



THE IMPACT OF TRANSGENDER SPORTS PARTICIPATION BANS

on Transgender People in the US

BRIEF / FEBRUARY 2025

Elana Redfield

On February 5, 2025, President Trump signed an executive order seeking to prohibit transgender women and girls from participating in girls' and women's sports, as well as their use of women's locker rooms.¹ Although the name of the executive order and the language used throughout suggest that the order is about "men", it is clear from the context that the order refers to transgender girls and women.² The order addresses the participation of transgender girls and women in both educational institutions and professional athletic associations.³ This brief examines the impact of this ban on transgender people.

SCOPE AND REACH OF THE EXECUTIVE ORDER

Transgender sports bans typically mandate that transgender girls and women cannot participate on teams that align with their gender identity. However, these policies do not prevent participation in school sports based on sex assigned at birth.⁴ The president's executive order follows this pattern, only addressing the participation of transgender girls and women. The order does not address participation in sports by transgender boys and men.⁵

¹ Exec. Order, Keeping Men Out of Women's Sports, The White House, Feb. 5, 2025, <https://www.whitehouse.gov/presidential-actions/2025/02/keeping-men-out-of-womens-sports/>.

² See e.g. Exec. Order, Keeping Men Out of Women's Sports, *supra* note 1, § 1. "In recent years, many educational institutions and athletic associations have allowed men to compete in women's sports;" *Id.*, § 4. "Many sport-specific governing bodies have no official position or requirements regarding trans-identifying athletes. Others allow men to compete in women's categories if these men reduce the testosterone in their bodies below certain levels or provide documentation of 'sincerely-held' gender identity." The executive order also specifically refers back to a previous executive order redefining sex for the purposes of federal statutes. *Id.*, § 2. Exec. Order, Protecting Children from Chemical and Surgical Mutilation, The White House, Jan. 28, 2025, <https://www.whitehouse.gov/presidential-actions/2025/01/protecting-children-from-chemical-and-surgical-mutilation/>.

³ *Id.*, § 3; *Id.*, § 4.

⁴ See Williams Institute Scholars, Comment Letter on Proposed Rule Re: Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Sex-Related Eligibility Criteria for Male and Female Athletic Teams, 88 Fed. Reg. 22,860 (April 13, 2023), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Comment-Title-IX-Sports-May-2023.pdf>.

⁵ Some state bans also extend to transgender boys and men in men's sports. *Id.* at 3; See e.g. TEX. EDUC. CODE § 33.0834 (2023).

The order addresses two primary contexts: school athletics at the K-12 and collegiate level⁶ and professional athletic associations.⁷

- **School Sports.** The president's executive order states, "Many educational institutions ... have allowed men to compete in women's sports."⁸ The order then directs the Secretary of Education to "take all appropriate action" to "protect all-female athletic opportunities and all-female locker rooms" by "clearly specifying and clarifying that women's sports are reserved for women."⁹ The context makes clear that the President intends to limit these opportunities and spaces to cisgender girls and women. The actions directed by the order include amending regulatory interpretations of Title IX of the 1972 Education Amendments, which protects against sex discrimination in educational programs and activities receiving federal funding,¹⁰ enforcement actions against such institutions under this new interpretation,¹¹ and termination of grants to programs deemed non-compliant.¹² Funding cutoff under statutes like Title IX has rarely been seen through to completion by any prior administration¹³—but there is reason to believe that the second Trump administration will pursue this line of action. Under the previous Trump administration, the Secretary of Education threatened to cut off funding for a school because it permitted transgender women to participate in women's sports.¹⁴
- **Professional Athletic Participation.** President Trump's order puts pressure on professional sports associations to adopt policies that exclude transgender girls and women from girls' and women's sports. For example, the order directs executive branch leaders, including the Assistant to the President for Domestic Policy¹⁵ and the Secretary of State,¹⁶ to encourage athletic associations to adopt a policy of excluding transgender girls and women from girls and women's sports. This includes convening representatives from these organizations, state Attorneys General, and "female athletes harmed by these policies."¹⁷ The order directs the Secretary of State to attempt to change International Olympic Committee rules on transgender participation¹⁸ and also directs immigration officials to refuse admission to transgender women from other countries for the purposes of sports participation. Since the 2028 Olympic Summer Games are scheduled to take place in Los Angeles, California,¹⁹ these changes, if adopted, could directly impact potential competitors.

⁶ "Preserving Women's Sports in Education" Exec. Order, Keeping Men Out of Women's Sports, *supra* note 1, § 3.

⁷ "Preserving Fairness and Safety in Women's Sports." *Id.*, § 4.

⁸ *Id.*, § 1.

⁹ *Id.*, § 3(a)(ii).

¹⁰ Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1688.

¹¹ Exec. Order, Keeping Men Out of Women's Sports, *supra* note 1, § 3(a)(iii).

¹² *Id.* § 3(b).

¹³ See e.g. Eloise Pasachoff, *Agency Enforcement of Spending Clause Statutes: A Defense of the Funding Cut-Off*, 124 YALE L.J. 248 (2014); c.f. Sasha Ingber, *Chicago Schools Lose Millions for Allegedly Not Shielding Students from Sexual Abuse*, NPR.ORG (September 28, 2018), <https://www.npr.org/2018/09/28/652802708/chicago-schools-lose-millions-for-allegedly-not-shielding-students-from-sexual-abuse>

¹⁴ See Dawn Ennis, *Betsy DeVos Tells Connecticut: Ban Transgender Athletes, or Say Goodbye to Your Federal Funding*, FORBES.COM (May 29, 2020), <https://www.forbes.com/sites/dawnstaceynnis/2020/05/29/betsy-devos-tells-connecticut-ban-transgender-athletes-or-say-goodbye-to-your-federal-funding/?sh=4ff001901793>;

¹⁵ Exec. Order, Keeping Men Out of Women's Sports, *supra* note 1, § 4(a).

¹⁶ *Id.*, § 4(b).

¹⁷ *Id.*, § 4(a)(i-ii).

¹⁸ *Id.*, § 4(d).

¹⁹ LA28 OLYMPIC GAMES, <https://la28.org/en.html> (last visited Feb. 6, 2025).

ESTIMATES OF TRANSGENDER STUDENTS AND PROFESSIONAL ATHLETES

A substantial number of transgender girls and women could be affected by the implementation of the executive order. However, limitations of current data make it difficult to estimate the number of transgender students and professional athletes who will be directly affected by this order, including specifically how many transgender girls and women participate in school or professional sports.²⁰ Below, we outline some relevant data points to help understand the population impacted by the executive order:

- **K-12 and College.** A federal ban on sports participation and locker-room use at educational institutions will directly impact all transgender girls and women who participate in school sports and has the potential to affect all transgender girls and women in kindergarten through higher education. The reach of such a ban could be particularly broad at the K-12 (primary or secondary school) level, where participation in some athletic activities, such as gym class, is typically mandatory.²¹
 - **National Estimates of Transgender Children and Youth.** The Williams Institute estimates that there are 1.6 million transgender people ages 13 and older in the United States, including 300,100 transgender youth ages 13-17,²² most of whom are likely enrolled in schools²³ and could be impacted by aspects of a ban on school sports participation or locker room use. We also estimate that there are 398,900 transgender young adults ages 18-24 in the U.S.,²⁴ many of whom are enrolled in colleges and universities.²⁵ A ban could also reach students younger than 13 or older than 24.

²⁰ Our national and state estimates rely on high-quality large-sample sources, such as the Youth Risk Behavior Survey. See JODY L. HERMAN, ANDREW R. FLORES & KATHRYN K. O'NEILL, WILLIAMS INST., *HOW MANY ADULTS AND YOUTH IDENTIFY AS TRANSGENDER IN THE UNITED STATES?* 13-17 (2022), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Pop-Update-Jun-2022.pdf> (methods). Due to limitations in these sources, we were unable to form accurate national estimates broken down by gender identity for any age group. Additionally, we do not yet have a reliable way to estimate the number of youth under the age of 13 who identify as transgender, nor do we have high-quality federal-level data on how many transgender students or athletes participate in athletic activities covered by a ban. Federal data collection related gender identity needs to improve to inform a wide range of policy issues, including those involving education, and transgender children, youth, and young adults. See e.g. Williams Institute Scholars, *Comment to Office of Science & Technology Policy Re: Federal Evidence Agenda on LGBTQI+ Equity* (Oct. 2022), <https://williamsinstitute.law.ucla.edu/publications/ostp-comment/>. However, the Trump administration has recently moved to prevent data collection and research regarding transgender populations. See e.g. Carla K. Johnson, *Health Data, Entire Pages Wiped from Federal Websites as Trump Officials Target 'Gender Ideology,'* ASSOC. PRESS (Jan. 31, 2025), <https://apnews.com/article/trump-gender-ideology-sex-pronouns-order-transgender-2d7e54837f5d0651ed0cefa5ea0d6301>.

²¹ *Physical Education and Physical Activity: State Statutes and Regulations for Healthy Schools, School Year 2017-2018*, CHILD TRENDS, <https://cms.childtrends.org/wp-content/uploads/2019/01/WSCC-State-Policy-Physical-Education-and-Physical-Activity.pdf> (last visited Jan. 10, 2025).

²² Herman, Flores & O'Neill, *supra* note 20 at 5. These policies will likely also affect gender nonconforming and nonbinary youth, which are not addressed directly by this fact sheet. For definitions of these terms, see e.g. Logan L. Barsigian et al., *Narratives of Gender, Sexuality, and Community in Three Generations of Genderqueer Sexual Minorities*, 7 PSYCHOL. SEX ORIENTAT. GEND. DIVERS. 276-292 (2021). See also BIANCA D.M. WILSON & ILAN H. MEYER, WILLIAMS INST., *NONBINARY LGBTQ ADULTS IN THE UNITED STATES* (2021), <https://williamsinstitute.law.ucla.edu/publications/nonbinary-lgbtq-adults-us/>. For considerations about how this may affect intersex youth, see note 33, *infra*.

²³ See *State Education Practices: Compulsory School Attendance Laws, Minimum and Maximum Age Limits for Required Free Education, By State: 2017*, NAT'L. CTR. FOR EDUC. STAT., https://nces.ed.gov/programs/statereform/tab5_1.asp (last visited Feb. 6, 2025).

²⁴ HERMAN, FLORES & O'NEILL, *supra* note 20 at 5.

²⁵ We have estimated that as many as 218,000 transgender people aged 18-40 are students, including many college and graduate students. KERITH J. CONRON, KATHRYN K. O'NEILL, AND LUIS A. VASQUEZ, WILLIAMS INST., *EDUCATIONAL EXPERIENCES OF TRANSGENDER PEOPLE* (April 2022), <https://williamsinstitute.law.ucla.edu/publications/transgender-higher-ed/>.

- **National Estimates of Transgender Children and Youth who Participate in Sports.** Using existing sources of data, we can estimate the following:
 - At the high school level, one study using data from the Youth Risk Behavior Surveillance System (“YRBSS”) found that 40.7% of transgender youth grades 9-12 played on at least one sports team.²⁶ Applying that estimate to the population of transgender youth aged 13-17 suggests that as many as 122,000 transgender youth could be participating in high school-level team athletics.²⁷
 - Although we don’t have reliable information about the number of transgender people under age 13, data from the 2020 National Health Interview Survey (“NHIS”) showed that approximately 52.5% of all youth under age 12 participated in a sport in the previous 12 months.²⁸
 - While better data are needed to understand the number of transgender student-athletes participating in the complex network of collegiate sports opportunities, anecdotal estimates remain very low.²⁹ It is unlikely that transgender athletes make up more than 1.3% of the overall college athlete population.³⁰
- **Professional Associations.** It is hard to estimate the impact of the President’s executive order on professional organizations, as their compliance is not mandated by the order—which means that responses from professional organizations could vary widely (including refusing to adopt exclusions). Furthermore, the number of transgender women competing in large-scale events like the Olympics is estimated to be very small.³¹ However, the National College Athletic Association, which governs many collegiate athletic competitions, has announced that it will ban transgender women from its competitions.³²

Notably, bans on sports girls and women’s participation could also impact intersex students and professional athletes.³³

²⁶ J. RHODES PERRY & SOMJEN FRAZER, ADVOCATES FOR YOUTH, ON ALL SIDES: HOW RACE & GENDER INFLUENCE HEALTH RISK FOR TRANSGENDER STUDENTS OF COLOR 66 (2020), <https://actionnetwork.org/forms/on-all-sides>. Although this finding was statistically significant, further research is needed to better understand sport participation by transgender youth aged 13-17. C.f. J. Rhodes Perry & Somjen Frazer at 40, 68.

²⁷ To produce this number, we applied the participation percentage derived by Perry and Frazer, *Id.*, to the population estimate produced by HERMAN, FLORES AND O’NEILL, *supra* note 20.

²⁸ LINDSEY I. BLACK, EMILY P. TERLIZZI & ANGEL VAHRATIAN, ORGANIZED SPORTS PARTICIPATION AMONG CHILDREN AGED 6-17 YEARS: UNITED STATES, 2020 1 (2022), <https://www.cdc.gov/nchs/data/databriefs/db441.pdf>.

²⁹ See Brooke Migdon, *NCAA President Says There Are ‘Less Than 10’ Transgender Athletes In College Sports*, THE HILL (Dec. 18, 2024), <https://thehill.com/homenews/lgbtq/5046662-ncaa-president-transgender-athletes-college-sports/>; Cyd Zeigler & Karleigh Webb, *These 40 Trans Athletes Have Competed Openly in College Sports*, OUTSPORTS (Dec. 6, 2024), <https://www.outsports.com/trans/2022/1/7/22850789/trans-athletes-college-ncaa-lia-thomas>.

³⁰ We estimate that 1.3% of young adults ages 18-24 in the U.S. are transgender. See HERMAN, FLORES & O’NEILL, *supra* note 20 at 5.

³¹ Although transgender and nonbinary athletes have competed at the Olympics, only one openly transgender woman (Laurel Hubbard) is known to have openly competed in a woman’s category. See e.g. Sonia Twigg, *Are There Any Transgender Athletes Competing at the 2024 Olympics?*, THE INDEPENDENT (Aug. 2, 2024), <https://www.the-independent.com/sport/olympics/paris-2024-olympics-transgender-athletes-b2582038.html>; See also *Fairness, Inclusion and Non-Discrimination in Olympic Sport*, INT’L. OLYMPIC COMM., <https://www.olympics.com/ioc/human-rights/fairness-inclusion-nondiscrimination#>.

³² See Juliet Macur, *N.C.A.A. Following Trump’s Order, Excludes Transgender Athletes From Women’s Sports*, N.Y. TIMES (Feb. 6, 2025), <https://www.nytimes.com/2025/02/06/us/politics/ncaa-transgender-athletes-ban.html>.

³³ Intersex refers to people whose sex characteristics do not fall into the typical binary categories of male and female. See interACT, *What Is Intersex?* INTERACTADVOCATES.ORG (last updated Jan. 26, 2021), <https://interactadvocates.org/faq/>; see also Human Rights Campaign, *Understanding the Intersex Community*, HRC.ORG (last viewed Jan. 17, 2025), <https://www.hrc.org/resources/understanding-the-intersex-community>. Although data are limited and further research is needed to better understand the size of the intersex population in the U.S., the best estimate to date is that intersex people (of all

CURRENT POLICY LANDSCAPE

To understand the full impact of the president's executive order, particularly on transgender students, it is important to consider the current landscape of federal and state laws and policies related to transgender sports participation. The order, if implemented, would most directly affect transgender girls and women living in states where there is not already an existing state-level restriction on participation in school sports.

- **Federal Landscape.** Beyond President Trump's executive order, rulemaking under Title IX and actions already underway by Congress might affect the impact of the order.
 - **Federal Rulemaking.** Oversight of many educational programs and activities receiving federal funding, including enforcement of Title IX, is currently vested in the U.S. Department of Education.³⁴ Under President Biden, the Department of Education enacted a Final Rule that codified some protections for transgender students under Title IX.³⁵ However, the administration's regulations did not directly address sports participation.³⁶ The Biden administration's Final Rule was blocked in its entirety by a court in January of 2025, which the Trump administration references in its executive order.³⁷
 - **Federal Legislation.** Although Congress has not yet enacted a federal ban, such a bill would provide substantial support for the policies laid out in the executive order. Aligned with the president's vision,³⁸ the U.S. House of Representatives has already passed a bill that would limit participation in women's school sports under Title IX.³⁹ A similar bill is pending in the Senate.⁴⁰

ages) comprise approximately 1.7% of the population. Melanie Blackless, Anthony Charuvastra, Amanda Derryk, Anne Fausto-Sterling, Karl Lauzanne & Ellen Lee, *How Sexually Dimorphic Are We? Review and Synthesis*, 12 *AM. J. OF HUM. BIOLOGY* 151-66 (2000). Intersex sport participation raises similar, and overlapping issues, with transgender sport participation. See e.g. Melissa Block, *The Sensitive Question of Intersex Athletes*, NPR (Aug. 16, 2023), <https://www.npr.org/sections/thetorch/2016/08/16/490236620/south-african-star-raises-sensitive-questions-about-intersex-athletes>; Rei Chin, *Sex Verification in Sport: The Sidelining of Intersex Athletes*, *Varsity.co.uk* (Dec. 15, 2021), <https://www.varsity.co.uk/sport/22637>. For an overview of recent international literature on the topic, please see Maria Jensen, Jörg Schorer & Irene R. Faber, *How is the Topic of Intersex Athletes in Elite Sports Positioned in Academic Literature Between January 2000 and July 2022? A Systematic Review*, 8 *SPORTS MED. – OPEN* 130 (2022).

³⁴ See e.g. Rebecca R. Skinner, Adam Stoll, and David P. Smole, *A Summary of Federal Education Laws Administered by the U.S. Department of Education*, CONG. RES. SERV. (Dec. 12, 2024), <https://crsreports.congress.gov/product/pdf/IF/IF10551>. The Trump administration has expressed the intention to eliminate or restructure the Department of Education. See e.g. Alayna Treene and Katie Lobosco, *Trump Administration Drafting Executive Order to Initiate Department of Education's Elimination*, CNN (Feb. 4, 2025), <https://www.cnn.com/2025/02/04/politics/education-department-trump-executive-order/index.html>.

³⁵ See Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 33,474 (April 29, 2024).

³⁶ The Biden administration proposed and then withdrew separate regulations specifically addressing how transgender sports participation would be understood under Title IX. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Sex-Related Eligibility Criteria for Male and Female Athletic Teams, 88 Fed. Reg. 22,860 (April 13, 2023); Zach Montague and Vimal Patel, *Biden Withdraws Proposed Regulations on Student Loans and Trans Athletes*, N.Y. TIMES (Dec. 20, 2024), <https://www.nytimes.com/2024/12/20/us/politics/biden-withdraw-student-debt-proposals.html>.

³⁷ On January 9, 2025, a Kentucky District Court granted summary judgment vacating the entire Title IX Final Rule. See *Memorandum Opinion & Order*, Tennessee v. Cardona, No. 2:24-cv-00072 (E.D. Ky. Jan 09, 2025).

³⁸ Press Release, Rep. Greg Steube, U.S. Rep. Greg Steube Reintroduces his Landmark Legislation to Protect Women's Sports (Jan. 3, 2025), <https://steube.house.gov/press-releases/u-s-rep-greg-steube-reintroduces-his-landmark-legislation-to-protect-womens-sports/>.

³⁹ H.R. 28, 119th Cong. (2025); Annie Karni, *House Passes Bill to Bar Trans Athletes from Female School Sports Teams*, N.Y. TIMES (Jan. 14, 2025), <https://www.nytimes.com/2025/01/14/us/politics/house-trans-athletes.html>.

⁴⁰ S. 9, 119th Cong. (2025); Alexander Bolton, *Thune Tees Up Tuberville's Bill to Block Transgender Athletes from Women's Sports*, THE HILL (Jan. 7,

- **State Landscape.** More than half of U.S. states already have a ban on sports participation by transgender youth consistent with their gender identity. However, the majority of transgender youth aged 13-17 live in states without such a ban.
 - **State with Explicit Bans.** Currently, 27 states have a law or regulation that prevents transgender girls and women from participating in sports based on their gender identity.⁴¹ Some of these states also extend a ban to transgender boys and men.⁴² An estimated 117,400 transgender youth ages 13-17—a little over one-third of all U.S. transgender youth in this age group—now live in one of the 27 states where access to sports participation is restricted under state law.⁴³
 - **Jurisdictions with No Explicit Ban.** Twenty-three states and D.C. do not currently have explicit bans on sports participation. This includes states with explicit protections, as described below, and states without clear policies.⁴⁴ Overall, approximately 182,400 transgender youth aged 13-17 live in jurisdictions where they are not currently subject to an explicit ban on transgender sports participation.⁴⁵
 - ◆ **State Protections.** Many jurisdictions without bans explicitly permit students to participate in sports consistent with their gender identity,⁴⁶ including the state of California, which guarantees the right

2025), <https://thehill.com/homenews/senate/5072488-senate-vote-transgender-athletes-bill/>.

⁴¹ *Bans on Transgender Youth Participation in Sports*, MOVEMENT ADVANCEMENT PROJ., https://www.lgbtmap.org/equality-maps/youth/sports_participation_bans (last visited Jan. 10, 2025); See also ELANA REDFIELD, KERITH J. CONRON, AND CHRISTY MALLORY, WILLIAMS INST., THE IMPACT OF 2024 ANTI-TRANSGENDER LEGISLATION ON YOUTH (April 2024), <https://williamsinstitute.law.ucla.edu/publications/2024-anti-trans-legislation/>.

⁴² See Williams Institute Scholars, *supra* note 4; For a list of current state bans and information about them, see *Bans on Transgender Youth Participation in Sports (Citations)*, MOVEMENT ADVANCEMENT PROJ. (July 19, 2024), <https://www.lgbtmap.org/img/maps/citations-sports-participation-bans.pdf>.

⁴³ HERMAN, FLORES & O’NEILL, *supra* note 20; ELANA REDFIELD, KERITH J. CONRON, AND CHRISTY MALLORY, THE IMPACT OF 2024 ANTI-TRANSGENDER LEGISLATION ON YOUTH, *supra* note 41 (Estimates here include New Hampshire, which has added a ban since publication of the report, and do not include Georgia or Nebraska, which are addressed in the following paragraph).

⁴⁴ In the category of states without explicit bans (as of Feb. 6, 2025), we include California, Colorado, Connecticut, Delaware, D.C., Georgia, Hawai’i, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, and Wisconsin. See Williams Institute Scholars, *supra* note 4. In Nebraska and Georgia there are policies in place to promote the exclusion of transgender youth from sports, but no outright bans have yet been enacted. Georgia’s law, which generally targets diversity, equity, and inclusion initiatives, also permits state athletic associations to enact transgender-exclusive policies. H.B. 1084, 156th Gen. Assemb., 2d Reg. Sess. (Ga. 2022) (codified at Ga. Code. Ann. § 20-2-316(c)(1)(E)(v)); See also Chuck Johnston and Devan Cole, *Georgia High School Association Uses New Law To Implement Anti-Trans Sports Ban*, CNN, May 4, 2022, <https://www.cnn.com/2022/05/04/politics/georgia-high-school-transgender-sports-ban/index.html>. Nebraska’s 2023 Executive Order requires that state agencies define sex using “biological sex at birth,” and specifically addresses athletics, although it does not explicitly mandate that sports team eligibility must be based on assigned sex at birth. Neb. Exec. Order 23-16, Establishing a Women’s Bill of Rights, Aug. 30, 2023, <https://governor.nebraska.gov/sites/default/files/doc/press/E0%20No.%2023-16%20-%20Establishing%20a%20Women%27s%20Bill%20of%20Rights.pdf>. Some schools had already enacted exclusive policies when the E.O. was signed. See e.g. Mauricio Martinez Garcia, *Nebraska School Introduces Controversial Policy for Transgender Student-Athletes*, NEBRASKA. TV, Aug. 15, 2023. <https://nebraska.tv/news/local/norfolk-public-schools-introduces-controversial-policy-for-transgender-student-athletes>; See also Zach Wendling, *Second Nebraska Bill Focused on Transgender Athletes is Based on NSAA Participation Policy*, NEB. EXAMINER (Jan. 22, 2025), <https://nebraskaexaminer.com/2025/01/22/second-nebraska-bill-focused-on-transgender-athletes-is-based-on-nsaa-participation-policy/>.

⁴⁵ See HERMAN, FLORES & O’NEILL, *supra* note 20. This estimates the number of transgender youth living in all states without an explicit ban, including the District of Columbia (D.C.), Georgia, and Nebraska, discussed *supra* note 44.

⁴⁶ See Williams Institute Scholars, *supra* note 4 at 16-17, fn. 105; Katie Barnes, *Transgender Athlete Laws By State: Legislation, Science, More*, ESPN (Aug. 24, 2023), https://www.espn.com/espn/story/_/id/3820926/transgender-athlete-laws-state-legislation-science. Note: Subsequent to our

to participate in sports by gender identity under statute.⁴⁷ Additionally, many states provide express protections against discrimination in education on the basis of gender identity, and others protect against discrimination on the basis of gender identity in educational institutions as a form of public accommodation.⁴⁸ Furthermore, New York State recently enacted a constitutional amendment prohibiting gender identity discrimination,⁴⁹ which some have argued will protect transgender athletes from exclusion from women's sports.⁵⁰ A federal ban on sports participation could directly conflict with state-level protections in all these states. However, it is also important to note that some of the existing protections are in the form of policies or guidance that could be rescinded or rewritten if a federal sports ban were upheld.⁵¹

POTENTIAL CONSTRAINTS ON THE IMPLEMENTATION OF THE EXECUTIVE ORDER

Although President Trump may move swiftly to attempt to enforce the executive order, particularly as it applies to educational institutions receiving federal funding, several factors may complicate or hinder his policy goals. These include the limitations of executive orders generally and pending court challenges to state-level sports bans.

- **Limitations of Executive Orders.** A key function of executive orders is political messaging.⁵² Executive orders have practical impacts, but there are limits to what a president can do through this medium.⁵³ Most importantly, an executive order must be supported by authority the president derives from the Constitution or through an express delegation from Congress by statute.⁵⁴ Additionally, implementation is often not immediate. This is because an executive order often takes the form of a directive to federal agencies or offices under the executive branch, each of which would have to conduct internal assessments and consider actions such as rulemaking.⁵⁵ However, executive orders may also have a more immediate impact in instances where formal rulemaking is not required⁵⁶ or by taking actions that may encounter

2023 public comment, several states have enacted a ban on transgender sport participation and other jurisdictions may have adjusted their policies, including at some states with previously inclusive policies. See e.g. H.B. 1205, 2024 Gen. Ct., Reg. Sess. (N.H. 2024) (enacted), H.B. 68, 135th Gen. Assemb., Reg. Sess. (Ohio 2023) (enacted 2024).

⁴⁷ CAL. EDUC. CODE §221.5(f) (2023).

⁴⁸ See SEXUAL ORIENTATION AND GENDER IDENTITY DATA COLLECTION BY HIGHER EDUCATION INSTITUTIONS IN THE U.S., WILLIAMS INST. 35-41 (Dec. 2023), <https://www.aaas.org/sites/default/files/2024-02/SOGI%20Data%20Collection%20in%20Higher%20Education%20%5BWilliams%20Inst.%20Dec.%202023%20v2.2%5D.pdf> (Discussing nondiscrimination laws applicable on the basis of sexual orientation and gender identity. These findings, prepared for the American Association for the Advancement of Science, are focused on higher education, but most apply to primary and secondary education as well).

⁴⁹ See *Text of Proposal 1, An Amendment*, N.Y. STATE Bd. OF ELECTIONS, <https://elections.ny.gov/2024-statewide-ballot-proposal> (last visited Jan. 10, 2025).

⁵⁰ See e.g. Katherine Franke, *Opinion: Don't Let the Lawn Signs Confuse You. Prop 1 Will Advance Sex Equality for Girls' Sports*, CITY & STATE (Nov. 4, 2024), <https://www.cityandstateny.com/opinion/2024/11/opinion-dont-let-lawn-signs-confuse-you-prop-1-will-advance-sex-equality-girls-sports/400808/>; Emily Ngo, *Trans Issue Muddies Battle over New York Ballot Measure*, POLITICO (Nov. 2, 2024), <https://www.politico.com/news/2024/11/02/trans-issue-muddies-battle-over-new-york-ballot-measure-00186607>.

⁵¹ *Id.*

⁵² Josh Boak, *What is an Executive Order? Here's What the Tool Can and Can't Do*, PBS News (Jan. 20, 2025), <https://www.pbs.org/newshour/politics/what-is-an-executive-order-a-look-at-trumps-tool-for-quickly-reshaping-government>.

⁵³ Abigail A. Gruber, *Executive Orders: An Introduction*, CONG. RES. SERV. (March 29, 2021), <https://crsreports.congress.gov/product/pdf/R/R46738>.

⁵⁴ *Id.* at 8-12.

⁵⁵ See e.g. Brendan Pierson, *What Are Executive Orders and How Can Trump Use Them?* REUTERS (Jan. 14, 2025), <https://www.reuters.com/world/us/what-can-trump-do-through-executive-orders-2025-01-14/>.

⁵⁶ See e.g. Phil Mattingly, *Trump's Team Outlines Suite of Executive Orders to Top Lawmakers Ahead of his First Day as President*, CNN.com (Jan.

fewer procedural constraints.⁵⁷ This executive order builds on an earlier executive order redefining the meaning of the word “sex,” which has already been relied upon by the Department of Justice to investigate a school district for having transgender-inclusive bathrooms.⁵⁸ Therefore, we will likely see swift movement to enforce aspects of this executive order as well. However, it is also likely the administration will face litigation and potential injunction.⁵⁹

- **Court Challenges.** Transgender student-athletes and their families have brought court cases challenging bans in numerous states, raising claims under Title IX, the U.S. Constitution, and state constitutions.⁶⁰ Two of these cases have been submitted to the Supreme Court, which could decide once and for all whether the bans violate federal nondiscrimination protections.⁶¹
 - **Title IX.** Even if the Trump administration were to change federal agency regulations interpreting Title IX to exclude transgender youth, court decisions could still ensure protection for student-athletes under the statute.⁶² In fact, one student-athlete has prevailed at the circuit-court level, winning preliminary judgment under the Title IX statute.⁶³ However, federal Circuit Courts remain split on how the Title IX statute would apply to transgender youth in schools, with some Circuits ruling against transgender

19, 2025), <https://www.cnn.com/2025/01/19/politics/trump-executive-orders-lawmakers-day-1/index.html>; See also Ben Wilhelm, *Executive Orders and Presidential Transitions*, CONG. RES. SERV. (July 30, 2024), <https://crsreports.congress.gov/product/pdf/IF/IF12724>; Kate R. Bowers & Daniel J. Sheffner, *Agency Recissions of Legislative Rules*, CONG. RES. SERV. (Feb. 8, 2021), <https://crsreports.congress.gov/product/pdf/R/R46673#:~:text=For%20example%2C%20an%20agency%20is,published%20in%20the%20Federal%20Register>.

⁵⁷ Candace Norwood, *The 19th Explains: What to Know About Executive Orders as Trump Prepares to Take Office*, THE 19TH (Jan. 15, 2025), <https://19thnews.org/2025/01/what-are-executive-orders-trump-second-term/>; See also, Brendan Pierson, *What Are Executive Orders and How Can Trump Use Them?*, *supra* note 55.

⁵⁸ For example, the Department of Education’s Office for Civil Rights opened an investigation into a Denver, Colorado School District within days of the President’s executive order redefining “sex.” See Jessica Seaman, *Trump Administration to Investigate DPS for Converting Girls Restroom to All-gender Bathroom*, THE DENVER POST (Jan. 28, 2025), <https://www.denverpost.com/2025/01/28/trump-investigation-dps-all-gender-restroom-discrimination/>.

⁵⁹ Shortly after the President issued executive orders regarding sex redefinition and gender-affirming care for people under 19, the American Civil Liberties Union and Lambda Legal filed a lawsuit challenging aspects the orders. President’s. See Press Release, ACLU of Maryland, Families and Advocates Sue Trump Administration Over Executive Order Seeking to Restrict Access to Gender-Affirming Care (Feb. 4, 2025), <https://www.aclu.org/press-releases/families-and-advocates-sue-trump-administration-over-executive-order-seeking-to-restrict-access-to-gender-affirming-care>.

⁶⁰ See e.g. B.P.J. v. W. Va. State Bd. of Educ., 98 F.4th 542 (4th Cir. 2024); Hecox v. Little, 104 F.4th 1061 (9th Cir. 2023); *scope of injunction narrowed* in Amended Opinion, Hecox v. Little, D.C. No.1:20-cv-00184-DCN (9th Cir. 2024); Doe v. Horne, No. CV-23-00185-TUC-JGZ, 2023 U.S. Dist. LEXIS 125488 (July 20, 2023, D. Ariz.); Tirrell v. Edelbut, Case No. 24-cv-251-LM-TSM (Aug. 19, 2024 D.N.H); Barrett v. Montana, 2024 MT 86 (April 24, 2024 Sup. Ct. Mont); Roe v. Utah High School Activities Assoc., No. 220903262 (Judicial Dist. Aug. 19, 2022).

⁶¹ See Docket No. 24-43, *West Virginia et al. v. B.P.J.*, By Her Next Friend and Mother, Heather Jackson, SUPREMCOURT.GOV, <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/24-43.html> (last visited Jan. 10, 2025); Docket No. 24-38, *Bradley Little, Governor of Idaho, v. Lindsay Hecox, et al.*, SUPREMCOURT.GOV, <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/24-38.html> (last visited Jan. 10, 2025).

⁶² Since Title IX is a statute, the language of the statute as enacted by Congress, and court interpretations of the statutory language, may take precedence over the regulations issued by agencies to enforce it. See e.g Loper Bright v. Raimondo, 144 S. Ct. 2244 (2024) (ending decades of precedent requiring courts to privilege an executive agency’s own interpretation of a statute, instead suggesting courts should make independent interpretations of statutory meaning).

⁶³ *B.P.J. v. West Virginia*, *supra* note 60 (affirming district court’s grant of summary judgment on Title IX grounds and remanding for further consideration of Equal Protection claims).

youth in the context of bathrooms.⁶⁴ At the same time, lawsuits have also been brought by cisgender students seeking to exclude transgender athletes from participation in women's sports under Title IX.⁶⁵ Additionally, if Congress were to pass the planned legislation excluding transgender girls and women from Title IX's sports protections, this could supersede both regulations and court precedent.

- **Equal Protection.** At least one transgender plaintiff has successfully challenged sports bans under the Equal Protection Clause of the U.S. Constitution at the Circuit Court level.⁶⁶ If the Supreme Court were to find that a federal sports ban violates the Constitution, that could prevent states and the federal government from enforcing sports bans. The Court is expected to issue a decision in 2025 in *U.S. v. Skrmetti*, a case challenging transgender healthcare discrimination case under the Equal Protection Clause,⁶⁷ which could shed light on how the Court will review a sports ban in the future.
- **State Constitutions.** States can offer different or even more expansive protections than the U.S. Constitution.⁶⁸ In a handful of states, challenges to sports bans have been brought with modest success.⁶⁹
- **Empirical Basis for Bans.** A review of the ban under U.S. and state constitutional doctrines will require an assessment of the empirical basis for the ban. For example, the executive order reiterates a concern for "fair" competition as a fundamental justification for the exclusion of transgender girls and women.⁷⁰ Although data are limited, current evidence does not suggest there is a categorical athletic advantage for transgender female athletes when compared with cisgender female athletes.⁷¹

⁶⁴ See e.g. *Grimm v. Gloucester Cty. Sch. Bd.*, 972 F.3d 586 (4th Cir. 2020), *reh'g en banc denied*, 976 F.3d 399 (4th Cir. 2020), *cert. denied*, 141 S. Ct. 2878 (2021); *Whitaker ex rel. Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. Of Educ.*, 858 F.3d 1034 (7th Cir. 2017), *abrogated on other grounds by Illinois Republican Party v. Pritzker*, 973 F.3d 760 (7th Cir. 2020); *c.f. Adams ex rel. Adams v. School Brd. of St. John's Cnty.*, 57 F.4th 791 (11th Cir. 2022) (*en banc*).

⁶⁵ See e.g. *Soule by Stanescu v. Conn. Ass'n of Sch., Inc.*, 57 F.4th 43 (2d Cir. 2022) (holding that a state athletic organization's policy of including transgender athletes does not violate Title IX); *See also Natalia V. Navarro, Anti-Trans Suit Seeking to Ban San José State Volleyball Player Is Denied on Appeal*, KQED News, <https://www.kqed.org/news/12015114/anti-trans-lawsuit-seeks-ban-san-jose-state-volleyball-player-tournament>; *Order*, Brooke Slusser, et al., v. The Mountain West Conference, et al., No. 1:24-cv-03155-SKC-MDB (Nov. 25, 2024 D. Co.).

⁶⁶ *Hecox v. Little*, *supra* note 60 (affirming preliminary injunction as to plaintiffs because the state's transgender sports ban likely violates the Equal Protection Clause of the U.S. Constitution).

⁶⁷ *U.S. v. Skrmetti*, No. 23-477 (U.S. argued Dec. 4, 2024) (whether a state ban on gender-affirming health care for minors violates the Equal Protection Clause of the U.S. Constitution).

⁶⁸ See *SEXUAL ORIENTATION AND GENDER IDENTITY DATA COLLECTION BY HIGHER EDUCATION INSTITUTIONS IN THE U.S.*, *supra* note 48 at 41 (discussing LGBT nondiscrimination protections under state constitutions).

⁶⁹ See e.g. *Barrett v. Montana* (holding that college sport ban violates Montana Constitutional provision regarding sports policymaking authority; K-12 bans still in place), *supra* note 60; *Roe v. Utah*, *supra* note 60 (holding that sports ban violates the Utah Constitution's equivalent of the federal Equal Protection Clause).

⁷⁰ By our count, the executive order references fairness at least ten times. See Exec. Order, *Keeping Men Out of Women's Sports*, *supra* note 1.

⁷¹ See e.g. Blair Hamilton, et al., *Strength, Power and Aerobic Capacity of Transgender Athletes: A Cross-Sectional Study*, 58 BR. J. SPORTS MED.

586 (2024); *c.f. Joanna Harper, et al., How Does Hormone Transition in Transgender Women Change Body Composition, Muscle Strength and Haemoglobin? Systematic Review with a Focus on the Implications for Sport Participation*, 55 BR. J. SPORTS MED. 865 (2021); *See also*, Dan Roan & Katie Falkingham, *Transgender Athletes: What do the Scientists Say?* BBC News (May 11, 2022), <https://www.bbc.com/sport/61346517>; Joanna Harper, *Transgender Athletes and International Sports Policy*, 85 LAW AND CONTEMPORARY PROBLEMS 151 (2022).

IMPACTS OF SPORTS BANS ON WELL-BEING

Bans on athletic participation for transgender girls and women could have negative impacts on the health and well-being of affected transgender students and athletes, particularly youth and young adults.

- **Benefits of Sports Participation.** Participation in sports is linked with numerous benefits, particularly for children and adolescents.⁷² It has been correlated with higher levels of self-esteem, lower levels of depression, and greater school belonging among LGBTQ youth.⁷³ Additionally, one study found that transgender and nonbinary students who participated in sports reported higher grades compared to those who did not participate.⁷⁴ Another study found that transgender students who participated in collegiate sports may be less likely to report psychological distress, self-harm, suicidal thoughts, and suicidal behavior compared to transgender students who did not participate in sports.⁷⁵ If transgender girls and women are not allowed to participate in sports based on their gender identity, they could be denied these and other benefits.
- **Risks of Exclusion.** Exclusion from sports could also result in discrimination or harassment for transgender students. A recent study using YRBSS data found that transgender high school students report disproportionate bullying, persistent hopelessness, and suicidal ideation compared to cisgender students.⁷⁶ Evidence suggests that transgender students in higher education may also experience greater levels of harassment and discrimination, have a more negative perception of campus and classroom climates, and feel less accepted as part of the campus community compared to cisgender students.⁷⁷ Any of these disparities could be made worse if transgender students are denied participation in school sports or forced to participate consistent with their sex assigned at birth under a federal ban.

CONCLUSION

President Trump's executive order signals to educational institutions and professional athletic associations that the federal government will attempt to use its enforcement powers to exclude transgender girls and women from participating in sports and using women's locker rooms across the United States. This will likely include issuing new rules excluding transgender girls and women under Title IX and enforcing those rules against educational

⁷² See e.g. Rochelle M. Eime et al., *A Systematic Review of the Psychological and Social Benefits of Participation in Sport for Children and Adolescents: Informing Development of a Conceptual Model of Health Through Sport*, 10 INT. J. BEHAV. NUTRITION & PHYS. ACTIVITY 1 (2013). See also Matt D. Hoffman et al., *Associations Between Organized Sport Participation and Mental Health Difficulties: Data from Over 11,000 US Children and Adolescents*, 17 PLOS ONE 1 (2022).

⁷³ Caitlin M. Clark & Joseph G. Kosciw, *Engaged or Excluded: LGBTQ Youth's Participation in School Sports and Their Relationship to Psychological Well-being*, 59 PSYCHOL. SCHS. 95 (2022).

⁷⁴ THE TREVOR PROJECT, THE TREVOR PROJECT RESEARCH BRIEF: THE WELL-BEING OF LGBTQ YOUTH ATHLETES (2020), <https://www.thetrevorproject.org/wp-content/uploads/2020/08/LGBTQ-Youth-Sports-and-Well-Being-Research-Brief.pdf>.

⁷⁵ Shoshana K. Goldberg, *Fair Play: The Importance of Sports Participation for Transgender Youth*, CTR. FOR AM. PROG. (2021), <https://www.americanprogress.org/article/fair-play/> (An analysis of data collected through the National College Health Assessment survey, a national survey of college students conducted by the American College Health Association).

⁷⁶ Nicolas A. Suarez, et al., *Disparities in School Connectedness, Unstable Housing, Experiences of Violence, Mental Health, and Suicidal Thoughts and Behaviors Among Transgender and Cisgender High School Students – Youth Risk Behavior Survey, United States, 2023*, 73 MMWR SUPPL. 58 (2024).

⁷⁷ ABBIE E. GOLDBERG, WILLIAMS INST., TRANSGENDER STUDENTS IN HIGHER EDUCATION 6 (2018), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Higher-Ed-Aug-2018.pdf>; See also KERITH J. CONRON ET AL., WILLIAMS INST., EDUCATIONAL EXPERIENCES OF TRANSGENDER PEOPLE 17 (2022), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Higher-Ed-Apr-2022.pdf>.

institutions receiving federal funding. However, the ability of the President to implement the executive order is limited by several factors: the separation of powers under the U.S. Constitution, protections under state constitutions, a patchwork of state laws, existing court decisions protecting transgender youth, and ongoing litigation. Furthermore, actions by Congress may ultimately change the landscape of Title IX and supplement or undermine steps taken by the president in this executive order. Nonetheless, the Trump administration will likely continue to exert direct pressure on education institutions and professional sports associations through various avenues while the outcome for transgender girls and women is ultimately determined.