

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.

THE STATE OF WEST VIRGINIA, *et al.*,
Petitioners,

v.

B. P. J., BY NEXT FRIEND AND MOTHER,
HEATHER JACKSON,
Respondent.

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

**BRIEF AS *AMICA CURIAE* OF REEM ALSALEM
UNITED NATIONS SPECIAL RAPPOREUR ON
VIOLENCE AGAINST WOMEN AND GIRLS, ITS
CAUSES AND CONSEQUENCES IN SUPPORT
OF PETITIONERS**

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INTEREST OF AMICA CURIAE¹

Amica curiae Reem Alsalem serves as the United Nations Special Rapporteur on violence against women and girls (hereinafter “United Nations Special Rapporteur”), a role established by General Assembly resolution 60/251 and Human Rights Commission resolution 1994/45, and renewed by subsequent resolutions, including Human Rights Council resolution 50/7.

This submission is drafted on a voluntary and individual basis for the Supreme Court’s consideration without prejudice, and should not be considered as a waiver, express or implied, of the privileges and immunities of the United Nations, its officials and experts on missions, pursuant to the 1946 Convention on the Privileges and Immunities of the United Nations.

In the performance of her mandate, the Special Rapporteur is considered as an expert on mission for the United Nations, within the meaning of Articles VI and VII of the Convention on the Privileges and Immunities of the United Nations, adopted by the U.N. General Assembly on 13 February 1946, to which the United States of America is a party since 29 April 1970. In accordance with Article VI, Section 22, as experts on mission for the United Nations, the Special Procedures mandate holders enjoy such privileges and immunities as are necessary for the independent exercise of their functions during the

1. No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No persons other than the Amica or her counsel made a monetary contribution to this brief’s preparation or submission.

period of their missions, including, in respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind.

With respect to this brief, the United Nations Special Rapporteur clarifies that the views expressed herein are her own opinion as a Special Rapporteur and that authorization for the positions and views expressed by her, in full accordance with her independence, was neither sought nor given by the United Nations, the Human Rights Council, the Office of the High Commissioner for Human Rights, or any of the officials associated with those bodies.

The U.N. Special Rapporteur on violence against women and girls, its causes and consequences is part of “[t]he system of Special Procedures” that “is a central element of the United Nations human rights machinery and covers all human rights: civil, cultural, economic, political, and social.”² Special Rapporteurs are independent human rights experts selected for their “(a) expertise; (b) experience in the field of the mandate; (c) independence; (d) impartiality; (e) personal integrity; and (f) objectivity.”³ These experts “undertake to uphold independence, efficiency, competence and integrity through probity, impartiality, honesty and good faith” and

2. United Nations Office of the High Commissioner for Human Rights (“OHCHR”), Special Procedures of the Human Rights Council, <https://www.ohchr.org/en/hrbodies/sp/pages/introduction.aspx> (last visited Nov. 11, 2024).

3. Human Rights Council, Institution-building of the United Nations Human Rights Council, ¶ 39, U.N. Doc. A/HRC/RES/5/1 (June 18, 2007).

“do not receive financial remuneration.” OHCHR, Special Procedures of the Human Rights Council.

In the exercise of her mandate as United Nations Special Rapporteur on violence against women and girls, its causes and consequences, *Amica* has extensively addressed the issue of violence against biological women and girls in sports, including in response to complaints from female athletes and their representative organizations in the United States. In December 2023, she issued an allegation letter to the Government of the United States under the Human Rights Council’s Special Procedures communication procedure, warning against the then-proposed changes to the regulations implementing Title IX of the Education Amendments of 1972 and their alignment with the United States’ international human rights obligations and commitments.⁴ She also focused her latest annual report to the U.N. General Assembly on the theme of violence against biological women and girls in sports.

In the performance of her mandate, the Special Rapporteur is considered as an expert on mission for the United Nations, within the meaning of Articles VI and VII of the Convention on the Privileges and Immunities of the United Nations, adopted by the United Nations General Assembly

4. Communication from the U.N. Special Rapporteur on Violence Against Women and Girls, its Causes and Consequences, to the United States, Ref. No. AL USA 30/2023 (Dec. 21, 2023), <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=28673>.

SUMMARY OF ARGUMENT

The state of West Virginia has a fundamental obligation to ensure equal, fair, and safe athletic opportunities for women and girls, which includes upholding sex-based categories in sports. Constitutional guarantees of equality and non-discrimination, codified in the Fourteenth Amendment and embodied in landmark human rights treaties, reinforce this obligation.

Barring a few exceptions, sport has globally been separated into the biological categories of male and female because of male performance advantage. *Decl. of Tommy Lundberg, A.M. v. Indianapolis Public Schools*, 1:22-cv-1076 (ECF No. 36-7) (17 June 2022). Sports have functioned on the universally recognized principle that a separate category for females is needed to ensure equal, fair, and safe opportunities in sports. *Id.* As highlighted in both her communication to the United States Government under the Human Rights Council Special Procedures communications procedure and her report on violence against women and girls in sports, the erosion of biological sex-based protections in sports would have severe adverse effects on women and girls, including extreme forms of discrimination and heightened risks of violence, not limited to physical injuries but also including sexual harassment, voyeurism, and physical and sexual attacks in sports-related facilities and spaces.

Drawing upon her previous engagement with the United States Government on this matter of grave and immediate concern, *Amica* submits that undermining female-only sports categories based on biology threatens to place the United States in violation of its obligations under international human rights law to prohibit and

prevent violence and discrimination against women and girls based on sex—which in its ordinary meaning can only refer to biological sex. Such a departure would also contravene other international human rights norms concerning the rights of women and girls to the enjoyment of the highest attainable standard of physical and mental health and to privacy. Accordingly, *Amica* respectfully urges the Court to rule in favor of *Petitioners* and vacate the injunction.

ARGUMENT

I. Protecting the Female Category in Sports on the Basis of Biological Sex is Essential to Ensuring Fairness and Safety.

Upholding categories in sports based on biological sex is not merely a compelling interest, but also a critical obligation for States, essential to guaranteeing equal, fair, and safe opportunities for women and girls. This approach is rooted in the recognition of the inherent physiological differences between the two sexes, which have long been acknowledged in competitive sports. *See e.g.*, Sandra K. Hunter *et al.*, *The Biological Basis of Sex Differences in Athletic Performance: Consensus for the American College of Sports Medicine*, 55 *Med. & Sci. Sports & Exercise* 2328 (2023); Doriane Lambelet & Wickliffe Shreve, *Comparing Athletic Performances: The Best Elite Women to Boys and Men*, *Duke Ctr. For Sports L. & Pol’y*, <https://law.duke.edu/sports/sex-sport/comparative-athletic-performance/> (last visited 18 Sept. 2025) (in process of updating). *See also* M. Becker & V. Hesse, *Minipuberty: Why Does It Happen?*, 93 *Horm. Res. Paediatrici*. 76 (2020).

Scientific research and empirical evidence indicate that athletes born male have performance advantages in sport throughout their lives, although this is most apparent after puberty. E. Tønnessen *et al.*, *Performance Development in Adolescent Track and Field Athletes According to Age, Sex and Sport Discipline*, 10 PLoS ONE e0129014 (2015). Such advantages are inherent and cannot be undone by medical or other treatments such as testosterone suppression. Joanna Harper *et al.*, *How does Hormone Transition in Transgender Women Change Body Composition, Muscle Strength, and Haemoglobin? Systematic Review with a Focus on the Implications for Sports Participation*, 55 *Br. J. Sports Med.* 865 (2021). See also Fionna McAnena, *The Flawed Science of Transinclusion in Women's Sports*, *The Critic* (Apr. 7, 2022), <https://thecritic.co.uk/the-flawed-science-of-trans-inclusion-in-womens-sport/>.

The sex difference in performance is larger than that explained by physiological and anatomical differences between males and females, owing *inter alia* to women having less opportunity and inequitable access to sports, facilities, and training than men, and higher dropout rates of female athletes than their male counterparts. Laurie Silverberg, *et al.*, UNESCO, *Sport and Gender Equity Game Plan* (2024) at <https://unesdoc.unesco.org/ark:/48223/pf0000390527> (noting that 49% of adolescent girls drop out of sports – a rate six times higher than boys); Regina Guthold *et al.*, *Global trends in insufficient physical activity among adolescents: a pooled analysis of 298 population-based surveys with 1·6 million participants*, 4 *Lancet Child Adolescent Health* 23 (2020); and Katherine B. Owen *et al.*, *Gender Differences in Physical Activity and Sport Participation in Adults*

Across 28 European Countries Between 2005 and 2022, 101 *Ann. Epidemiol.* 52 (2025).

The erosion of sex-based protections for biological women constitutes unfair treatment and results in extreme forms of sex-based discrimination against female athletes, both on and off the playing field.” U.N. Special Rapporteur on Violence Against Women and Girls, its Causes and Consequences, *Sex-based Violence Against Women and Girls: New Frontiers and Emerging Issues*, U.N. Doc. A/HRC/59/47 ¶ 33 (June 16, 2025). The denial of opportunities to compete fairly also causes extreme psychological distress to female athletes, as they are aware that they have no real chance of winning and will lose out on scholarships and other educational and economic opportunities. *Id.*

The maintenance of sex-separated sports categories is also justified by the fact that compelling female athletes to compete with individuals born male would increase risk of female athletes sustaining injuries. This increased risk, along with specific religious beliefs that restrict females from accessing mixed-sex spaces, can and does lead women and girls to self-exclude. Women in Sport, *Safe and Fair Sport for Women and Girls*, ¶ 10, <https://womeninsport.org/safe-and-fair-sport-for-women-and-girls/> (last visited Sept. 18, 2025). Furthermore, allowing athletes born male to, for example, box, wrestle, pin, shove, or strike at female athletes in the arena or on a playing field, regardless of the power differences based on sex, creates a risk of reinforcing social perceptions that tolerate violent behaviors against women and girls off the playing field. Communication from the U.N. Special Rapporteur, *supra* note 4, at 3.

When the erosion of sex-based sports categories extends to related spaces like locker rooms and restrooms, it further jeopardizes women's and girls' safety and infringes on their privacy. In particular, compelling biological women and girls to share restrooms, locker rooms and other intimate spaces with biological males increases the risk of sexual harassment, voyeurism, and physical and sexual attacks in unisex locker rooms. It also leads to feelings of anxiety, stress, humiliation, loss of dignity and embarrassment, leading biological women and girls to avoid these facilities altogether or even withdraw from sports entirely. *Id.* at 2.

Allowing males to access female-only intimate spaces could also be potentially abused by sexual predators. As previously noted by the Special Rapporteur, the insistence on safeguarding or risk management protocols does not arise from the belief that males who identify as female represent a safeguarding threat. Rather it is grounded on empirical evidence that demonstrates that the majority of sex offenders are male, and that persistent sex offenders will go to great lengths to gain access to those they wish to abuse, including by potentially abusing the process to access single-sex spaces or take up roles which are normally reserved for women for safeguarding reasons. *See e.g.*, Communication from the U.N. Special Rapporteur on Violence Against Women and Girls, Its Causes and Consequences to the UK Regarding the Gender Recognition Reform Ref. No. OL GBR 14/2022 (November 29 2022), <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27681>.

Consequently, upholding female sports categories not only provides fairness but also responds to the imperative of safety, as it reduces the risk of physical and psychological harm for female athletes, both on and off the playing field. By declaring any male, irrespective of how they identify, ineligible for participation on female sports teams, West Virginia's Save Women's Sports Act, HB 3293 constitutes a reasonable and legitimate measure to protect both the integrity of female sports and the dignity, safety, and privacy of female athletes.

II. Upholding Female Categories in Sports is Consistent with the United States' Commitments under International Human Rights Law.

A. Removing single-sex sports and related spaces violates the rights to equality and non-discrimination on the basis of sex.

Article 1 of the Universal Declaration of Human Rights (UDHR) provides that "all human beings are born free and equal in dignity and rights ..." Article 2 of the UDHR states that "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind...", including distinction based on sex. While the UDHR does not make an explicit reference to sports, sports-related activities are generally understood within the broader framework of education and cultural participation. U.N. Special Rapporteur in the Field of Cultural Rights on the participation of Russian and Belarusian Athletes in International Sports Competitions, Q&A (May 3, 2023), <https://www.ohchr.org/sites/default/files/documents/issues/culturalrights/>

activities/SR- CulturalRightsQA-4May2023-en.pdf. In this regard, Article 27 of the UDHR recognizes the right of everyone to, *inter alia*, “freely participate in the cultural life of the community”, while Article 26 protects the right to education.

States have an obligation to guarantee equality and non-discrimination in the enjoyment of human rights, including on the basis of sex. International human rights law establishes a broad normative framework to guarantee that. Articles 2 and 3 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the United States in 1992, provide that State parties shall take all appropriate measures, including the prohibition of discrimination on the ground of sex, to put an end to discriminatory actions, both in the public and the private sector, which impair the equal enjoyment of rights by women. In particular, Article 2, paragraph 1 establishes a general obligation to respect and ensure that all persons within their territory and subject to their jurisdiction enjoy the rights recognized therein without distinction of any kind, including on the basis of sex. Additionally, Article 3 requires States parties to ensure the equal right of men and women to the enjoyment of all civil and political rights provided for in the Covenant. Furthermore, Article 26 of the ICCPR not only enshrines a general right to equality before the law and, without discrimination, to equal protection of the law, but also directly prohibits any discrimination under the law and guarantees to all persons equal and effective protection against discrimination, including sex-based discrimination.

It is well-established that under international human rights law, differential treatment based on prohibited

grounds such as sex is not discriminatory when it rests on reasonable and objective criteria, pursues a legitimate aim, and its measures are appropriate, proportional, and the least intrusive means to achieve that aim. As noted by the Human Rights Committee, “[t]he right to equality before the law and freedom from discrimination, protected by article 26, requires States parties to act against discrimination by public and private agencies in all fields.” Human Rights Comm., General Comment No. 18: Non-discrimination, 37th Sess. (1989) (compiled in U.N. Doc. HRI/GEN/1/Rev.1 at 26 (July 29, 1994)).

The Committee has further stressed that “not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.” Maintaining sex-separated sports is a proportional action that corresponds to the legitimate aims laid out in Article 26 of the International Covenant on Civil and Political Rights and does not automatically result in the exclusion of transgender persons from sports, nor does it require invasive sex screenings. In reference to this case, the protection of female sports categories also serves the legitimate objective of ensuring safety and fairness in female sports, notably by mitigating risks of harm and ensuring equality of opportunity on and off the playing field. The proportionality and legitimacy of the continued maintenance of sex-separated sports and of single-sex intimate spaces are also justified by the fact that it does not result in the exclusion of any person from the practice of sports, nor require invasive means to verify eligibility for the female category.

Although the United States is not a party to certain international human rights treaties—such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)—it has signed, but not ratified, both instruments. These treaties reaffirm the international human rights obligation to eliminate discrimination against women and girls and to guarantee their equality with men and boys. Under Article 18 of the Vienna Convention on the Law of Treaties, which, albeit not ratified by the United States, is commonly regarded as stating the customary international law, a State that has not signed a treaty shall refrain from acts that would defeat its object and purpose, pending a decision on ratification.

With regard to non-discrimination, CEDAW article 3 mandates the undertaking of all appropriate measures in all fields, in particular, the political, social, economic and cultural fields, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men. Article 10 of CEDAW specifically calls on States to eliminate discrimination against women and ensure to them equal rights with men in the field of education, including the same opportunities to benefit from scholarships and other study grants.

Furthermore, CEDAW refers in its article 13 to the need to “take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure “the same opportunities to

participate actively in sports and physical education.” Permitting biological males to compete in female categories undermines the opportunities specifically designed for promoting the equality of women and girls’ empowering women within the sport arenas and providing an opportunity where they can thrive and gain recognition without the disadvantages that come from competing against male athletes. Communication from the U.N. Special Rapporteur on Violence Against Women and Girls, its causes and consequences to the International Olympic Committee, Ref. No. OL OTH 64/2025 (5 June 2025), at 7, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=30017>.

Article 3 of the International Covenant on Economic, Social, and Cultural Rights affirms the right of men and women to the equal enjoyment of all economic, social, and cultural rights. In its General Comment No. 16 (2005) (E/C.12/2005/4), the Committee on Economic, Social and Cultural Rights stated that respect for this right requires States to refrain from discriminatory actions that result in the denial of the equal right of men and women to the enjoyment of economic, social and cultural rights. It also stated, in the same general comment, that “it is incumbent upon States parties to take into account the effect of apparently gender-neutral laws, policies and programmes and to consider whether they could result in a negative impact on the ability of men and women to enjoy their human rights on a basis of equality.” *Id* at ¶ 18.

B. International law does not permit any derogation to the prohibition of discrimination on the basis of sex.

Article 31 of the Vienna Convention on the Law of Treaties (1969) mandates that treaties be interpreted “in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.” The same article also specifies that States shall take into account – together with the context in which a treaty was concluded – any relevant rules of international law applicable in the relations between parties” and any subsequent practice. In this case, the meaning and practice attached to the definition of “non-discrimination based on sex” becomes important. While not addressing or defining the terms “sex” or “gender,” many foundational international human rights treaties and instruments, enshrine a prohibition of discrimination based on sex, which, in accordance with the law of treaties, can only be understood as a biological category.

Furthermore, where tensions may arise between the right to non-discrimination based on sex and non-discrimination based on other characteristics, international human rights law does not endorse an interpretation that allows either for derogations from the obligation to ensure non-discrimination based on sex. The Special Rapporteur has emphasized on previous occasions that international human rights treaties prohibit such derogations under any circumstance, including during a public emergency. While some treaties may permit derogations from certain human rights obligations, such exceptions must not involve discrimination on the ground of sex.

C. Removing single-sex sports and related spaces violates the equal rights of female athletes to safety and privacy.

Building on the Universal Declaration of Human Rights' recognition that "all human beings are born free and equal in dignity and rights," article 3 of the Declaration on the Elimination of Violence against Women states that women are entitled to equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, civil or any other field, including, inter alia, the right to be free from all forms of discrimination and the right to the highest attainable standard of physical and mental health. According to Article 4 of the same Declaration, States must "pursue by all appropriate means and without delay a policy of eliminating violence against women." Under international law, women and girls also have a right to privacy. Article 17 of the International Covenant on Civil and Political Rights of 1966 stipulates that "no one shall be subjected to arbitrary or unlawful interference with his privacy" and that "everyone has the right to the protection of the law against such interference or attacks." The protection of these rights would inevitably be forfeited by forcing mixed-sex spaces in sports locker rooms and other intimate facilities.

CONCLUSION

The devaluation of single-sex sports leads to unfair, unlawful, and extreme forms of discrimination against female athletes based on sex, where women and girls are forced to compete on an unequal footing, putting them at a clear disadvantage against male opponents. As noted in her report to the General Assembly on violence against women and girls in sports, over 600 female athletes in more than 400 competitions have already lost more than 890 medals in 29 different sports.

The failure of both States and non-State actors to respond effectively and prevent such acts and mitigate associated risks indirectly allows violence and discrimination to occur and persist. Because the erosion of female-only sports, as well as related spaces, has been shown to exacerbate the vulnerability of women and girls to human rights violations and abuses, any retrogression of women's and girls' sex-based protections must not be permitted in both law and practice.

Amica urges this Court to affirm the constitutionality and necessity of legislative measures that maintain sex-separated athletic categories and facilities. Such laws are consistent with historical international norms of sexual equality. The West Virginia law is tailored, proportionate, and implements the legitimate aims of fairness, safety, and equality. The law does not exclude any person from the practice of sport, nor does it require invasive means to verify eligibility; rather, the law ensures that biological women and girls are not deprived of equal opportunity, dignity, and protection of the law when engaging in sports and athletic activities.

Respectfully submitted,

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