No. 24-38

In the Supreme Court of the United States

BRADLEY LITTLE, IN HIS CAPACITY AS GOVERNOR OF THE STATE OF IDAHO, ET AL.,
Petitioners,

v.

LINDSAY HECOX, ET AL.,
Respondents.

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

BRIEF FOR DR. MARK REGNERUS AS AMICUS CURIAE IN SUPPORT OF THE PETITIONERS

EDWARD C. WILDE
OVERING MORALES
790 E. Colorado Blvd., #320
Pasadena, CA 91101
(626) 564-8600
ewilde@overingmorales.com

MICHAEL S. OVERING
ITZEL MORALES

Counsels of Record for Amicus Curiae

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QUESTIONS PRESENTED

Whether laws that seek to protect women's and girls' sports by limiting participation to women and girls based on sex violate the Equal Protection Clause of the Fourteenth Amendment.

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INTEREST OF MARK REGNERUS

Mark Regnerus is Professor of Sociology at the University of Texas at Austin. His research is in the areas of sexual behavior, family, marriage, and religion. Mark is the author of over 40 published articles and book chapters, and four books. The last two of these are The Future of Christian Marriage (Oxford, 2020), a seven-country study of the waning marital impulse, and Cheap Sex and the Transformation of Men, Marriage, and Monogamy (Oxford, 2017) in which he describes the world that has come to be due to the influence of technology on sex and sexuality. His published research is widely reviewed, including in outlets such as The New Yorker, The Atlantic Monthly, Christianity Today, and the Wall Street Journal. He's a frequent contributor to First Things, National Review, and Public Discourse. The academic work of Professor Regnerus has examined social structures and effects of human sexuality in its variations which have been a frequent issue before legislatures and courts at the state and federal level.

SUMMARY OF THE ARGUMENTS

Gender identity, a comparatively recent idea concerning how a person perceives themselves with regard to sex-based traits, characteristics, and self-identity, is surging in the United States. Some argue that gender identity should be used as a substitute for natal sex distinctions. However, "gender identity" is neither objectively identifiable, clearly or

stably defined or measured, and does not constitute a fixed characteristic. Therefore, gender identity cannot be discerned or established for the purpose of protection. If key scholars did not widely dispute its essential nature, and if medical associations did not privilege the cognitive aspects of gender identity almost exclusively over its physical (i.e., biological and hormonal) aspects, they would not be in such an impotent position to counsel here. Since gender identity is largely based on realities operative in the mind, there is simply insufficient clarity to substitute "gender" identity for natal sex distinctions utilized by the Idaho legislature. The laws at issue rely on socially-shared understandings rooted in the visible world of experience. In such circumstances, it is appropriate for this Court to defer to the legislature.

ARGUMENTS

I. Scientific Expertise can be Used to Evaluate the Empirical Basis for Policy.

Equal as to what? All human beings have humanity in common, but a myriad of personal characteristics distinguish one human being from another and not every distinction is offensive to the Constitution. As this Court explained in 1940: 'The Constitution does not require things which are different in fact or opinion to be treated in law as though they were the same." *Tigner* v. *Texas*, 310 U.S. 141, 147 (1940). As further explained in *Toll* v. *Moreno*, 458 U.S. 1, 39 (1982):

> All laws classify, and, unremarkably, the characteristics that distinguish the classes so created have been judged relevant by the legislators responsible for the enactment. The Equal Protection Clause, however, reflects the judgment of its Framers that some distinguishing characteristics may seldom, if ever, be the basis for difference in treatment by the legislature. The key question in all equal protection cases, of course, is whether the distinguishing characteristics on which the State relies are constitutional.

Here, those challenging the laws of Idaho claim by virtue of their "gender identity" they are "woman" and "girls"—their natal physiology does not control. Hence to discriminate against a "transgender" athlete (typically a natal male in a female-sport) is alleged to offend the equal protection clause of the Fourteenth Amendment.

This is an issue upon which empirical social science can be useful to assist the Court in answering the challenge. *Daubert* v. *Merrell Dow Pharms., Inc.*, 509 U.S. 579, 593, (1993) [1] The

[1] No counsel for any party authored this brief, in whole or in part. No person or entity other than *amicus* contributed monetarily to its preparation or submission. The Court goes on to reference peer review with the caveat that peer review and publication are necessarily conclusive evidence. *Daubert* v. *Merrell Dow Pharms., Inc.*, 509 U.S. 579, 593 (1993) ("Another pertinent consideration is whether the theory or technique has been subjected to peer review and publication. Publication

challenge to the state laws at issue is based ultimately upon the assertion that one's "gender identity" is the equivalent of one's "sex." The assertion is that where one has a self-concept that one belongs to the category of "woman," one is a "woman" for purposes of athletic competition.

Other *amici* will present evidence and argument concerning human physiology, and without reading briefs that have not been filed, it is known there will be debates over physiology. However, the assertion of gender identity has refused to be limited to physiology.[2]

(which is but one element of peer review) is not a sine qua non of admissibility; it does not necessarily correlate with reliability.") Yet, when a published study has engendered such animosity and despite academic prejudice proves to be verified, it speaks well of the researcher.

[2] The potential positions arrange over many fields of human knowledge. The philosophical matter of what is human nature is not avoided. Do the sexes male and female constitute natures of platonic realism or do these constitute bare nominalist labels? Is female a linguistic structure whether or not coupled to certain types of behavior and clothing? Does a natal male who ingests estrogen become "female"? To what extent does the subjective state of a person modifying the natural progression of their body affect this determination? If one is a gnostic who understands the "true" self to be trapped by the body, does that understanding trump the materialist assertion? And how does the materialist determine male and female? Do we consider gametes alone? Such questions do not exhaust the moral, philosophical, and empirical complexities. And how does present opinion relate to past? Is history a Hegelian progression where the present supersedes the past? Or does the past get a vote: "Tradition means giving votes to the most obscure of all classes, our ancestors. It is the democracy of the dead. Tradition refuses to submit to the small and arrogant oligarchy of those who merely happen to be walking about." Chesterton, Gilbert K.

As explained at greater length below, the various experts and expert organizations cannot agree: There is no shared understanding of "gender identity" among the experts.

The States gave their decision in favor of physical performance criteria capable of measurement. Those challenging natal sex restrictions for female sport activity contend that "gender identity" is the proper basis to measure "like-to-like." [3] Where the fundamental categories are debated, the Court should defer to the moral reasoning of legislature: "[T]he normal rule that courts defer to the judgments of legislatures 'in areas fraught with medical and scientific uncertainties.'" *Dobbs* v. *Jackson Women's Health Org.,* 597 U.S. 215 (2022). It is not necessary for this Court to agree with the moral positions of the various state legislatures to uphold the law based upon a moral basis which the Justice does not hold. *See, e.g.*, *Hedgepeth* v. *Wash. Metro. Area Transit Auth.*, 386 F.3d 1148 (CADC 2004). [4]

Orthodoxy. (New York: John Lane Company, 1909), 85. Yet, this does not leave the court in a simple morass. Whatever answer this Court provides will bleed over into other categories. If one is a "female" because of a subjective belief, can that same human being change ethnicity or species? How is the line drawn at sex and not "race"?

[3] The cumulative evidence that strikingly few biological females participate in male sports is a matter of verification.

[4] This Court's attempts to wrestle with the morality of abortion provides a recent example of this difficulty a decision which entails morality. *Gonzales* v. *Carhart*, 550 U.S. 124, 182 (2007)("*See, e.g., See, e.g., Planned Parenthood* v. *Casey*, 505 U.S. 833, 850 (1992) ("Some of us as individuals find abortion offensive to our most basic principles of morality, but that

The challenge to the state laws must fail because the challengers cannot successfully establish predicate definitions.

II. There is a Surge in Transgender Self-Identity Among Adolescents and Adults in the United States.

The matter of "flexibility in designs, definitions, outcomes, and analytical modes" hamper the study of gender identity today.[5] While these are common challenges that stalk the early years of any subject matter's study, uncommon and significant political obstacles also threaten the ability to learn about gender identity with minimal bias. Talented researchers have been subject to elevated scrutiny, suppression, and even censure. There has been an aggressive policing of conclusions that is not commensurate with the free search for empirical truths.

Protocols in social scientific measurement come about when, over time, scholars in different locales and working with different groups of people

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cannot control our decision. Our obligation is to define the liberty of all, not to mandate our own moral code.")") Viability was a technological question. The DNA of the baby could be confirmed. But the relative value of the baby was a question which verification cannot answer.

[5] John P. A. Ioannidis, *Why Most Published Research Findings are False*, 2 PLoS Med 8 (2005) at e124; *see also* Joseph P. Simmons et al., *False-Positive Psychology: Undisclosed Flexibility in Data Collection and Analysis Allows Presenting Anything as Significant*, 22 Psychological Science 11, 1359-66 (2011).

come to agree—within reasonable limits—that there are best-practice ways of asking questions. When the questions concern sensitive matters, as the topic of gender identity does, it is easier to get it wrong. Patience is required. But in this domain, developments are moving quickly, while protocols have been established hastily.

The instability in understanding basic transgender matters comes from estimates of the overall transgender population. One recent assessment of 2021-2023 data from the CDC Behavioral Risk Factor Surveillance System (BRFSS) estimated that eight-tenths of one percent, or 2.1 million American adults, identify as transgender,[6] an estimate that has doubled (from 0.4 percent) in size since 2016. [7] One national probability survey, conducted in 2022, found that 5 percent of young adults say their gender differs from their birth sex.[8]

Estimates of transgender adolescents are just over four times as large as the rate noted among all adults, but lower than that among young adults. In the 2023 Youth Risk Behavior Surveillance System (YRBSS), 3.3 percent—or 724,000—young Americans

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[6] Herman, J.L. and Flores, A.R. (2025). *How Many Adults and Youth Identify as Transgender in the United States?* The Williams Institute, UCLA School of Law.

[7] Esther Meerwijk & Jae Sevelius, *Transgender Population Size in the United States: A Meta-Regression of Population-Based Probability Samples*, 107 American Journal of Public Health e1-e8 (2017).

[8] Brown, A. (2022) *About 5% of young adults in the U.S. say their gender is different from their sex assigned at birth.* Pew Research Center, https://www.pewresearch.org/short-reads/2022/06/07/about-5-of-young-adults-in-the-u-s-say-their-gender-is-different-from-their-sex-assigned-at-birth/.

between ages 13 and 17 identify as transgender.[9] This national rate dwarfs the variable (but elevated) estimates of 1.3 to 2.7 percent that were discernible in particular studies of Boston, San Francisco, and Minnesota high schools as recently as eight years ago.[10]

Finally, the 2015 United States Transgender Survey (USTS), which is not a population-based sample but is nevertheless comprehensive in its reach, offered its respondents 25 different options in their question on gender identity, with an additional possibility to write in something other than what appeared there (an option which 12 percent respondents chose.)[11] The answers "transgender" (65 percent) and "trans" (56 percent) were the top selections, but "trans woman," "trans man," "non-binary," "genderqueer," "gender non-conforming," and "gender fluid" or "fluid" were all answers chosen by at least 20-25 percent of all respondents. Moreover, 44 percent of respondents said they were

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[9] Herman & Flores, *op. cit.*

[10] Joanna Almeida et al., *Emotional Distress among LGBT Youth: The Influence of Perceived Discrimination Based on Sexual Orientation,* 38 J Youth Adolesc. 7, 1001–14 (2009); Marla E. Eisenberg et al., *Risk and Protective Factors in the Lives of Transgender/Gender Nonconforming Adolescents*. 61 J Adolesc. Health 4, 521–526 (2017); John P. Shields et al., *Estimating Population Size and Demographic Characteristics of Lesbian, Gay, Bisexual, and Transgender Youth in Middle School*, 52 J Adolesc. Health 2, 248-250 (2013).

[11] James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). *The Report of the 2015 U.S. Transgender Survey*. Washington, DC: National Center for Transgender Equality. See Question 2.2 at 254.

"very comfortable" with the term transgender being used to describe them.[12]

Curiously, three years after it was fielded, the 2022 USTS has yet to release their most recent survey instrument. Nor have they described the results of their self-identity questions in detail. A short summary of it observes that 38 percent of respondents identified as nonbinary, 35 percent as a transgender woman, and 25 percent as a transgender man.[13] Only five (5) percent noted that they were born with a variation in physical sex characteristics or else reported a DSD (long referred to as a "disorder of sexual development," but increasingly referred to as a "difference in sexual development").

III. Contested and Contrasting Definitions of Gender Identity are Prevalent Among Experts.

Gender identity—what it is and what's *in* it—is far from universally understood or agreed upon. While racial classification may involve a degree of self-identification, cases concerning racial discrimination typically also involve racial characteristics, including skin color, national origin, and ethnicity. Race must be more than mere self-identity. And while cases can involve partial genetic relationships—such as when someone describes themselves as "half Irish and half black" or as "three-quarters Asian and one-quarter Jewish"— it is nonsensical to describe oneself as "one-quarter

[12] *Id.*
[13] *Id.*

female." Sex is not divided in this manner. Presciently, Columbia University sociologist Tey Meadow reported in her study on the production of legal gender classifications: "Many courts look to medical definitions of sex…. yet there is no consensus about when gender change actually happens."[14] This remains the case, 16 years after this assertion was made.

Indeed, there is nothing close to a shared understanding of gender identity among experts today. Instead, there are a wide variety of claims about the nature, sources, and descriptions of gender identity, prompting the conclusion that future cases would be hard-pressed to speak of any solitary (or even several types of) gender identity as a common grounds for having experienced discrimination. This should not surprise, since while a common understanding of sex—as male and female, with rare instances of disorders of sexual development (DSD)—is very old and remains quite reliable, gender identity is comparatively new and has yet to establish a wide hold on the popular (and even scholarly) imagination. Here, in brief, are perspectives from several experts. They offer variable definitions characteristic of the very early stages of an academic subfield—not exactly the stuff upon which binding legal arrangements should be constructed.

Psychiatrist and professor Stephen Levine, who once founded the gender clinic at Case Western Reserve University's School of Medicine and was

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[14] Tey Meadow, *"A Rose is a Rose": On Producing Legal Gender Classifications*, 24 Gender & Society 6 814–837 (2010) at 824.

active in the World Professional Association for Transgender Health (WPATH), describes the evolution of the idea:

> "Within about thirty years, body/gender incongruence has gone from being viewed as a rare psychiatric disorder, to a serious medical condition…to an increasingly common normal variation of gender identity development…. At the same time, the wish to change one's "sex" (a reflection of the binary view of gender) is increasingly being replaced by the wish to personally define gender as one sees fit (the nonbinary view of gender)."[15]

Similarly, Bernadette Wren—former senior clinician at the (now closed) UK Tavistock Gender Identity Development Service (GIDS), rejected the notion of an "essential gender" and discussed viewing "all gender as fictional and artificial." [16] In a therapeutic context, Wren maintains, "the meaning of trans rests on no demonstrable foundational truths but is constantly being shaped and re-shaped in our social world."[17] That is, nothing compels a

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[15] Stephen B. Levine, *Informed Consent for Transgendered Patients*, 45 Journal of Sex & Marital Therapy 3 218-229 (2019) at 219.

[16] Wren, B. (2014). Thinking postmodern and practising in the Enlightenment: Managing uncertainty in the treatment of children and adolescents. *Feminism & Psychology, 24*(2) at 271.

[17] *Ibid* at 287.

therapist to stick to agreed-upon notions of gender when you're listening to a client.

Deanna Adkins is a Duke University Medical School pediatric endocrinologist and a frequent expert witness in gender identity cases. Quite differently from Wren, the psychologist and therapist, Adkins claims that "evidence strongly suggests that gender identity is innate or fixed at a young age and that gender identity has a strong biological basis."[18] She maintains that a person's gender identity "is fixed, is not subject to voluntary control, cannot be voluntarily changed, and is not undermined or altered by the existence of other sex-related characteristics that do not align with it," an assertion that is distinct from the American Academy of Pediatrics (AAP) policy statement on the care and support for transgender and gender diverse children and adolescents, which holds that the self-recognition of gender identity "develops over time" and yet "[f]or some people, gender identity can be fluid, shifting in different contexts."[19]

One may be tempted to conclude that such disagreements over definitions and delineations

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[18] Declaration of Deanna Adkins, M.D., U.S. District Court, Middle District of North Carolina, Case 1:16-cv-oo236-TDS-JEP, https://www.aclu.org/sites/default/files/field_document/AdkinsDecl.pdf; *see also* Gabe Murchison, *Supporting and Caring for Transgender Children*, Human Rights Campaign, American Academy of Pediatrics, and American College of Osteopathic Pediatricians, (2016).

[19] Rafferty, J. & Committee on Psychosocial Aspects of Child and Family Health.(2018). Ensuring comprehensive care and support for transgender and gender-diverse children and adolescents, 142 *Pediatrics* 4 e20182162; doi: https://doi.org/10.1542/peds.2018-2162.

about gender identity must be diminishing over time, coalescing toward a central series of assertions. But it's not the case. The AAP has not shifted its viewpoint; rather, it recently voted to reaffirm it[20] and cited it five times in their brief for the *United States* v. *Skrmetti* case.[21]

Lisa Diamond, a developmental psychologist and gender studies professor at the University of Utah, is well known for her work on sexual fluidity in women. In a 2020 study, Diamond discussed gender fluidity and nonbinary gender identities among children and adolescents, concluding that gender is neither stable nor static—hence making it difficult to establish at any point in time:

> …it may take time for children to find a way to articulate nonbinary or fluid gender identities (the lack of commonly understood terms for such identities is precisely why individuals have created their own terms, such as gender fluid and genderqueer). Providing youth—and parents—with more time, support, and information about the full range of

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[20] Wyckoff, A.S. (2023). "AAP reaffirms gender-affirming care policy, authorizes systematic review of evidence to guide update," American Academy of Pediatrics News, https://publications.aap.org/aapnews/news/25340/AAP-reaffirms-gender-affirming-care-policy?autologincheck=redirected.

[21] Brief of Amici Curiae the American Academy of Pediatrics and Additional National and State Medical and Mental Health Organizations, *United States* v. *Skrmetti*, (U.S. Sup. Ct. 2025) at 4, 6, 7, 13, 14.

> gender diversity, and the fact that gender expressions and identities may change dynamically across different stages of development, may help facilitate more effective decisions about social and medical transitions.[22]

One study tracking the fluidity of transgender and nonbinary youth examined the frequency and patterning of changes in self-reported gender identity and sexual orientation identity over time, and observed that 13 percent of youth signaled a gender identity change in just three months, while nearly 30 percent did so over the full 18 months of the study.[23]

All of this suggests an option-filled domain that is dynamic, often temporary, and far from agreed-upon. Diamond concurs that gender is "not a stable achievement, but rather 'a pattern in time.'"[24] If Professor Diamond is right about gender identity, it is in turn hardly the scenario for establishing in law a protected class status based on anything other than a self-declaration.

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[22] Diamond, L. M. (2020). Gender fluidity and nonbinary gender identities among children and adolescents. *Child development perspectives*, *14*(2), 110-115 at 113.

[23] Katz-Wise, S. L., Ranker, L. R., Kraus, A. D., Wang, Y. C., Xuan, Z., Green, J. G., & Holt, M. (2024). Fluidity in gender identity and sexual orientation identity in transgender and nonbinary youth. *The Journal of Sex Research*, *61*(9), 1367-1376 at 1367.

[24] Diamond (2020) *op. cit.* at 113; Fausto-Sterling, A. (2012). The dynamic development of gender variability. *Journal of homosexuality*, *59*(3), 398-421 at 405.

IV. Medical and Health Professional Organizations Differ on Gender Identity Definitions.

A scrutiny of the professional organizations which we would expect to weigh in on definitions of gender identity reinforces the above conclusion about scholarly experts. They too differ widely in how they understand gender identity. As noted above, the AAP's policy was issued in 2018 and reinforced in August 2023. It is not, however, the result of a plebiscite among its membership. Its policy statement describes gender identity as

> A person's deep internal sense of being female, male, a combination of both, somewhere in between, or neither, resulting from a multifaceted interaction of biological traits, environmental factors, self-understanding, and cultural expectations.[25]

This description of gender identity has nothing directly to do with secondary sex characteristics and is cognitive in nature—an internal sense. The American Psychological Association (APA) describes gender identity as a similar matter of cognition and emotion:

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[25] Rafferty, *op. cit.* Table 1 at 2.

> a person's psychological sense of self in relation to their gender. Many people describe gender identity as a deeply felt, inherent sense of being a boy, a man, or male; a girl, a woman, or female; or a nonbinary gender (e.g., genderqueer, gender-neutral, agender, gender-fluid, transgender) that may or may not correspond to a person's sex assigned at birth, presumed gender based on sex assignment, or primary or secondary sex characteristics.

Sensibly, the APA understands that external social structures also matter here—that is, what others think and how they act:

> Although the dominant approach in psychology for many years had been to regard gender identity as residing in individuals, the important influence of societal structures, cultural expectations, and personal interactions in its development is now recognized as well. Significant evidence now exists to support the conceptualization of gender identity as influenced by both environmental and biological factors.[26]

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[26] American Psychological Association, APA Dictionary of Psychology, https://dictionary.apa.org/gender-identity. Entry updated 11/15/2023; Retrieved 9/15/2025.

In 2023, the American Medical Association (AMA) characterized *both* sex and gender as "socially constructed," asserting that they are neither stable nor objective. Indeed, "it is appropriate to affirm each individual's self-determination regarding both sex and gender labels."[27] In other words, sex and gender alike are subjective and flexible.

That the AMA prudently observes that understandings of gender reflect "historical, cultural, and social mores" renders moot the utter subjectivity of their definition of gender. The organization asserts that there is a predictable, understandable history to how men and women have acted, thought about themselves, and shared interpersonal understandings of each other as men and women—and then declares that it is utterly unimportant for what any one person feels inside themselves. It's asserting that culture, social history, and shared norms both matter and don't matter.

In an unempirical overreach, the AMA's brief asserts that neither gender nor sex are "stable, objective categories" before noting that "a landmark study demonstrated that about 1 in 50 live births present with" an intersex or DSD condition. Indeed, it is false to suggest that sex is not a stable category, when human sociability has for millennia depended upon it. The DSD claim is simply a gross overestimate. Among four of the most common key "types" of DSDs, the *most* common (Klinefelter

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[27] American Medical Association (2023). Sex and gender in medical education: Issue Brief. AMA Council on Medical Education. https://www.ama-assn.org/system/files/cme-issue-brief-sex-gender-medical-education.pdf at 1.

Syndrome) occurs in two-tenths of one percent of male births.[28] Moreover, the AMA even mentions menopause—a "nonpathological" bodily change—as an example of how sex characteristics can vary over time, somehow linking a common experience of about half of the globe's population with a discussion of sex and gender identity. That the AMA is asserting these in print is an indication of its ideological capture.

Finally, the Endocrine Society suggests that "gender identity" is an invisible trait and based on self-identification alone, while "biological sex" refers to "physical aspects of maleness and femaleness."[29] (They do not recommend using the term "biological sex and biological male or female, since "these may not be in line with each other."[30]) For an industry that typically not only values but plans on *average* performance within an acceptable range (of organs, tests, medications, surgical tools, physicians, etc.), it is a profound irony that the Endocrine Society's

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[28] Kim, K. S., & Kim, J. (2012). Disorders of sex development. *Korean journal of urology*, *53*(1), 1-8. doi: 10.4111/kju.2012.53.1.1; Thyen, U., Lanz, K., Holterhus, P. M., & Hiort, O. (2006). Epidemiology and initial management of ambiguous genitalia at birth in Germany. *Hormone research in paediatrics*, *66*(4), 195-203. https://doi.org/10.1159/000094782; Sax, L. (2002). How common is intersex? A response to Anne Fausto-Sterling. *Journal of sex research*, *39*(3), 174-178. https://doi.org/10.1080/00224490209552139

[29] Hembree, W. C., Cohen-Kettenis, P. T., Gooren, L., Hannema, S. E., Meyer, W. J., Murad, M. H., ... & T'Sjoen, G. G. (2017). Endocrine treatment of gender-dysphoric/gender-incongruent persons: an endocrine society clinical practice guideline. *The Journal of Clinical Endocrinology & Metabolism*, *102*(11), 3869-3903. Quotes are term definitions at 3875.

[30] *Ibid.*

official advice to clinicians concerning biological sex is to ignore such averages and focus on possible (but decidedly non-average) exceptions. As with the AAP and APA, the Endocrine Society maintains that gender identity must be "deeply" felt or held in order to matter here, adding a subjective degree to an already subjective element.

Just as scholars and professional organizations cannot agree on gender identity, neither can athletic associations. Many of the latter seem to welcome natal females to participate in male sports—but only if they can be competitive with natal males. In the case of the reverse, which is the source of far more controversy, a variety of physical criteria—the medical associations' least-favorite kind here—are the most helpful. Has a 13-year-old natal male gone through puberty? Is their testosterone climbing, as might be predicted? He typically cannot play in an organized girls' team sport, despite the fact that the medical professional organizations give preference to what that 13-year-old *claims* to be true about his self-understanding as a boy or a girl, or nonbinary—an entire category that defies athletic norms.

Hence, there is a sex distinction for one category of sports—women's—but not for men's. In other words, the best women are presumed to be those most proximate to men in ability.

CONCLUSION

Athletic associations no doubt display distinctions in their participation criteria for gender identity. Some accommodate natal males in female

competitive sports teams so long as particular thresholds are met (e.g., not experiencing puberty). But any type of physical, measurable criterion would be *more* than many scholars and all of the key medical associations just discussed would put upon their own patients in discerning gender identity. That is, the medical associations' criteria appear universally subjective, existing in the minds of the patients. It is an irony that in a world—athletics—that hinges on sex distinctions in physical strength and stamina, the medical associations' go-to source of treatment here ignores the physical and social world and privileges the subjective and mental categories of people they treat. Since such organizations have made little attempt to assert that gender identity must have more to it than "deeply" felt cognitive criteria, their counsel is of little value in discerning how gender identity merits a protected legal status in the social and physical world that people inhabit.

Edward C. Wilde
Michael S. Overing
Itzel Morales
OVERING MORALES
790 E. Colorado Blvd., #320
Pasadena, CA 91101
(626) 564-8600
ewilde@overingmorales.com
movering@overingmorales.com
imorales@overingmorales.com

Counsels of Record
For Amicus Curiae
Dr. Mark Regnerus

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