No. 23-392

In the Supreme Court of the United States

METROPOLITAN SCHOOL DISTRICT OF MARTINSVILLE,
Petitioner,

v.

A.C., A MINOR CHILD BY HIS NEXT FRIEND, MOTHER AND LEGAL GUARDIAN, M.C.,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR PARENTS DEFENDING EDUCATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[*]

Parents Defending Education is a national, nonprofit, grassroots association. Its members include many parents with school-aged children. Launched in 2021, it uses advocacy, disclosure, and litigation to combat the increasing politicization and indoctrination of K-12 education.

PDE has a substantial interest in this case. Title IX was enacted to prevent discrimination against, and ensure equal opportunities for, female students. By any metric, it has been wildly successful in achieving that purpose. The Seventh Circuit's decision, however, will reverse this progress and harm vulnerable families, including PDE's members and their children.

SUMMARY OF ARGUMENT

Congress passed Title IX to ensure that female students in the United States could access the same benefits and opportunities enjoyed by male students. As one might expect, Title IX achieves its purpose by recognizing two categories of students: males and females. The law repeatedly speaks about benefits provided by "one sex" versus "the other sex," and sometimes references "both sexes." Title IX, by its very nature, is comparative: It requires school administrators—and the courts overseeing them—to compare the

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[*] Under Rule 37.2, *amicus curiae* provided timely notice of its intention to file this brief. Under Rule 37.6, no counsel for a party authored this brief in whole or in part, and no person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

opportunities afforded to one group with the opportunities afforded to another. It is impossible to compare two things, however, if neither has a verifiable definition. The key question is straightforward: What did Congress mean when it required equal treatment for members of each "sex"?

The text, structure, history, and purpose of Title IX all point to one conclusion: that "sex" refers to biological and inalterable differences between males and females. As the *en banc* court of the Eleventh Circuit observed, "[t]here simply is no alternative definition of 'sex' for transgender persons as compared to non-transgender persons under Title IX." *Adams by & through Kasper v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791, 813-14 (11th Cir. 2022) (en banc).

But the Seventh Circuit has split with the Eleventh Circuit and joined the Fourth Circuit in concluding that "sex" doesn't mean "biological sex." *See A.C. by M.C. v. Metro. Sch. Dist. of Martinsville*, 75 F.4th 760 (7th Cir. 2023); *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586 (4th Cir. 2020). According to these circuits, Title IX and the Equal Protection Clause of the Fourteenth Amendment require schools to permit a biological boy to use the girls' bathroom if the boy identifies as a girl (and vice versa).

The Seventh and Fourth Circuits have thus forced schools to allow students' privacy to be invaded. Perhaps worse, these circuits will necessarily require schools to change women's sports into a fundamentally unfair and unsafe enterprise. And they've done

so when neither the text of Title IX nor the Constitution requires this result. This Court should grant the petition and right these circuits' jurisprudential wrongs.

REASONS FOR GRANTING THE PETITION

I. The Seventh Circuit's decision interferes with students' privacy rights and leaves schools without feasible alternatives.

The Seventh Circuit's ruling risks compromising the privacy rights of students, especially in private spaces like restrooms, locker rooms, lodging accommodations for competitive sports travel, and medical facilities on school property and at school-sponsored events. "The Supreme Court has long recognized the need for privacy in close quarters, bathrooms, and locker rooms to protect individuals with anatomical differences—differences based on biological sex." *Bear Creek Bible Church v. EEOC*, 571 F.Supp.3d 571, 625 (N.D. Tex. 2021) (citing *United States v. Virginia*, 518 U.S. 515, 550 n.19 (1996)).

The Seventh Circuit dismissed these privacy concerns based on several speculative conclusions. According to the Seventh Circuit, "[a] transgender student's presence in the restroom provides no more of a risk to other students' privacy rights than the presence of … any other student who uses the bathroom at the same time." *Whitaker By Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1052 (7th Cir. 2017). "'Common sense," claims the Seventh Circuit, dictates that "'the communal restroom is a place where individuals act in a discreet manner to protect their privacy and those who have

true privacy concerns are able to utilize a stall.'" *A.C.*, 75 F.4th at 773 (quoting *Whitaker*, 858 F.3d at 1052).

But "'a page of history is worth a volume of logic.'" *Jones v. Hendrix*, 599 U.S. 465, 472 (2023). There is a reason that "[t]here has been a long tradition in this country of separating sexes" in many circumstances, particularly in "public bathrooms" and locker rooms. *Adams*, 57 F.4th at 801. And recent experience only confirms as much. Contra the Seventh Circuit, history and experience show that the privacy concerns are not "'entirely conjectural'" but a very real reality for students across the country. *A.C.*, 75 F.4th at 772.

For example, in one Iowa school district, students expressed that the school's bathroom policy was a privacy concern, as students "'would not feel comfortable changing in front of a transgender student in locker rooms'" or "'be comfortable being in a bathroom with a transgender student.'" *Adult Reads Anonymous Letter from Linn-Mar Student Opposed to Radical Transgender Policy*, The Iowa Standard (Apr. 26, 2023), perma.cc/YVG2-E7T8. Students and their parents repeatedly organized protests and rallies to try to protect student privacy at school. *See* Brooks, *Protesters Rally Outside Linn-Mar over Transgender Policy*, CBS Iowa (May 6, 2022), perma.cc/GZE3-DH5M.

In Pennsylvania, students walked out in protest of the school's bathroom policy that allowed biological males to use the female restroom if they identify as a transgender female. *See Penn-Delco School District Allows Biological Male Students to Use Female Restrooms Despite Concerns from Parents and Students*,

Parents Defending Education (Oct. 20, 2023), perma.cc/Z5UH-W2H6; Poff, *Students in Pennsylvania School District Plan Walkout over Male Using Girls' Bathroom*, Wash. Examiner (Oct. 20, 2023), perma.cc/2YLR-5VEZ. Likewise, at another school in Pennsylvania, students walked out of class in protest of the school's bathroom policy. *See* Penley, *Pennsylvania School District Reverses Trans Bathroom Policy Weeks After Student Walkout*, Fox News (Oct. 5, 2023), perma.cc/STB6-WV7X (describing the events at Pekiomen Valley School District).

In Virginia, there have been many protests related to one school district's bathroom policy, "most prominently" after a girl "was sexually assaulted in the girls' [bathroom] by a boy." Steinbuch, *Loudoun County Students Stage Walkout to Protest Transgender Bathroom Policy*, N.Y. Post (Nov. 3, 2023), perma.cc/GP8Z-BF8U. Because of the district's bathroom policy, some female students have "stopped using the bathroom at school." Tietz, *High School Students Walk Out of Class in Protest of Transgender Bathroom Policy: 'They Ignore Us,'* Fox News (Nov. 2, 2023), perma.cc/CA3L-GRMY. Male students also experience the invasion-of-privacy effects of the school's policy. *See id.* ("Another male student [expressed] that he would like to be able to change after football practice and not feel uncomfortable that 'other genders' are watching him.").

Locker rooms for sports have resulted in the same privacy concerns. For example, many students raised privacy concerns after the NCAA permitted a transgender female to occupy the same locker room as

biological females without any warning at a swim competition. *See* Berrien, *'18 Times Per Week': Former Teammate of Lia Thomas Recalls Humiliation of Undressing*, Daily Wire (July 27, 2023), perma.cc/86L8-R8NJ. Many students raised the same privacy concerns recently over a similar incident in Wisconsin. *See* Schemmel, *Trans Student Exposed Girls to Male Genitalia in School Locker Room, Legal Group Claims*, Fox 25 (Apr. 21, 2023), perma.cc/EKW8-QXTF.

The decision below raises more than just privacy concerns. The economic cost of building new bathrooms with privacy protections is extraordinary, and, practically speaking, individualized re-engineering of hundreds of thousands of facilities is not possible. An estimate in Loudoun County shows that bathroom renovations alone will cost that school district $11 million dollars for two of its eighteen high schools. Minock, *Loudoun Schools Explore Replacing Boys and Girls Bathrooms with All-Gender, Single Stalls*, ABC7 News (Apr. 12, 2023), perma.cc/CN4W-WU52. This figure excludes the other sixteen high schools, sixty-five elementary schools, and twenty-one middle schools in that school district alone. Trying to do something similar across the country is not possible. Without this Court's intervention, schools in the Seventh and Fourth Circuits are helpless to avoid the privacy concerns authorized by the decision below.

II. The Seventh Circuit's decision endangers women's sports.

The natural extension of the Seventh and Fourth Circuit decisions is that schools must allow

transgender students to participate in sports of the opposite sex. The *en banc* court of the Eleventh Circuit understood that any bathroom decision would also mean drastic consequences for sports:

> For the same reason, affirming the district court's order would have broad implications for sex-separated sports teams at institutions subject to Title IX, including public schools and public and private universities.... *Thus, equating "sex" to "gender identity" or "transgender status" would also call into question the validity of sex-separated sports teams.*

Adams, 57 F.4th at 816-17 (emphasis added). In the Seventh and Fourth Circuits, the consequences for sports are a reality. *See B.P.J. by Jackson v. West Virginia State Bd. of Educ.*, 2023 WL 2803113 (4th Cir. Feb. 22, 2023); *A.M. by E.M. v. Indianapolis Pub. Sch.*, 617 F.Supp.3d 950, 966 (S.D. Ind. 2022) ("A law that prohibits an individual from playing on a sports team that does not conform to his or her gender identity punishes that individual for his or her gender nonconformance, which violates the clear language of Title IX." (cleaned up)).

At bottom, this case involves "an important issue that this Court is likely to be required to address in the near future, namely, whether either Title IX … or the Fourteenth Amendment's Equal Protection Clause prohibits a State from restricting participation in women's or girls' sports based on genes or physiological or anatomical characteristics." *West Virginia v.*

B.P.J., by Jackson, 143 S.Ct. 889, 889 (2023) (Alito, J., dissenting, joined by Thomas, J.). The answer is that neither do.[1] And the consequences of concluding otherwise are untenable.

This Court should grant the petition and reject the "highly counterintuitive result" that the Seventh and Fourth Circuit decisions require. *Yellen v. Confederated Tribes of Chehalis Rsrv.*, 141 S.Ct. 2434, 2448 (2021).

A. Title IX lets schools condition eligibility for women's athletics on biological sex instead of gender identity.

Title IX of the Education Amendments of 1972 prohibits educational institutions that receive federal funds from excluding, denying the benefits of a program or activity, or otherwise discriminating against individuals "on the basis of sex." 20 U.S.C. §1681, *et seq*. "While Title IX says nothing specifically about sports, its implementing regulations do." *Adams*, 57 F.4th at 816; *see also* 34 C.F.R. §106.41(a) ("No person shall, on the basis of sex, be excluded from participation in ... any interscholastic, intercollegiate, club or intramural athletics."). "Those regulations, which necessarily flow from Title IX's general prohibition against sex discrimination, mirror the blanket-rule-

[1] PDE addresses only the Title IX issue, although PDE agrees that the equal-protection issue is of extraordinary importance and that the Constitution does not forbid school districts from maintaining separate-sex bathrooms and separate-sex sports.

with-specific-exception framework that Title IX applies to living facilities." *Adams*, 57 F.4th at 816.

1. Basic canons of statutory interpretation leave no doubt that Title IX's use of the term "sex" refers to a binary classification based on biological differences between males and females. Courts must "interpret [a statute's] words consistent with their ordinary meaning at the time Congress enacted the statute." *Wis. Cent. Ltd. v. United States*, 138 S.Ct. 2067, 2070 (2018) (cleaned up). The "overwhelming majority of dictionaries" when Title IX was enacted "define[d] 'sex' on the basis of biology and reproductive function." *Adams*, 57 F.4th at 812; *see also Frontiero v. Richardson*, 411 U.S. 677, 686 (1973) ("[S]ex, like race and national origin, is an immutable characteristic determined solely by the accident of birth.").

What the text suggests, context confirms. *See Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 321 (2014) ("[R]easonable statutory interpretation must account for both the specific context in which language is used and the broader context of the statute as a whole." (cleaned up)). Section 1681(a)(2), for instance, distinguishes between "institution[s] which admi[t] only students of one sex" and "institution[s] which admi[t] students of *both sexes*." 20 U.S.C. §1681(a)(2) (emphasis added). Section 1681(a)(8) likewise refers to sex in binary terms. Under that provision, if father-son or mother-daughter activities are provided for "one sex," then reasonably comparable activities must be provided for "the other sex." §1681(a)(8).

Title IX's implementing regulations reinforce a commonsense understanding of "sex." For example, Title IX regulations specify that discrimination against a student "on the basis of … pregnancy" constitutes discrimination "on the basis of sex." 34 C.F.R. §106.40(b)(1); *see* 20 U.S.C. §1682. Federal courts have recognized this rule as a valid corollary to Title IX's ban on sex-based discrimination, based on the understanding that "sex" refers to "the 'structural' and 'functional' differences between male and female bodies." *Conley v. Nw. Fla. State Coll.*, 145 F.Supp.3d 1073, 1077 (N.D. Fl. 2015); *see also Muro v. Bd. of Supervisors of Louisiana State Univ. & Agric. & Mech. Coll.*, 2019 WL 5810308, at *3 (E.D. La. Nov. 7, 2019) ("[A]n adverse action taken against a student on the basis of pregnancy or pregnancy-related conditions is taken *because of* her sex."). Indeed, the reference to "sex" in this context could not possibly contemplate gender identity because biological males are incapable of pregnancy no matter how they identify. Mirroring the language in the statute itself, Title IX regulations also frequently refer to sex in binary and biological terms. *See, e.g.*, 34 C.F.R. §106.33 (authorizing "separate toilet, locker room, and shower facilities on the basis of sex" but specifying that "such facilities provided for students of one sex shall be comparable to such facilities provided to students of the other sex").

Title IX regulations also have a provision authorizing sex-specific competitions when "contact sports" are involved. 34 C.F.R. §106.41(b). The regulations define "contact sports" to include boxing, football, and any "other sports the purpose or major activity of which involves bodily contact." *Id.* The rule makes

sense if "sex" refers to biological characteristics. But separating contact sports by sex makes no sense if "sex" is unmoored from physical differences and determined entirely by each student's internal sense of their gender. If Title IX's protections turned on a particular student's self-identification rather than his or her physical attributes, then limiting participation in contact sports to one group but not the other would make no sense.

The Seventh and Fourth Circuits' deviation from these longstanding regulations is telling. *See Bittner v. United States*, 598 U.S. 85, 97 (2023) ("[T]he government has repeatedly issued guidance to the public at odds with the interpretation it now asks us to adopt. And surely that counts as one more reason yet to question whether its current position represents the best view of the law." (cleaned up)); *Niz-Chavez v. Garland*, 141 S.Ct. 1474, 1484 (2021) (similar).

Based on this overwhelming evidence, the legal conclusion here is straightforward: Title IX and its attendant regulations require schools to provide equal opportunities to male and female student athletes, and the equality of those opportunities is evaluated in the context of biological sex. *See, e.g.*, Coleman, *et al.*, *Re-affirming the Value of the Sports Exception to Title IX's General Nondiscrimination Rule*, 27 Duke J. Gender L. & Pol'y 69, 87-88 (2020) ("[I]t is neither myth nor outdated stereotype that there are inherent differences between those born male and those born female and that those born male, including transgender women and girls, have physiological advantages in many sports.").

2. The Seventh Circuit believed that this Court's decision in *Bostock v. Clayton County*, 140 S.Ct. 1731 (2020), "strengthen[ed]" its conclusion. *A.C.*, 75 F.4th at 769. That is wrong. But if *Bostock* has created any confusion, this Court should make crystal clear that *Bostock* does not apply outside Title VII.

In *Bostock*, the Court held that discrimination "because of sex" under Title VII prohibited employers from terminating employees because of their transgender status. *See* 140 S.Ct. at 1739. The Court "agree[d] that homosexuality and transgender status are distinct concepts from sex," but it concluded that firing employees "based on homosexuality or transgender status" still triggers Title VII's protections because the employer's action "necessarily entails" a decision made "in part because of the affected individuals' sex." *Id.* at 1746-47. The Court's decision thus rested on the premise that sex is binary and immutable, and that an employee's biological sex is a necessary component of any determination about whether "discrimination because of sex" has occurred under Title VII. Put differently, whether an adverse action against a transgender employee violates Title VII depends not on the specific nature of the employee's gender identity but on how the employer treats the employee as compared to other employees of the same biological sex.

Bostock's reasoning doesn't apply to Title IX for at least three reasons. First, the Court "proceed[ed] on the assumption that 'sex' … refer[red] only to biological distinctions between male and female." *Id.* at 1739.

Second, "[t]he *Bostock* decision only addressed sex discrimination under Title VII; the Supreme Court expressly declined to 'prejudge' how its holding would apply to 'other federal or state laws that prohibit sex discrimination' such as Title IX." *Tennessee v. U.S. Dep't of Educ.*, 2022 WL 2791450, at *16 (E.D. Tenn. July 15, 2022) (quoting *Bostock*, 140 S.Ct. at 1753). Third, Title IX and its implementing regulations contain several carveouts specific to biological sex that are not present in Title VII.

For these reasons, several federal courts have recognized that "the rule in *Bostock* extends no further than Title VII." *Pelcha v. MW Bancorp, Inc.*, 988 F.3d 318, 324 (6th Cir. 2021); *see also, e.g.*, *Adams*, 57 F.4th at 811 (same). For example, in *Adams*, the Eleventh Circuit held that *Bostock*'s reasoning was inapplicable in the Title IX context. *See id.* ("We cannot, as the Supreme Court did in *Bostock*, decide only whether discrimination based on transgender status necessarily equates to discrimination on the basis of sex."). *Bostock* was distinguishable, the court held, "because Title IX, unlike Title VII, includes express statutory and regulatory carveouts for differentiating between the sexes." *Id.* The Eleventh Circuit noted that if Title IX's reference to "'sex' were ambiguous enough to include 'gender identity,'" then those "carveout[s], as well as the various carveouts under the implementing regulations, would be rendered meaningless." *Id.* at 813.

The Department of Education also evaluated Title IX's scope in the immediate aftermath of *Bostock* and concluded that this Court's decision did not change the decades-long consensus that Title IX's protections

are grounded in biological sex. In a January 2021 memorandum, the Department reiterated that its "longstanding construction of the term 'sex' in Title IX to mean biological sex, male or female, is the only construction consistent with the ordinary public meaning of 'sex' at the time of Title IX's enactment." U.S. Dep't of Educ. Office for Civil Rights, *Memorandum re: Bostock v. Clayton Cnty.*, 1 (Jan. 8, 2021), perma.cc/5GX3-HZSX ("*Bostock* Memo"). The Department noted that "Title IX text is very different from Title VII text in many important respects." *Id.* Like the Sixth and Eleventh Circuits and other federal courts, the *Bostock* Memo also observed that the Supreme Court "decided [*Bostock*] narrowly, specifically refusing to extend its holding to Title IX and other differently drafted statutes." *Id.* The *Bostock* Memo emphasized that "[u]nder Title IX and its regulations, a person's biological sex *is* relevant for the considerations involving athletics, and distinctions based thereon are permissible." *Id.* at 7. The Department further specified that "schools must consider students' biological sex when determining whether male and female student athletes have equal opportunities to participate." *Id.*

The January 2021 *Bostock* Memo aligns with the Department's other pronouncements in 2020. On October 16, 2020, for example, the Department's Office of Civil Rights settled a complaint against Franklin Pierce University, which had alleged that the University violated Title IX by "den[ying] female student-athletes equal athletic benefits and opportunities by permitting transgender athletes to participate in women's intercollegiate athletic teams." U.S. Dep't of Educ. Office of Civil Rights, *Letter to Kim Mooney*, 1

(Oct. 16, 2020), perma.cc/ECH5-Q95X. The settlement agreement required the University "to rescind the Policy [and] cease any and all practices related thereto." *Id.* at 6. The terms of the settlement notwithstanding, the Department made clear its views that *Bostock* doesn't apply in the Title IX context. *See id.* at 5.

In sum, nothing in the text, history, or implementing regulations of Title IX contemplates sports separated by gender identity rather than biological sex. But even if some doubt remained, it favors petitioner's reading. That's because the Spending Clause requires Congress to speak clearly in Title IX. *See Adams*, 57 F.4th at 815. And even if the Spending Clause doesn't compel a clear statement, the major-questions doctrine does. *See, e.g.*, *Biden v. Nebraska*, 143 S.Ct. 2355, 2372-75 (2023); *West Virginia v. EPA*, 142 S.Ct. 2587 (2022).

B. The ruling endangers female athletes.

The Seventh and Fourth Circuit's understanding of Title IX and the Equal Protection Clause is flawed. Its reasoning threatens to turn female sports into a fundamentally unfair and unsafe enterprise. That cannot be right.

Recent experience has shown that transgender athletes that participate in female sports frequently dominate the competition. *See, e.g.*, McCaughey, *Transgender Weightlifter Shatters Women's Deadlifting Record, Trounces Competitors in Canadian Championship*, New York Sun (Aug. 16, 2023), perma.cc/T7B3-RS4X; Steinbuch, *Tennis Star Martina Navratilova Slams Trans Cyclist Austin Killips'*

Victory, N.Y. Post (May 5, 2023), perma.cc/8UBD-Y7VF; Prestigiacomo, *Another Women's Sport Sees Trans Athletes Rise to Top, And Competitors Are Speaking Out*, Daily Wire (Oct. 1, 2022), perma.cc/5ZVV-L5EU (listing sports where transgender girls eclipsed biological girls, including "disc golf").

Experience has also shown that transgender athletes put females at risk for greater injury. Males possess "categorically different strength, speed, and endurance." Coleman & Shreve, *Comparing Athletic Performances the Best Women to Boys and Men*, Ctr. for Sports Law & Policy, perma.cc/3Z7R-W6Q2. These physical differences increase the risk to females to compete against males, particularly in contact sports. Recognizing this distinction, Title IX's existing regulations expressly address "contact sports," separating contact sports by sex to promote the physical wellbeing of athletes. 34 C.F.R. §106.41(b).

An example illustrates the folly in allowing transgender athletes to participate in women's sports. Consider the fact that an elite male lacrosse player can shoot a lacrosse ball between 80-95 miles-per-hour. For this reason, goalies in men's lacrosse games wear helmets and chest protectors to prevent serious injury from projectiles flying towards them at 130 feet-per-second. An elite female lacrosse player, by contrast, shoots the same ball at least 20-30 miles-per-hour slower. Thus, goalies in female lacrosse games have no need for head and chest protection and only wear protective eyeglasses. Under the Seventh and

Fourth Circuits' position, however, a 14-year-old female lacrosse goalie with no protective equipment could be forced to stare down high-velocity shots from a 17-year-old, biologically male competitor.

Indeed, in a recent high-school field-hockey game, a biological male took a shot and hit an opposing female player in the face, causing her to "'shrie[k] and screa[m]'" in "'fear and pain.'" Gaydos, *High School Field Hockey Captain Speaks Out Against Rule Allowing Boys on Girls Teams After Horrific Injury*, Fox News (Nov. 5, 2023), perma.cc/34J9-FLKM. The shot caused "'significant facial and dental injuries'" and "'required hospitalization.'" Morik, *Massachusetts Superintendent Calls for Change After Male Sends Female to Hospital in Field Hockey Game*, Fox News (Nov. 3, 2023), perma.cc/5Y6V-Y5KS. After the incident, "players and coaches" were "horrif[ied]," *id.*; they were "visibly distraught over the injury," Pollina, *High School Girl's Field Hockey Player Loses Teeth, Injured by Shot from Male Opponent*, N.Y. Post (Nov. 4, 2023), perma.cc/Z9L3-HTSC. In the words of one player: "'Following the injury, my teammates were sobbing not only in fear for their teammate but also in fear that they had to go back out onto the field and continue a game, playing against a male athlete who hospitalized one of our own.'" Gaydos, *supra*. "'By trying to create equality,'" the player explained, the league is "'only creating inequalities.'" *Id.*

Other anecdotal evidence points out the obvious: Males and females have important biological differences that make them compete differently. For exam-

ple, a student competing in varsity-level volleyball reported significant mental and physical delays in recovery after experiencing a severe neck injury caused by a transgender female athlete. Downey, *Female Volleyball Player Testifies to Physical, Mental Trauma Since Injury by Trans Athlete*, National Review (Apr. 20, 2023), perma.cc/D2W5-QGWE. Mixed Martial Arts's first transgender female athlete fractured a biological female's skull in a fight. Purohit, *When Transgender Fighter Fallon Fox Broke Her Opponent's Skull in MMA Fight* (Sept. 30, 2021), perma.cc/G876-K6KA. The biological female was concussed, fractured a portion of her skull, and had to receive seven staples in her head. *Id.* In early April, a biological female athlete suffered a significant injury from a transgender female soccer player in Australia. Flower, *Parents Upset at 'Unfair Advantage' of Trans Woman in Female Soccer League Will Be Offered Training to Better Understand 'Lived Experience' of Transgender Players*, UK Daily Mail (Apr. 2, 2023), perma.cc/H95F-TZUE.

None of these stories show "fair" or "safe" athletic competitions. And they show why Title IX distinguishes between the two sexes. Yet the Seventh and Fourth Circuits' reasoning forbids this commonsensical distinction between the sexes.

CONCLUSION

This Court should grant certiorari.

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