

Flashpoints In Focus: Employer Risk After Trans Sports Ruling

By **Dawn Solowey, Alison Silveira and Lilah Wylde** (July 23, 2026)

This article is part of a monthly column that examines polarizing social, cultural or political issues that affect workplace legal considerations. In this installment, we discuss a recent decision concerning transgender athletes and how related debates can lead to employment issues for schools and universities.

The U.S. Supreme Court's June 30 decision in *West Virginia v. B.P.J. and Little v. Hecox* answered one of the most contentious flashpoints questions in sports: whether states may limit participation in women's and girls' sports based on athletes' sex assigned at birth.

In *B.P.J.*, the Supreme Court held that West Virginia and Idaho did not violate the equal protection clause of the 14th Amendment or Title IX in separating women's and men's sports teams by their sex assigned at birth.

But for schools, universities and athletic departments, the hardest questions may be the ones that the court left unanswered. That's because they are also employers of coaches, trainers and administrators. And even employees outside the athletics department may have strong views on the divisive issues at play in *B.P.J.*

The question is how institutions manage the workplace disputes that are likely to follow.

The B.P.J. Decision

On June 30, the Supreme Court issued its long-awaited ruling in the *B.P.J.* case against the backdrop of 27 states having enacted laws within the past six years that maintain female sports for athletes who were assigned female at birth, according to the opinion.

The court ruled that states can exclude transgender female athletes from women's sports teams. The justices ruled unanimously that state statutes in Idaho and West Virginia did not violate Title IX, a federal civil rights law that bars sex-based discrimination in education programs and activities, including sports, that receive federal financial assistance.[1]

The court reasoned that Title IX's text and long-standing regulatory framework expressly contemplate sex-separated athletics and permit schools to define women's teams based on athletes' sex assigned at birth.

In an opinion written by Justice Brett Kavanaugh, the majority also held that there was no violation of the equal protection clause of the 14th Amendment. The court concluded that the states' interest in preserving athletic opportunities for women and girls justified maintaining female athletic teams for those who were assigned female at birth, and found that the challenged statutes were consistent with long-standing distinctions recognized in sex-separated sports. Justices Clarence Thomas and Neil Gorsuch filed concurring opinions.



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Justice Sonia Sotomayor, joined by the court's liberal justices, filed a sharp opinion, concurring in part and dissenting in part. Although she agreed that Title IX permits sex-separated athletic teams, she argued that the court improperly resolved disputed factual questions relevant to whether the challenged laws were sufficiently tailored to the states' asserted interests in safety and competitive fairness, as required by the equal protection clause.

Justice Ketanji Brown Jackson separately concurred in part and dissented in part. While agreeing that B.P.J.'s Title IX claim failed in this athletics context, she criticized the majority's broader conclusion that Title IX's reference to "sex" means only biological sex, and argued that the court should have left open whether Title IX's prohibition on sex discrimination extends to discrimination against trans people in other contexts.

How Athletic Policies Can Create a Workplace Flashpoint

The justices' opinions reflect the extent to which the subject of trans women in sports has become a national flashpoint.

For example, writing for the majority, Justice Kavanaugh felt compelled to state directly in the decision: "No student-athlete on either side of the issue, whether a biological female or transgender, deserves to be ostracized or vilified." Writing for the dissent, Justice Sotomayor acknowledged that "[t]his litigation implicates deeply sensitive, contentious, and evolving issues."

Flashpoints around trans athletes' participation and competition in sports are especially likely to erupt on the campuses of educational institutions, which occupy a unique position in the employment landscape. Schools and universities are places where legal, social and political issues are often actively debated.

At the same time, as employers, these entities are responsible for implementing institutional policies, maintaining workplace expectations, and complying with federal and state law. Athletic participation policies can bring those competing interests into sharp focus.

At educational institutions, flashpoints around which athletes are eligible to compete can easily spill into the workplace. While the athletes themselves are students and not employees, a controversy that begins with athlete eligibility can generate employee complaints, accommodation requests, public comments, internal investigations, or disciplinary decisions involving coaches, trainers, faculty members, athletic administrators and other staff. At that point, the institution is no longer just evaluating student-athlete eligibility; it is managing employees.

Institutions must often evaluate the same controversy through different legal frameworks. For instance, Title IX governs the athletics policy itself, while Title VII and state employment laws govern how the institution responds to workplace disputes over flashpoints surrounding gender and gender identity in sports.

Employees may have fundamentally different views regarding sex, gender identity, athletics or institutional policy. Some employees may support policies limiting participation based on athletes' sex assigned at birth, while others may oppose those policies or advocate for broader inclusion of trans athletes.

Employees may express those views publicly, raise concerns through internal channels, or challenge institutional decisions that they believe conflict with their professional, personal or

religious convictions.

For example, a coach may publicly criticize the institution's participation policy. An assistant coach may object on religious grounds to helping implement it. An athletic trainer may become involved in a workplace complaint arising from a dispute over the policy. An administrator may be asked to discipline an employee after comments they made publicly, including on social media, draw attention to the institution.

A complaint that begins as a disagreement regarding an athletics policy can quickly evolve into allegations involving discrimination, harassment or retaliation.

Educational employers will need to take care to distinguish between protected beliefs and speech, and speech that is not protected in a private workplace setting. In general, employees who work for a private employer are not protected by First Amendment rights to free speech.

However, some speech may be protected. For example, in a private employment context, there may be state law protections for political speech or off-duty conduct, National Labor Relations Act protection for protected concerted activity — such as certain speech about workplace conditions — or academic freedom protections for tenured faculty.

Employers will also want to separate speech that is merely an expression of a political viewpoint — even if strident — from speech that may violate workplace policies, such as those around discrimination, harassment and retaliation.

While there is room for robust, and even sharp, disagreement about the flashpoints around gender and sports, the employer does not need to tolerate language that violates its antidiscrimination policies, such as speech disparaging others based on protected classifications.

Thus, consistent application of workplace policies and clear communication regarding employee expectations will be especially important when a flashpoint is roiling the institution.

When the Investigation Becomes the Issue

The Supreme Court's opinion alluded to the special power that sports hold in the minds of American communities. For example, Justice Kavanaugh wrote that women and girls in sports "savor their athletic accomplishments and cherish them for years, even decades, after their playing days are over." And for her part, dissenting Justice Sotomayor acknowledged that "many are understandably invested in ensuring that competition stays fair and safe."

These strong feelings about athletics tap into broader debates regarding fairness, inclusion and institutional values. As such, workplace disputes involving athletic participation policies may attract attention from many stakeholders — not just employees, but students, parents, alumni, donors, advocacy groups, community members and the media.

That increased visibility can place significant pressure on institutions conducting a workplace investigation into alleged discrimination or harassment. Thus, it is critical that the investigation follows best practices in terms of timeliness, thoroughness and fairness.

Employers should take care to focus on specific workplace conduct and whether it violates

an institutional policy, rather than becoming embroiled in broader social or political debates.

The employer will want to take pains to follow best practices for the investigation — from selecting an investigator with appropriate cultural sensitivity to conducting prompt and thorough witness interviews to documenting the process along the way. With this approach, if the investigation is challenged internally or externally, the employer can feel confident that it has followed a defensible process.

When flashpoints have garnered attention from the media or the public, the employer will also want to align its strategy with that of its public relations or communications team.

Religious Accommodation Issues

In B.P.J., Justice Thomas wrote a separate, solo concurrence to state his view that "[m]en and boys with gender dysphoria are not women or girls, even if they believe that they are." He opined that sex is binary, and that to use "language to obscure reality" is to "lie to the public." These viewpoints are controversial to be sure, but such beliefs may also have religious underpinnings for some.

Conflicts can also occur around employees' expression of religious beliefs about trans athletes. For example, an employee may object on religious grounds to aspects of an institution's implementation of a participation policy, request an accommodation relating to policy-related responsibilities or challenge how the institution responded to those concerns.

At the same time, institutions may face competing concerns from other employees who see the same policy through a different lens and view expressions of religious belief as biased against trans people or those in other protected classifications.

The employer should take care to follow its process with respect to religious accommodation requests, including conducting an interactive process, documenting that process and making sound determinations as to which accommodations are reasonable, if any, and which requested accommodations may pose an undue hardship.

The fact that a controversial topic is at the center of the request makes it all the more important for the employer to follow a consistent, defensible process in managing the request.

How a Lawful Athletics Policy Can Lead to Downstream Employment Claims

The risk of employment litigation may be particularly acute in athletics, where personnel decisions frequently occur for reasons that are unrelated to protected activity. For example, coaches may be disciplined, reassigned or terminated following unsuccessful seasons. Similarly, athletic administrators may lose responsibilities following organizational changes, budget reductions or shifts in leadership.

Yet when personnel decisions occur shortly after an employee has raised concerns regarding an athletic participation policy, institutions may face allegations that the stated reason for the decision was pretextual. From a litigation perspective, timing can be just as important as the decision itself.

The practical lesson is that compliance efforts cannot end with the adoption of a lawful athletics policy under the B.P.J. decision.

When managing employee disputes around flashpoints over athletics, institutions should ensure that performance concerns, disciplinary decisions, contract renewal determinations and other employment actions are well documented and supported by legitimate business reasons. This is particularly true where employees have recently engaged in protected activity relating to highly visible athletic policy disputes.

Conclusion

The Supreme Court's decision in *B.P.J.* will be remembered as a major sports law decision in which the court answered a constitutional and Title IX question around whether schools can maintain separate sports teams for women and men, as defined by their sex assigned at birth. But educational institutions are still left with the challenge of managing clashing viewpoints among employees around this controversial topic.

By investing in sound employment policies, best practices investigations and a compliant process for religious accommodations — and committing to documenting performance management and employment decisions — educational institutions can create a culture where employees can respectfully hold divergent viewpoints on this divisive topic while minimizing negative morale and legal risk.

And there is no time like the present; if history is any indication, flashpoints around trans rights, including in athletics, are likely to gain additional traction leading up to the midterm elections.

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[1] The statutes at issue were the West Virginia Save Women's Sports Act, W. Va. Code § 18-2-25d (2021), and the Idaho Fairness in Women's Sports Act, Idaho Code §§ 33-6201 to 33-6203 (2020).