

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.

STATE OF WEST VIRGINA, *ET AL.*,
Petitioners,

v.

B.P.J., BY HER 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 *AMICUS CURIAE* TRUE BLUE
SAPPHIRES, INC. IN SUPPORT OF PETITIONERS**

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QUESTION PRESENTED

1. Whether Title IX prevents a state from consistently designating girls' and boys' sports teams based on biological sex determined at birth.
2. Whether the Equal Protection Clause prevents a state from offering separate boys' and girls' sports teams based on biological sex determined at birth.

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INTEREST OF *AMICUS CURIAE*¹

Amicus Curiae True Blue Sapphires is a non-profit, tax-exempt organization as defined by I.R.C. 501(c)(3). True Blue Sapphires was founded in 2024 by alumnae of the Kappa Kappa Gamma (“Kappa”) sorority after its leadership admitted two men to the sorority in conflict with the organization’s founding purposes. True Blue Sapphires recognizes the crucial role that women-only spaces like sororities and women’s sports teams have played in securing equality for women. Women-only spaces, based on biological sex rather than self-identification, are launching pads for young women to grow, learn, and compete. True Blue Sapphires advocates for the preservation of those spaces.

SUMMARY OF ARGUMENT

From its earliest written history, humanity has recognized that men and women are fundamentally different from one another and drawn legal distinctions based on those often objectively measurable differences. While many of those laws unfortunately perpetuated stereotypes and discrimination, in modern times, statutes classifying people based on their biological sex, such as Title IX, have served the interest of equality between the sexes. Indeed, federal law has recognized that fulfilling the Equal Protection Clause’s guarantee not only allows, but in some cases requires, that the government draw

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.

lines based on biological sex to advance the interests of intimacy, privacy, and safety, without which, equality is impossible.

The field of athletic competition at issue in this case highlights how this permissible discrimination on the basis of sex serves the interests of fairness and opportunity for biological women. But as the academic literature and common sense teaches, there are benefits to single-sex spaces beyond protecting athletic records. Single-sex sororities, much like single-sex athletic teams, provide young women with an environment in which they can enjoy the friendship and camaraderie

In these spaces, young women learn leadership skills in an environment removed from male dominance. This gives them the confidence to compete in endeavors where all too often, biological men continue to hold advantages arising from entrenched societal prejudices rather than the biological advantages apparent on the playing field.

The goal of accepting those who identify as a sex different from that recorded at their birth or somewhere along a spectrum of gender identity may be laudable and, no doubt, those individuals frequently face invidious discrimination from their fellow citizens and in some cases, their government. But a broad ruling in this case threatens to erase the distinction between “sex” as it has been understood as an objective determinant and self-identified “gender identity.” The loss of that distinction puts women-only organizations and the benefits they have long provided at risk.

A “single-gender” environment, open to anyone who identifies as female, is simply not the same as a “single-sex” environment reserved for biological women. The former does not secure the privacy, safety, and psychological benefits the latter has long been understood to provide. Research shows that single-sex environments reduce anxiety, foster confidence, and encourage women to pursue fields and opportunities they might otherwise avoid. These benefits arise not merely from the absence of excess testosterone, but from the shared lived experience of being female-bodied in a society where women face unique forms of discrimination and vulnerability.

Further, application of the Equal Protection Clause to persons who self-identify as a protected class is unworkable in practice and overthrows this Court’s long recognition that in some areas—such as biological sex—classification is not invidious but serves the interests of equality.

ARGUMENT

I. Single-Sex Organizations Promote Equality

A. Kappa Kappa Gamma’s Founding as Single-Sex Organization

A century before Congress enacted Title IX, six women at Monmouth College understood that women were entitled to the same social, educational, and psychological benefits enjoyed by members of men’s fraternities. The women had been members of a women’s literary club but found that it did not provide the same social support system that men’s fraternities did. They wanted more. In short, they wanted equality. “The world seemed to be moving too slowly

and nothing short of a Greek-letter fraternity ... would satisfy us,” wrote Kappa Founder Louise Bennet. Kappa Kappa Gamma website, *Meet our Founders*, 10/13/2019, <https://www.kappakappagamma.org/stay-connected/heritage/meet-our-founders/>

Women were a distinct minority in colleges in the late 19th century. At the time of Kappa’s founding, only 11,000 women between the ages of 18 and 21 were enrolled in college in the entire United States. Men outnumbered women by nearly five to one on college campuses, and many colleges did not permit women to enroll at all. As one of Kappa’s Presidents, Kay Smith Larson, described that era, “Women were often ignored in the classroom and ridiculed outside of it.” Id. Kappa’s Founders thus took matters into their own hands when they decided to form a Greek-letter organization to match what the men had.” Id. The six young women called their organization a “women’s fraternity”—the word “sorority” had not come into usage, and took root only in 1882, when a Syracuse Latin professor suggested it to the women of Gamma Phi Beta. Nadine Jolie Courtney, *Which Sorority Was Actually the First?*, Town & Country (May 18, 2017), <https://www.townandcountrymag.com/society/tradition/a9660538/first-oldest-college-sorority/>.

Certainly, Kappa’s Founding Sisters made the decision to create their own Greek letter organization rather than seeking admission to an existing men’s fraternity in part because they understood that membership would almost certainly have been denied to them. In fact, one of Kappa’s founders wrote that had the administration realized that they planned to

form a Greek fraternal organization for women, it would likely have put a stop to their plans. *Meet our Founders*, supra.

1. Women-only Organizations Provide Benefits that Co-ed Organizations Do Not.

But those founding sisters likely also recognized what cultures from the beginning of human civilization have recognized—that while the sexes are equal in many respects and ought to be treated equally by the law there, a single-sex organization provides benefits that a co-ed organization cannot. First, while reliable statistics are not available for the 1870s, Kappa’s founders likely felt the same—if not greater—threat from male aggression as biological women entering college do today.

In 1957, Clifford Kirkpatrick and Eugene Kanin published the first study addressing sexual aggression and its effect on biologically female college students. They found that 56% of college women reported some form of “erotic offensiveness” from male classmates, including “attempts at ‘necking,’ ‘petting’ above the waist, ‘petting’ below the waist, sex intercourse, and attempts at sex intercourse with violence or threats of violence.” C. Kirkpatrick & E. Kanin, *Male Sexual Aggression on a University Campus*, 22 *American Sociological Review* 1, 52-58 (1957) Of this latter category, 21 percent of women “were offended by forceful attempts at intercourse” and 6 percent by “aggressively forceful attempts at sex intercourse in the course of which menacing threats or coercive infliction of physical pain were employed.” *Id.*

In a more recent survey conducted by the Association of American Universities almost a quarter of respondents reported “erotic offensiveness” as Kirkpatrick and Kanin had defined it. *Report on the 2024 Higher Education Sexual Misconduct and Awareness Survey*, Association of American Universities 2024 <https://www.aau.edu/issues/climate-survey-sexual-assault-and-sexual-misconduct>.

And while efforts to educate or discipline young men into better behavior are warranted and present the ideal solution to this problem—indeed single-sex sororities have led the way in these efforts—the power dynamic on campus is unlikely to change soon. Women-only spaces, like sororities, which often include a university-sanctioned group living component, serve as a safe haven from these pressures

But even assuming that American society and campus culture regarding sexual behavior changed overnight, research shows that a single-sex environment fosters self-confidence in young women that leads to greater equality. A study conducted by the American Association of University Women found that girls in single-sex schools or classrooms reported higher levels of self-confidence and greater participation in class discussions than girls in coeducational settings. The AAUW Report, *How Schools Shortchange Girls* (1992) https://www.wcwonline.org/images/pdf/how-schools-shortchange-girls-executive_summary.pdf; see also, The Case for Girl Scouts: Research and Data, (compiling research on single-sex spaces), <https://www.sdgirlscouts.org/content/dam/sdgirlscouts-redesign/documents/girls->

and-families/join-renew/The%20Case%20for%20Girl%20Scouts_Research_FINAL.pdf. What's more, research shows that far from reinforcing negative gender stereotypes, a single-sex environment encourages women to enter into traditionally male-dominated fields such as STEM. As a University of Massachusetts study concluded, "when women see women in leadership roles — whether it's an all-female environment or a coed one, they start thinking of women as leaders." Sian Beilock, *Women-Only Spaces Provide A Recipe Success: Here Are the Ingredients*, *Forbes* (Oct. 7, 2019).

Women-only spaces also provide an opportunity for women to explore and debunk gender stereotypes. *Id.* Studies show that "just acknowledging the existence of the stereotype that girls are not as good as boys at math, for example, helps girls perform better on math tests." *Id.* (citing Michael Johns, Toni Schumader & Andy Martens, *Knowing is Half the Battle: Teaching Stereotype Threat as a Means of Improving Women's Math Performance*, *Psychological Science*, Vol. 16., Issue 3, (March 2005).

The National Panhellenic Conference has documented a significant link between sorority membership and positive educational outcomes. The college retention rate for sorority members, after accounting for pre-college characteristics such as GPA and standardized test scores, was three times higher than that for women who were not sorority members. J. Patrick Biddix, Ph.D., *Sorority Membership and Educational Outcomes: Results from a National Study*, National Panhellenic Conference, October 2014, at 7; <https://npcwomen.wpengine.com/wp-content/uploads/>

2017/10/Retention-Research-Results-2014.pdf.

Eighty-four percent of sorority members graduated within six years. In contrast, 71% of non-sorority members graduated within six years. While that difference may appear small on its face, adjusting for pre-college characteristics, “the likelihood of graduating within six years was nearly 2.5 times higher for sorority members.” *Id.* The rate of “on time” graduation for sorority members was nearly double that of non-members. *Id.*

Equally if not more important is sorority membership’s impact on women’s mental health. Again, in 2023, the National Panhellenic Conference surveyed over 1,200 college women and found that “in terms of wellbeing, members feel extremely joyful and positive about their sorority experience, feel very supported and cared about, and find the experience meaningful (which was the highest metric).” <https://npcwomen.org/wp-content/uploads/2023/06/NPC-Sorority-Belonging-Diversity-Wellbeing-Joining-Survey-Spring-2023-1.pdf>. These results were consistent with prior NPC surveys showing a strong sense of well-being and belonging among sorority members. *Id.* ; see also additional survey result, available at <https://npcwomen.org/priorities/npc-research/research-results/>

Congress acknowledged the value of single-sex Greek organizations when it amended Title IX in 1974. 20 U.S.C. 1681(a)(6). After Title IX’s passage in 1972, the federal government took the position that fraternities and sororities could not continue as part of college life. Members of Congress, led by former Senator Birch Bayh, the Senate sponsor of Title IX,

rejected this view. Senator Bayh stated that “[f]raternities and sororities have been a tradition in the country for over 200 years. Greek organizations, much like the single-sex college, must not be destroyed in a misdirected effort to apply Title IX.” 120 Cong. Rec. 39992 (1974) (statement of Sen. Bayh). A broad holding expanding the Equal Protection Clause to include self-identified class, however, would do just that.

II. Sorority Life and the Importance of Title IX to Shared Living

The beating heart of sorority life—the most important element in realizing its benefits—is the shared residential experience. Sororities are more than campus clubs or social organizations; they are living communities. Sharing a houses, or in some cases a wing or floor of a dormitory means sharing daily routines, and intimate aspects of their lives. This shared living fosters deep bonds of trust, mutual reliance, and sisterhood that cannot be replicated in occasional meetings or mixed-gender groups. Members share not only living-space, but share one another’s daily lives—studying late into the night, coping with setbacks, and celebrating milestones. The existence of the True Blue Sapphires and its commitment to defending the single-sex spaces they benefited from in their college years testifies to how the shared experience in the context of a sorority forges enduring ties of sisterhood that alumnae carry for life.

Sororities fall squarely within the type of intimate association recognized by this Court and their residential component makes the intimacy genuine. See *Roberts v United States Jaycees*, 468 U.S. 609, 618–20 (1984) (“[C]ertain kinds of personal bonds have played a critical rules in the culture and traditions of the Nation by cultivating and transmitting shared ideals and beliefs; they thereby foster diversity and act as critical buffers between the individual and power of the State.”) And while *Roberts*, like *Pierce v Society of Sisters*, 268 U.S. 510 (1925) and *Meyer v Nebraska*, 262 U.S. 390 (1923) before it, dealt with protecting intimate association from legislative governmental interference, a court decision conflating sex and gender identity would accomplish the same purpose. Worse, it would undo express congressional protection of sex-based classifications enacted to promote equality. Most importantly for the amici here, the erosion of Title IX in the context of athletic competition would call into question the validity of the Title IX’s Greek letter organization and housing exemptions.

As the True Blue Sapphires can attest, this is no hypothetical slippery slope argument. *Westenbroek v. Fraternity*, 2023 WL 5533307 (D.Wyo. Aug. 25, 2023).

III. A Broad Holding Expanding the Equal Protection Clause to Self-Identified Classifications Undermines Equality

This Court has long based its equal protection jurisprudence on the impermissibility of government classifications based on immutable characteristics. See, *United States v Skrametti*, 605 U.S.____, 145 S.Ct. 1816, 1828 (2025) (Noting strict scrutiny of

classifications based on race, alienage and national origin). Some immutable characteristics, such as race, rarely—if ever—have any legitimate purpose in a statute. *Id.*, *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181, 206-208 (2023). Others, like sex, may be allowable when they further the goal of equality. *United States v. Virginia*, 518 U.S. 515, 533 (1996). The more relaxed scrutiny of sex-based classifications make imminent sense because while race is a societal construct, “physical differences between men and women [] are enduring.” *Id.* This Court has recognized what has been obvious to human societies since civilization’s birth: “[T]he two sexes are not fungible; a community made up exclusively of one [sex] is different from a community composed of both.” *Ballard v. United States*, 329 U.S. 187, 193 (1946).

It should go without saying that a plaintiff cannot step into a protected class that is based on some objective immutable characteristic merely by *identifying* with it. Allowing plaintiffs to do so dilutes the protection of the suspect class. This is not to say that the Court should countenance invidious discrimination against transgender Americans. But in protecting transgender Americans from discrimination, it should take care not to undo the hard work done by Congress and the courts to create and preserve equality for biological women. Women-only spaces, particularly sororities and sorority housing have flourished under Title IX’s protections. These spaces serve a vital role in the lives of many collegiate women and in American society. They are worth preserving.

CONCLUSION

For all the forgoing reasons, the decision of the Court of Appeals should be reversed.

Respectfully submitted,

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