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**Public Policy as Curriculum: A Feminist Post-Structural Policy and  
Critical Policy Analysis of Legislative Bills Mandating Intramural and  
Interscholastic Sports Participation According to Sex**

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**Abstract**

This study is a feminist post-structural policy analysis as a form of historical (Davis, Jr., 1991, pp. 77-88) and critical (Sirotnik, 1991, pp. 243-258) curriculum inquiry of five state legislative bills mandating that intramural and interscholastic sports teams be grouped according to sex (Allan et al., 2010). The study first describes the legal context of the sampled bills and the populations that are affected. Then, the study engages in feminist post-structural policy analysis by answering the questions adapted from the three primary feminist post-structural policy analysis focuses (Allan et al., 2010). This study then engages in a critical policy analysis of the bills to explore their practical implications (Cahill, 2015; Apple, 2018; Diem et al., 2014). The study concludes with a brief recommendation of policy changes.

**Keywords:** Policy, Transgender, Gender Non-conforming, Cisgender, Education, Critical Policy Analysis.

## Introduction

One of the most pressing issues facing both K-12 and higher education currently is the increasing number of laws being passed on the state level that mandate that intramural and interscholastic sports teams be grouped according to sex (Movement advancement project, 2025). These laws raise critical ethical questions for educators and society regarding the inclusion of transgender and gender non-conforming people, abbreviated as “TGNC” after this point, into the school space and American life. There is no shortage of studies on the topic of TGNC students in school from a variety of policy perspectives including health, education, and law that collectively stress how pertinent of an issue the inclusion of TGNC students in American life and schools is and the complexities it presents (Anderson, 2018; Flores et al., 2020; Ingram & Thomas, 2019; Lenzi, 2018; Pecoraro & Pitts, 2020; Pike, 2020; Sharrow, 2021; Reynolds & Jahromi, 2021; Singh et al., 2010; Walch et al., 2021). In 2018, the American Academy of Pediatrics (AAP) issued the policy statement *Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents*, which affirmed its support of gender affirming care for TGNC youth, which it defines as:

Developmentally appropriate care that is oriented toward understanding and appreciating the youth’s gender experience. A strong, nonjudgmental partnership with youth and their families can facilitate exploration of complicated emotions and gender-diverse expressions while allowing questions and concerns to be raised in a supportive environment. In a GACM (gender-affirming care model), the following messages are conveyed:

- Transgender identities and diverse gender expressions do not constitute a mental disorder;
- Variations in gender identity and expression are normal aspects of human diversity, and binary definitions of gender do not always reflect emerging gender identities;
- Gender identity evolves as an interplay of biology, development, socialization, and culture; and
- If a mental health issue exists, it most often stems from stigma and negative experiences rather than being intrinsic to the child. (Rafferty et. al, p. 4)

Despite statements such as this from the AAP, debates in all areas of American culture still rage over TGNC visibility. As a result, TGNC rights and inclusion has emerged as its own site of political and subsequently, policy discourse. This study seeks to examine TGNC K-12 and university-level sports policy from a feminist post-

structuralist policy analysis perspective that views policy as discourse. The goal of this study is to illuminate how the discourse around TGNC inclusion is shaping public policy and to engage with public policy analysis from a critical policy analysis perspective.

### **The Curriculum Theorizing of Public Policy**

Allan (2008) writes:

This emphasis on contextuality is indeed a marker of critical and post-structural approaches to discourse and policy analysis which works to question assumptions embedded in the formulation of policy problems and solutions. In order to accomplish this, analyses need to examine policy with an eye towards the context in which policy emerges. (p. 51)

Part of this contextuality is the formal, hidden, and social curriculum laws produce. Most directly, public policy is an example of Kliebard's (1982) concept of curriculum as metaphor. Kliebard (1982) wrote:

In the case of the metaphor of a social contract, for example, we are being urged to accept the view that we ought to obey laws that we have actually consented to in the same way that we consent to enter voluntarily into a contract. What the social contract theory is doing here is not proposing or expressing empirical laws or generalizations, but exposing a criterion that *ought* to govern certain relationships. (p. 16, emphasis Kliebard's)

Kliebard (1982) asserts that one of the most critical functions of curriculum theory is to reveal the hidden criteria that determine what "ought" to be taught (pp. 16-17). Law, policy, jurisprudence, and the discourses that inform them fall within the scope of analysis for curriculum theory because they all function as sites of formal, hidden, and social curriculum theorizing and generation. Law, policy, and jurisprudence have real consequences for a student's self-perception and quality of life as well as for teacher pedagogy through the power of mandates.

While public policy analysis is not a typical form of curriculum theorizing, they both fall firmly within the scope of curriculum theory (Pinar et al., 1995, p. 666; Kliebard, 1982). Public policy has relevance for the discipline of curriculum theory for a variety of reasons, but critically among them is that law and policy create and are created by the combination of the hidden, formal, and social curriculum. The concepts of curriculum as a political text (Pinar et al., 1995), curriculum as an assemblage of

violence (Wozolek, 2021), and necropower (Mbembe, 2003) all recognize the power of law and public policy to create formal, hidden, and social ontological curriculum concerning how groups of people should and should not be treated by the institutions of power. Furthermore, curriculum theorizing recognizes that law and public policy are products and producers of discourse; to this end, I have engaged in a feminist post-structural policy analysis (Allan et al., 2010) of legislative bills concerning the participation of transgender and gender nonconforming students in interscholastic sports as a form of historical (Davis, Jr., 1991, pp. 77-88) and critical (Sirotnik, 1991, pp. 243-258) curriculum inquiry.

### **Research Design**

Allan et al. (2010) describe the feminist post-structural approach to policy analysis as “analyzing policy as discourse” which asserts that policy itself is both a product of and a producer of consequential discourse within a society about critical issues (p. 74). Feminist post-structural thought is diverse and robust. Allan et al. (2009) assert that while there is no single meaning of feminist post-structuralism, they have drawn on the work of scholars such as Bacchi, Baxter, Lather, Ropers-Huilman, St. Pierre and Pillow, and Weedon to articulate the insights provided by the lens:

- An understanding of discourse as a dynamic constellation of words and images that legitimate and produce a given reality (Allan, 2003).
- A focus on the relationship between discourse and subjectivity- providing a understanding how language and meaning produce dynamic and contradictory subject positions.
- An explanation of identity and sense of self as inevitably fluid, inprocess, and contingent upon discourse. Poststructural feminism works to destabilize the rational, fixed, coherent subjects of enlightenment humanism.
- An explanation of both methodological and political assumptions embedded in questions asked and answered by other forms of feminist theory (Weedon, 1997).
- An emphasis on and understanding of power as a productive rather than a repressive force.
- An imperative for examining how particular educational realities have been constituted and regulated through discourse, asking: What social effects are produced and with what consequences?
- An ethic of activism central to feminism while also acknowledging subjectivity as an effect of discourse. (Allan et al., 2009, pp. 36-37)

Discourse creates the conditions of possibility, thought, and action (Allan et al., 2010) as well as formal, hidden, and social curriculum (Pinar et al., 1995). By engaging in post-structural policy analysis, researchers can expose and interrogate how social problems are conceptualized and addressed through the power of institutions and the state (Allan et al., 2010). For this study, the critical issues being addressed in the discourse around TGNC inclusion is that of identity and rights.

This study is a feminist post-structural policy analysis of five state legislative bills mandating that intramural and interscholastic sports teams be grouped according to sex (Allan et al., 2010). The study first describes the legal context of the sampled bills and the populations that are affected (Miller & Hamler, 2019). Then, the study engages in feminist post-structural policy analysis by answering the following questions adapted from the three primary feminist post-structural policy analysis focuses (Allan et al., 2010, p. 74):

- 1) What are the process by which policy problems are defined that examines justifications of policy and grade levels and corresponding ages defined in the text of the bills?
- 2) What is the influence of identity differences in the shaping of policy problems and solutions that examines the definitions of gender and sex from the text of the bills?
- 3) What are the ways in which policy as discourse not only reflects but also contributes to producing subjectivities and sociopolitical realities, which include mechanisms of enforcement from the text of the bills?

This study then engages in a critical policy analysis of the bills to explore their practical implications (Cahill, 2015; Apple, 2018; Diem et al., 2014). The study concludes with a brief recommendation of policy changes.

### **Overview of the Problem**

In the United States, the TGNC community has historically been marginalized (Gill-Peterson, 2018; Stryker, 2017). In a cultural sense, the TGNC community has been forced to the fringes of society. In a legal sense, the TGNC community has been subject to overt discrimination and criminalization in various states. This policy debate cannot be taken out of its larger context of the inclusion of TGNC people in American life and the subsequent push back this has created. The issue of TGNC student athletes participating in interscholastic sports (Movement advancement project, 2025) is more than an athletic concern; it is a civil rights matter. The following section describes the recent legal changes and challenges that are germane to the development of law and policy directed at the issue of TGNC student-athletes participating in interscholastic sports according to their gender identity. The topic of TGNC inclusion touches every

aspect of American life and institutions from the military to the criminal justice system. The scope of this study focuses on one of them: education and specifically interscholastic sport participation.

In 2020, the United States Supreme Court ruled collectively in *Bostock v. Clayton County*, *Altitude Express, Inc. v. Zarda*, and *R.G. & G.R. Harris Funeral Homes Inc. v. Equal Employment Opportunity Commission* that Title VII of the Civil Rights Act of 1964 protected LGBTQ individuals from employment discrimination. Justice Neil Gorsuch wrote for the majority:

Today, we must decide whether an employer can fire someone simply for being homosexual or transgender. The answer is clear. An employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex. Sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids. (p. 2)

While Justice Gorsuch did not address the issue of sports in his opinion, Justice Samuel Alito did in his dissent for *Bostock v. Clayton County*. Justice Alito wrote in dissent:

Another issue that may come up under both Title VII and Title IX is the right of a transgender individual to participate on a sports team or in an athletic competition previously reserved for members of one biological sex. This issue has already arisen under Title IX, where it threatens to undermine one of that law's major achievements, giving young women an equal opportunity to participate in sports. The effect of the Court's reasoning may be to force young women to compete against students who have a very significant biological advantage, including students who have the size and strength of a male but identify as female and students who are taking male hormones in order to transition from female to male. (2020, p. 47)

On July 22, 2021, the United States Department of Education issued *Enforcement of Title IX of the Education Amendments of 1972 with Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of Bostock v. Clayton County*. The US Department of Education stated that they applied the ruling in *Bostock v. Clayton County* to *Title IX* and that the Office of Civil Rights would investigate complaints of sexual orientation and gender identity discrimination under their authority to enforce *Title IX* itself. The Notice of Interpretation states:

As the Court also explained, when an employer discriminates against a person for being gay or transgender, the employer necessarily discriminates against that person for "traits or actions it would not have questioned in members of a different sex." (2021, pp. 32637-32638)

In response to this and other directives regarding TGNC individuals' rights, twenty states filed a federal lawsuit to prevent the new rules from being enforced. Those states were: Tennessee, Alabama, Alaska, Arizona, Arkansas, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Ohio, Oklahoma, South Carolina, South Dakota and West Virginia (Morrison, 2022, footnote 61). On January 20, 2025, *Enforcement of Title IX of the Education Amendments of 1972 with Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of Bostock v. Clayton County* was officially rescinded by Executive Order 14168 (2025). On February 5, 2025, the Trump administration issued Executive Order 14201 which declared that the official policy of the federal government that male participation in women's sports violates Title IX (2025). The following day, the National Collegiate Athletic Association (NCAA) announced its new policy which states that participation on men's teams is open to anyone while participation on women's teams is open only to people "assigned female at birth (NCAA, 2025)."

### Sample

This study utilized a criterion sampling strategy (Creswell, 2013). The units of analysis were the bills chosen for this study from Arkansas, Mississippi, Montana, Tennessee, and West Virginia. For this study, only final engrossed bills were analyzed because bills often contain richer data concerning the justifications of the authors that may be lost once the engrossed text is added to revised statute. The criteria for selection were primarily that the bills sought to ban transgender student athletes from participating in interscholastic sports according to their gender identity and these were the only states where such bills had been made into law through the regular legislative process at the time of sampling. The sampled states represented are regionally, socioeconomically, and racially diverse. Laws in states such as South Dakota, where laws were the result of Executive order, were not included.

### Groups Affected by these Bills

The groups most impacted by the sampled bills are cisgender and TGNC individuals under the age of 25 in the states of Arkansas, Mississippi, Montana, Tennessee, and West Virginia. Table 1 shows the 2020 *five-year average American Community survey* reports the percent and total number of females and males that are under the age of 25 and the combined percentage of females and males as a percentage of the total population in each of the sampled states:

**Table 1 (Table found in the appendix)**

*Percent and Total Number of Under 25 Individuals that are Female, Male, and*

***Combined Percentage of Under 25 Female and Male of the Total Population of each sample state***

Table 1 shows that these bills apply to over 30 % of four of the five sampled states' respective total populations. Although not explicitly mentioned, the sampled bills apply to a large cross section of each state's population.

Regarding TGNC demographics, data is limited. Table 2 shows the percent and total number of age 13- to 17-year-old and 18-to 24-year-old individuals that identify as transgender according to a 2022 report from the Williams Institute at the UCLA School of Law:

**Table 2 (Table found in the appendix)**

***Percent and total number of 13- to 17-year-old and 18-to 24-year-old Individuals that Identify as Transgender***

It must be noted that, regarding the transgender population of the sampled states, the bills apply to less than 1% of the 13- to 17-year-old population in four of the five states and of the 18- to 24-year-old population in two of the five states (Herman et al., 2022) As a matter of policy, these bills are focused on an ultra-minority population.

**Feminist Post-structural Policy Analysis the sampled bills from Arkansas, Mississippi, Montana, Tennessee, and West Virginia.**

**1) The Process by Which Policy Problems are Defined**

Of the 5 sampled bills, all provided an explicit justification within the text of the bills, including the title, for why these bills were written but the implicit must be taken into consideration when doing any post-structural analysis of a text. Table 3 shows phrases that were taken from the text of the sampled bills while retaining the original punctuation and capitalizations:

**Table 3 (Table found in the appendix)**

***Justifications***

The word choice such as *fairness, protection, save, displace, and discriminates* found in the text of the sampled bills is explicitly protective in nature. It can be surmised that the drafters of the legislation frame the problem requiring public policy remedy as girls' sports being under attack and in need to saving or protecting from an incursion of "biological males."

Regarding the grade levels and corresponding ages defined in the text sampled bills, only Tennessee omits institutions of higher education, so at the time this study was conducted the law only applies to student-athletes in primary and secondary

schools. Table 4 provides a plain text interpretation of grade levels and corresponding ages defined in the text of the sampled bills:

**Table 4 (Table found in the appendix)**

*Grade Levels and Corresponding Ages Defined in the Text of the Sampled Bills*

All the sampled bills would apply to public high schools, and four would apply to public institutions of higher education, while two specifically mention private institutions of higher education. It must be noted that Mississippi does not specifically mention private universities but includes any university that is a member of the NCAA, NAIA, or the NJCCA, so they are subject to the law. Four of the five bills include middle school in the grade levels covered by the bills, while three of the five include elementary school. Four of the five sampled bills include post-secondary intramural sports, which applies to all post-secondary students. Considered as a whole, the grade levels and corresponding ages covered in three of the five sampled states range from early childhood and extends to adults.

It is critical to consider how the justifications and the grade levels and corresponding ages defined in text of the sampled bills conceptually function together. The problem group defined in these bills is largely children and adolescents. The implications of framing youth as a problem requiring legal remedy are fraught because it sanctions the use of state power against a population that, due to their age, has few if any available means to secure their rights. Considering this, these bills are also concerns for child and family policy makers and scholars.

**2) The Influence of Identity Differences in the Shaping of Policy Problems and Solutions**

All the sampled bills have a clear definition of sex. Table 5 provides a plain text interpretation of the definitions of gender/sex in the text of the sampled bills:

**Table 5 (Table found in the appendix)**

*Definitions of Gender/Sex in the Text of the Sampled Bills*

The sampled bills banning TGNC student athlete participation in school sports are not, textually speaking, gender bans. They do not contest gender identity *per say*, but rather they rely on biological sex as the determining factor for who can play on which team. It can be surmised from how the biological sex is centered in the bills that the drafters are sidestepping the debate about gender being a social construct and the sex spectrum being a biological reality. Yet, this framing creates pertinent issues that are unaddressed in the sampled bills.

Specifically, the male-female binary that sits at the heart of the sampled bills allows no room for intersex individuals; this makes the definition of sex presented by the bills factually incorrect. The United Nations Free and Equal (n.d.) Intersex Fact Sheet states “Intersex is an umbrella term that refers to people born with physical sex characteristics (such as sexual anatomy, reproductive organs, hormonal patterns and/or chromosomal patterns) that do not fit typical definitions for male or female bodies (p.1).” The United Nations Free and Equal Intersex Fact Sheet continues:

These characteristics may be internal or external, may be apparent at birth or emerge from puberty, or not be physically apparent at all. There exists a broad and diverse spectrum of sex characteristics among intersex people, with more than 40 such variations documented...According to experts, somewhere between 0.05 per cent and 1.7 per cent of the global population is born with intersex traits. The upper estimate is bigger than the population of Mexico. (n.d., p. 1)

The absence of any consideration of intersex individuals is a glaring omission that defaults to a false binary understanding of biological sex for its own definitions. The sampled bills put intersex students in a legal gray area.

### **3) The Ways in which Policy as Discourse not only Reflects but also Contributes to Producing Subjectivities and Sociopolitical Realities**

Four of the five sampled bills have enforcement clauses in the case that a cisgender student discovers that they have competed against a TGNC student. Table 6 provides a feminist post-structural policy analysis of the mechanisms of enforcement in the text of the sampled bills:

#### **Table 6 (Table found in the appendix)**

##### *Mechanisms of Enforcement in the Text of the Sampled Bills*

Except for Tennessee, all the bills allow for a cisgender student athlete to sue. This right is not extended to TGNC student athletes. The subjectivity these clauses create is that it frames competition between a cisgender and TGNC student athletes as akin to a cisgender student athlete being denied equal protections. Furthermore, it frames this competition as being akin to trauma, as the four bills allow for a cisgender student athlete to sue for damages, which can include emotional damages. This creates a TGNC subjectivity and sociopolitical reality which enshrines in law that their participation in school sports is a financial liability for the schools they attend.

### **Discussion and Implications**

Law and policy are historical documents that are the products of their times (Allan, 2008). The context of all the sampled bills is the current social and political environment where LGBTQ individuals are increasing in social visibility as well as

having more civil rights recognized after Supreme Court Decisions in *Lawrence v. Texas* in 2003, *Obergefell v. Hodges* in 2015, and *Bostock v. Clayton County* in 2020. These advancements have sparked a noticeable backlash within the modern conservative movement that has included such politically charged commentary by elected officials referring to LGBTQ individuals as “groomers” and denunciations of what is being described as gender ideology, which is that gender identity as biological sex are different concepts (Block, 2022; Romano, 2022). When examined as a whole, the cultural and the policy discourse can best be described as a conflict between those who favor using the power of the state to facilitate TGNC inclusion and those who favor using the power of the state to maintain TGNC exclusion.

It must be pointed out that the sampled bills have only recently become law, it is difficult to say what the impact of these bills will be with any certainty. As a curriculum theorist and critical policy analyst, I recognize that schools are subject to necropolitics and necropower and can function as legal assemblages of violence where people are reduced to problems to be solved and exposed to harm using the power of the state (Mbembe, 2003; Wozolek, 2021). Bearing this in mind, I limit the critical policy analysis (Cahill, 2015; Apple, 2018; Diem et al., 2014) in this article to certain emergent policy questions that will have to be addressed in school settings regarding TGNC student rights, dignity, and safety (Sharpe, 2006; Greenberg, 2006) that are relevant to the school setting.

It is important to assert that these bills are, regardless of the rhetoric they employ, bans on TGNC student athlete’s participating in school sanctioned sports unless they are willing to abandon their chosen gender identity. It is also important to acknowledge the ethical dilemma that these laws place teachers, coaches, school and district administrators, and university personnel in. The state laws mandate that schools and universities bar qualified TGNC student athletes from participating in a school sanctioned activity. This potentially exposes these institutions to federal lawsuits for creating a hostile environment for TGNC students under *Title IX*. The Office of Civil Rights under the United States Department of Education states the following about sex-based harassment:

Title IX also prohibits gender-based harassment, which is unwelcome conduct based on a student’s sex, harassing conduct based on a student’s failure to conform to sex stereotypes...

Sex-based harassment creates a hostile environment if the conduct is sufficiently serious that it denies or limits a student’s ability to participate in or benefit from the school’s program. When a school knows or reasonably should know of possible sex-based harassment, it must take immediate and appropriate steps to investigate or otherwise determine what occurred. If an investigation reveals that

the harassment created a hostile environment, the school must take prompt and effective steps reasonably calculated to end the harassment, eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects. (2024, Paragraphs 2, 4)

While the recent shift in official policy concerning sex-based discrimination has led to the removal of the previous statement from the OCR website, the fact remains that the sampled bills mandate that schools and universities create hostile environments for TGNC student athletes. The bills require school openly discriminate against TGNC student athletes because the authors of the legislation view them as dangerous to cisgender students, despite having no evidence that this is the case or that TGNC student athletes have a decide advantage over cisgender student athletes. If the claims about TGNC superiority in sports were true, then the top echelon of women’s athletes would have an over representation of TGNC athletes; this is not the case.

When analyzed from the perspective of the intersection of Diem et al.’s (2014) critical policy analysis concern of social stratification that “focuses on the broader effect that a given policy has on relationships of inequality and privilege (p. 1072)” and Cahill’s (2015) assertion that critical policy analysis in education focuses on exposing “inconsistencies between what policy says and what policy does, particularly in terms of power relationships in society (p. 303),” these bills raise one alarming question, “How will schools confirm sex?” These laws rest on a false understanding of biological sex. Cruz (2011) writes:

States (and individuals) generally act as though they believe that people can be divided into two classes, male and female, that stand in a relationship of opposition to one another (hence "the opposite sex"), that are mutually exclusive (you cannot be in a relationship of identity both with the set of males and with the set of females), and that are exhaustive (you must be in a relationship of identity with one of these sex groups). Though they should not, the seeming naturalness and utter familiarity of this common taxonomic scheme of sex identity sometimes lead one to overlook the human agency that state actors are exercising when they make determinations of sex identity. Biology does not so neatly partition humankind. People are marked by tremendous biological, anatomical, hormonal, and even genetic variation. (pp. 64-65)

In regard to power relationships and what a policy allows for, I assert that these bills are undergirded by a cisgender supremacist jurisprudence that seeks to criminalize transgender and gender nonconforming bodies (Sharrow, 2021). As a result of their ideological orientation, the bills open a legal door to potentially grotesque violations of privacy because they attempt to sort people into two discrete categories of sex.

What if someone is accused of being transgender or gender non-conforming but they aren't? How will race and class play into this? How will the state go about providing remedy in the case that a birth certificate does not satisfy the plaintiffs' claims? While none of the bills sampled in this study ask or answer this question, it does hang prominently over the discourse. It will be seen by many stakeholders in schools that subjecting cisgender and TBGNC students to state compelled physical examinations or blood tests to confirm their gender is a violation of student privacy in an abusive way. In the case of intersex students, will the state establish certain testosterone measures that act as a cut off for if an intersex student can compete against other female students despite their bodies naturally producing higher rates of testosterone than cisgender female students? It can be argued that the sampled bills conceptualize intersex, at best, as an aberration or, at worst, as deviations from the norm that must be policed by the state.

Furthermore, the trend of passing laws that prevent TGNC students from participating in school sanctioned sports according to their gender identity raises Fourth Amendment right to privacy concerns (McQuade, 2021; Holtzman, 2016). Holtzman (2016) argues, "inquiries into students' anatomical sex to determine which bathroom or sports team they can choose violates the Fourth Amendment right to privacy by causing dignitary harm (pp. 1973- 1974)." McQuade (2021) asserts that "the right to bodily privacy is fundamental" under the Fourth Amendment (p. 201). Dignitary harm includes the invasion of privacy and deliberately inflicting emotional distress (Abraham & White, 2019). Bearing this definition in mind, the bills sampled in this study are clearly inflict dignitary harm because they subject both cisgender and TGNC student athletes to the possibility of medically unnecessary examinations to confirm their sex. These bills enshrine into law the practice of reducing student athletes to their genitalia with complete disregard to their own identities while compelling them to share private medical documents with district and university personnel who are empowered to inspect them regardless of if they are qualified to interpret medical information or not (Holtzman, 2016).

### **Conclusion: Policy Recommendations**

Regarding policy recommendations, I assert that the laws banning TGNC youth from participating in intramural and interscholastic sports according to their gender identity should be repealed. Furthermore, *Title IX* and *the Civil Rights Act of 1964* should be amended to specifically include sexual orientation and gender identity as suspect classes. This would guarantee equal protections for LGBTQ students beyond the interpretation of the current U.S. Department of Education, which, as recent actions have shown, can be rescinded by a future administration. In addition to this, the Department of Education should use its powers under *Title VI of the Civil Rights Act of*

1964 to deny states that pass anti- TGNC legislation access to education funding from the federal government; however, this would be a means of last resort and done with prudence as to avoid harming at risk student populations.

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## Appendix

**Table 1**

*Percent and Total Number of Under 25 Individuals that are Female, Male, and Combined Percentage of Under 25 Female and Male of the Total Population of each sampled state*

<b>State</b>	<b>Percent and total number of under 25 individuals that are female</b>	<b>Percent and total number of under 25 individuals that are male</b>	<b>Combined percentage of under 25 female and male of the total population</b>
Arkansas	15.96%/ 480,628	16.75%/ 504,523	32.71%
Mississippi	16.43%/ 489,809	17.07%/ 508,914	33.49%
Montana	14.83%/ 157,475	15.97%/ 169,542	30.80%
Tennessee	15.36%/ 1,040,333	15.98%/ 1,082,088	31.34%
West Virginia	14.06%/ 254,200	14.90%/ 269,357	28.97%

**Table 2**

*Percent and total number of 13- to 17-year-old and 18-to 24-year-old Individuals that Identify as Transgender*

<b>State</b>	<b>Percent and total number of 13- to 17-year-old individuals that identify as transgender</b>	<b>Percent and total number 18-to 24-year-old individuals that identify as transgender</b>
Arkansas	.88%/ 1,800	3.59%/ 9,800
Mississippi	1.20% / 2400	.81%/ 2,400
Montana	.78% / 500	.70%/ 700
Tennessee	.74% / 3,100	1.95%/ 11,700
West Virginia	.68%/ 700	1.18%/ 1,800

**Table 3**

*Justifications*

State	Text
Arkansas (2021, p. 1)	“AN ACT TO CREATE THE FAIRNESS IN WOMEN'S SPORTS ACT”
Mississippi (2021, p. 1)	“TO PROVIDE PROTECTION FOR ANY SCHOOL OR INSTITUTION OF HIGHER EDUCATION THAT MAINTAINS SEPARATE ATHLETIC TEAMS OR SPORTS FOR STUDENTS OF THE FEMALE SEX.”
Montana (2021, p. 1)	“AN ACT CREATING THE SAVE WOMEN'S SPORTS ACT”
Tennessee (2021, p. 1)	“WHEREAS, allowing boys to compete in girls' athletic competitions discriminates against girls by regularly resulting in boys displacing girls in competitive events and excluding specific and identifiable girls from opportunities to compete at higher levels and from public recognition critical to college recruiting and scholarship opportunities that should go to those outstanding female athletes.”
West Virginia (2021, p. 2)	“In the context of sports involving competitive skill or contact, biological males and biological females are not in fact similarly situated. Biological males would displace females to a substantial extent if permitted to compete on teams designated for biological females.”

**Table 4***Grade Levels and Corresponding Ages Defined in the Text of the Sampled Bills*

State	Grade Levels in the Bill Text	Plain Text Interpretation of Corresponding Age
Arkansas (2021, pp. 3-4)	Public k-12, public charter, public two year and four-year institutions of higher education,	1) Student athletes ranging from age 5 to around age 24 attending public elementary

	private institutions are not exempt if they compete against public institutions. Also applies to intramural and club sports.	and secondary schools, participating private elementary and secondary schools, public and private community colleges, public and private junior colleges, and public and private universities. 2) All post-secondary students participating in intramural sports regardless of age.
Mississippi (2021, pp. 1-2)	Public k-12, public two year and four-year institutions of higher education, Private k-12 schools that are part of the Mississippi High School Activities Association. Also applies to intramural sports. Any higher education institution that is part of the NCAA, NAIA, or NJCCA.	1) Student athletes ranging from age 5 to around age 24 attending public elementary and secondary schools, participating private elementary and secondary schools, public community colleges, public junior colleges, and public universities. Also includes any private higher education institution that is a member of the NCAA, NAIA, and NJCCA. 2) All post-secondary students participating in intramural sports regardless of age.
Montana (2021, p. 3)	Public k-12, public charter, public two year and four-year institutions of higher education, private institutions are not exempt if they compete against public institutions. Also applies to intramural and club sports.	1) Student athletes ranging from age 5 to around age 24 attending public elementary and secondary schools, participating private elementary and secondary schools, public and private community colleges, public and private junior colleges, and public and private universities.

		2) All post-secondary students participating in intramural sports regardless of age.
Tennessee (2021, pp. 1-2)	Public High school and middle school, does not apply to k-4, universities are not mentioned.	1) Student athletes ranging from age 9 to around age 18 attending public middle (grades 5-8) and secondary schools (grades 9-12).
West Virginia (2021, pp. 2-3)	Public secondary and institutions of higher education. Also applies to intramural and club team sports.	1) Public school and University Student athletes ranging from age 14 to around age to around age 25. 2) All post-secondary students attending a public institution participating in intramural sports regardless of age.

**Table 5***Definitions of Gender/Sex in the Text of the Sampled Bills*

<b>State</b>	<b>Definition in the text of the bill</b>	<b>Plain Text Interpretation</b>
Arkansas (2021, p. 4)	Biological sex binary of Male and Female	TGNC student athletes are banned from participating according to their chosen gender, and the status of intersex student athletes is undetermined.
Mississippi (2021, pp. 1-2)	Biological sex binary of Male and Female	TGNC student athletes are banned from participating according to their chosen gender, and the status of intersex student athletes is undetermined.
Montana (2021, p. 3)	Biological sex binary of Male and Female	TGNC student athletes are banned from participating according

		to their chosen gender, and the status of intersex student athletes is undetermined.
Tennessee (2021, p. 1)	Biological sex binary of Male and Female.	TGNC student athletes are banned from participating according to their chosen gender, and the status of intersex student athletes is undetermined.
West Virginia (2021, p. 2)	Biological sex binary of male and female at birth and genetic.	TGNC student athletes are banned from participating according to their chosen gender, and the status of intersex student athletes is undetermined.

**Table 6***Mechanisms of Enforcement in the Text of the Sampled Bills*

<b>State</b>	<b>Enforcement according to the bill text</b>	<b>Feminist post-structural policy analysis of the mechanisms of enforcement in the text</b>
Arkansas (2021, pp. 4-5)	State is forbidden from adjudicating any charges of gender bias or taking adverse action against a school that does enforce law. A (cisgender) student can sue a school for monetary damages including psychological, emotional, or physical harm. Any student who is subject to retaliation for reporting a violation can sue.	TGNC students cannot sue in state court if they are discriminated against in violation of Title IX. They are a legal nonentity in regard to school athletics.

Mississippi (2021, p. 2)	State is forbidden from adjudicating any charges of gender bias or taking adverse action against a school that does enforce law. A (cisgender) student can sue a school for monetary damages for direct or indirect harm	TGNC students cannot sue in state court if they are discriminated against in violation of Title IX. They are a legal nonentity regarding school athletics.
Montana (2021, pp. 3-4)	A (cisgender) student can sue a school for monetary damages for direct or indirect harm. Any student who is subject to retaliation for reporting a violation can sue. Any school or institution that suffers any direct or indirect harm may sue the government entity, licensing or accrediting organization, or athletic association or organization.	TGNC students cannot sue in state court if they are discriminated against in violation of Title IX. They are a legal nonentity regarding school athletics.
Tennessee (2021, pp. 1-2)	None specified.	
West Virginia (2021, p. 3)	A (cisgender) student can sue a school for monetary damages for direct or indirect harm.	TGNC students cannot sue in state court if they are discriminated against in violation of Title IX. They are a legal nonentity in regard school athletics.