Nos. 24-38, 24-43

In the Supreme Court of the United States

BRADLEY LITTLE, Governor of Idaho, et al.,
Petitioners,

v.

LINDSAY HECOX, et al.,
Respondents.

WEST VIRGINIA, et al.,
Petitioners,

v.

B.P.J., by next friend and mother, HEATHER JACKSON,
Respondent.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS FOR THE NINTH AND FOURTH CIRCUITS

BRIEF OF DEFENDING EDUCATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICUS CURIAE*

Defending Education is a national, nonprofit, grassroots association.[1] Its members include students and parents with school-aged children. DE uses advocacy, disclosure, and litigation to combat the increasing politicization and indoctrination of K-12 and post-secondary education.

Title IX was enacted to ensure equal educational opportunity for female students, including in athletics. Indeed, "giving young women an equal opportunity to participate in sports" is "one of Title IX's major achievements." *Adams v. Sch. Bd. of St. Johns County*, 57 F.4th 791, 818 (11th Cir. 2022) (en banc) (Lagoa, J., concurring) (cleaned up). Over the past five decades, Title IX has "precipitated a virtual revolution for girls and women in sports" and spurred "significant increases in athletic participation" at "all levels of education." Brake, *The Struggle for Sex Equality in Sport and the Theory Behind Title IX*, 34 U. Mich. J. L. Reform 13, 15 (2000). "[T]he number of girls playing high school sports [increased] from one in twenty-seven" in 1972 to "one in three" by 2000. *Id.*

This new era of opportunity has provided measurable benefits for adolescent girls, young women, and their families. "Girls who play sports stay in school longer, suffer fewer health problems, enter the labor

[1] Per 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.

force at higher rates, and are more likely to land better jobs. They are also more likely to lead." Brooke-Marciniak & de Varona, *Amazing things happen when you give equal funding to women in sports*, World Econ. Forum (Aug. 25, 2016), perma.cc/N38E-HQAE.

DE has vigorously defended Title IX's guarantee of equal opportunity—including athletic opportunity—for female students. *See Comment on 2022 Proposed Title IX Rule*, DE (Sept. 12, 2022), perma.cc/F5G9-RYAP (highlighting "the Title IX rights of female athletes to compete in single-sex sports"); *Comment on 2023 Proposed Title IX Rule*, DE (May 15, 2023), perma.cc/FZ62-SQQE (similar). And DE has challenged educational institutions whose policies erase opportunities for female students in violation of federal law. *E.g.*, *Administrative Complaint Against Smith College*, DE (June 20, 2025), perma.cc/X6UC-AYH6; *Administrative Complaint Against Contoocook Valley Sch. Dist.*, DE (Aug. 8, 2025), perma.cc/75SV-7VDD.

The decisions below threaten to undo the gains that female student athletes have made by effectively eliminating single-sex athletics in the Fourth and Ninth Circuits. And in holding that federal law forces female students to compete in sports against biological boys, those courts have turned both Title IX and the Equal Protection Clause on their heads. *See* 34 C.F.R. §106.41(b) (explaining that Title IX allows schools to "operate or sponsor separate teams for members of each sex"); *Kansas v. U.S. Dep't of Educ.*, 739 F. Supp. 3d 902, 923 (D. Kan. 2024) (forcing girls to compete against boys would "subordinate the fears,

concerns, and privacy interests of biological women to the desires of transgender biological men" who would intrude upon spaces normally reserved for "their female peers"). This Court should reverse the judgments below to ensure that federal law continues to "provide equal athletic opportunity for members of *both* sexes." 34 C.F.R. §106.41(c) (emphasis added).

SUMMARY OF ARGUMENT

Congress overwhelmingly passed Title IX in 1972. *See* 118 Cong. Rec. 6277 (1972) (Senate: 88-6); 118 Cong. Rec. 16842 (1972) (House: 275-125). Title IX's core prohibition is only 37 words and states: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. §1681(a).

When Congress approved that language in 1972, no one was voting to let biological boys play in girls' sports. Quite the opposite, in fact. With Title IX, Congress sought to promote girls' sports. It even passed an amendment requiring the Department of Health, Education, and Welfare to equalize opportunities for female student athletes. *See* Pub. L. 93-380, 88 Stat. 484, 612 (1974). "'[I]t would require blinders to ignore that the motivation for' enacting Title IX … was to promote opportunities for girls in sports." BPJ.Pet.App.59a (Agee, J., dissenting) (quoting *Williams v. Sch. Dist. of Bethlehem*, 998 F.2d 168, 175 (3d Cir. 1993)).

In fact, a bill that imposed Respondents' reading of Title IX wouldn't even pass today. Nearly 70% of Americans "say transgender athletes should only be allowed to compete on sports teams that conform with their birth gender"—a number that is growing over time. Jones, *More Say Birth Gender Should Dictate Sports Participation*, Gallup (June 12, 2023), perma.cc/F78BATGV.

The Fourth and Ninth Circuits, however, have effectively outlawed single-sex sports in their jurisdictions. Whether as a matter of Title IX or equal protection, the panel majorities in these cases would force schools to allow biological males who identify as transgender to participate in women's sports. Female athletes will lose spots to their transgender peers because they cannot compete against those peers' immutable biological advantages. Female athletes will suffer more severe and more frequent injuries because their transgender competitors are naturally bigger, faster, and stronger. And they will have to share private spaces, like female locker rooms, with biological males.

Neither Title IX nor the Equal Protection Clause could possibly require such counterintuitive results. Instead, Title IX's text plainly prohibits discrimination only on the basis of *biological* sex, and only when one sex is treated *worse* than the other. It does not require schools to ignore biological differences in all situations. The statute's history and congressional intent confirm that conclusion. And the Equal Protection Clause certainly does not compel schools to allow

biological men in women's sports, where they will inevitably displace their female peers thanks to their natural physical advantages. If anything, equal protection means schools must *preserve* female-only sports teams.

This Court should reverse the judgments below, restore Title IX's original public meaning, and ensure that female students' right to participate equally in athletic opportunities remains protected.

ARGUMENT

I. Title IX does not force female student athletes to compete against biological males.

Congress, federal agencies, and courts agreed, for decades, that Title IX allows schools to maintain separate athletic teams for biological boys and girls. The statute's text, history, and purpose prove that consensus correct.

A. The text, history, and purpose of Title IX show that it bars discrimination based on biological sex, not gender identity.

1. "[T]he starting point for interpreting a statute is the language of the statute itself." *Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980). And Title IX's language is straightforward. It prohibits discrimination "on the basis of sex" in any federally funded "education program or activity." 20 U.S.C. §1681(a). Nothing in that language suggests that "sex" includes gender identity or that a school discriminates "on the basis of sex" simply by maintaining sex-specific sports teams.

This Court gives "terms their ordinary meaning at the time Congress adopted them." *Niz-Chavez v. Garland*, 593 U.S. 155, 160 (2021). When Title IX was adopted in 1972, the word "sex" meant biological sex (male or female) based on "reproductive functions." *The American Heritage Dictionary of the English Language* 640 (1st ed. 1969), bit.ly/4nbBg6r; *see id.* ("Either of two divisions, designated *male* and *female*"); *Black's Law Dictionary* 1541 (4th ed. 1968), bit.ly/3IujIDl ("The sum of the peculiarities of structure and function that distinguish a male from a female organism; the character of being male or female"); *The Oxford English Dictionary*, Vol. XV at 107-08 (2d ed. 1989), bit.ly/4ntDzS2 ("The sum of those differences in the structure and function of the reproductive organs on the ground of which beings are distinguished as male and female, and of the other physiological differences consequent on these").

The term "sex" did not, however, include gender identity. Indeed, no reputable dictionary in common use around the time of Title IX's adoption defined "sex" to include an internal self-perception of one's gender apart from one's biology. Which makes sense: the very idea of gender identity as a characteristic distinct from biological sex was a novel—and controversial—concept in 1972. *See Gore v. Lee*, 107 F.4th 548, 562 (6th Cir. 2024) ("The concept of 'gender identity' did not enter the English lexicon until the 1960s."); *Franciscan Alliance, Inc. v. Burwell*, 227 F. Supp. 3d 660, 688 (N.D. Tex. 2016) ("Even the early users of the term 'gender identity' recognized the distinction between 'sex' and 'gender identity.'"). The "overwhelming" consensus, in other words, was that the definition

of "sex" turned on "biology and reproductive function." *Adams*, 57 F.4th at 813.

Put simply, "sex" means biological sex, not gender identity. So when Title IX bans discrimination "on the basis of sex," 20 U.S.C. §1681(a), it does not ban discrimination on the basis of gender identity. And it certainly does not ban *every* distinction between males and females.

The rest of Title IX confirms the point. *See Nat'l Bank of Oregon v. Indep. Ins. Agents of Am., Inc.,* 508 U.S. 439, 455 (1993) ("Statutory construction … must account for a statute's full text" and "structure."). Multiple provisions in Title IX expressly permit schools to separate male and female students where such separation makes sense. *E.g.*, 20 U.S.C. §§1681(a)(6) (schools may associate with sex-selective fraternities and sororities and other groups like the YMCA and the Boy Scouts), 1681(a)(7) (Boys State and Girls State), 1681(a)(8) (father-son and mother-daughter activities), 1686 ("separate living facilities for the different sexes"). As long as a school provides equal opportunities to male and female students, it need not allow *male* students to access *female* opportunities or vice-versa. And as these provisions implicitly recognize, in many situations, "safeguarding equal educational opportunities for men and women necessarily requires differentiation and separation of the sexes at times." *Tennessee v. Cardona*, 737 F. Supp. 3d 510, 530-31 (E.D. Ky. 2014) (cleaned up). The law is not blind to the reality of sex.

Critically, these provisions preserving schools' ability to "differentiat[e] between the sexes in certain

instances," *Adams*, 57 F.4th at 814, are not *exceptions* to Title IX's general ban on sex discrimination. Rather, they are rules of construction that illuminate what it *means* to "discriminate" (or not discriminate) based on "sex" in the first place. *See* 20 U.S.C. §1686 (rule allowing for sex-separated living facilities is a rule of "interpretation" dictating how the statute "shall be construed").

Respondents' contrary position—that Title IX somehow requires schools to permit male participation in female activities—would "mak[e] a hash of the scheme Congress devised." *Pulsifer v. United States*, 601 U.S. 124, 149 (2024). To start, it offers no explanation for *why* Congress would permit the preservation of sex-specific activities or living facilities if it believed those practices treated some students unfavorably. Worse, it would actually "swallow" these sex-specific provisions "and render them meaningless." *Adams*, 57 F.4th at 814 n.7. If, for example, a biological male wished to live in a female dormitory, the school would normally be able to deny that request because Title IX permits a school to "maintai[n] separate living facilities for the different sexes." 20 U.S.C. §1686. But if the biological male *identifies* as female, then he would be entitled to live in a female dormitory because Respondents read Title IX to prohibit discrimination based on gender identity. *Adams*, 57 F.4th at 813. Bedrock principles of statutory interpretation do not countenance such "highly counterintuitive result[s]." *Yellen v. Confederated Tribes of Chehalis Reservation*, 594 U.S. 338, 360 (2021).

The best reading of Title IX's text, in other words, allows schools to separate sports and similar activities based on sex. But even if this aspect of Title IX were somehow ambiguous, Petitioners would still prevail under the clear statement rule. Because Title IX is an exercise of Congress's powers under the Spending Clause, *Davis v. Monroe County. Bd. of Educ.*, 526 U.S. 629, 640 (1999), it functions "'in the nature of a contract'" and "operates based on consent," *Cummings v. Premier Rehab Keller, PLLC*, 596 U.S. 212, 216, 219 (2022). And a party to a contract must "voluntarily and knowingly accept the terms of that contract." *Id.* at 219 (cleaned up). This means Congress cannot "impose a condition on the grant of federal moneys" unless it does so "unambiguously." *Pennhurst v. Halderman*, 451 U.S. 1, 17 (1981). But Title IX contains no "clear statement" prohibiting sex-specific sports teams. *Adams*, 57 F.4th at 815-17.

If anything, recent litigation surrounding Title IX shows that extending the law to cover male participation in female sports is a novel, controversial, and minority position. This Court, for one, declined to "prejudge" the question when it decided *Bostock v. Clayton County*. 590 U.S. 644, 681 (2020); *see id.* ("we do not purport to address bathrooms, locker rooms, or anything else of the kind"). And since then, many courts that have addressed the scope of Title IX's ban on sex discrimination have held that it does *not* cover gender identity. *See Tennessee v. Cardona*, 2024 WL 3453880, at *2 (6th Cir. July 17) ("many jurists have explained" that Title IX does not "extend to discrimination on the basis of 'gender identity'"). Certainly, Title IX does not unambiguously prohibit sex-separated spaces when

federal courts have "split" on that very question and this Court has declined to answer it. *Louisiana v. U.S. Dep't of Educ.*, 737 F.Supp.3d 377, 397-98 & n.49 (W.D. La. 2024).

2. "Historical context" confirms the text's plain meaning. *Mid-Con Freight Sys., Inc. v. Mich. Pub. Serv. Comm'n*, 545 U.S. 440, 449 (2005). "Title IX was enacted in response to evidence of pervasive discrimination against women with respect to educational opportunities." *McCormick v. Sch. Dist. of Mamaroneck*, 370 F.3d 275, 286 (2d Cir. 2004). The law, in other words, was designed to boost "opportunities for female athletes," *id.* at 287, and "giving young women an equal opportunity to participate in sports" has indeed been "one of Title IX's major achievements," *Adams*, 57 F.4th at 818 (Lagoa, J., concurring) (cleaned up). The law's "remedial focus," therefore, is on guaranteeing that female students, the "underrepresented gender," are not boxed out of athletic programs by their biologically male peers. *Cohen v. Brown University*, 101 F.3d 155, 175 (1st Cir. 1996).

Title IX's immediate post-enactment history points the same way. Regulations adopted almost contemporaneously with the law's passage embraced the continued practice of sex-separated sports. Soon after Title IX was passed, Congress directed the Secretary of Health, Education, and Welfare to implement the law by promulgating regulations "with respect to intercollegiate athletic activities" that include "reasonable provisions considering the nature of particular sport." 88 Stat. at 612. Those regulations explain that schools can separate males and females in all sports

after school and in contact sports like "wrestling, boxing, … [and] basketball" during school. 34 C.F.R. §§106.34(a)(1), 106.41(b); *see McCormick*, 370 F.3d at 286-88 (discussing the "concern by members of Congress about ensuring equal opportunities for female athletes"). Other regulations enacted around the same time embraced the separation of sexes in other areas as well. *E.g.*, 40 Fed. Reg. 24128, 24139–43 (1975) (rulemaking); 34 C.F.R. §106.32(b) (student housing); 34 C.F.R. §106.33 ("toilet, locker room, and shower facilities").

These contemporaneous regulations, "which have remained consistent over time," are "especially useful in determining the statute's meaning." *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 394 (2024). To that end, this Court has observed that these particular regulations have strong "probative value" and "accurately reflect" Title IX's text. *Grove City College v. Bell*, 465 U.S. 555, 567-68 (1984). But if the decisions below were correct, that would mean these longstanding regulations have been unlawful from the start. That unlikely claim is enough on its own to doom Respondents' reading of the statute.

3. In statutory interpretation, it is the statute's text, rather than the legislator's intent, that governs. *Corner Post v. Bd. of Governors of Fed. Rsrv. Sys.*, 603 U.S. 799, 815 (2024). But "clear evidence of congressional intent may illuminate" the meaning of the text. *Milner v. Department of Navy*, 562 U.S. 562, 572 (2011). And here, the relevant evidence proves that Congress never meant to force biological boys into girls' sports.

Title IX's text itself proves that Congress never wanted to erase biological distinctions between male and female students. *NFIB v. Sebelius*, 567 U.S. 519, 544 (2012) ("[T]he best evidence of Congress's intent is the statutory text."). Again, when Congress enacted Title IX, it explicitly stated that the law does *not* prohibit single-sex activities like fraternities and sororities, father-son and mother-daughter activities, beauty pageants, or single-sex living facilities. *E.g.*, 20 U.S.C. §§1681(a)(6)-(9), 1686. Accepting Respondents' view of Title IX requires believing that the *same* legislators who voted to keep biological boys from joining a sorority or attending a mother-daughter dance *also* voted to give those males a federal right to compete against their female peers in athletic contests. No rational Congress would draw those lines, and this Court should not indulge such a "contextually implausible outcome." *Facebook v. Duguid*, 592 U.S. 395, 406-07 (2021).

Beyond its sheer absurdity, Respondents' reading of the statute would also impute contradictory motives to the legislators who voted for Title IX. On their view, Congress thought that separating biological boys and girls in sports, bathrooms, or living facilities *is* discriminatory—at least when a student identifies as a gender that does not match their sex—but voted to allow those practices anyway. Simply put, that makes no sense. *Cf. Behlmann v. Century Surety Co.*, 794 F.3d 960, 964 (8th Cir. 2015) ("'This Court interprets statutes in a way that'" is "'reasonable and logical and gives meaning to the statute.'").

Evidence outside of the text confirms that the Title IX Congress did not intend the outcome embraced by the Fourth and Ninth Circuits here. Consider, for example, pre-enactment statements from Title IX's primary sponsor, Senator Birch Bayh. In his floor speech introducing the bill, Senator Bayh explained that Title IX was designed to combat "the stereotype" of women as the "weaker sex" and promote opportunities for women in education. 118 Cong. Rec. 5804 (1972). The law was meant to "provide for the women of America something that is rightfully theirs—an equal chance to attend the schools of their choice, to develop the skills they want, and to apply those skills" outside of the classroom. *Id.* at 5808. In other statements, Senator Bayh clarified that the law was not intended to eliminate all distinctions between biological men and women, *see* 117 Cong. Rec. 30407 (1971) ("I do not read this as requiring integration … between the sexes."), and in fact "*permit*[*s*] differential treatment by sex" when it comes to "sports facilities or other instances where personal privacy must be preserved," 118 Cong. Rec. 5807 (1972) (emphasis added).

Then, in 1987, members of Congress reiterated their commitment to preserving single-sex sports teams. That year, Congress amended Title IX to clarify that "if any part of an education institution received federal funds, the institution as a whole must comply with Title IX's provisions." *McCormick*, 370 F.3d at 287. And "[t]he congressional debate leading to" the vote focused on "concern[s] by members of Congress about ensuring equal opportunities for *female* athletes" who attended institutions that received federal financial support. *Id.* (emphasis added).

Title IX, like any statute, "cannot be construed in the abstract." *Pulsifer*, 601 U.S. at 140. To the extent permitted by the text's "permissible interpretation[s]," it should be read to "furthe[r] rather than obstruc[t]" congressional "purpose." Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* 63 (2012). For remedial statutes like Title IX, that means the Court must consider "the problem to which the statute was addressed, and also the way in which the statute is a remedy for that problem." Bray, *The Mischief Rule*, 109 Geo. L.J. 967, 968–76 (2021). The text, context, and legislative history all make clear that Congress adopted Title IX to boost opportunities for female student athletes. Construing the statute to allow separate sports teams for biological boys and girls—as both courts and federal agencies have done for decades—promotes that goal.

Respondents' reading of the statute, by contrast, subjugates "biological females' rights to privacy and to play competitive sports" to the desire of "transgender individuals" to join the "sports teams of their choosing." BPJ.Pet.App.73a (Agee, J., dissenting). Such a rule would, strangely, provide "more protection against discrimination on the basis of transgender status" than "against discrimination on the basis of sex." *Adams*, 57 F.4th at 814. "No Congress has ever intended such a result." BPJ.Pet.App.73a (Agee, J., dissenting).

B. *Bostock* does not compel a different conclusion.

In holding that Title IX forces schools to allow biological boys on girls' sports teams, the Fourth Circuit

below relied almost entirely on this Court's decision in *Bostock*. But *Bostock*, which applied Title VII's ban on employment discrimination, did not silently overturn decades of consensus about Title IX's application to student athletics.

Start with the obvious fact: Title VII and Title IX are different laws. They "use materially different language," "serve different goals," and "have distinct defenses." *Tennessee*, 2024 WL 3453880 at *2-3. Title VII operates in the employment context and makes it categorically illegal to "discriminate against any individual" in any way "because of … sex." 42 U.S.C. §2000e-2(a). "It doesn't matter if other factors besides the plaintiff's sex contributed to the decision. And it doesn't matter if the employer treated women as a group the same when compared to men as a group." *Bostock*, 590 U.S. at 659. An individual's "sex," like their race or religion, simply "is not relevant to the selection, evaluation, or compensation of employees." *Id.* at 660 (cleaned up).

Title IX, on the other hand, takes a more nuanced approach to discrimination "on the basis of sex" in the educational context. 20 U.S.C. §1681(a). Rather than categorically prohibit distinctions based on sex, the law recognizes a role for such distinctions—indeed, it expressly allows segregation of male and female students in many circumstances—and instructs that its general ban on sex discrimination in education "shall be construed" in light of that recognition. *Id.* §1686*; see id.* §1681(a)(4)-(9). In other words, "Title IX, unlike Title VII, includes express statutory … carve-outs for

differentiating between the sexes." *Adams*, 57 F.4th at 811.

These textual differences reflect real differences between schools and the workplace. "[S]chools are unlike the adult workplace." *Davis*, 526 U.S. at 651; *see Adams*, 57 F.4th at 808 (same). In the workplace, men and women are "similarly situated" and there is no good reason to rely in part or in whole on an employee's sex when deciding whether to hire or fire them. *Bostock*, 590 U.S. at 657, 659-60. But as this Court has said before, there are real and "enduring" biological "differences between men and women" that matter in the educational context. *United States v. Virginia*, 518 U.S. 515, 533 (1996). Congress recognized those differences and "clearly intended to affirm certain aspects of sex separation in education—like in restrooms, showers, locker rooms, and sports—within [Title IX's] overall prohibition on sex discrimination." BPJ.Pet.App.73a (Agee, J., dissenting).

Accordingly, unlike Title VII, which creates a statutory violation whenever an employer makes a decision based on an employee's sex, *Bostock*, 590 U.S. at 659-60, "discrimination" occurs under Title IX only when a female student is treated "less favorabl[y]" than her male counterparts, or vice-versa. *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 174 (2005).

Any analogy between Title IX and Title VII, moreover, must account for the different constitutional powers underlying each statute. Remember, unlike Title VII, which is an exercise of Congress's Commerce Clause powers, *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 261 (1964), Title IX is authorized

only under the Spending Clause, *Davis*, 526 U.S. at 640. The "contractual framework" for Spending Clause legislation "distinguishes Title IX from Title VII." *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 286 (1998). Schools are subject to Title IX's mandates only if those requirements are unambiguously clear. And whatever Title VII requires, it is by no means clear that Title IX compels schools to allow biological boys on girls' sports teams.

In fact, the question of whether *Bostock*'s logic applies to Title IX—which, again, was the Fourth Circuit's entire rationale—is *itself* subject to a circuit split. *Louisiana*, 737 F.Supp.3d at 397-98 & n.49. So it is impossible to say that *Bostock*'s holding clearly extends to Title IX.

II. The decisions below subordinate the rights of female athletes to the desires of their biologically male peers.

The Ninth Circuit, for its part, didn't rely on the text of Title IX to force biologically male students into female sports. Instead, it relied on the Equal Protection Clause of the Fourteenth Amendment. *See* Little.Pet.App.12a. But that rationale fares no better. The Equal Protection Clause does not require forcing female students to compete against biologically male peers who are faster, stronger, and bigger than them. If anything, it requires the opposite.

A. The Equal Protection Clause prohibits "invidious sex discrimination." *United States v. Skrmetti*, 145 S. Ct. 1816, 1833 (2025). But it does not mean that "things which are different in fact" must be "treated

in law as though they were the same." *Tigner v. Texas*, 310 U.S. 141, 147 (1940). And it "does not prevent the states from resorting to classification for the purposes of legislation." *F.S. Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920). At bottom, it is "essentially a direction that all similarly situated persons should be treated alike." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). "In applying this standard, the Supreme Court is willing to take into account actual differences between the sexes, including physical ones." *Clark v. Ariz. Interscholastic Ass'n*, 695 F.2d 1126, 1129 (9th Cir. 1982) (collecting cases).

Courts applying this standard to school sports have held that equal protection requires schools to provide "'substantially comparable'" athletic opportunities for male and female students. *Mansourian v. Bd. of Regents of Univ. of California at Davis*, 816 F. Supp. 2d 869, 930-31 (E.D. Cal. 2011); *see id.* (the requirement is "'one of comparability, not absolute equality'"). They have also consistently held that sex-segregated teams are a permissible, and sometimes necessary, way to achieve that goal. *See D.N. v. DeSantis*, 701 F. Supp. 3d 1244, 1254 (S.D. Fla. 2023) ("[T]he government has an important interest in protecting and promoting athletic opportunities for girls." (collecting cases)).

That makes sense, of course, because "[s]ponsoring separate men's and women's teams … appears to expand substantially the opportunity for women to participate in intercollegiate athletics." *Haffer v. Temple University*, 678 F. Supp. 517, 525 (E.D. Pa. 1987). By contrast, "if all of [the school's] athletic teams were

open to both men and women, the overwhelming majority of team members would be men." *Id.*

B. It's easy to see why eliminating female-only sports teams would reduce opportunities for young women and girls and put them at risk of harm. Safety, fairness, and privacy are all threatened when biological males play women's sports.

Most obviously, girls will lose spots—either on the team or on the podium—if they are forced to compete against biologically male peers who have a natural physical advantage over them. Because of "average physiological differences" between men and women, "males [will] displace females to a substantial extent." *Clark*, 695 F.2d at 1131; *see Adams*, 57 F.4th at 819 (Lagoa, J., concurring) ("inherent differences" give men "physiological advantages" over women). Indeed, recent experience proves this commonsense intuition true: transgender athletes who participate in female sports continue to dominate the competition.[2]

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[2] *E.g.*, Brief for the Petitioner, No. 24-38, at 4-6; Crane, *The staggering number of medals female athletes lost to trans opponents revealed in explosive UN report*, N.Y. Post (Oct. 23, 2024), perma.cc/7FH5-93FQ; Austin & Hong, *Trans athlete wins 2 girls events at California track and field finals*, Associated Press (June 1, 2025), bit.ly/4gxwlKs; Fortin, *Transgender athlete Verónica Garcia wins Washington 2A Girls' 400-meter state title again*, NonStop Local KHQ (June 1, 2025), perma.cc/7BLK-GBX7; Thompson, *Trans athlete wins MVP of women's college basketball tournament after dominating Christian rival in title game*, FOX (Mar. 2, 2025), perma.cc/W7LK-68LQ; McCaughey, *Transgender Weightlifter Shatters Women's Deadlifting Record, Trounces Competitors in Canadian Championship*, New York Sun (Aug. 16, 2023), perma.cc/T7B3-RS4X.

Girls face the risk of physical injury as well. Males possess "categorically different strength, speed, and endurance." Coleman & Shreve, *Comparing Athletic Performances the Best Women to Boys and Men*, Duke Law Sch. Ctr. for Sports Law & Policy, perma.cc/3Z7R-W6Q2. These physical differences increase the risk to females when they are forced to compete against males, particularly in contact sports. (That's why Title IX regulations have long specified that schools "may operate or sponsor separate teams for members of each sex where … the activity involved is a contact sport," 34 C.F.R. §106.41(b), though even this safety-oriented rule may be unlawful on Respondents' theory.) Female athletes have, in fact, suffered traumatic injuries when playing against biologically male athletes: dental injuries, neck injuries, skull fractures, and more. And injured athletes are, along with their other female teammates, understandably scared to return to the field—where they may have to face off against biologically male competitors again.

In one representative incident, a female field hockey player was struck in the face when a biological male on the opposing team hit the ball in her direction. Gaydos, *High school field hockey captain speaks out against rule allowing boys on girls teams after horrific injury*, FOX (Nov. 5, 2023), perma.cc/34J9-FLKM. Her injuries required hospitalization, and her teammates "fear[ed] that they had to go back out onto the field and continue … playing against a male athlete who hospitalized one of our own." *Id.* "By trying to create equality," one player explained, the league

had "only creat[ed] inequalities." *Id.* Other similarly distressing examples abound.[3]

Secondary effects will be significant as well. When young women participate in sports more, they also "'stay in school longer, suffer fewer health problems, enter the labor force at higher rates, and are more likely to land better jobs.'" *Adams*, 57 F.4th at 820 (Lagoa, J., concurring). But if the Fourth and Ninth Circuits get their way, they will unwind those gains to allow transgender biological males to participate in female sports.

These very real harms are precisely what motivated the State of Idaho to adopt its Fairness in Women's Sports Act. *See* Brief for Petitioners, No. 24-38, at 14-16 ("Males' inclusion in female athletic competitions concerned the legislators because they considered it unfair," and they passed the Act to "preserv[e] opportunities for girls and women"). Shockingly, though, the Ninth Circuit concluded that Idaho's law—which preserves female sports for female students—somehow "undermine[s]" the State's inter-

[3] *E.g.*, Downey, *Female Volleyball Player Testifies to Physical, Mental Trauma Since Injury by Trans Athlete*, National Review (Apr. 20, 2023), perma.cc/D2W5-QGWE; Purohit, *When transgender fighter Fallon broker her opponent's skull in MMA fight*, Sportskeeda (Sept. 30, 2021), perma.cc/G876-K6KA; Flower, *Parents upset at 'unfair advantage' of trans women in female soccer leagues will be offered training to better understand 'lived experience' of transgender players*, UK Daily Mail (Apr. 2, 2023), perma.cc/H95F-TZUE.

ests in "women's equality" and "fairness in female athletic teams." Pet.App.40a. That conclusion refutes itself.

When we "measure equal opportunity" in school sports, "relevant [biological] differences" between men and women "cannot be ignored." *Yellow Springs Exempted Vill. Sch. Dist. Bd. of Educ. v. Ohio High School Athletic Ass'n*, 647 F.2d 651, 657 (6th Cir. 1981). Experience shows that, because of natural differences between the sexes, women suffer when they are forced to compete against biological men. "When males and females are not in fact similarly situated and when the law is blind to those differences, there may be as much a denial of equality as when a difference is created which does not exist." *Id.*

* * *

Separating male and female students based on biologically real differences is not discrimination under Title IX or under the Equal Protection Clause. Instead, sex-specific sports teams are a beneficial and often necessary measure to ensure that female students have the same athletic opportunities as their male peers. Requiring schools to ignore these biological realities and place female students in competitions against their male peers would undermine Title IX's central purpose and jeopardize female students' safety and privacy.

CONCLUSION

This Court should reverse the judgments below.

Respectfully submitted,

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