

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 HER NEXT FRIEND
AND MOTHER, HEATHER JACKSON,
Respondent.

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

**BRIEF OF *AMICUS CURIAE* SEX MATTERS
IN SUPPORT OF PETITIONERS**

JOHN C. SULLIVAN
Counsel of Record
JACE R. YARBROUGH
S|L LAW PLLC
610 Uptown Boulevard, Suite 2000
Cedar Hill, Texas 75104
john.sullivan@slfirm.com
(469) 523-1351

Counsel for Amicus Curiae

TABLE OF CONTENTS

	<i>Page</i>
TABLE OF CONTENTS.....	i
TABLE OF CITED AUTHORITIES	ii
INTEREST OF <i>AMICUS CURIAE</i>	1
SUMMARY OF ARGUMENT.....	4
ARGUMENT.....	7
I. The Legal Background Of The United Kingdom Provides A Helpful Framework For Addressing The Cases Before this Court	7
II. Conflating Sex And Gender Has Harmful, Real-World Effects	9
III. <i>For Women Scotland</i> Is A Useful Analogue For Deciding The Question Of Biological Males Participating In Women's Sports.....	14
CONCLUSION	20

TABLE OF CITED AUTHORITIES

	<i>Page</i>
Cases	
<i>Clift v. the United Kingdom</i> , 2010.	9
<i>Fábián v. Hungary</i> [GC], 2017	9, 10
<i>For Women Scotland Ltd v. The Scottish Ministers</i> [2025] UKSC, available at https://supremecourt. uk/uploads/uksc_2024_0042_judgment_ updated_16f5d72e76.pdf	3-6, 8, 13-16, 18, 19
<i>Demokrat Parti v. Turkey</i> (dec.), 2021	9, 10
Statutes	
34 C.F.R. § 106.37(c)(1)	18
Civil Rights Act of 1964	7
Disability Discrimination Act 1995	7
Equal Pay Act 1970	7
Gender Recognition Act, https://www.legislation. gov.uk/ukpga/2004/7/contents	8
Idaho Code Ann. § 33-6202(2)	18
Race Relations Act 1976	7
Sex Discrimination Act 1975	7

Cited Authorities

	<i>Page</i>
UK Equality Act 2010, https://www.legislation.gov.uk/ukpga/2010/15/contents	3-8, 10, 14, 19
W. Va. Code Ann. § 18-2-25d(c)(2)-(3)	18

Other Authorities

<i>Girlguiding ‘tied itself in knots’ over trans rights</i> , The Times (Apr. 24, 2022), https://www.thetimes.com/uk/society/article/girlguiding-tied-itself-in-knots-over-trans-rights-kn89nx6xm	11
<i>Hostel let man dressed as woman sleep in female-only room</i> , Telegraph (June 10, 2023), https://www.telegraph.co.uk/news/2023/06/10/man-dressed-woman-female-only-room-astorvictoria-hostel/	12
https://fairplayforwomen.com/wp-content/uploads/2024/01/How-inclusion-in-sport-is-harming-women-and-girls-by-Fair-Play-For-Women-14-Jan-2024.pdf	11
https://scottishlesbians.org.uk/resources	13
https://sex-matters.org/posts/updates/sex-matters-intervention-to-the-supreme-court/	13
https://sex-matters.org/sports-policies/	11
https://sex-matters.org/sports-timeline/	11

Cited Authorities

	<i>Page</i>
https://www.equalityhumanrights.com/equality/equality-act-2010	7
https://www.gov.uk/government/publications/independent-review-of-data-statistics-and-research-on-sex-and-gender	5
https://www.theguardian.com/world/2025/apr/22/equalities-minister-bridget-phillipson-welcomes-uk-gender-ruling-supreme-court	19
<i>Inside the Edinburgh Rape Crisis Centre scandal</i> , The Spectator (Nov. 9, 2024), https://www.spectator.co.uk/article/inside-the-edinburghrape-crisis-centre-scandal/	12
<i>Lie of gender identity’ spurred founding of LGB Alliance, court told</i> , The Guardian (Sept. 14, 2022), https://www.theguardian.com/society/2022/sep/14/lie-of-genderidentity-spurred-founding-of-lgballiance-court-told	12
<i>Patients don’t have the right to know if their medics are transgender and may be guilty of discrimination if they ask to see another doctor—and those with dementia ‘should be challenged’ over discriminatory views, NHS warns</i> , Daily Mail (June 8, 2023), https://www.dailymail.co.uk/news/article-12174641/Patientsdont-right-know-medicstransgender-NHSwarns.html	11

Cited Authorities

	<i>Page</i>
Rape crisis centre to launch single-sex only meetings after trans row, BBC News (July 29, 2025), https://www.bbc.com/news/articles/cvgp558qkz0o	11
<i>The lesbians who feel pressured to have sex and relationships with trans women</i> , BBC (Oct. 26, 2021), https://www.bbc.co.uk/news/uk-england-57853385	13
<i>Trans police officers set to be allowed to strip-search women</i> , Telegraph (Feb. 24, 2025), https://www.telegraph.co.uk/news/2025/02/24/trans-policeofficers-to-be-allowed-to-strip-search-women/	10
<i>Warning over transgender guidance to judges</i> , Law Society Gazette (Feb. 24, 2020), https://www.lawgazette.co.uk/news/warning-over-transgenderguidance-tojudges/5103196.article	12

INTEREST OF *AMICUS CURIAE*¹

Amicus curiae Sex Matters is a human rights charity registered in England. Sex Matters campaigns for clarity on sex in law and policy in the UK in order to protect human rights. *Amicus*'s objectives are to: (1) promote human rights where they relate to biological sex; (2) advance education about sex and the law; and (3) promote the sound administration of the law in relation to sex and equality in the law.

As part of its work, Sex Matters provides guidance to people who may face discrimination and harassment at work for standing up for sex-based rights, including public accommodations such as schools. It publishes guidance so that individuals can understand the law and their rights, including those related to “gender critical” belief discrimination and single-sex facilities, services, and sports. *Amicus* also undertakes extensive research projects; meets with Members of Parliament, peers in the House of Lords, government Ministers and civil servants; engages with UK regulators including the Equality and Human Rights Commission, Department for Education and Health and Safety Executive; and engages with international organizations.

In just a few years of operation, Sex Matters has established itself as an effective stakeholder and respected commentator in debates on how institutions, policies, and

1. Rule 37 Statement: No attorney for any party authored any part of this brief, and no one apart from *amicus curiae* and its counsel made any financial contribution toward the preparation or submission of this brief.

rules should protect people against discrimination and harassment based on protected characteristics, including sex and gender reassignment. *Amicus* has published over 20 research briefings and responded to 15 government consultations. Board members and staff have given evidence to the UK and Scottish Parliaments and have been invited to present to the UN Independent Expert on sexual orientation and gender identity, the Equality and Human Rights Commission, the UN Special Rapporteur on violence against women and girls, the Council of Europe Group of Experts on Action against Violence against Women and Domestic Violence, and representatives of His Majesty's Inspectorate of Constabulary and Fire & Rescue reviewing activism in the police.

Amicus has a particular interest in the cases before this Court involving the participation by biological males in women's sports because Sex Matters was created in order to protect the rights of women where their biological sex matters in how they are treated. Stated differently, Sex Matters exists to prevent women from being treated unfairly in areas where biology (science) itself creates a natural distinction that cannot be set aside without damaging women's rights. While it is important to protect both men and women from discrimination, it must be acknowledged that women tend to be more vulnerable to sex discrimination, domestic violence, sexual violence, and sexual harassment. Indeed, ninety-eight percent of sexual crimes are carried out by men. Recognition of these population-level differences does not equate to demonizing all males as rapists—but it does mean reality matters when crafting law and policy. Similarly, in sport the female category allows women to compete without men. Clear sex-based rules are needed to protect women's

sports. The same is not true for the men’s category (which is sometimes called the “open” category), since women would not qualify competitively.

While Sex Matters is a British organization, its interests in United States law on this issue are significant. Not only does *Amicus* seek to protect women of all nationalities, there are thousands of British women each year that come to the United States who will be affected by this Court’s decision—many on student visas and many to play sports on collegiate teams covered by legal protections such as Title IX.

Recently, Sex Matters was the only civil society organization given permission to intervene in both written submissions and oral argument in the UK Supreme Court in the seminal case *For Women Scotland Ltd. v. The Scottish Ministers* [2025] UKSC 16.² *For Women Scotland* was a pivotal decision holding that the references to women in Britain’s Equality Act 2010 meant biological women and thus measures intended to benefit women must be for the group defined by biology. The Equality Act provides for single-sex services and sports based on the biological definition. This means biological males can be prohibited from participating in women’s services including sports. See *id.* ¶ 234. Though not binding, the reasoning of *For Women Scotland* applies equally here and *Amicus* is well-positioned to highlight to this Court some of the same arguments adopted by the UK Supreme Court.³

2. Available at https://supremecourt.uk/uploads/uksc_2024_0042_judgment_updated_16f5d72e76.pdf.

3. Counsel for *Amicus* who argued as intervenor in *For Women Scotland* was specifically thanked by the UK Supreme

SUMMARY OF ARGUMENT

As in the United States, UK law broadly outlaws discrimination while also permitting different treatment of men and women (and of boys and girls) in a range of specified cases where it is appropriate. See UK Equality Act 2010.⁴ These cases generally involve privacy, dignity, peace of mind, safety, and fairness—and while those instances can apply to either sex, it is recognized that safety and fairness are issues for women much more than for men. There are also exceptions for positive action: for example, to address under-representation of women in some sectors.

In recent years, policymakers in the UK broadened the meaning of “sex” as a human characteristic from its scientific meaning, going beyond biology to include beliefs or feelings. Anyone who felt they were a woman could declare as such, with the expectation to be treated as a woman. This led to biological males being granted access to female-only provisions such as rape crisis and domestic violence shelters, women’s scholarships and prizes, women’s sports, and women’s prisons, among others.

Tracking sex differences was also becoming more difficult as data sets measuring “women” and “men”—for things such as monitoring crime statistics or pay differentials—included people of both sexes based on self-declared “gender identity.” The effect was to reduce accuracy of data related to differences between the sexes.

Court for submissions “which gave focus and structure to the argument that ‘sex’, ‘man’ and ‘woman’ should be given a biological meaning.” See *For Women Scotland*, ¶ 35.

4. <https://www.legislation.gov.uk/ukpga/2010/15/contents>.

This problem was investigated, and solutions proposed, in an independent review commissioned by the UK government in 2024.⁵

A measure to increase female representation on public boards in Scotland—based on an expanded definition of sex treating biological males that self-identify as women as being actual women—was challenged by the grassroots women’s group called For Women Scotland. This ultimately led the UK Supreme Court to consider and clarify the meaning of sex in equality law. The UK Supreme Court considered all of the exceptions to sex discrimination in the Equality Act, since the definition of terms must be consistent throughout the statute. See *For Women Scotland*, ¶ 8.

For Women Scotland explored key situations in which sex might matter and where there are exceptions to the general provision against sex discrimination. These included: (1) sports, where male and female bodies are so different that separate categories are needed in most sports in order to provide fair, safe play and competition for women and girls; (2) employment, where some roles require a person of the same sex as the client (such as providing intimate care for elderly or vulnerable people); and (3) services for victims of domestic or sexual violence. For example, the Court considered that women who have experienced male violence feel safe only when no male is present. Relatedly, many rape victims are only able to talk about their experiences in group counselling in a single-sex group with a same-sex counselor; the presence or later

5. <https://www.gov.uk/government/publications/independent-review-of-data-statistics-and-research-on-sex-and-gender>.

discovery that someone of the other sex was present would be traumatizing and humiliating.

The UK Supreme court concluded that sex in the Equality Act must mean biology. This matters both for the core provisions on sex discrimination and for exceptions. The overall scheme enables protections and opportunities for women and girls—and the judgment illustrates many of these. At base, *For Women Scotland* reaffirmed that biological reality must be considered in order to protect women in certain situations.

The logic of *For Women Scotland* applies equally to the cases here. Women are a legally protected class because of their sex—not notions of gender. To mix biological males into categories that are reserved for women precisely *because* they are women undermines the entire point of the protection in the first instance. The only way that a service can be single-sex is to exclude everyone of the other sex, regardless of how persons identify, whether they hold government paperwork acknowledging their transgender status, or even whether they take puberty blockers or cross-sex hormones. Men who identify as transgender have general protections against discrimination (such as in employment), but this does not mean that they have changed sex. If men are admitted to female-only categories—whether it be women’s sports or women’s locker rooms—this literally renders the provision mixed sex and defeats the purpose of the provision.

The judgments of the Court of Appeals should be reversed.

ARGUMENT

I. The Legal Background Of The United Kingdom Provides A Helpful Framework For Addressing The Cases Before This Court.

The United Kingdom's Equality Act of 2010 consolidated, updated, and supplemented prior Acts and Regulations that formed the basis of anti-discrimination law in Great Britain (United Kingdom less Northern Ireland).⁶ These consisted primarily of the Equal Pay Act 1970, the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995, and three major statutory instruments protecting against discrimination in employment on grounds of sexual orientation, age, and religion or belief.

The statutory framework provided by all of these laws parallels Title VII of the Civil Rights Act of 1964 in many respects. The UK's Equality Act protects people against discrimination, harassment, or victimization in employment, and as users of private and public services, based on nine "protected characteristics." These are: age, disability, sex, sexual orientation, marriage and civil partnership, gender reassignment, pregnancy and maternity, race, and religion or belief.⁷

An individual may have several protected characteristics. Everyone has an age, a sex, and a sexual orientation. In the Act, a "woman" is defined as

6. See <https://www.legislation.gov.uk/ukpga/2010/15/contents>.

7. <https://www.equalityhumanrights.com/equality/equality-act-2010>.

“a female of any age” and a “man” as “a male of any age.” The protected characteristic of gender reassignment is specifically defined in the Equality Act as follows: “A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person’s sex by changing physiological or other attributes of sex.” Under this broad definition, a mere intention to alter one’s gender display is sufficient to obtain protection under the Equality Act against discrimination. A person should not be refused service in a restaurant or refused a job because of undergoing gender reassignment. Such a person’s sex remains unchanged for purposes of the Equality Act. Thus a man who identifies as a woman is protected as a man and as someone with the characteristic of gender reassignment. This is the status of the majority of people in the UK who identify as transgender.

A separate law, the Gender Recognition Act 2004 (GRA), provides that a gender recognition certificate (GRC) and a replacement birth certificate can be provided to people who meet certain requirements.⁸ Even under the GRA, however, no medical or other procedure is required to obtain a GRC. See *For Women Scotland*, ¶ 26 (recognizing that “neither possession of a GRC nor the protected characteristic of gender reassignment requires any specific physiological change”).

The question in *For Women Scotland* was whether a GRC should qualify in all cases as a substitute for biological sex as the term (and associated usages of “man” and “woman” or “male” and “female”) are used in the Equality Act. *Id.* ¶ 8. *Amicus* successfully argued to the UK high court that, while discrimination on the basis of

8. <https://www.legislation.gov.uk/ukpga/2004/7/contents>.

a protected characteristic is largely prohibited, there are exceptions where such discrimination is lawful. For sex, these include: (1) the provision of single- or separate-sex services where it is recognized that joint provision would be less effective, or that a service is needed for one sex only; (2) where there is a Genuine Occupational Requirement to employ a person of one sex (for reasons of privacy and decency or where personal services are provided, such as in the provision of single-sex services in healthcare or in services supporting female victims of male violence); (3) for positive action, to encourage or develop people of a sex that is under-represented or disadvantaged in a role or activity; and (4) in sport, because it is “gender-affected” (*i.e.*, a sport, game, or other activity of a competitive nature in circumstances in which the physical strength, stamina, or physique of average persons of one sex would put them at a disadvantage compared to average persons of the other sex as competitors in events involving the activity).

II. Conflating Sex And Gender Has Harmful, Real-World Effects.

When considering discrimination (including access to single-sex spaces and services), the question of comparators is crucial. It has been argued that the correct comparator for a “transwoman” (that is, a man who identifies as a woman) is a woman, and thus to avoid unlawful discrimination the person should be treated “no differently to another woman” in relation to single-sex services. European case law (and American, for that matter) does not support this reasoning, though. The question of whether or not two persons are in a comparable situation is specific to the context—the particular nature of the complaint in which someone was treated differently. See *Fábián v. Hungary* [GC], 2017, § 113; *Clift v. the United Kingdom*, 2010, § 66; *Demokrat Parti v. Turkey*

(dec.), 2021. The elements that characterize different situations, and determine their comparability, must be assessed in the light of the subject matter and the purpose of the measure by which they are treated differently. See *Fábián v Hungary* [GC], 2017, § 121. This truth has long been overlooked, however, leading to harmful consequences in the name of nondiscrimination.

Since the introduction of the Equality Act in the UK, there has been an increasing demand that anyone claiming the protected characteristic of gender reassignment can expect to be treated as if they have changed from their birth sex to their desired or target sex, and that such a person is entitled to access services of their target sex rather than their birth sex. Those advocating for people with transgender identities claim that such people have a “gender identity” which overrides their biological sex and that gender identity rather than bodily sex should be taken as paramount. This has led to many formerly single-sex spaces, services, and sports admitting people of the other sex who identify as transgender (while still claiming to be single-sex). The consequences of such conflation between sex and gender are harmful.

Among the real-world effects of treating biological males as women (and vice-versa) in the UK have included:

- Female police officers being expected to perform intimate body searches on male detainees who identify as women (but still have male genitalia).⁹

9. *Trans police officers set to be allowed to strip-search women*, Telegraph (Feb. 24, 2025), <https://www.telegraph.co.uk/news/2025/02/24/trans-policeofficers-to-be-allowed-to-strip-search-women/>.

- Female patients requesting a female healthcare professional only to be examined by male staff members who identify as women.¹⁰
- Women’s and girls’ sports including males who identify as women, putting fairness and safety for women at risk.¹¹
- Single-sex associations coming under pressure to include members of the opposite sex.¹²
- Single-sex services (such as women’s refuges and rape crisis centers) being pressured to include males who identify as women, both as service-users and as staff members.¹³

10. *Patients don’t have the right to know if their medics are transgender and may be guilty of discrimination if they ask to see another doctor—and those with dementia ‘should be challenged’ over discriminatory views, NHS warns*, Daily Mail (June 8, 2023), <https://www.dailymail.co.uk/news/article-12174641/Patients-dont-right-know-medics-transgender-NHSwarns.html>.

11. Sex Matters maintains a current list of policies, <https://sex-matters.org/sports-policies/>, and a timeline of policies, <https://sex-matters.org/sports-timeline/>. Importantly, this particular policy has led to self-exclusion of women from sports in the UK. Fair Play for Women has collected testimonies. <https://fairplayforwomen.com/wp-content/uploads/2024/01/How-inclusion-in-sport-is-harming-women-and-girls-by-Fair-Play-For-Women-14-Jan-2024.pdf>.

12. *Girlguiding ‘tied itself in knots’ over trans rights*, The Times (Apr. 24, 2022), <https://www.thetimes.com/uk/society/article/girlguiding-tied-itself-in-knots-over-trans-rights-kn89nx6xm>.

13. *Rape crisis centre to launch single-sex only meetings after trans row*, BBC News (July 29, 2025), <https://www.bbc.com/news/articles/cvgp558qkz0o>.

- Traumatized women who use single-sex services being told that they are female-only but then facing male staff and male participants.¹⁴
- Women using residential accommodations (such as hostels and student halls) that are described as female-only subsequently finding themselves sharing those accommodations with biological men who identify as women.¹⁵
- Victims and witnesses told they must call male assailants “she” and describe them as women.¹⁶
- Gay men and lesbians harassed and discriminated against for saying they are same-sex—not “same gender”—attracted.¹⁷

14. *Inside the Edinburgh Rape Crisis Centre scandal*, The Spectator (Nov. 9, 2024), <https://www.spectator.co.uk/article/inside-the-edinburghrape-crisis-centre-scandal/>.

15. *Hostel let man dressed as woman sleep in female-only room*, Telegraph (June 10, 2023), <https://www.telegraph.co.uk/news/2023/06/10/man-dressed-woman-female-only-room-astorvictoria-hostel/>.

16. *Warning over transgender guidance to judges*, Law Society Gazette (Feb. 24, 2020), <https://www.lawgazette.co.uk/news/warning-over-transgenderguidance-tojudges/5103196.article>.

17. *Lie of gender identity’ spurred founding of LGB Alliance, court told*, The Guardian (Sept. 14, 2022), <https://www.theguardian.com/society/2022/sep/14/lie-of-genderidentity-spurred-founding-of-lgballiance-court-told>.

- Gay men and lesbians coerced, tricked, or pressured into having sexual relations with trans-identifying people of the opposite sex.¹⁸

Amicus intervened in *For Women Scotland* to illustrate how the only coherent interpretation of sex in the Act was birth sex based on biology—not certificated sex based on holding a gender recognition certificate—and to demonstrate the incoherent and harmful outcomes of replacing the objective reality of sex with gender identity.¹⁹ A group of lesbian organizations also intervened to illustrate how a definition of sex using certificated sex rather than birth sex renders protection against discrimination based on their sexual orientation—an attraction only to other women—unworkable.²⁰ If sex in the Act meant certificated sex, not birth sex, then lawful lesbian associations would be required to admit males who identify as women and who are sexually attracted to women, so long as they had a GRC. But a gender recognition certificate could not change how lesbians see a man and whether he might (or should be allowed to) form part of their dating pool. See *For Women Scotland*, ¶¶ 206–09.

Ultimately, the effect of conflating sex and gender—either based on certificates, other changeable identity documents, or self-identification—turns single-sex

18. *The lesbians who feel pressured to have sex and relationships with trans women*, BBC (Oct. 26, 2021), <https://www.bbc.co.uk/news/uk-england-57853385>.

19. <https://sex-matters.org/posts/updates/sex-matters-intervention-to-the-supreme-court/>.

20. <https://scottishlesbians.org.uk/resources> (4th item).

provisions into mixed-sex ones. And in mixed-sex scenarios, biological women (in particular) face specific and concrete harms. The same can be seen in American law and society as well.

III. *For Women Scotland* Is A Useful Analogue For Deciding The Question Of Biological Males Participating In Women's Sports.

In April of this year, the UK Supreme Court unanimously held that the terms “man”, “woman” and “sex” in the Equality Act 2010 refer to biological sex. *For Women Scotland*, ¶ 235. Any other reading would be incoherent given the inherent differences between biological males and biological females, and the purpose of the statutory scheme to protect women (and men) against sex discrimination and require public authorities to advance equality of opportunity. In other words, the traditional nondiscrimination framework established to protect women—especially in areas such as sports, *id.* ¶¶ 232–36, or in the accessing of positive actions, *id.* ¶¶ 153–54—would be undone by the harms noted above if actual sex were not taken into account when interpreting those statutory provisions. See Part II *supra*.

The *For Women Scotland* court explained further:

If sex has its biological meaning in this paragraph, then a service-provider can separate male and female users as obvious and distinct groups. For example, a homeless shelter could have separate hostels for men and women provided this pursued a legitimate aim, which might be the safety and security of women users or their privacy and dignity (and the

same for male users). By contrast, if sex means certificated sex, the service provider would have to allow access to trans women with a GRC (in other words, biological males who are female according to section 9(1)) to the women's hostel. The following practical difficulties would arise. First, it would be difficult or impossible for the service-provider to distinguish between trans women with and without a GRC because, as we have explained, the two groups are often visually or outwardly indistinguishable. Secondly and more fundamentally, it is likely to be difficult (if not impossible) to establish the conditions necessary for separate services for each sex when each group includes persons of both biological sexes. For example, it is difficult to envisage how the condition in paragraph 26(2)(a) (a joint service for persons of both sexes would be less effective) could ever be fulfilled when each sex includes members of the opposite biological sex in possession of a GRC and excludes members of the same biological sex with a GRC. In other words, if as a matter of law, a service-provider is required to provide services previously limited to women also to trans women with a GRC even if they present as biological men, it is difficult to see how they can then justify refusing to provide those services also to biological men and who also look like biological men.

Id. ¶ 213.

Similarly, the court reasoned that the provisions involving protections for female athletes were

plainly predicated on biological sex, and may be unworkable if a certificated sex interpretation is required. The exemption it creates is a complete exemption in relation to the prohibition against sex discrimination in sport in relation to the participation of a competitor in a sport that is a gender-affected activity (section 195(1)) and a partial exemption for gender reassignment discrimination in relation to the participation of a transsexual person as a competitor in a gender-affected activity but only where the treatment is necessary for fairness or safety reasons. In both cases the exemption cannot apply unless there is a gender-affected activity. This is a gateway condition.

The *For Women Scotland* court went further in helping to define what this means in the context of sports:

A gender-affected activity is a defined term. It depends on a determination of whether the physical strength, stamina or physique of average persons of one sex would put them at a disadvantage as competitors in a particular sport when compared to average persons of the other sex. Take boxing as an example. This is undoubtedly a gender-affected activity on a biological interpretation of sex in section 195(3). On this basis, it is readily apparent (indeed, obvious) that women's average physical strength, stamina and/or physique will disadvantage them as competitors against average men in a boxing match. However, if average women as a group for comparison with average men for the

purposes of section 195(1) includes trans women with GRCs (so legally female but biologically male) the differences in strength, stamina and physique between the two groups may begin to fade. Although at present the numbers of trans people with GRCs may be statistically insignificant, that could not have been predicted at the time the GRA 2004 was enacted, and the effect of section 9(1) cannot depend on how many people are issued with GRCs. Each group has members of the opposite biological sex in it and the gateway condition may be difficult to establish at all. Even if the gateway condition is established, the approach to the group of trans sportswomen who are potentially to be excluded would differ on a rationally unconnected basis: whether or not they have a paper certificate. To exclude trans women with a GRC from the boxing competition, the organiser would have the additional burden of showing that it was necessary to do so in the interests of fairness or safety, whereas a trans woman without a GRC could simply be excluded as a male under section 195(1).

On the other hand, a biological definition of sex would mean that a women's boxing competition organiser could refuse to admit all men, including trans women regardless of their GRC status. This would be covered by the sex discrimination exception in section 195(1). But if, in addition, the providers of the boxing competition were concerned that fair competition or safety necessitates the

exclusion of trans men (biological females living in the male gender, irrespective of GRC status) who have taken testosterone to give them more masculine attributes, their exclusion would amount to gender reassignment discrimination, not sex discrimination, but would be permitted by section 195(2). It is here that the gender reassignment exception would be available to ensure that the exclusion is not unlawful, whether as direct or indirect gender reassignment discrimination.²¹

Just so here. The practical harms created by allowing biological males to participate in spaces reserved for women would undermine the entire point of the statutory scheme developed to protect women in the first instance. Take Title IX, for instance. A central feature of the statute was to provide equal scholarship opportunities for female athletes who would not be expected to compete alongside male athletes, even when playing the exact same sport. 34 C.F.R. § 106.37(c)(1). It is nonsensical to think that athletes born with male chromosomes and attributes were meant by Congress to displace athletes born with female sex characteristics—it would undo the very protection Title IX was drafted to provide. *For Women Scotland* thus provides a helpful analogue for addressing the “gender-affected activity” of sports where biological realities must trump subjective constructions.

21. An important parallel exists here to the current cases before this Court. Both West Virginia and Idaho allow biological women to play in the “open” category of men’s sports because women have no physiological advantage over biological men. Biological males, however, are only allowed to play on the men’s teams—no matter how they identify. See W. Va. Code Ann. § 18-2-25d(c)(2)-(3); Idaho Code Ann. § 33-6202(2).

*

*

*

For Women Scotland resolved the perceived ambiguity over the correct interpretation of sex in the Equality Act and enabled single-sex services, spaces, and sports to operate with confidence. Its result was even welcomed by the UK Prime Minister for the clarity it provides.²² And at the same time, the UK Supreme Court made clear that the rights of trans-identifying people were unchanged by the ruling, whether they hold a gender recognition certificate or not. They still maintain protections against discrimination (such as being paid less or fired from their job) and in general have the ability to participate in the spaces consistent with their biological reality.

Applying the common-sense approach of *For Women Scotland* to the present cases should lead to the same result here. Women are a legally protected class precisely *because of* their sex. And the only way that a service (such as sports) can be single-sex is to exclude everyone of the other sex, regardless of how they identify or of whether they hold government paperwork acknowledging their transgender status. Men who identify as transgender have other protections, but cannot be admitted to female-only categories as this renders the provision mixed sex. Such mixed sex scenarios undermine the legal protections already established, and nowhere is this more apparent than in women's sports.

22. <https://www.theguardian.com/world/2025/apr/22/equalities-minister-bridget-phillipson-welcomes-uk-gender-ruling-supreme-court>.

CONCLUSION

The judgments of the court of appeals should be reversed.

Respectfully submitted,

JOHN C. SULLIVAN

Counsel of Record

JACE R. YARBROUGH

S|L LAW PLLC

610 Uptown Boulevard, Suite 2000

Cedar Hill, Texas 75104

john.sullivan@slfirm.com

(469) 523-1351

Counsel for Amicus Curiae

SEPTEMBER 2025