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## **NCLA Says Spending Clause Clear Statement Rule Would Justify Reversing Title IX Girls' Sports Case**

*State of West Virginia, et al. v. B.P.J., by Next Friend and Mother, Heather Jackson*

**Washington, DC (September 19, 2025)** – The New Civil Liberties Alliance filed an *amicus curiae* [brief](#) today in *West Virginia v. B.P.J.* at the U.S. Supreme Court. NCLA asked the Justices to respect the well-established rule that requires Congress to clearly state in advance any conditions it imposes on States for receiving federal funds. Hence, NCLA suggested the Court must recognize that, when Title IX prohibits discrimination on the basis of “sex,” it means biological sex. The U.S. Court of Appeals for the Fourth Circuit ruled in this case that West Virginia’s Save Women’s Sports Act, which prohibits biological males from competing on girls’ and women’s school sports teams, violated Title IX because it discriminates based on “gender identity.” In doing so, the Fourth Circuit stretched the meaning of Title IX to include gender identity, rather than protecting only against discrimination based on biological sex, as the States, Congress, and the general public would have understood at the time of Title IX’s enactment. NCLA’s brief asks the Supreme Court to reverse the Fourth Circuit’s error, which flies in the face of core constitutional principles.

Notably, the Fourth Circuit ignored the fact that Congress passed Title IX through its authority under the Spending Clause in Article I of the Constitution. Precedent requires Congress to clearly state any conditions it sets for States and their instrumentalities to receive federal funding. In Title IX’s text, Congress never indicated that the federal government could withhold education funding over matters of gender identity, only biological sex. By extending Title IX protections to gender identity, the Fourth Circuit impermissibly rewrote the statute, interpreting it far beyond its plain meaning and creating ambiguity where clarity had previously stood.

The Fourth Circuit’s decision would effectively license Congress (and the courts) to subvert the clear statement rule and impose ambiguous conditions on States to receive federal funds, which undermines their ability to effectively govern education and many other core areas of public life. It would also empower executive agencies to exploit statutory ambiguity—though in this case there is none—enabling them to place conditions on federal funding to States in countless ways that Congress never clearly authorized. Such violations of federalism and separation-of-powers principles cannot be allowed to stand.

### **NCLA released the following statements:**

“The Fourth Circuit’s misinterpretation of Title IX as encompassing gender identity—when it only prohibits discrimination on the basis of sex—essentially nullifies the clear statement rule, a vital constraint on Congress’s already broad power to legislate via conditions on its spending. The Supreme Court must reject this flawed reading of Title IX. If Congress wants to regulate in this area, it must *at the very least* do so clearly and unambiguously.”  
— **Andreia Trifoi, Staff Attorney, NCLA**

“Title IX’s plain text protects women on the basis of sex—not gender identity—and the Fourth Circuit cannot conjure ambiguity in a statute that has long been clear to reach a policy outcome that Congress never enacted.”  
— **Casey Norman, Litigation Counsel, NCLA**

“Title IX was passed under Congress’s Spending Clause authority, which implicates the clear statement rule. That means Congress had to put the States on notice *before* they accepted federal funding as to what they were agreeing to. But Congress never clearly stated the extension of Title IX to gender identity—and it could not have done so in 1972. This issue provides sufficient reason all by itself for the Supreme Court to reverse the Fourth Circuit.”  
— **Mark Chenoweth, President, NCLA**

For more information visit the *amicus* page [here](#).

## ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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