is said to “give males a powerful physiological athletic advantage over females” (12), and allows them to “consistently achieve records 10-20% higher than comparably fit and trained women across almost all athletic events” (14). The Plaintiffs also claim that “increasing numbers of males are in fact competing in girls’ and women’s events each year, girls are in fact losing, and males are seizing one “girls’” or “women’s” championship and record after another” (21). Pages 25 and 26 consist of tables with results from the 2017 women’s outdoor track 100 meter and 200 meter competitions. The winner of both races was Andraya Yearwood, a transgender female. She won the 100 meter race with a time of 12.66 seconds, with the second place winner, a biological female, finishing at 12.83

seconds. In the 200 meter race, Andraya won first with a time of 26.08 seconds, with the second place winner, a biological female, finishing at 26.38 seconds. The Plaintiffs highlight the fact that in these instances, only two people could qualify for the state championships, so with Andraya winning both categories, she therefore took the opportunity away from a biological female. They also address a similar instance with a transgender female named Terry Miller, who won various races, thus, beating all the other biological females in the category. Ultimately, the Plaintiffs desire for a declaration and injunctive relief from the Defendants that says they violated Title IX because they have not provided “equal treatment, benefits, and opportunities for girls in all athletic competitions” (49). The Plaintiffs also wanted the Defendants “to remove times achieved by male athletes from any records purporting to record times achieved by girls or women” as well as any victories obtained by transgender females (50).

While I will further analyze the implications of each argument as far as Title IX in later paragraphs, and provide additional insights, I will first express my thoughts regarding the Plaintiffs’ argument. I agree that there are undeniable biological differences between a male and female, and that these biological differences, whether it is increased male testosterone levels during puberty or wider hips and gained weight in females during puberty, have the potential to impact athletic ability (13). The Plaintiffs provide evidence of this as well on page 13, outlining how males will have larger hearts, lungs, and muscle fibers, which can be advantageous in the athletic realm. However, evidence to support their claims were not always clear. One particular instance of this is on page 21, which says that an increasing amount of males are competing in female categories. This claim can potentially be true. However, there is no evidence in the brief

that states where this information was obtained. How can one know if an increasing amount of biological males are competing in the girls category if there is no clear evidence proving this claim? Again, while I believe this claim is not impossible, a little more evidence would have been helpful since their argument states that Title IX took opportunities away from biological females. Additionally, while the time tables served as a helpful guide to see where transgender females were placing in comparison to biological females, at some points, biological females were actually faster than transgender females or did not have times that were incrementally slower than transgender females specifically. For example, on page 25, in the 2017 CIAC Class M Women's outdoor track competition on May 30th, 2017, Andraya Yearwood won at 12.66 seconds, with Kate Hall, a biological female, coming in second at 12.83 seconds. The difference between the two was 0.17 seconds. However the margin between the 3rd and 4th place finishers, both biological females, was 0.23 seconds, a slightly larger margin than Andraya and Kate. Therefore, this means that the margin of time between Andraya and Kate was not as statistically significant as the Plaintiffs tried to claim,, since the 3rd and 4th place finishers had a larger margin of time between them, and they are both biological females. In the table on page 27, which was also a 100 meter race but occurred on June 5th, 2017, Andraya actually finished 3rd. Two biological females ultimately had faster times than she did. While the Plaintiffs are arguing that Andraya's victories are qualifying her to advance to state championships, and thus, taking that opportunity away from biological females, it is important to note that Andraya's times are not always significantly faster than biological females. I believe, based on the evidence the Plaintiffs presented, that Andraya's placement does certainly take away a spot in the state

championships for a biological female. However, whether this negatively impacts biological females enough to violate Title IX remains unclear in this argument, but it is what the Defendants attempt to address in their brief.

The Defendants- *Soule v. CT Association of Schools*

The Defendants want the court to dismiss the case entirely. As far as articulating their argument, first, they claim on page 8 that “Soule identifies only one instance in which she was allegedly denied an athletic opportunity as a result of competing against either Andraya or Terry.” This instance occurred during the 2019 indoor track season, where “Soule competed against Andraya and Terry in the 55m dash at the State Open Championship” (8). According to the brief, the three individuals competed in a race to determine who would advance to the state championships. “Terry had the fastest time and Andraya had the second-fastest, while Soule had the eighth-fastest time—behind Terry, Andraya and five other, non-transgender girls—and therefore failed to qualify for the final 55m championship race” (8). Because of this instance, Soule said that if Andraya and Terry did not compete in this race, then “she would have placed sixth, and would therefore have been eligible to compete in the final heat for a spot at the New England Championship” (8). While the brief expresses that this opportunity was taken away from Soule, on page 9, it emphasizes that Soule had “other opportunities” to compete at the New England Championships, with events like the long jump and relay. The Defendants then go on to explain that the other Plaintiffs, besides Soule, only demonstrated one opportunity that was lost to them, even though they had other opportunities with other competitions (10). The Defendants made various other claims as well to articulate their argument. On page 14, the Defendants say

that the Plaintiffs do not have a sufficient claim for declaratory or injunctive relief, since, in order for this to occur, they have to meet three elements, which the Defendants claim they did not meet:

“First, the plaintiff must have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of . . . [and] Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision” (14).

Thus, there was no evidence of an injury that could warrant injunctive relief, according to the Defendants. Additionally, they say that the claim the Plaintiffs make regarding the superior athletic abilities of transgender females may not be the case. This is because it is unclear if Andraya and Terry had puberty blockers, which would mean that they would not have experienced a typical male puberty (23). Ultimately, the Defendants assert that the Plaintiffs are the ones who would be in violation of Title IX. The definition of sex emerges again as a contested definition, since the Plaintiffs define sex based on biological traits, but the Defendants believe “the plain meaning of “sex” refers more generally to “the properties or characteristics by which individuals may be classified as male or female” *Fabian v. Hosp. of Cent. Conn.*, 172 F. Supp. 3d 509, 526 (D. Conn. 2016). They claim the characteristics of sex reach beyond “chromosomes or another singular biological trait; instead, they also include hormonal, anatomical, reproductive, and social elements” (25). The brief goes on to explain that banning transgender females from participating in the girls category at competitions would be

discriminatory. This is based on precedents from prior court decisions that extended the definition of sex to include characteristics and sex stereotyping, not just biological factors (28). Additionally, on page 32, the Defendants apply the three part test to prove that schools were actually in compliance with Title IX stipulations. The three part test was established in 1979 in order to see if schools were in compliance with providing effective accommodation for women in athletics. The following aspects of the three part test are outlined on page 32 of the brief-

1. Whether participation opportunities are provided to males and females in numbers substantially proportionate to their respective enrollments;
2. If one sex is underrepresented in sports, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interest[s] and abilities of the members of that sex, or,
3. If one sex is underrepresented, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program. *Biediger*, 691 F.3d at 92–93.

The Defendants argue that the Plaintiffs' argument is under the presumption that effective accommodation under Title IX has to include sex-separated teams, which, they assert, does not. Therefore, the Defendants claim that allowing transgender athletes to compete on women's teams would still be acceptable under Title IX, and they would not have a viable claim "unless they can show that they do not possess sufficient skill "to compete actively" alongside girls who are transgender" (35). Another important argument in this brief occurs on page 37. While the Plaintiffs asserted that they could not win with transgender females competing, the Defendants

state otherwise. A few tables on page 37 highlights both indoor and outdoor track championships from recent years, and shows that the Plaintiffs each had two wins in each year since 2017 (excluding 2020 since no season was held because of the COVID-19 pandemic). Terry also had two wins in each competition in every year, while Andraya had zero. The Defendants claim that these tables show that the Plaintiffs were able to “effectively compete right alongside both Terry and Andraya” (37). A couple final key arguments I will highlight from this brief is that the Defendants cite several other cases that shows that “Title IX does not expressly and unequivocally provide for a definition of sex that would preclude transgender girls from participating in sex-separated girls’ teams (44). Therefore, with this in mind, the Defendants argue that the “Plaintiffs fail to identify any text within Title IX, its implementing regulations, or Department of Education policy statements... that [shows] Title IX bars girls who are transgender from participating in athletics with other girls (44)” Also, the Defendants emphasize that under the court case *Pennhurst*, “schools cannot be held liable for damages under such an unprecedented and unsupported legal theory” (44). With all the aforementioned factors in mind, the Defendants called for the dismissal of this case.

The Defendants make very interesting points. As far as athletic opportunity, I believe the Defendants made a clearer point, because they said that despite Andraya and Terry qualifying to advance while biological females did not, the biological females still had other opportunities to excel. This included other categories besides running, like the long jump. Therefore, opportunities to advance were still present, which I believe addresses part three of the three part test of Title IX, which is that it “can be demonstrated that the interests and abilities of the

members of that sex have been fully and effectively accommodated by the present program” (32). If both the Plaintiffs and transgender females still had several opportunities to advance to further championships, then would they not have been “fully and effectively accommodated?” Additionally, the tables on page 37 that showed the various wins the Plaintiffs, Terry, and Andraya each had was helpful, although, I will say that further clarification would have been more effective. While the competitions where the wins occurred were justified, it was unclear which categories were won. While the Defendants explain that some races were individual and some were relays, and while it can show that the Plaintiffs could effectively compete alongside Andraya and Terry, I believe the Plaintiffs could still come back with another argument. Their argument could potentially state that Andraya and Terry still bested them in individual competitions, so the Plaintiffs can possibly say that they were not accommodated in individual races. Even though the table with the number of wins was helpful, further clarifications regarding which races were won or lost would have provided more insight, and would have presented more evidence to support their argument.

Implications for Title IX

Both arguments have various implications for Title IX. While the Defendants do argue that the scope of the meaning of sex has expanded based on various preceding court cases, it elicits the question of sex versus gender once again. In future Title IX legislation, particularly athletics in this instance, should the definition of sex be expanded or should it completely change to gender identity? In my opinion, I believe there is a difference between biological sex and gender identity, so in order to fully include transgender rights into Title IX legislation, a

systematic shift should be made to gender identity. While some legal precedents may have, in the Defendants' opinion, expanded the definition of sex, even if the definitions keep evolving, is it not still possible that people could still make a case that Title IX should include a more limited scope for "on the basis of sex?" This is exactly what happened during the transfer of the Obama administration to the Trump administration. The Trump administration rolled back the 2016 DCL, which, as stated previously, urged schools to use "gender identity" as opposed to sex. The Trump administration then leaned towards Title IX's original wording "on the basis of sex," interpreting this stance as one's biological sex (Battle 1). Therefore, in order to avoid these contentions, Title IX legislation should be consistent with their definitions as opposed to relying on the continuous expansion of the scope of the meaning of sex.

In the case of athletics, I prefer the meaning and usage of gender identity, because if sex is limited to the biological realm, then it can negatively impact transgender students, ultimately discriminating against them. Thus, after a careful analysis of both arguments, I not only agree with the Defendants, but in my opinion, they articulated their argument much more effectively. While I believe they should have detailed the types of races won by the Plaintiffs or Andraya and Terry, those tables did show that it is not always a guarantee that a transgender female will beat a biological female. They make the case that to assume this presumption would be discriminatory, and is not a solid, legal basis for not allowing transgender females to compete with biological females, to which I agree. Additionally, the Defendants addressed the three part test, which the Plaintiffs did not. Schools only have to meet one aspect of the three part test, and I believe the Defendants proved that the Plaintiffs did not have a viable claim under the third part of the test,

which, once again, states- “if one sex is underrepresented, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program” (32). The Defendants claim that the Plaintiffs assume that teams must be sex segregated in order to meet effective accommodation. However, this is not the case, since the Defendants cite various precedents on page 34 where “courts have recognized that allowing girls to play on boys’ teams (and vice versa) can sometimes be the only effective way to provide equal athletic opportunity under the Fourteenth Amendment.” Again, according to the Defendants, this means that the “Plaintiffs cannot state a claim for denial of effective accommodation unless they can show that they do not possess sufficient skill “to compete actively” alongside girls who are transgender” (35). Thus, since the Defendants further explain how a couple of the Plaintiffs actually beat Andraya or Terry in some instances, it shows that effective accommodation would not be necessary under Title IX since they competed alongside Andraya and Terry with no issues. While the Plaintiffs do make a solid point that there are undeniable biological differences between the sexes, like the Defendants stated, merely assuming that transgender females will win because of assumed biological differences is not enough to claim that they are taking away opportunities from biological females. I say “assumed” here because the Defendants additionally discuss how it is unknown if transgender females actually went through a typical male puberty that would grant them superior abilities over biological females (23). Thus, discriminating against transgender females on the sole assumption of biological abilities would actually violate Title IX, because it would not provide effective accommodation for transgender females. They may actually be at a disadvantage

competing against males who went through a normal puberty, especially if the transgender females took puberty blockers. How to determine how much of a typical male puberty a transgender female athlete went through may be hard to measure, however, allowing them to compete with other females has proven to not create significant barriers and did not cause a loss of numerous opportunities for the Plaintiffs. As I addressed before, while Title IX should expand its scope to gender identity in order to avoid conflicts with the definition of sex, even despite this definition, the Plaintiffs still had equitable opportunities under Title IX, particularly demonstrated by the three part test. But, further distinction between biological sex and gender identity will be helpful to clarify future Title IX cases. Additionally, as I will explain next, it is important that there is a uniform federal policy that all schools adhere to, instead of some states choosing to allow transgender athletes to compete with biological females while others do not.

Separative State Policies

Lack of uniformity among states is very problematic, because while some states prioritize the inclusivity of transgender students, others do not. However, this is also due to the Trump administration's ambiguous policies. While the 2016 DCL under the Obama administration called for the use of students' gender identity in the case of determining which facilities to use and athletic competitions to compete in, the Trump administration took a different approach. They not only rescinded the DCL and stuck with Title IX's original "on the basis of sex" decision, but they also left policies up to individual states. This meant that in some states, transgender athletes could compete in the same category as biological females, but in other states, this was not the case.

According to [transathletes.com](https://www.transathletes.com), different high schools have varying policies for transgender athletes. The states are split up into four color categories. If the state is green, it means its policies are friendly towards transgender athletes. Blue states require “medical proof or invasive disclosures.” Red states are deemed as “discriminatory state guidance that includes multiple harmful components” and black means that states have no guidance for this subject. There are numerous interesting points of analysis for these policies. First, it is important to note that these are the policies as of 2020, meaning that states are still operating under these statutes. Secondly, it is intriguing to look at the geography of the policies. States on the Pacific coast like California, Washington, and Oregon are green states, with the same being true for northeastern states, like Connecticut, New York, Massachusetts, and New Jersey ([transathletes.com](https://www.transathletes.com)). Many of the red states are southern states, like Texas, Arkansas, Louisiana, and Georgia ([transathletes.com](https://www.transathletes.com)). While the geography of these policies may seem trivial, it holds great significance for the treatment of transgender athletes. Despite some border states having similar policies, some states actually border each other, but have completely opposite policies.

This is exemplified by Colorado and New Mexico. Colorado is green, while New Mexico is red. Colorado’s policy states that students can use their gender identity to determine which category they compete in during athletic competitions. However, New Mexico’s policy states that “students are required to compete in the gender listed on their original or amended birth certificate” ([transathletes.com](https://www.transathletes.com)). How can two states in the same country be so close geographically, but differ immensely when it comes to their transgender athletic policy? While this depends on many factors, such as governors and people in political power in those states, it

is still fascinating to see how despite a shared border, policy can be so vastly different. This is similar for other states too, like Alabama, Georgia, and Florida. Both Alabama and Georgia are red states, with Alabama determining an athlete's eligible status "by the gender indicated on the student-athlete's certified certificate of birth" and Georgia interpreting gender as "determined by the gender noted on his/her birth certificate" (transathletes.com). Both of these states border Florida, however, Florida is a green state and has a much different policy than Alabama and Georgia. Florida's policy states that "all eligible students should have the opportunity to participate in interscholastic athletics in a manner that is consistent with their gender identity and expression, irrespective of the gender listed on a student's birth certificate and/or records" (transathletes.com). This is another example of how states can border each other, but have completely different perspectives on transgender athletes. This difference in policy prompts a couple important questions. First, it is interesting that these policies use the term gender identity, but also use the term gender alone, pertaining to the gender listed on an athlete's birth certificate. I wondered why no reference to sex was made here, and what each state's stance was on the difference between sex and gender, since that is important when distinguishing and defining transgender policies. Additionally, I wondered what would happen, for example, if a transgender athlete competed in Florida, but earned a high enough placement to advance to a competition taking place in Alabama or Georgia. Could they compete in the same category they competed in for Florida, or would they have to switch categories when competing in Alabama or Georgia? I believe this could cause an abundance of confusion since these states differ vastly regarding their policies. Would that mean the transgender athlete's placement in the Florida

competition would not count, and would that mean a biological female or male would compete in their place? In my opinion, this would be discriminatory, because if the transgender individual won a specific category in one state, should they not be able to compete in that category in another state? The transathletes.com website does not give an exact year these policies were in place, but rather presents a range: 2013-2020. So much happened nationally within this time span, including the transition from the Obama administration to the Trump administration. In turn, this resulted in vastly different regulations, most notably, as I have been discussing, the 2016 DCL and the Trump administration subsequently revoking it. As I have also discussed, the 2016 DCL prioritized gender identity while the Trump administration rescinded it and returned to the original definition of “on the basis of sex,” which also left policies up to local schools and states. So, in this case, would red states have been out of compliance with Title IX during the time of the 2016 DCL? While they may currently be in compliance with Title IX now in 2020, could red state policies have been viewed as discriminatory during 2016? I believe they could have if federal regulations specified the use of gender identity when determining the usage of facilities and teams athletes would compete under. If this was the case, I also wonder why states were not held accountable for Title IX compliance during this time.

This is precisely why having transgender athletic policies vary across different states is confusing and discriminatory. For example, a transgender athlete may be led to believe they can compete in a category that aligns with their gender identity during a competition after looking at the policies in one state, but then realize that their own state has different requirements. This is confounding for an athlete, especially if they are not made aware of the policies in their state

prior to competing in their competition. This may also not allow them to compete in categories aligning with their gender identity in other states, even if they competed differently in their home state. This can also lead to confusion not only with categories, but, as I discussed before, with prior awards as well. For example, say a transgender female wins her category, but then advances to a competition in a state with a different policy- do they forfeit their other placement?

Additionally, some state policies say that athletes must compete in a category corresponding with their assigned gender on their birth certificate. However, as I previously stated throughout this paper, there is a blossoming understanding of the distinction between sex and gender- more specifically, biological sex and gender identity. So, in this case, gender assigned at birth would not necessarily mean the same thing as the gender identity once chooses later on in life.

Conflating the two can also cause confusion, because gender as many understand it now is a social construct, unlike biological sex. Discriminating against someone's assigned gender in athletic competitions proves to not be a solid basis, since just because a gender was assigned at birth, it does not mean it is the same as what someone identifies with later in their life. If the definition of gender, or sex for that matter, is not uniform nationally, then it leaves room for several lawsuits in the realm of transgender athletics simply because of a variation with definitions. In order for transgender rights in Title IX to be fully realized, then policies must be uniform across the nation as opposed to leaving decisions up to individual states.

Recommendations for Inclusion

After studying the aforementioned debates regarding transgender rights and Title IX, I concocted a few possible solutions as far as effective recommendations for methods of inclusion for transgender rights into Title IX policy.

First, as I explained and will continue to explain throughout this paper, Title IX needs to utilize the term gender identity as opposed to sex in order to be inclusive to all transgender individuals. Merely expanding the definition of sex is not sufficient, because people can still argue for a more rigid definition and understanding of sex. Scientifically, the understanding of biological sex and gender identity has involved tremendously. Thus, Title IX needs to reflect this, because just expanding the definition of sex does not encompass the true meaning of what transgender individuals need, which is to have access to facilities and teams based on their gender identity. After analyzing both the bathroom debate and the athletic debate through *CT Association of Schools v. Soule*, I personally saw no solid basis to keep facilities and teams divided solely based on biological sex. Therefore, I propose reinstating the gender identity principle of the 2016 DCL, however, I believe there should be more information and clarification as well. This includes clarifying the difference between biological sex and gender identity, and reiterating that they are not, in fact, the same topic. Having more clarification will allow legislators, governments, and schools to fully grasp the concept of gender identity, and know that it will not pose any issues, but is rather a step towards inclusion for people who are transgender.

Secondly, Title IX policy, especially surrounding transgender rights, needs to be agreed upon federally, and not left up to local state governments and schools, like the Trump administration proposed. As I explained before, this lack of uniformity can cause confusion

among states, especially if a transgender athlete wins a category in their own state, but cannot compete in that category in another state because of different guidelines. If Title IX does not attack this issue at the federal level, then it will still leave ambiguity among state policies, and decisions will depend on how each state decides to interpret the “on the basis of sex” statute. Whether they utilize gender identity or revert to a more rigid definition of sex, how far the expansion of sex reaches in each state will be debated upon by multiple legislators and advocacy groups, each potentially arguing that it is unfair that one state utilizes one policy while the other state is different. Thus, to avoid such conflict on both the state and national level, it is important that Title IX addresses one uniform policy that states must follow. In the case of inclusion regarding the rights of transgender individuals, as I stated earlier, I propose using gender identity when determining facilities and athletic teams transgender individuals choose to engage with.

When I analyzed the *CT Association of Schools v. Soule* case, I also discussed the three part test Title IX uses to determine whether schools are providing equal opportunities for athletics. While I believe that this test also proves that transgender individuals competing on athletic teams aligning with their gender identity does not violate Title IX, my third recommendation is that Title IX should develop a similar test for facilities. This test can have stipulations that determine whether a school is in compliance with transgender rights as far as facilities like bathrooms and locker rooms. While I believe more research must be done nationally to determine what the exact tenants of this test will look like, I think it is important for Congress and other legislators to ask themselves the following questions and research the specifics of the following topics:

- Should all bathrooms be removed of a specific gender? If some bathrooms remain gendered but not all, then what is the exact proportionality of all gender bathrooms that must be in place so that it is inclusive enough for students of all genders? This is a central argument that must be addressed. I believe there is sufficient evidence to make all bathrooms inclusive, since there have been very few instances of sexual crimes relating to transgender individuals or people claiming to be transgender as perpetrators. However, if it is not the case that all bathrooms become inclusive of all genders, then Congress must determine the proportionality of all gender bathrooms so that it matches the number of transgender or non-binary students and employees attending or working at a specific school. I believe setting a baseline for at least one gender inclusive bathroom is important as well, since this will ensure that regardless if there is only one student or employee who is transgender or gender non-binary, they will still feel included knowing there is a gender inclusive bathroom. While schools should allow individuals to just choose a bathroom based on their gender identity, having desegregated bathrooms is an important topic of discussion regarding inclusion for all students and employees.
- How should locker room accommodations operate? While I believe it is important for a student to select a locker room based on their gender identity, it is also vital that the needs of other students are considered as well, in order to provide a space that takes into account the concerns of all students in an equitable manner. It is important that Congress addresses and creates a balance for these concerns. Whether this includes a couple different locker rooms that do not display the typical boy/girl binary, or the expansion of current locker rooms to

create enough room for other students are all factors to consider. This is in order for transgender students to still choose a locker room based on their gender identity, however, it allows for additional accommodations to be considered as well to provide safety and comfort to all students, whether they are transgender, non-binary, or cisgender.

While other factors may be taken into consideration when developing this test, I believe the development itself will allow states and schools to be held accountable regarding transgender rights with bathrooms, locker rooms, and other facilities. Having a solidified test will also be useful for court cases as well, since this test's development would mean that there would be a legal precedent regarding transgender inclusiveness with facilities, which would be helpful when determining a court decision on a case. Thus, these recommendations are just a few solutions to aid Title IX in becoming more inclusive of transgender individuals. It will provide several clarifications as well regarding the definitions of sex and gender, state versus federal policy, and further clarification for facilities under Title IX, which is similar to the test for athletics.

Relation to Other Documents

It is also important to analyze if transgender rights appear in other documents, clauses and amendments to help inform the function of Title IX policy. First, I looked at the Universal Declaration of Human Rights (UDHR) to see if it explicitly mentioned transgender rights. After analyzing all of the articles, I thought it was interesting that there is no explicit mention of the term transgender in the UDHR. For instance, in Article 2 of the UDHR, it says "everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social

origin, property, birth or other status.” I thought it was particularly interesting that the document used the term sex with no mention of gender. This relates back to the difference between sex and gender, however, I am assuming that people viewed sex and gender as very similar if not the same during this time, considering that the UDHR was written in 1948, when gender roles were fairly pronounced and rigid. Nevertheless, it is interesting to see the prioritization of the term sex over gender. This has vital implications for Title IX policy, because if documents like the UDHR are prioritizing the term sex, it does not leave as much room for transgender rights to flourish. Therefore, it is important that Title IX shifts from “the basis of sex” to gender identity in order to be inclusive towards transgender individuals. Even though some prior court case decisions have agreed on expanding the definition of sex for the sake of Title IX, how sex and gender are understood now scientifically and socially is paramount, especially for rights relating to transgender individuals and Title IX.

While transgender rights are not explicitly mentioned in the Constitution, some say that a couple of the amendments contain wording that has the ability to protect transgender individuals. These two amendments are the First and Fourteenth Amendments. A part of the Bill of Rights, the First Amendment of the U.S. Constitution states-

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances” (U.S. Const. amend. I).

According to the National Center for Transgender Equality, they argue that the language in this amendment “provides protection for transgender individuals to display their gender expression publicly and to dress in respect to their identified gender (National Center for Transgender Equality, 2018). While this amendment protects outward gender expression, the center says that they also have a “right to privacy” so they can choose to not “disclose their gender identity publicly” (5). While I can personally understand how transgender individuals can freely make speeches about their gender identity, or freely assemble in protest, there are still some scenarios I am unsure about. For example, if a transgender female dressed according to their gender identity, then are they still protected under the First Amendment? I also find no instances of language that protects transgender individuals’ rights in the cases of facility usage or athletic team associations. While such rights may be implied according to the National Center for Transgender Equality, I still feel as if transgender rights can still be contested. Thus, the function of Title IX would be to ensure that transgender rights are protected not only through the use of gender identity, but gender expression as well. Having language in Title IX that bans the use of discriminatory language towards transgender people as well as eliminate discrimination based on speech or expression they choose to utilize is important to ensure transgender rights are properly included into Title IX. These terms can allow Title IX to be a pillar of transgender rights where the First Amendment of the Constitution may lack.

It is also said that the Fourteenth Amendment has some implications for transgender rights as well. This is because “the Fourteenth Amendment contains the Equal Protection Clause, which prevents state officials from denying any individual equal protection under the law” (U.S.

Const. amend. XIV, §1). This Equal Protection Clause would therefore mean that “individuals in the public school and higher education level may not treat transgender individuals differently than their counterparts” (Gonzales 7). The relationship between the Equal Protection Clause and Title IX is quite interesting. According to Melnick, there is actually a “close connection between Title IX and the Equal Protection clause of the Fourteenth Amendment” (238). Because of this close connection, Melnick says that “Title IX resides in a “quasi-constitutional” twilight zone: in part simply a policy choice made by legislators and in part a legislative effort to enforce constitutional norms...” (238). This connection is partly true, especially with the expansion of the definition of sex. The Supreme Court first “expanded its reading of Equal Protection” which “invalidated not only laws containing explicit sex classifications, but policies allegedly based on “animus” against sexual minorities” (Melnick 239). After the expansion of sex occurred regarding the Equal Protection Clause, Melnick then says on page 239 that “these constitutional arguments migrated to interpretation of Title IX, which also covers private schools not subject to the Fourteenth Amendment.” Therefore, while the Equal Protection Clause, in theory, provides equal protection to all individuals under its jurisprudence, its history of expansion pertains to sex discrimination, and does not explicitly mention gender identity (Melnick 239). Thus, while the Equal Protection law says it protects from discrimination, transgender rights may not be at its forefront if it primarily deals with sex discrimination, which, as this paper has previously stated, the definition of sex and gender as we understand it now is quite different. While the Equal Protection Clause has expanded the definition of sex, I am unsure if it is enough to say that this expansion alone will protect transgender individuals. This is another reason why Title IX must

include the term gender identity if the policy decides to be inclusive towards people who are transgender. If the term gender identity itself is not in the Equal Protection Clause, then it might give room for people to argue that it only protects individuals under a rigid understanding of sex, as opposed to expanding it to gender identity. This is why it is necessary that Title IX expands its definitions, so transgender individuals can one hundred percent rely on a document and policy that will protect them instead of just hoping it has expanded enough to include them.

Conclusion

The way this project started is actually very different from how it turned out. Originally, I thought I would focus on other aspects of Title IX, such as women in athletics or sexual assault. However, once I learned about all the injustices pertaining to transgender individuals and Title IX, I knew I wanted to shed light on this issue, since it does not always receive a lot of attention in the media. Thus, I have concluded that there is no basis to exclude transgender individuals from Title IX. As displayed by the contention with North Carolina's law, there are seldom any issues that would prove any statistical significance for having bathrooms stick with biological sex. Additionally, after careful analysis of the argument of the Plaintiffs and Defendants in the *Soule v. CT Association of Schools* case, it shows that having transgender individuals compete in athletic categories proves to be consistent with the three part test, and does not significantly reduce opportunities for biological females. Ultimately, the role of Title IX in order to ensure transgender rights is twofold. First, Title IX must make a shift from the use of sex to gender identity. While the definition of sex can be expanded, there comes a point where expansion can only go so far, which calls for a new term entirely. This is in order to ensure that transgender

individuals are protected under Title IX, since it can be argued that the definition of sex should revert back to biological, but the introduction of an entirely new term cannot be heavily contested since it is a completely different definition than biological sex. Next, it is important that Title IX functions to create a uniform federal policy so there is no confusion among individual states. As I stated throughout this paper, having transgender athletic policies be different across states can become confusing, especially in cross state competitions. A uniform federal policy will allow rules and stipulations to remain the same, no matter where the athlete competes in the country. Thus, these changes, coupled with the other recommendations I have made, will allow Title IX to become more inclusive of transgender individuals. The right to a bathroom and to compete in athletics should not be dependent on a social construct, and as society evolves, Title IX must evolve as well.

Works Cited

Barnett, Brian S. "The Transgender Bathroom Debate at the Intersection of Politics, Law, Ethics, and Science." *The Journal of the American Academy of Psychiatry and the Law*, vol. 46, no. 2, 1 June 2018.

Battle, Sandra, and T.E Wheeler. "Dear Colleague Letter." Received by Colleague , 22 Feb. 2017.

Busch, Elizabeth Kaufer, and William E. Thro. *Title IX: the Transformation of Sex Discrimination in Education*. Routledge, Taylor & Francis Group, 2018.

Gersen, Jeannie Suk. "The Transgender Bathroom Debate and the Looming Title IX Crisis." *The New Yorker*, 24 May 2016, pp. 1–3.

"K-12 Policies." *Transathletes.com*, 2020, www.transathlete.com/k-12.

Levenson, Michael, and Neil Vigdor. "Inclusion of Transgender Student Athletes Violates Title IX, Trump Administration Says." *The New York Times*, 29 May 2020.

"The Logic of Expansion." *The Transformation of Title IX: Regulating Gender Equality in Education*, by R. Shep. Melnick, Brookings Institution Press, 2018, pp. 225–246.

Phillips, Michelle E. "Trump Administration Rescinds Guidance on Transgender Rights under Title IX." *JacksonLewis*, 23 Feb. 2017.

Seals, Almond A, and Melissa C Gonzales. "Legal Rights of Transgender Students in Education." *Diversity, Social Justice, and the Educational Leader*, vol. 3, no. 1, May 2019, pp. 1–10.

United States District Court. *Soule v. CT Association of Schools*. 12 Feb. 2020, pp. 1–52.

Universal Declaration of Human Rights. United Nations, 2017.

11th Circuit. *Bostock v. Clayton County, Georgia*. 15 June 2020. *Scotusblog.com*.

