No. 24-38

In the
Supreme Court of the United States

BRADLEY LITTLE, in his official capacity as Governor of the State of Idaho, et al.,

Petitioners,

v.

LINDSAY HECOX, et al.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR *AMICI CURIAE* PRESIDENT OF THE ARIZONA STATE SENATE WARREN PETERSEN AND SPEAKER OF THE ARIZONA HOUSE OF REPRESENTATIVES STEVE MONTENEGRO IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICI CURIAE*[1]

More than half the States have enacted legislation to protect the integrity and safety of women's sports by allowing only biological women to compete.[2] Arizona is one of them. In 2022, the Arizona Legislature passed the Save Women's Sports Act, which provides that "[a]thletic teams or sports designated for 'females', 'women' or 'girls' may not be open to students of the male sex." ARIZ. REV. STAT. § 15-120.02(B). This provision mirrors similar laws passed in Idaho and West Virginia at issue in this case. *Compare* IDAHO CODE ANN. § 33-6203(2); W. VA. CODE § 18-2-25d(c)(2).

Before it passed the Save Women's Sports Act, the Arizona Legislature received uncontradicted witness testimony that biological boys have physiological advantages over girls, including before puberty, that result in boys possessing sports performance advantages over girls. *See* Doc. 303, *Doe* v. *Horne*, No. 4:23-cv-00185-JGZ, at ¶¶ 18-22 (D. Ariz. May 30, 2025). Based on this testimony and the evidence before it, the Arizona Legislature made findings that, from age six, boys score higher than girls on muscular strength, muscular endurance, and speed/agility tests, and that the physiological differences conferred by biological sex create a "sports performance gap between males and females" that appears "insurmountable." AZ LEGIS 106, § 2(6), (9) (2022).

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[1] Pursuant to Sup. Ct. R. 37.6, no counsel for any party authored this brief in whole or in part, and no party or counsel for a party, or any other person, other than *amici curiae* or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

[2] *Bans on Transgender Youth Participation in Sports,* Movement Advancement Project, https://perma.cc/NY3K-CTQ6.

The Act thus separates teams by biological sex and applies to "[e]ach interscholastic or intramural athletic team or sport that is sponsored by a public school or a private school whose students or teams compete against a public school." ARIZ. REV. STAT. § 15-120.02(A). Then-Governor Doug Ducey signed the legislation on March 30, 2022,[3] and it became effective on September 24, 2022.[4]

In April 2023, two biological males who identify as female, and who were 11 and 15 years old at the time, challenged Arizona's Save Women's Sports Act in federal court. *See* Doc. 1, *Doe* v. *Horne*, No. 4:23-cv-00185-JGZ (D. Ariz. Apr. 17, 2023). Even though the students could participate in school sports on teams matching their biological sex or on co-ed teams, *see* ARIZ. REV. STAT. § 15-120.02(A), (C), they alleged that the Act violated the Equal Protection Clause, Title IX, the Americans with Disabilities Act, and the Rehabilitation Act by preventing them from playing school sports against biological girls.

The district court granted a preliminary injunction after finding that the Save Women's Sports Act likely violated the Equal Protection Clause and Title IX as applied to the students.[5] *See Doe* v. *Horne*, 683 F. Supp. 3d 950, 969-77 (D. Ariz. 2023). The Ninth

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[3] Letter from Gov. Doug Ducey to Sec. of State Katie Hobbs, Mar. 30, 2022, https://perma.cc/3LQ7-PZFV.

[4] *General Effective Dates*, Arizona State Legislature, https://perma.cc/R4BT-54SG.

[5] Plaintiffs did not seek preliminary relief for their claims under the Americans with Disabilities Act or the Rehabilitation Act.

Circuit affirmed.[6] *Doe* v. *Horne*, 115 F.4th 1083, 1112 (9th Cir. 2024).

Relying heavily on *Hecox* v. *Little*, 104 F.4th 1061 (9th Cir. 2024),[7] the Ninth Circuit applied intermediate scrutiny because it found that the Save Women's Sports Act discriminates against "transgender girls." *Horne*, 115 F.4th at 1102. The Arizona Legislature argued that the Act would satisfy intermediate scrutiny, even if it applied under the plaintiffs' theory, because it advances Arizona's substantial interests at least 99.996 percent of the time as to every other student-athlete except transgender athletes. *Id.* at 1110. The Ninth Circuit rejected this argument by concluding that the Act does not affect biological boys who identify as boys because it "merely codifies preexisting rules" by non-governmental entities like the National Collegiate Athletic Association (NCAA) "barring" them from women's sports teams. *Id.* at 1104 n.9, 1110. Notwithstanding extensive evidence to the contrary,

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[6] The Ninth Circuit concluded that it did not need to reach the Title IX claim because it affirmed on Equal Protection grounds. *Horne*, 115 F.4th at 1111. However, the Ninth Circuit observed that the Title IX claim faced a "colorable argument" under the Spending Clause because "it may not have been clear to the State when it accepted federal funding that this provision does not authorize distinctions based on assigned sex." *Id.* at 1110.

[7] Hecox has moved to vacate the Ninth Circuit's decision. *See* Suggestion of Mootness, *Little v. Hecox*, No. 24-38 (U.S. Sept. 2, 2025). Yet because of *Horne*, vacating *Hecox* will not necessarily change the precedent for sports participation laws in the Ninth Circuit. The Court should reject Hecox's plea to deny review of the Ninth Circuit's decision or, in the event that it determines that Hecox's case is moot, it should grant the Arizona Legislature's petition for a writ of certiorari and review *Horne*. *See Petersen* v. *Doe*, No. 24-449 (U.S.).

including Arizona's specific legislative findings, the Ninth Circuit affirmed the district court's finding that, "[b]efore puberty, there are no significant differences in athletic performance between boys and girls." *Id.* at 1100, 1108.

Even though it recognized that "it is undisputed that the State's asserted interests in ensuring competitive fairness, student safety, and equal athletic opportunities for women and girls are important governmental objectives," *id.* at 1107, the Ninth Circuit found the Act insufficiently tailored under intermediate scrutiny because it supposedly does not achieve its purposes as applied to transgender, biologically male athletes who take puberty blockers to avoid experiencing male puberty, *id.* at 1108-09. The Arizona Legislature's petition to this Court for a writ of certiorari remains pending. *See Petersen* v. *Doe*, No. 24-449 (U.S.).

Arizona's elected representatives enacted a law on an issue of public concern that previously had been regulated by unelected bureaucrats. But rather than defer to the Arizona Legislature on an issue of "medical and scientific uncertainty," *United States* v. *Skrmetti*, 145 S. Ct. 1816, 1836 (2025) (quoting *Gonzales* v. *Carhart*, 550 U.S. 124, 163 (2007)), the Ninth Circuit reached its own scientific conclusions and essentially subjected the law to strict scrutiny by forcing it to perfectly fit each of the State's seven million residents. Our constitutional system demands a different result.

Amici curiae President of the Arizona State Senate Warren Petersen and Speaker of the Arizona House of Representatives Steve Montenegro submit this brief to discuss how Arizona's experience should inform how similar laws, including in Idaho and West Virginia, should be treated.

SUMMARY OF ARGUMENT

The American people's elected representatives have repeatedly taken steps to ensure competitive fairness, safety, and equal opportunities to girls in sports. In 1972, Congress passed Title IX to prohibit discrimination "on the basis of sex" in federally funded educational programs. *See* 20 U.S.C. § 1681(a). Title IX provides girls with equal opportunities in school-sponsored athletics, and it expressly allows sports teams to be separated on the basis of sex. *See* 34 C.F.R. § 106.41(b). Title IX "transformed" sports for girls, increasing girls' high school sports participation by more than 1,000%. Amy Tennery, *Fifty years since Title IX, the world of women's sports is transformed*, REUTERS (June 22, 2022).[8]

More than a half-century later, elected legislators in 27 States have taken action to protect girls' sports by only allowing participation by biological girls.[9] Arizona passed its Save Women's Sports Act after receiving witness testimony that boys were dominating and displacing girls in school sports, including in Arizona. *See* Doc. 303, *Doe* v. *Horne*, No. 4:23-cv-00185-JGZ, at ¶¶ 23-25 (D. Ariz. May 30, 2025).

But the Fourth Circuit and the Ninth Circuit ruled against the sports participation laws of Arizona, Idaho, and West Virginia. *See Horne*, 115 F.4th at 1112; *Hecox*, 104 F.4th at 1091; *B.P.J. by Jackson* v. *W. Va. State Bd. of Educ.*, 98 F.4th 542, 565 (4th Cir. 2024). These decisions improperly reached different conclusions than the legislatures on an evolving issue,

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[8] *Available at* https://perma.cc/V3PV-ALQ2.

[9] *Bans on Transgender Youth Participation in Sports,* Movement Advancement Project, https://perma.cc/NY3K-CTQ6.

and they essentially demanded that the legislatures satisfy strict scrutiny by requiring a perfect fit between the laws and every state resident. These rulings are inconsistent with our constitutional structure.

The rulings also led to outcomes that the legislatures sought to avoid. For example, in Arizona, the two male plaintiffs playing in girls' sports under the injunction have medaled in running competitions, starred on a volleyball team, and taken roster spots and playing time from girls. *See* Doc. 303, *Doe* v. *Horne*, No. 4:23-cv-00185-JGZ, at ¶¶ 149-156, 162-165 (D. Ariz. May 30, 2025). West Virginia girls have experienced similar consequences. *See* Pet'rs Br., No. 24-43 (U.S. Sept. 12, 2025).

The Equal Protection Clause does not constitutionalize sports participation policy or remove the issue from State legislatures. The Court should reverse.

ARGUMENT

I. *Hecox* and *B.P.J.* improperly elevate the judicial branch over the legislative branch.

A. Courts should defer to legislatures in areas of medical and scientific uncertainty.

Under a longstanding rule, state and federal legislatures have "wide discretion to pass legislation in areas where there is medical and scientific uncertainty." *Skrmetti*, 145 S. Ct. at 1836 (quoting *Carhart*, 550 U.S. at 163); *see also, e.g., Turner Broad. Sys., Inc.* v. *FCC*, 520 U.S. 180, 195–96 (1997) (holding that "courts must accord substantial deference to the predictive judgments of Congress," and that courts "owe Congress' findings an additional measure of deference out of respect for its authority to exercise

the legislative power"). "When Congress," or a state legislature, "undertakes to act in areas fraught with medical and scientific uncertainties, legislative options must be especially broad and courts should be cautious not to rewrite legislation …." *Marshall* v. *United States*, 414 U.S. 417, 427 (1974). To be sure, this deference is not absolute, and courts "retain[] an independent constitutional duty to review factual findings where constitutional rights are at stake." *Carhart*, 550 U.S. at 165. But this deference to legislative factfinding is significant and "must be especially broad" in cases like this one, where "[state] officials 'undertake to act in areas fraught with medical and scientific uncertainties.'" *S. Bay United Pentecostal Church* v. *Newsom*, 140 S. Ct. 1613, 1613 (2020) (Roberts, C.J., concurring in denial of application for injunctive relief) (quoting *Marshall*, 414 U.S. at 427)).

For decades, federal circuits have followed this instruction and deferred to state legislative factfinding in cases that involve significant medical or scientific uncertainty. *See, e.g., Brandt by & through Brandt* v. *Griffin*, 147 F.4th 867, 884 (8th Cir. 2025) (en banc) ("[T]he Supreme Court leaves wide discretion for medical legislation to the more politically accountable bodies, especially in areas of medical uncertainty.") (citing cases); *Poe by & through Poe* v. *Drummond*, --- F.4th ----, 2025 WL 2238038, at *11 (10th Cir. Aug. 6, 2025) ("Medical and scientific uncertainty also support that Oklahoma has 'wide discretion to pass legislation' in this area of healthcare." (citation omitted)); *Navratil* v. *City of Racine*, 101 F.4th 511, 520 (7th Cir. 2024) (rejecting a time/place/manner First Amendment challenge to COVID lockdown orders because when state "officials 'undertake to act in areas fraught with medical and

scientific uncertainties,' their latitude 'must be especially broad'") (cleaned up); *Pena* v. *Lindley*, 898 F.3d 969, 980 (9th Cir. 2018) (affording "substantial deference to the predictive judgments" of the legislature in applying intermediate scrutiny to firearms regulations) (quotations omitted); *N.Y. State Rifle & Pistol Ass'n, Inc.* v. *Cuomo*, 804 F.3d 242, 261–62 (2d Cir. 2015) (same); *Planned Parenthood Minn., N.D., S.D.* v. *Rounds*, 686 F.3d 889, 899–900 (8th Cir. 2012) (en banc) ("[T]he Supreme Court 'has given state and federal legislatures wide discretion to pass legislation in areas where there is medical and scientific uncertainty'"); *Abigail All. for Better Access to Developmental Drugs* v. *von Eschenbach*, 495 F.3d 695, 713 (D.C. Cir. 2007) (rejecting a claim of terminally ill patients to access experimental drugs because "state and federal legislatures [have] wide discretion to pass legislation in areas where there is medical and scientific uncertainty"); *Waterman* v. *Farmer*, 183 F.3d 208, 216 n.8 (3d Cir. 1999) (citing *Marshall* and deferring to New Jersey's state legislative factfinding regarding sex-offender rehabilitation); *United States* v. *Middleton*, 690 F.2d 820, 823 (11th Cir. 1982) ("When Congress undertakes to act in areas fraught with medical and scientific uncertainties, legislative options must be especially broad…."). These decisions afforded appropriate deference to the legislative branch.

B. The Fourth Circuit and Ninth Circuit refused to defer to legislative findings.

In contrast to these decisions, the Fourth Circuit and the Ninth Circuit refused to defer to West Virginia's and Idaho's explicit legislative findings, which directly contradict the courts' analysis. *See* W. VA. CODE § 18-2-25d(a); IDAHO CODE ANN. § 33-6202. Like Arizona, both the West Virginia and Idaho

Legislatures found that there are inherent differences between biological males and biological females, that these biological differences provide males an advantage in athletic capabilities, and that separating sports teams on the basis of biological sex is necessary to provide females with equal athletic opportunities. *See* W. VA. CODE § 18-2-25d(a)(1), (3), (5); IDAHO CODE ANN. § 33-6202(1), (8)-(9), (12). Neither the Fourth Circuit nor the Ninth Circuit disputed these findings. In fact, the Fourth Circuit's majority opinion did not cite or mention West Virginia's legislative findings a single time. *See generally B.P.J.*, 98 F.4th 542. For its part, the Ninth Circuit characterized two of Idaho's legislative findings as "flawed" because the author of a study opposed the legislation after it passed[10] and a pre-print study was modified during peer review. *Hecox*, 104 F.4th at 1084. But a legislature "is not obligated, when enacting its statutes, to make a record of the type that an administrative agency or court does to accommodate judicial review." *Turner Broad. Sys., Inc.*, 512 U.S. at 666; *see also Minority Television Project, Inc.* v. *F.C.C.*, 736 F.3d 1192, 1199 (9th Cir. 2013) (reasoning that a legislature "is a political body that operates through hearings, findings, and legislation; it is not a court of law bound by federal rules of evidence").

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[10] The author "personally urged Governor Little to veto the bill because the legislature had misinterpreted her work." *Hecox*, 104 F.4th at 1084. Yet the author provided no evidence that the legislature "misus[ed]" her work and instead expressed policy differences with the lines drawn by the Idaho Legislature. *See* Letter from Nancy Hogshead-Makar and Doriane Lambelet Coleman to Brian Wonderlich, Mar. 19, 2020, *at* https://perma.cc/2CMK-38V2.

When it similarly rejected Arizona's legislative findings, the Ninth Circuit held that deference to legislative factfinding in cases of medical and scientific uncertainty applies only in cases involving *rational-basis* scrutiny, not intermediate scrutiny: "[N]either *Carhart* nor [the Sixth Circuit's decision in *L.W. ex rel. Williams* v.] *Skrmetti* applied heightened scrutiny, as we are obliged to do, and that standard requires the State to demonstrate an 'exceedingly persuasive justification' for a discriminatory classification …." *Horne*, 115 F.4th at 1109 (quoting *United States* v. *Virginia*, 518 U.S. 515, 531, 533 (1996)); *see also id.* at 1109 n.15 (noting that *Carhart* and *Skrmetti* applied rational-basis scrutiny, not intermediate scrutiny, as the justification for declining to defer to Arizona's findings).

The Ninth Circuit's attempt to distinguish these cases is meritless. Other federal circuits have applied this Court's traditional deference to legislative factfinding in cases of medical and scientific uncertainty, in cases involving not just rational-basis scrutiny, but higher levels of scrutiny, including intermediate scrutiny. *See, e.g., Navratil*, 101 F.4th at 519–20 (deferring to legislative factfinding in a case involving intermediate First Amendment scrutiny of time/place/manner restrictions, which must be "narrowly tailored to serve a significant governmental interest"); *Pena*, 898 F.3d at 980 (deferring to legislative findings in applying intermediate scrutiny to firearms regulations); *Cuomo*, 804 F.3d at 261–62 (same); *Rounds*, 686 F.3d at 899 (deferring to legislative factfinding in pre-*Dobbs* undue-burden scrutiny of abortion restrictions); *Golan* v. *Holder*, 609 F.3d 1076, 1083-85 (10th Cir. 2010) (according "substantial deference to the predictive judgments of Congress" in a case applying "intermediate scrutiny"

under the First Amendment); *Mercado-Boneta* v. *Administracion del Fondo de Compensacion al Paciete ex rel. Ins. Comm'r of P.R.*, 125 F.3d 9, 13 (1st Cir. 1997) (acknowledging deference to legislative factfinding in a Contract Clause case that applied enhanced scrutiny that is "more searching than … rational basis review"); *Supre* v. *Ricketts*, 792 F.2d 958, 963 (10th Cir. 1986) (deferring to legislative factfinding in Eighth Amendment deliberate-indifference review); *see also Kadel* v. *Folwell*, 100 F.4th 122, 196 (4th Cir. 2024) (en banc) (Wilkinson, J., dissenting), *cert. granted, judgment vacated sub nom. Crouch* v. *Anderson*, No. 24-90, 145 S. Ct. 2835 (U.S. June 30, 2025), and *cert. granted, judgment vacated,* No. 24-99, 145 S. Ct. 2838 (U.S. June 30, 2025) (in a case applying intermediate scrutiny, faulting the majority for disregarding the rule that "States have 'wide discretion to pass legislation in areas where there is medical and scientific uncertainty'"). This Court's case law strongly indicates that this majority view, not the Ninth Circuit's novel view in *Horne*, is correct. *See Carhart*, 550 U.S. at 163 (noting that "[t]his traditional rule is consistent with *Casey*," which adopted undue-burden review instead of rational-basis scrutiny).

Under a proper application of this Court's precedent, the fact that defense experts disagreed with plaintiffs' experts should have led the Fourth Circuit and the Ninth Circuit to *uphold* the legislative findings by Arizona, Idaho, and West Virginia, not reject them. "[I]t is precisely where such disagreement exists that legislatures have been afforded the widest latitude in drafting such statutes." *Kansas* v. *Hendricks*, 521 U.S. 346, 360 n.3 (1997). "[C]ourts are bound to give the legislature greater deference—not less—where the latter has undertaken

to act in an area where experts disagree." *Waterman*, 183 F.3d at 216 n.8 (cleaned up). This is especially true where, as here, "[c]ommon sense tells us," *id.* at 217, that the Fourth Circuit's and Ninth Circuit's factual findings are plainly incorrect. Pre-pubescent boys and girls are *not* identical with respect to athletic competitiveness—as reflected in the near-universal practice of separating pre-pubescent boys and girls by sex in competitive sports. "Ignoring fundamental principles of separation of powers," the Fourth Circuit and Ninth Circuit decisions "would rewrite the legislation, ignore the [legislative] evidence, and substitute … [their] own policy judgment for that of [the legislatures]." *Minority Television Project, Inc.*, 736 F.3d at 1199.

C. Deferring to legislative findings respects the separation of powers.

Our Constitution carefully delineates power between the branches because the Founders "viewed the principle of separation of powers as the absolutely central guarantee of a just Government." *Morrison* v. *Olson*, 487 U.S. 654, 697 (1988) (Scalia, J., dissenting). As the Supreme Court long ago observed, it is "a general rule inherent in the American constitutional system, that, unless otherwise expressly provided or incidental to the powers conferred, the Legislature cannot exercise either executive or judicial power; the executive cannot exercise either legislative or judicial power; the judiciary cannot exercise either executive or legislative power." *Springer* v. *Gov't of Philippine Islands*, 277 U.S. 189, 201–02 (1928). This respect for the separation of powers is "essential to the successful working of this system," *Kilbourn* v. *Thompson*, 103 U.S. 168, 191 (1880), and "can serve to safeguard individual liberty," *N.L.R.B.* v. *Noel Canning*, 573 U.S. 513, 525 (2014) (citation omitted). Indeed, "[t]he

Framers recognized that, in the long term, structural protections against abuse of power were critical to preserving liberty." *Bowsher* v. *Synar*, 478 U.S. 714, 730 (1986). Infringing the separation of powers thus implicates a threat to individual liberty. "Liberty is always at stake when one or more of the branches seek to transgress the separation of powers." *Clinton* v. *City of N.Y.*, 524 U.S. 417, 450 (1998) (Kennedy, J., concurring); *see also Stern* v. *Marshall*, 564 U.S. 462, 483 (2011) ("'there is no liberty if the power of judging be not separated from the legislative and executive powers.'" (quoting The Federalist No. 78, p. 466 (C. Rossiter ed. 1961) (A. Hamilton)).

Deference to legislative findings, particularly in areas of medical and scientific uncertainty on an issue that "does not violate the equal protection guarantee of the Fourteenth Amendment," *Skrmetti*, 145 S. Ct. at 1837, respects these fundamental separation of powers principles and thus protects individual liberty. "Our Constitution principally entrusts '[t]he safety and the health of the people' to the politically accountable officials of the States 'to guard and protect,'" *S. Bay United Pentecostal Church*, 140 S. Ct. at 1613 (Roberts, C.J., concurring in denial of application for injunctive relief) (quoting *Jacobson* v. *Massachusetts*, 197 U.S. 11, 38 (1905)), and "they should not be subject to second-guessing by an 'unelected federal judiciary,' which lacks the background, competence, and expertise to assess public health and is not accountable to the people," *id.* (citation omitted). "[T]he fact the line might have been drawn differently at some points is a matter for legislative, rather than judicial, consideration." *Skrmetti*, 145 S. Ct. at 1836 (citation omitted). After all, the legislative branch "is far better equipped than the judiciary to 'amass and evaluate the vast amounts

of data' bearing upon an issue as complex and dynamic as that presented here." *Turner Broad. Sys., Inc.*, 512 U.S. at 665-66 (citation omitted). And "[t]he Constitution presumes that ... even improvident decisions will eventually be rectified by the democratic process and that judicial intervention is generally unwarranted no matter how unwisely [the courts] may think a political branch has acted." *F.C.C.* v. *Beach Commc'ns, Inc.*, 508 U.S. 307, 314 (1993); *see also Williamson* v. *Lee Optical of Oklahoma Inc.*, 348 U.S. 483, 488 (1955) ("For protection against abuses by legislatures the people must resort to the polls, not to the courts."). "That respect for a legislature's judgment applies even when the laws at issue concern matters of great social significance and moral substance." *Dobbs* v. *Jackson Women's Health Org.*, 597 U.S. 215, 300 (2022) (collecting cases).

The decisions by the Fourth Circuit and the Ninth Circuit elevate the judicial branch over the legislative branch. The Court should reverse to preserve the separation of powers and protect liberty.

II. *Hecox* and *B.P.J.* elevate unelected bureaucrats over the legislative branch.

Unlike Congress, state legislatures typically have "plenary power to deal with any topic unless otherwise restrained by the Constitution." *Seisinger* v. *Siebel*, 203 P.3d 483, 490 (Ariz. 2009) (citation omitted). This includes education. "Title 15," in which Arizona's Save Women's Sports Act is located, "by providing for virtually every area of concern in the field, makes clear the fact that the [Arizona] legislature has plenary power over public education in this state." *Amphitheater Unified Sch. Dist. No. 10* v. *Harte*, 624 P.2d 1281, 1284 (Ariz. 1981) (Cameron, J., dissenting); *see also* ARIZ. CONST. art. XI, § 1(A). Exercising this authority, the Arizona Legislature has

passed numerous laws regulating school athletics. *See, e.g.*, ARIZ. REV. STAT. §§ 15-341(24) (requires health and safety policies at school-sponsored practices and games relating to the provision of water, risk of concussions, and dangers of heat-related illnesses and other injuries), 15-347(B) (prohibits bans on athletes wearing religious or cultural accessories or hairpieces that do not affect health or safety), 15-795.01(2) (allowing students eligible early for a high school diploma to continue participating in school sports), 15-802.01 (allowing homeschooled students to participate in public school sports), 15-1772 (describing a student athlete's right to cancel an agency contract), 15-1892 (detailing student athlete compensation provisions, such as name, image or likeness). Idaho and West Virginia also have broad plenary power. *See, e.g.*, *Nate* v. *Denney*, 464 P.3d 287, 290 (Idaho 2017) ("It is a well-established rule that a state legislature has plenary power over all subjects of legislation not prohibited by the federal or state constitution[.]" (citation omitted)); *State* v. *Beaver*, 887 S.E.2d 610, 624 (W. Va. 2022) ("The general powers of the legislature, within constitutional limits, are almost plenary.").

The Arizona, Idaho, and West Virginia Legislatures passed laws that set uniform standards on all interscholastic, intercollegiate, and intramural sports teams sponsored by public secondary schools and state institutions of higher education in their States. *See* ARIZ. REV. STAT. § 15-120.02(A); IDAHO CODE ANN. § 33-6203(1); W. VA. CODE § 18-2-25d(c)(1). Before this legislation, school sports had numerous participation standards under the NCAA, National Association of Intercollegiate Athletics (NAIA), National Junior College Athletic Association (NJCAA), and state high school athletic associations.

Arizona even has two state high school athletic associations, the Arizona Interscholastic Association and the Canyon Athletic Association. And for the 24 sports that it oversees,[11] from 2022 to 2025, the NCAA used a "sport-by-sport approach to transgender participation" that used national governing body policy, international federation policy, or International Olympic Committee policy criteria.[12] In short, without the legislation, a State could have dozens of different sports participation standards approved by unelected officials.

Even though "developing and maintaining a uniform legal scheme and consistent policies and procedures" is an important government interest, *Corbitt* v. *Sec'y of the Alabama L. Enf't Agency*, 115 F.4th 1335, 1349 (11th Cir. 2024), the Fourth Circuit and the Ninth Circuit allowed earlier actions by unelected officials to restrict the legislatures' plenary power. The courts emphasized that, before the legislatures passed the laws at issue, the state athletic associations "already had a policy addressing participation by transgender students." *B.P.J.*, 98 F.4th at 561 n.2; *see also Horne*, 115 F.4th at 1104; *Hecox*, 104 F.4th at 1077. These state athletic associations are governed by school officials who are not publicly elected,[13] and their policies vested

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[11] *Overview*, NCAA, at https://perma.cc/VGS3-NKAR.

[12] *Board of Governors updates transgender participation policy*, NCAA (Jan. 19, 2022), at https://perma.cc/3LFS-87BU.

[13] *See* Arizona Interscholastic Association Const. art. 6, § 6.2.4, https://perma.cc/R7WH-ZJY9; Idaho High School Activities Association By-Laws art. VI, § 1, https://idhsaa.org/asset/Rules%20&%20Regs/ByLaws%2025-26.pdf; West Virginia Secondary School Activities Commission Const. § 127-1-6.1.b, https://perma.cc/BVZ6-Y3UV.

participation decisions in unelected officials often applying malleable standards. Under the policy of the Arizona Interscholastic Association, for instance, "transgender female students were permitted to play on girls' teams when a committee of experts found 'that the student's request is appropriate and is not motivated by an improper purpose and there are no adverse health risks to the athlete.'" *Horne*, 115 F.4th at 1094 (quoting policy). In Idaho, "transgender girls in 9–12 athletics … [could] compete on girls' teams after they had completed one year of hormone therapy suppressing testosterone under the care of a physician." *Hecox*, 104 F.4th at 1070. And in West Virginia, "transgender students of any sex could join teams matching their gender identity if—but only if—their school determined that 'fair competition' would not be impacted by the student's participation." *B.P.J.*, 98 F.4th at 550-51 (quoting policy). The Ninth Circuit noted the pre-existing NCAA policy,[14] *Horne*, 115 F.4th at 1094, *Hecox*, 104 F.4th at 1061, but the courts did not otherwise consider that other college or state athletic association policies might apply in the States.

Despite this hodgepodge of state, national, and international standards, the Ninth Circuit found that the legislation served a "discriminatory purpose" because the "*only* contribution to Idaho's student-athletic landscape is to entirely exclude transgender women and girls from participating on female sports teams." *Hecox*, 104 F.4th at 1077 (emphasis in original); *see also Horne*, 115 F.4th at 1104 ("The Act functions solely to abrogate those policies, and thus burdens only transgender female students."). The

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[14] The NCAA Board of Governors also is not publicly elected. NCAA Const. art. 2 § A(3)(b), at https://perma.cc/58H6-H7JN.

Fourth Circuit also relied on the pre-existing legislation to reject West Virginia's argument that its law was "substantially related to its interest in ensuring competitive fairness." *B.P.J.*, 98 F.4th at 561 n.2. In essence, the courts applied "a kind of reverse pre-emption," *Schuette* v. *Coal. to Defend Affirmative Action, Integration & Immigrant Rts. & Fight for Equal. By Any Means Necessary (BAMN)*, 572 U.S. 291, 328 (2014) (Scalia, J., concurring in the judgment), to prevent state legislatures from passing policies different from those set by unelected officials at non-governmental or quasi-governmental organizations.

This reasoning runs contrary to constitutional principles. "It is a strange notion—alien to our system," that an entity beneath the State "can forever preempt the ability of a State—the sovereign power—to address a matter of compelling concern to the State." *Washington* v. *Seattle Sch. Dist. No. 1*, 458 U.S. 457, 495 (1982) (Powell, J., dissenting). Such an approach removes democratic accountability for important policy issues. "The Framers were particularly cognizant . . . of the link between accountability of officials in the Legislative and Executive Branches and individual liberty." *In re Aiken Cnty.*, 645 F.3d 428, 440 (D.C. Cir. 2011) (Kavanaugh, J., concurring). The legislative branch "has express constitutional authority to legislate" and "is directly accountable to the American people," but "[n]either is true of administrative agencies." *Texas* v. *Rettig*, 993 F.3d 408, 412 (5th Cir. 2021) (Ho, J., dissenting from denial of rehearing en banc). If responsibility for protecting girls in sports "were handed-out to unelected and insulated lower-level officials, accountability would be lost in the nameless bureaucracy." *Cody* v. *Kijakazi*, 48 F.4th 956, 960 (9th

Cir. 2022). Likewise, "if people outside government could wield the government's power—then the government's promised accountability to the people would be an illusion." *Consumers' Rsch., Cause Based Com., Inc.* v. *F.C.C.*, 88 F.4th 917, 925 (11th Cir. 2023).

The decisions by the Fourth Circuit and the Ninth Circuit elevate unelected bureaucrats over the legislative branch at the expense of democratic accountability. The Court should reverse to preserve the people's authority, through their legislatures, over important social policy.

III. *Hecox* and *B.P.J.* essentially subjected legislative decisions to strict scrutiny.

"The equal protection guarantee of the Fourteenth Amendment does not take from the States all power of classification." *Pers. Adm'r of Mass.* v. *Feeney*, 442 U.S. 256, 271 (1979). Instead, the Equal Protection Clause "must coexist with the practical necessity that most legislation classifies for one purpose or another, with resulting disadvantage to various groups or persons." *Skrmetti*, 145 S. Ct. at 1828 (quoting *Romer* v. *Evans*, 517 U.S. 620, 631 (1996)). And "[t]he calculus of effects, the manner in which a particular law reverberates in a society, is a legislative and not a judicial responsibility." *Id.* at 1837 (quoting *Personnel Adm'r of Mass.*, 442 U.S. at 272).

Traditional "classification" equal protection claims, which the plaintiffs in *B.P.J.*, *Hecox*, and *Horne* assert to pursue heightened scrutiny, consider classes, not individuals. As this Court recently explained in *Skrmetti*, "SB1 divides minors into two groups: those who might seek puberty blockers or hormones to treat the excluded diagnoses, and those who might seek puberty blockers or hormones to treat

other conditions." 145 S. Ct. at 1833. The Court then examined the membership in each group: "Because only transgender individuals seek puberty blockers and hormones for the excluded diagnoses, the first group includes only transgender individuals; the second group, in contrast, encompasses both transgender and nontransgender individuals." *Id*.

The sports participation laws challenged in Arizona, Idaho, and West Virginia separate student athletes into two groups: females and males. ARIZ. REV. STAT. § 15-120.02(A); IDAHO CODE ANN. § 33-6203(1); W. VA. CODE § 18-2-25d(c)(1). The first group—biological females—includes both transgender individuals and nontransgender individuals, all of whom are allowed to play in girls' sports. The second group—biological males—includes both transgender individuals and nontransgender individuals, none of whom are allowed to play in girls' sports. Under this Court's reasoning in *Skrmetti*, the sports participation laws do not "exclude any individuals on the basis of transgender status." *Skrmetti*, 145 S. Ct. at 1833-34.[15]

The Fourth Circuit and Ninth Circuit disregarded this traditional classification analysis and instead required each State to show that their sports participation laws had a "substantial fit" with every

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[15] The decisions by Hecox, B.P.J., and the *Horne* plaintiffs to not challenge sex-separated sports renders their claims underinclusiveness challenges subject to rational basis review. *See, e.g.*, *Jana-Rock Constr., Inc.* v. *N.Y. State Dep't of Econ. Dev.*, 438 F.3d 195 (2d Cir. 2006). The Ninth Circuit rejected this argument by erroneously concluding that Arizona's Save Women's Sports Act was not "remedial legislation" and was "motivated by a discriminatory purpose." *Horne*, 115 F.4th at 1106.

person in the State. Using an as-applied analysis, the Fourth Circuit framed the issue as whether West Virginia's sports participation law "may lawfully be applied to prevent a 13-year-old transgender girl who takes puberty blocking medication and has publicly identified as a girl since the third grade from participating in her school's cross country and track teams." *B.P.J.*, 98 F.4th at 550. Similarly, the Ninth Circuit required the States to show that "all transgender women, including those like Lindsay who receive hormone therapy, have a physiological advantage over cisgender women." *Hecox*, 104 F.4th at 1085; *see also Horne*, 115 F.4th at 1108-09.

But "the Equal Protection Clause does not demand a perfect fit between means and ends when it comes to sex." *Adams by & through Kasper* v. *Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791, 801 (11th Cir. 2022). In fact, "[n]one of [the Court's] gender-based classification equal protection cases have required that the statute under consideration must be capable of achieving its ultimate objective in every instance." *Nguyen* v. *I.N.S.*, 533 U.S. 53, 70 (2001). "Intermediate scrutiny has never required a least-restrictive-means analysis, but only a 'substantial relation' between the classification and the state interests that it serves." *Virginia*, 518 U.S. at 573 (Scalia, J., dissenting) (discussing cases); *see also Roe* v. *Critchfield*, 137 F.4th 912, 926 (9th Cir. 2025) ("Intermediate scrutiny in the equal protection context requires only that the means are substantially related to the government's objective, not the least restrictive means or the means most narrowly tailored to achieve the government's interest.").

Individual characteristics also should not be considered under intermediate scrutiny because the

court "assess[es] congressional judgment about a category of persons, not about [the plaintiff] himself." *Mai* v. *United States*, 952 F.3d 1106, 1119 (9th Cir. 2020); *see also Pena*, 898 F.3d at 986 (holding that an equal protection challenge "is subsumed in the Second Amendment inquiry"). This is reinforced by the "class of one" jurisprudence. This Court has "recognized successful equal protection claims brought by a 'class of one,' where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment." *Vill. of Willowbrook* v. *Olech*, 528 U.S. 562, 564 (2000); *see also Engquist* v. *Oregon Dep't of Agric.*, 553 U.S. 591, 602 (2008) (applying rational basis review to "class of one" claim). To prevail, "[a] class of one plaintiff must show that the discriminatory treatment 'was intentionally directed just at him, as opposed ... to being an accident or a random act.'" *N. Pacifica LLC* v. *City of Pacifica*, 526 F.3d 478, 486 (9th Cir. 2008) (citation omitted). Plaintiffs thus cannot pursue both intermediate scrutiny and individualized evidence.

Under a proper classification analysis, the sports participation laws are constitutional. For example, based on "the roughly 170,000 students playing school sports in Arizona each year" compared to the "tiny number" of transgender students who sought to play on sports teams different from their biological sex, Arizona demonstrated that "it directly advances the State's objectives 'roughly 99.996 percent of the time.'" *Horne*, 115 F.4th at 1108, 1110 (quoting brief). The Ninth Circuit did not credit the Save Women's Sports Act's exclusion of biological males who identify as male based on its erroneous view that "the Act does not actually affect cisgender men and boys." *Id.* at

1110. But Arizona did not have a sports participation law before the Act, and it applies equally to exclude all males, regardless of their gender identity, from girls' sports.

Nor was the Ninth Circuit persuaded by the fact that the Save Women's Sports Act also excluded "those who have experienced male puberty and who have not received hormone therapy to suppress their levels of circulating testosterone." *Id*. This is not just "*some* transgender female athletes," *id.* (emphasis in original); based on recent studies, it may be nearly all such athletes. According to 2025 estimates, approximately 724,000 13- to 17-year-olds identify as transgender. Jody L. Herman and Andrew R. Flores, *How Many Adults and Youth Identify as Transgender in the United States?*, UCLA School of Law Williams Institute (Aug. 2025), at 2.[16] Compare these estimates to recent private insurance claims analysis, which found fewer than 18,000 youth with a diagnosis of gender dysphoria, and of those, "there were less than 1,000 [youth] that accessed puberty blockers and less than 2,000 that ever had access to hormones." Selena Simmons-Duffin, *'A very, very small number' of teens receive gender-affirming care, study finds*, NPR (Jan. 6, 2025).[17] And the majority of this "very, very small number" of teens already may have completed much of puberty before seeking chemical alteration. Two transgender doctors reported that "[m]any transgender adolescents do not present for care at the time of onset of puberty. In our clinic, for example, approximately two-thirds of patients are presenting

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[16] *Available at* https://perma.cc/C95P-6U85.

[17] *Available at* https://perma.cc/G9DZ-EXP6.

for care at pubertal stage 4 or 5." Hadrian Myles Kinnear and Daniel Evan Shumer, *Duration of Pubertal Suppression and Initiation of Gender-Affirming Hormone Treatment in Youth*, in *Pubertal Suppression in Transgender Youth* (2019), at 80-81.[18] As these studies demonstrate, the appropriate class for B.P.J., Hecox, and the *Horne* plaintiffs includes biological males who identify as male, biological males who have only socially transitioned to a female gender identity, and biological males who medically transitioned after puberty. *Cf. Horne*, 115 F.4th at 1107 n.13 (describing differences between "social transition," "medical transition," and surgery).

With this properly defined class, the sports participation laws in Arizona, Idaho, and West Virginia satisfy either rational basis review or intermediate scrutiny. By requiring a perfect fit instead of a substantial fit, the Fourth Circuit and the Ninth Circuit essentially—and improperly—subjected the laws to strict scrutiny.

IV. Arizona's experience demonstrates the consequences of constitutionalizing this issue.

In July 2023, the district court preliminarily enjoined Arizona's Save Women's Sports Act as to two biologically male plaintiffs. *See Horne*, 683 F. Supp. 3d at 977. The court ruled that "the Act shall not prevent Plaintiffs from participating in girls' sports," and that "the Plaintiffs shall be allowed to play girls' sports at their respective schools." *Id.* The district court and the Ninth Circuit denied requests to stay the decision pending appeal. *See* Doc. 136, *Doe* v.

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[18] *Available at* https://perma.cc/MS6L-35X3.

Horne, No. 4:23-cv-00185-JGZ (D. Ariz. July 31, 2023); Doc. 16, *Doe* v. *Horne*, No. 23-16026 (9th Cir. Aug. 14, 2023); Doc. 107, *Doe* v. *Horne*, No. 23-16026 (9th Cir. Jan. 4, 2024) (denying en banc consideration of motion for stay). The Ninth Circuit affirmed the preliminary injunction decision in September 2024. *See Horne*, 115 F.4th at 1112. The Arizona Legislature's petition for a writ of certiorari remains pending. *See Petersen* v. *Doe*, No. 24-449 (U.S.).

In the more than two years since the injunction issued, biological girls in Arizona have been negatively affected. Plaintiff Doe won a girls track event the first time running that distance. *See* Doc. 303, *Doe* v. *Horne*, No. 4:23-cv-00185-JGZ, at ¶ 149 (D. Ariz. May 30, 2025). Doe also had the third-fastest time in two girls running competitions. *Id.* at ¶ 150. In fact, Doe finished in the top 11 in five girls running competitions, *id.* at ¶ 151, with one time among the fastest sixth-grade girls times in the history of Doe's school, *id.* at ¶ 152. Overall, an expert estimated that Doe's participation on the girls school cross-country and track and field teams resulted in more than 350 instances in which a girl's placement was negatively impacted, including losing out on one first-place finish and two third-place finishes. *Id.* at ¶ 154. In contrast, Doe's running time at each cross-country meet would have resulted in a much lower finishing position in the boys' category than in the girls' category. *Id.* at ¶ 153. Doe also displaced girls by making the cut on a school soccer team and receiving playing time. *Id.* at ¶¶ 155-156.

Plaintiff Roe has played on the school varsity and junior varsity girls volleyball teams. *Id.* at ¶¶ 162-164. Roe has even served as team captain and a starter on the junior varsity girls volleyball team. *Id.* at ¶ 163. Roe has scored more service aces, tips, and

dumps than any other member of the school junior varsity girls volleyball team. *Id.* at ¶ 165. Thus, during the injunction, girls have been displaced and disadvantaged by plaintiffs' participation in girls' sports.

Perhaps not surprisingly, the *Horne* plaintiffs never presented expert evidence showing that they did not have a competitive advantage over girls in sports. Their experts did not medically examine them, review their medical records, know their testosterone levels, observe them playing sports, talk with them or their families, or independently verify anything that plaintiffs' counsel told them. *Id.* at ¶¶ 141-47. Plaintiffs thus provided no individualized evidence showing they did not have the competitive advantage that the on-the-ground results demonstrated that they did.

Rather than provide individualized evidence, a plaintiffs' expert, Dr. Daniel Shumer, persuaded the district court of the supposed "scientific consensus that the biological cause of average differences in athletic performance between men and women is caused by the presence of circulating levels of testosterone beginning with male puberty." *Horne*, 683 F. Supp. 3d at 964; *see also id.* at 966. But at his deposition, Dr. Shumer admitted that the "consensus" referred to a single journal article by Handelsman. *See* Doc. 286-3, *Doe* v. *Horne*, No. 4:23-cv-00185-JGZ, at 137:7-10 (D. Ariz. Apr. 30, 2025). The article contained no primary research, *id.* at 147:2-4, and did not report any data before age 10, *id.* at 152:16-18. Dr. Shumer thus admitted that the article did not have data to support any pre-puberty conclusions. *Id.* at 155:20-156:23. The data that the article did report showed that boys had an advantage over girls at every

age measured. *Id.* at 153:3-11, 156:24-157:9. The same single journal article also was cited by the plaintiffs' expert in *Hecox* and *B.P.J.* to misleadingly support the same "consensus" opinion. *See* Doc. 22-9, *Hecox* v. *Little*, No. 1:20-cv-00184-CWD (D. Idaho Apr. 30, 2020), at ¶ 25; Doc. 289-25, *B.P.J.* v. *West Virginia State Bd. of Educ.*, No. 2:21-cv-00316 (S.D. W. Va. Apr. 21, 2022), at ¶ 25; *see also* Doc. 297, *Doe* v. *Horne*, No. 4:23-cv-00185-JGZ, at 18 (D. Ariz. May 21, 2025) (Dr. Safer "also relies primarily, if not exclusively, on the Handelsman Article to support his similar opinions"). In other words, the article neither established a consensus nor supported plaintiffs' theory about pre-puberty advantages.

This was not the only time that Dr. Shumer's opinions were the same as experts in other litigation. At least 22 times in 19 paragraphs of his expert report—the majority of his report's substantive paragraphs—Dr. Shumer plagiarized the reports of two experts not involved in the *Horne* litigation. *See* Doc. 286-3, *Doe* v. *Horne*, No. 4:23-cv-00185-JGZ, at 203:24-232:5. (D. Ariz. Apr. 30, 2025); *see also* Doc. 265-5, *Doe* v. *Horne*, No. 4:23-cv-00185-JGZ (D. Ariz. Mar. 5, 2025) (side-by-side comparison of reports). After being confronted with his pervasive plagiarism at his deposition, Dr. Shumer admitted that "it's clear that some of the words I used were used from other sources without appropriate credit and that that meets [the University of Michigan's] definition" for plagiarism. Doc. 265-1, *Doe* v. *Horne*, No. 4:23-cv-00185-JGZ, at 240:21-24 (D. Ariz. Mar. 5, 2025). Dr. Shumer also repeatedly admitted that he should have cited the other expert reports. *Id.* at 234:1-13, 235:10-11, 235:25-236:1. He recognized that it was a mistake not to do so. *Id.* at 234:11-13.

Dr. Shumer's opinions were vital to the preliminary injunction decisions in Arizona's case. The district court cited Dr. Shumer's declarations almost 50 times in its preliminary injunction decision, and the Ninth Circuit cited him 20 times in its opinion affirming the district court. Despite Dr. Shumer's admissions that he plagiarized other expert reports, the district court denied a motion to exclude his opinions at the summary judgment stage. *See* Doc. 297, *Doe* v. *Horne*, No. 4:23-cv-00185-JGZ (D. Ariz. May 21, 2025).

The developments since the district court's July 2023 preliminary injunction decision have only reinforced the wisdom of the Arizona Legislature's decision to pass the Save Women's Sports Act. The Legislature found that "a sports performance gap between males and females" exists. AZ LEGIS 106, § 2(9) (2022). During the injunction, the two biologically male plaintiffs have dominated girls in sports by winning races and scoring in matches, and they have displaced girls by making the cut and receiving playing time on sports teams. *See* Doc. 303, *Doe* v. *Horne*, No. 4:23-cv-00185-JGZ, at ¶¶ 149-156, 162-165 (D. Ariz. May 30, 2025). The Legislature also found that pre-puberty boys had physiological advantages. AZ LEGIS 106, § 2(6) (2022). In just the last two years, multiple peer-reviewed publications have determined that pre-puberty boys have athletic advantages—running faster, jumping farther, and throwing farther—as well as physiological advantages—greater muscle strength and grip strength—over pre-puberty girls.[19] *Cf. Horne*, 115

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[19] *See, e.g.,* Atkinson et al. *Sex Differences in Track and Field Elite Youth*. MED. & SCI. IN SPORTS AND EXER. 1390-1397 (2024);

F.4th at 1109 ("future cases may have different outcomes if the evolving science supports different findings"). Based on its findings, the Legislature concluded that "[h]aving separate sex-specific teams furthers efforts to promote sex equality by providing opportunities for female athletes to demonstrate their skill, strength and athletic abilities while also providing them with opportunities to obtain recognition, accolades, college scholarships and the numerous other long-term benefits that flow from success in athletic endeavors." AZ LEGIS 106, § 2(14) (2022). Now even the organizations that the Ninth Circuit cited to deny Arizona's Save Women's Sports Act, *Horne*, 115 F.4th at 1094—the NCAA and the Arizona Interscholastic Association—share the Act's policy, *see* Doc. 303, *Doe* v. *Horne*, No. 4:23-cv-00185-JGZ, at ¶¶ 131-32 (D. Ariz. May 30, 2025); Additional Undisputed Material Facts, Doc. 318, *Doe* v. *Horne*, No. 4:23-cv-00185-JGZ, at ¶¶ 1-3 (D. Ariz. July 14, 2025).

Brown et al. *Sex-Based Differences in Track Running Distances of 100, 200, 400, 800, and 1500m in the 8 and Under and 9-10-Year-Old Age Groups*. EUR. J. SPORT SCI. 24:217-225 (2024); Brown et al. *Sex-Based Differences in Swimming Performance in 10-Years-Old-and-Under Athletes in Short Course National Competition*. EUR. J. SPORT SCI. 2025:e12237 (2025); Brown et al. *Sex-Based Differences in Shot Put, Javelin Throw, and Long Jump in 8-and-Under and 9-10-Year-Old Athletes*. EUR. J. SPORT. SCI. 2025:e12241 (2025); Joyner et al. *Evidence on Sex Differences in Sports Performance*. J. APPL. PHYSIOL. 138:274-281 (2025); James L. Nuzzo. *Sex Differences in Grip Strength from Birth to Age 16: A Meta-Analysis*. EUR. J. SPORT SCI. 25(3):e12268 (2025); Nuzzo et al. *Sex Differences in Upper- and Lower-Limb Muscle Strength in Children and Adolescents: A Meta-Analysis*. EUR. J. SPORT SCI. 25(3):e12282 (2025).

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"[A]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Maryland* v. *King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) (internal quotation omitted). "Likewise, this Court has held that '[t]here is always a public interest in prompt execution' of the law, absent a showing of its unconstitutionality." *Labrador* v. *Poe by & through Poe*, 144 S. Ct. 921, 923 (2024) (Gorsuch, J., concurring in the grant of stay) (quoting *Nken* v. *Holder*, 556 U.S. 418, 436 (2009)). The States of Arizona, Idaho, and West Virginia, and their people, have suffered irreparable harm from the injunction of the sports participation laws that were enacted by their elected representatives. Girls in Arizona and elsewhere have suffered harm by being defeated and displaced by biological males.

"The Equal Protection Clause does not resolve the[] disagreements" over sports participation policies. *Skrmetti*, 145 S. Ct. at 1837. Like Tennessee's medical treatment law, the Court should leave questions regarding sports participation policies "to the people, their elected representatives, and the democratic process." *Id.*

CONCLUSION

The Court should reverse the judgments of the Fourth and Ninth Circuits.

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