

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 Ninth and Fourth Circuits

**BRIEF OF AMICI CURIAE ADVOCATES FOR
GIRLS' AND WOMEN'S RIGHTS IN SUPPORT OF
RESPONDENTS**

Lucy K. Walker
Ashlyn L. Hare
Clarice S. Tenorio
HUTCHINSON BLACK & COOK
921 Walnut Street, Suite 200
Boulder, CO 80302

Naomi R. Shatz
Inga Bernstein
Tess Halpern
ZALKIND DUNCAN & BERNSTEIN
2 Oliver Street, Suite 200
Boston, MA 02109

Tara Ford
Counsel of Record
Molly Mauck
Rachel Stein
Yi Li
Vanessa Rae Young
Elizabeth Graves-Meyerhoff
PUBLIC COUNSEL
610 S. Ardmore Avenue
Los Angeles, CA 90005
(213) 385-2977, ext. 188
tford@publiccounsel.org

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
INTERESTS OF AMICI CURIAE	1
SUMMARY OF ARGUMENT	1
ARGUMENT	4
I. H.B. 500 and H.B. 3293 perpetuate a long history of excluding women from sports.....	5
II. H.B. 500 and H.B. 3293 harm—rather than protect—girls and women	9
A. The laws embolden schools to target girls and women athletes based on sex stereotypes	11
B. All girls and women will face public scrutiny and harassment, harming their mental health.....	15
C. The laws subject girls and women to invasive and coercive sex “verification” policies.....	20
III. H.B. 500 and H.B. 3293 force schools and athletic associations to implement unworkable and intrusive sex “verification” policies.....	29
CONCLUSION	33
APPENDIX	
List of Amici Curiae.....	1a

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Bostock v. Clayton Cnty.</i> , 590 U.S. 644 (2020).....	13
<i>Frontiero v. Richardson</i> , 411 U.S. 677 (1973).....	4, 15
<i>Missouri v. McNeely</i> , 569 U.S. 141 (2013).....	22, 29
<i>Price Waterhouse v. Hopkins</i> , 490 U.S. 228 (1989).....	13
<i>Safford Unified Sch. Dist. No. 1 v. Redding</i> , 557 U.S. 364 (2009).....	22, 23, 25, 29
<i>Semenya v. Int’l Assoc. of Athletics Feds.</i> , 2018/O5794, 2018/O5798 (Ct. Arb. Sport 2018).....	24
<i>Skinner v. Ry. Lab. Executives’ Ass’n</i> , 489 U.S. 602 (1989)	22
STATUTES	
20 U.S.C. § 1681 <i>et seq.</i>	9
Ala. Code § 16-1-52	22
Ariz. Rev. Stat. Ann. § 15-120.02	22
Ariz. Rev. Stat. Ann. § 15-120.02(C)	28
Ark. Code Ann. § 6-1-107.....	22
Ga. Code Ann. § 20-3-15(3).....	21
Ga. Code Ann. § 20-3-15(9).....	21
Idaho Code § 33-6201	26

Idaho Code § 33-6203(1)	2, 10, 20
Idaho Code § 33-6203(2)	2, 21
Idaho Code § 33-6203(3)	2, 3, 10, 11, 20, 22
Ind. Code § 20-33-13-4(b).....	21
Kan. Stat. Ann. § 60-5602(a).....	21
Ky. Rev. Stat. Ann. § 156.070(2)(e).....	21
Miss. Code Ann. § 37-97-1	22
Mont. Code Ann. § 20-7-1306	22
N.C. Gen. Stat. § 116-401(b).....	21
N.D. Cent. Code § 15.1-39-01(2).....	21
N.H. Rev. Stat. Ann. § 193:41(IV).....	21
Neb. Rev. Stat. § 79-3804(5).....	21
Ohio Rev. Code Ann. § 3313.5320	22
Tenn. Code Ann. § 49-6-310(a)	22, 26
Utah Code Ann. § 53G-6-901.....	12
Utah Code Ann. § 53G-6-902.....	12
Utah Code Ann. § 53G-6-901(3)	21, 28
Utah Code Ann. § 53-G-6-902(1)(b).....	28
W. Va. Code § 18-2-25d(b)	2
W. Va. Code § 18-2-25d(b)(1).....	10, 20, 26
W. Va. Code § 18-2-25d(c).....	2, 3
W. Va. Code § 18-2-25d(c)(2)	21
W. Va. Code § 18-2-25d(d)	3, 21, 28, 31
W. Va. Code § 18-2-25d(d)(1).....	10, 11
Wyo. Stat. Ann. § 21-25-101(a)(iv)	21

RULES

S. Ct. Rule 37.6	1
------------------------	---

RULES AND REGULATIONS

29 C.F.R. § 38.7(d)(1)	13
------------------------------	----

LEGISLATIVE MATERIALS

W. Va. Leg. Originating H.B. 3293 (Mar. 16, 2021), https://perma.cc/NJZ8-PJD6	21
---	----

OTHER AUTHORITIES

Alfonseca, Kiara, <i>Utah Official Falsely Suggests Teen Student Is Transgender, Now Faces Calls to Resign</i> , ABC News (Feb. 9, 2024), https://perma.cc/TZY9- NVDF	17
Associated Press, <i>Utah School Secretly Investigated If Winning Female Student Athlete is Transgender</i> , Guardian (Aug. 18, 2022), https://perma.cc/RM9F-G4WF ...	12, 13, 28
Baitinger, Brooke, <i>Adults Interrupt Track Meet to Accuse 9-Year-Old Girl of Being Transgender, Parents Say</i> , Sacramento Bee (June 14, 2023)	13, 16, 18
Brant, Jacqueline, <i>Sword or Shield? The Weaponization of Title IX Against Transgender Athletes</i> , 42 Minn. J.L. & Ineq. 91 (2024)	20

- Buckwald, Jordan, *Outrunning Bias: Unmasking the Justifications for Excluding Non-Binary Athletes in Elite Sport*, 44 Harv. J.L. & Gender 1 (2021)..... 8, 14
- FAQ: Intersex, Gender, and LGBTQIA+*, InterACT (July 14, 2025), <https://perma.cc/MWN6-W63Y>..... 27
- Fidler, Merrie A., The Origins and History of the All-American Girls Professional Baseball League (2006) 6
- Gehrke, Robert, *An Angry Utah Parent Accused a High School Basketball Player of Being Transgender. Will it Keep Happening?*, Salt Lake Trib. (Jan. 27, 2024), <https://perma.cc/97MW-GW2P> 12, 13, 18
- Gender Test Reports Trigger Criticism from South Africa*, Wash. Post (Sept. 12, 2009), <https://www.washingtonpost.com/archive/sports/2009/09/12/gender-test-reports-trigger-criticism-from-s-africa/0dd7dd30-83ac-4cea-abf8-026be166df48/> 24
- GLAAD, *Sex Verification Testing: What You Need to Know* (2025), <https://perma.cc/AH7C-TUEK>..... 26
- Goff, Phillip Atiba et al., “*Ain’t I a Woman?*”: *Towards an Intersectional Approach to Person Perception and Group-Based Harms*, 59 Sex Roles 392 (2008) 15

- Gordon, Allegra R., et al., *Gender Expression, Violence, and Bullying Victimization: Findings From Probability Samples of High School Students in 4 US School Districts*, 88 J. Sch. Health 306 (2018), <https://doi.org/10.1111/josh.12606> 17, 18, 19
- Gross, Jenny, *Utah School Board Member Is Censured After Questioning Student's Gender*, N.Y. Times (Feb. 16, 2024), <https://www.nytimes.com/2024/02/16/us/utah-natalie-cline-censored.html> 17, 18
- Heggie, Vanessa, *Testing Sex and Gender in Sports; Reinventing, Reimagining and Reconstructing Histories*, 34 Endeavor 157 (2010)..... 6, 7, 8, 31
- Human Rights Watch, *"They're Chasing Us Away from Sport": Human Rights Violations in Sex Testing of Elite Women Athletes* (Dec. 2020), <https://perma.cc/LK6L-R5QB> 7, 8, 24, 25
- InterACT, Comment Letter on Proposed Mandatory Civil Rights Data Collection (Feb. 11, 2022), <https://perma.cc/VRJ5-VB94>..... 27
- Jones, Zoe Christen, *Utah Investigates Winning Student-Athlete's Gender After Parents of Second- and Third-Place Finishers Submit Complaints*, CBS News (Aug. 18, 2022), <https://perma.cc/S865-EB24>..... 12

- Lavietes, Matt, *Utah Official Faces Calls to Resign After Falsely Suggesting Teen Girl is Transgender*, NBC News (Feb. 8, 2024), <https://perma.cc/FF5E-YAHG> 17
- Lyall, Sarah, *Brittney Griner, in Her Own Words*, N.Y. Times (May 7, 2024), <https://www.nytimes.com/2024/05/07/books/review/brittney-griner-coming-home.html> 15
- Medley, Shayna, *(Mis)interpreting Title IX: How Opponents of Transgender Equality Are Twisting the Meaning of Sex Discrimination in School Sports*, 45 N.Y.U Rev. L. & Soc. Change 673 (2022)..... 6
- Nat'l Fed. of State High Sch. Ass'ns, *The Case for High School Activities*, <https://perma.cc/LK6N-TX92> 19, 20
- Osterman, Michelle J.K. et al., *Births: Final Data for 2023*, 74 Nat'l Vital Stats Reps. 1 (Mar 18, 2025), <https://perma.cc/BYF5-MLMG> 26
- Parks Pieper, Lindsay, *Sex Testing in Volleyball*, 42 Int'l J. Hist. Sport 876 (2025)..... 30
- Photopoulos, Julianna, *The Future of Sex in Elite Sport*, Nature (Mar. 31, 2021), <https://perma.cc/KD7Y-LXQA> 27
- Queen Serena: The Power and the Glory*, Harper's Bazaar (May 30, 2018), <https://perma.cc/MC6T-8DU8> 15

- Reidy, Dennis E., et al., *Feminine Discrepancy Stress and Psychosocial Maladjustment Among Adolescent Girls*, 49 Child Psychiatry Hum Dev. 176 (2018), <https://doi.org/10.1007/s10578-017-0739-7> 18, 19
- Sinclair, Andrew, *World Athletics' Mandatory Genetic Test for Women Athletes is Misguided. I Should Know – I Discovered the Relevant Gene in 1990*, Conversation (Aug. 3, 2025), <https://perma.cc/W69X-4BGB> 30
- Tucker, Emma, *Utah School District Takes Steps to Protect Teen After School Board Member Appears to Question Girl's Gender on Social Media*, CNN (Feb. 8, 2024), <https://www.cnn.com/2024/02/08/us/natalie-cline-controversy-student-gender-social-media-posts> 13, 17
- Tucker, Ross & Malcolm Collins, *The Science and Management of Sex Verification in Sport*, 21 S. Afr. J. Sports Med. 147 (2009)..... 7
- Vertinsky, Patricia & Gwendolyn Captain, *More Myth than History: American Culture and Representations of the Black Female's Athletic Ability*, 25 J. Sport Hist. 532 (1998)..... 14
- Wackwitz, Laura A., *Sex Testing in International Women's Athletics: A History of Silence*, 5 Women Sport & Phys. Activity J. 51 (1996)..... 9

Walker, Austin, <i>Clerical Error Forces Queen Creek Biological Boy onto Girls' Basketball Team</i> , AZ Family (Oct. 17, 2025), https://perma.cc/6DNV-ATFA	28
Waters, Michael, <i>The Other Olympians</i> (2024).....	7
<i>What Is Intersex?</i> , InterACT (Nov. 5, 2025), https://perma.cc/P6P8-4JRK ;	26, 27
<i>When Is a Woman Actually a Woman? Today's Chief Worry Among Athletic Officials</i> , Look Magazine, Feb. 1937, https://perma.cc/8UAV-NU9G	6, 7
Women's Sports Foundation, <i>Chasing Equity</i> (2000), https://perma.cc/F7G7-XKUA	20
World Health Org., <i>Polycystic Ovary Syndrome</i> (Feb. 7, 2025), https://perma.cc/9JAZ-FASA	31

INTERESTS OF AMICI CURIAE¹

Amici are organizations dedicated to advocating for the civil rights of women and girls.²

Public Counsel is a nonprofit public interest law firm dedicated to advancing civil rights. It champions jurisprudence that defends the rights of all girls and women, including protections for those who do not conform to sex stereotypes, and that ensures strong legal protections against sex discrimination. Public Counsel is committed to gender equity for all in education and athletics. Public Counsel and the additional fifteen *amici* submit this brief to urge the Court to uphold longstanding precedents that safeguard fair opportunities for girls and women to benefit from educational and athletic programs.

Amici submit this brief to explain how H.B. 500 and H.B. 3293 will harm all girls and women by exposing them to scrutiny and harassment based on sex stereotypes. These urgent considerations, as well as administrative infeasibility, support respondents' positions and warrant affirmance of the judgments below.

SUMMARY OF ARGUMENT

Laws that exclude transgender athletes from women's sports harm all girls and women. These cases require the Court to consider the inevitable harm that

¹ Pursuant to Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *amici* or their counsel has made a monetary contribution intended to fund the preparation or submission of this brief.

² See Appendix for the complete list of *amici*.

H.B. 500 and H.B. 3293 wreak by pushing schools to verify the sex of girls and women as a condition of participating in sports. The Court should affirm that states have no business invading the privacy of girls and women or policing their sex.

Idaho’s H.B. 500 and West Virginia’s H.B. 3293 embolden schools to scrutinize girls’ and women’s bodies and appearance based on sex stereotypes. In seeking to exclude transgender girls and women from sports, H.B. 500 and H.B. 3293 require schools to categorize students based on “biological sex.” *See* Idaho Code § 33-6203(1)–(2) (2025)³; W. Va. Code § 18-2-25d(b)–(c). In Idaho, anyone has a right to “dispute” a student’s sex under the statute, effectively forcing the student to “verify [her] biological sex” through physical examinations of her “reproductive anatomy,” genetic testing, or hormone testing. *See* Idaho Code § 33-6203(3). West Virginia limits participation on sports teams designated as “female,” “based solely on the individual’s reproductive biology and genetics at birth.” *See* W. Va. Code § 18-2-25d(b)–(c).

To comply with these laws, schools and athletic associations must identify and exclude transgender athletes from participating in school sports. In identifying transgender athletes, schools, athletic associations, competitors, and the broader community will inevitably rely on sex stereotypes—singling out girls with short hair or an athletic build, or those who are simply “too good” at their sport. This has already happened across the country. In Utah, for instance, a

³ All state statutes cited within this brief are to the most updated Westlaw 2025 versions. The parenthetical year references have therefore been omitted.

leading scorer on her high school basketball team was publicly questioned about her sex because of her appearance and faced a firestorm of online harassment.

Under H.B. 500 and H.B. 3293, all girls and women will be vulnerable to this kind of scrutiny in schools. Those targeted for investigation will be questioned and subjected to invasive sex “verification” procedures—including potential genital exams. These laws threaten to humiliate girls and subject them to harassment. Because H.B. 500 and H.B. 3293 apply only to sports teams designated as “female,” girls and women are the only ones subject to these incursions on their privacy and dignity—boys and men are not.

H.B. 500 and H.B. 3293 thus enlist schools, athletic associations, competitors, and community members to surveil girl and women athletes for any perceived masculinity. Idaho will subject girls to sex verification testing. *See* Idaho Code § 33-6203(3). Even in West Virginia, which does not specify a verification procedure, schools will be forced to resort to invasive tests—or risk litigation. *See* W. Va. Code § 18-2-25d(c)–(d). Regardless of whether the law specifies *how* states should determine sex, states are tasked with scrutinizing girls in ways that are bound to harm them. Within such a prying environment, girls may feel pressured to conform to traditional ideas of femininity to avoid suspicion—or avoid athletics altogether.

These harms refute the states’ assertion that the laws are necessary to protect girls and women—the laws harm the very girls they purport to protect. By exposing all girl and women athletes to investigation, harassment, and invasive testing, these laws will

deter participation in sports, threatening to impede progress towards athletic equality. And by encouraging public scrutiny based on how girls look or act, these laws revive the archaic sex stereotypes that Title IX sought to counteract. As the plurality stated in *Frontiero v. Richardson*, 411 U.S. 677, 684 (1973) (footnote omitted): “There can be no doubt that our Nation has had a long and unfortunate history of sex discrimination. Traditionally, such discrimination was rationalized by an attitude of ‘romantic paternalism’ which, in practical effect, put women, not on a pedestal, but in a cage.”

H.B. 500 and H.B. 3239 should be rejected. School sports should be spaces for healthy competition, growth, and learning—not sites of fear, suppression, and harassment. These laws threaten the privacy and dignity of girls and women and undermine their participation in sports. This Court should protect girls and women in schools and affirm the judgments below.

ARGUMENT

As organizations dedicated to empowering girls and women, *amici* are deeply concerned about the inevitable harm these laws will cause to all girls and women who seek to participate in athletics. Below, *amici* highlight stories of girls and women athletes who have faced scrutiny and harassment about their sex. As these stories illustrate, when schools, associations, coaches, teammates, opponents, parents, and even bystanders are empowered to scrutinize girls based on their appearance and athletic performance, girls will suffer public humiliation, intrusions on their privacy, and even invasive medical tests. And as all girls feel pressure to conform to sex stereotypes, both

their overall health and participation in sports will be adversely impacted. Ultimately, H.B. 500 and H.B. 3293 will harm not only transgender girls—all girls and women stand to suffer.

I. H.B. 500 and H.B. 3293 perpetuate a long history of excluding women from sports.

Laws like H.B. 500 and H.B. 3293 purport to counter a new and unique threat to women’s sports. But excluding women for their perceived masculinity is nothing new. Just as today’s laws excluding transgender athletes seek to “protect” women from transgender athletes, girls and women were historically excluded from sports supposedly for their own good. And just as today’s laws require schools and associations⁴ to decide who is “female,” sports authorities introduced sex testing⁵ in the twentieth century to purportedly protect “real” women from perceived threats from “gender frauds”—to the detriment of all women. Threats to girls’ and women’s participation in sports persist, but the inclusion of transgender students is not one of them.

In the nineteenth and early twentieth centuries, many believed that athletics presented a threat to

⁴ “Athletic associations” or “associations” refer to interscholastic athletic associations, as well as private athletic associations organizing club sports.

⁵ “Sex testing” or “sex verification” refer to sports authorities’ use of a range of practices to determine an athlete’s sex, including but not limited to physical examinations, genetic testing, and testing for hormone levels.

“[t]he female physique and disposition.”⁶ As major sports began introducing women’s events, sports authorities sought to enforce stereotypical notions of femininity. In the 1940s, for instance, the All-American Girls Professional Baseball League rules dictated that women athletes should “ALWAYS appear in feminine attire” off the field.⁷ The league also provided “beauty training” to players, and those “who flagrantly violated the feminin[e] image league administrators strove to project, were summarily dismissed[.]”⁸

Women athletes who did not conform to stereotypes about how women should look and behave were often regarded with suspicion. When American Olympic runner Helen Stephens appeared in a February 1937 issue of *Look* magazine, the article did not focus on her Olympic gold medals.⁹ Instead, the article, entitled *When Is a Woman Actually a Woman? . . . Today’s Chief Worry Among Athletic Officials*, ran a photo of Stephens mid-run, highlighting her “strapping figure,” and asked

⁶ Shayna Medley, *(Mis)interpreting Title IX: How Opponents of Transgender Equality Are Twisting the Meaning of Sex Discrimination in School Sports*, 45 N.Y.U. Rev. L. & Soc. Change 673, 681 (2022).

⁷ Merrie A. Fidler, *The Origins and History of the All-American Girls Professional Baseball League* 59 (2006).

⁸ *Id.* at 60, 62.

⁹ Vanessa Heggie, *Testing Sex and Gender in Sports; Reinventing, Reimagining and Reconstructing Histories*, 34 Endeavour 157, 158 (2010).

readers, “What Do You Think? Is This a Man Or a Woman?”¹⁰

To protect “real[,] feminine . . . girls” from these purported “men masquerading as women,”¹¹ sports authorities implemented sex testing to force would-be participants to “prove” that they were women.¹² In the 1940s, sports authorities began to require women athletes to present identity cards and “certificates of femininity.”¹³ For example, the International Olympic Committee (IOC) and the International Association of Athletics Federations (now known as World Athletics) required “all female athletes who wish[ed] to register for an event to provide a physician letter attesting to their sex.”¹⁴ In the 1960s, the IOC forced female athletes to strip naked in front of a committee of doctors and “experts” to prove that they were, in fact, women, in what became known as “nude parades.”¹⁵

¹⁰ *Id.* at 161; *When Is a Woman Actually a Woman? . . . Today’s Chief Worry Among Athletic Officials*, *Look Magazine*, Feb. 1937, at 38–39, <https://perma.cc/8UAV-NU9G>.

¹¹ Michael Waters, *The Other Olympians* 170 (2024) (quoting a Canadian coach and newspaper columnist bemoaning that “real feminine Canadian girls [were] forced to compete against that sort of a mannish athlete”); Human Rights Watch, *“They’re Chasing Us Away from Sport”: Human Rights Violations in Sex Testing of Elite Women Athletes* 19 (Dec. 2020), <https://perma.cc/LK6L-R5QB>.

¹² Human Rights Watch, *supra* note 11, at 19.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 20; Ross Tucker & Malcolm Collins, *The Science and Management of Sex Verification in Sport*, 21 *S. Afr. J. Sports Med.* 147, 148 (2009).

At the 1966 British Empire and Commonwealth Games, women athletes were forced to endure required, on-site genital and physical examinations.¹⁶

Men have never been subjected to analogous scrutiny or sex testing.¹⁷ From the beginning, sex testing was motivated by paternalistic impulses to protect “real women”—who were paradoxically deemed ill-suited to sport—from competitors perceived as insufficiently feminine.¹⁸

Though the “nude parades” were eventually abandoned due to widespread opposition from athletes, sex testing persisted in new forms.¹⁹ In 1985, 24-year-old Spanish hurdler María José Martínez-Patiño, who was born and raised as a woman, was barred from participating in the World Student Games in Japan based on a chromosomal test.²⁰ Her medals and records were revoked.²¹ She appealed and successfully overturned the ruling, but she was vilified in the press.²² Maria later described her “sense of

¹⁶ Human Rights Watch, *supra* note 11, at 20.

¹⁷ *Id.* at 19.

¹⁸ *Id.*; see Jordan Buckwald, *Outrunning Bias: Unmasking the Justifications for Excluding Non-Binary Athletes in Elite Sport*, 44 Harv. J. L. & Gender 1, 14–16 (2021) (discussing how the first sex testing requirements were implemented as “female athleticism challenged traditional (Western) notions of femininity” and how “a rising discomfort relating to female athleticism” spurred systemic sex testing).

¹⁹ Human Rights Watch, *supra* note 11, at 20.

²⁰ Heggie, *supra* note 9, at 160.

²¹ *Id.*

²² *Id.*

incredible shame and violation,” as her sex and athletic achievements were questioned while “the whole world was watching.”²³

After decades of exclusion and scrutiny, a critical stride was made in 1972: Title IX of the Education Amendments, 20 U.S.C. § 1681 *et seq.*, was passed to rectify women’s historical exclusion from educational opportunities, including in school sports. Generations of girls and women have since reaped the benefits of Title IX. But new efforts to limit participation in girls’ and women’s sports threaten these hard-won advances.

Today’s laws excluding transgender girls, like H.B. 500 and H.B. 3293, revive efforts to enforce archaic sex stereotypes by policing girls’ and women’s participation in sports. As before, states seek to exclude women they perceive as “too masculine” or “too strong” from sports, under the guise of protecting women. And as before, these efforts reflect paternalistic myths that women are too fragile to participate in sports.

This latest incarnation is no less harmful. As history has shown, policies restricting access to women’s sports harm all girls and women. Indeed, they have already done so.

II. H.B. 500 and H.B. 3293 harm—rather than protect—girls and women.

Although H.B. 500 and H.B. 3293 primarily target transgender athletes, enforcement of these laws will

²³ Laura A. Wackwitz, *Sex Testing in International Women’s Athletics: A History of Silence*, 5 *Women Sport & Phys. Activity J.* 51, 51 (1996).

subject all girls and women to scrutiny, harassment, and intrusive practices aimed at “verifying” their sex. H.B. 500 and H.B. 3293 task schools and athletic associations with ensuring that athletic teams are segregated based on “biological sex.” *See* W. Va. Code § 18-2-25d(b)(1); Idaho Code § 33-6203(1). But as a practical matter, these laws also invite others—including fellow competitors, parents, and community members—to take it upon themselves to identify athletes they believe to be violating these laws. *See* Idaho Code § 33-6203(3) (providing that anyone can “dispute” a student’s sex); W. Va. Code § 18-2-25d(d)(1) (providing that any student “aggrieved” by a failure to enforce the law may sue). In their search for transgender athletes, schools, associations, competitors, parents, and community members will inevitably fall back on sex stereotypes. Girls and women will be targeted for invasive investigation, threatening their safety and their mental and physical health.

In particular, girls and women who excel in their sport or do not fit stereotypical notions of femininity will face public scrutiny, harassment, and ridicule. And all girls and women will face pressure to conform to stereotypes to escape intrusive questioning about their sex or to step away from sports altogether. Student athletes may also be subjected to sex “verification” testing—a host of coercive and often invasive practices. The Court should reject these intrusions into the lives of girls and women.

A. The laws embolden schools to target girls and women athletes based on sex stereotypes.

By pushing schools to identify and exclude any girl or woman who could possibly be transgender, H.B. 500 and H.B. 3293 all but guarantee that countless girls and women will be caught in the dragnet.

In practice, H.B. 500 and H.B. 3293 encourage schools, athletic associations, competitors, and community members to question girls based on their appearance or athletic performance. H.B. 500 authorizes anyone, including fellow competitors or their parents, to “dispute” a student’s sex. Idaho Code § 33-6203(3). Any dispute, no matter how flimsy, can expose a student to harassment and intrusive sex verification methods. *See* Sections II.B–C., *infra*. Similarly, H.B. 3293 permits any student “aggrieved by a violation” to bring an action against a county board of education or state institution of higher education to enforce the law. W. Va. Code § 18-2-25d(d)(1). This provision encourages schools to target and exclude a broad range of athletes to avoid legal action from disgruntled competitors.

These disputes have already begun. In Utah, which enacted a law similar to H.B. 500 and H.B. 3293, the parents of the second- and third-place winners in a track meet filed a complaint “questioning whether the winner was assigned female at birth” after a high school girl won first place “by a wide

margin.”²⁴ See Utah Code Ann. §§ 53G-6-901 and 53G-6-902. Without the winning student’s or her parents’ permission or knowledge, the Utah High School Activities Association (UHSAA), then investigated the girl’s sex.²⁵ Even after the high school “reviewed her high school record and determined she was registered as female[,]” UHSAA instructed the high school to dig further “to double check.”²⁶ School officials called the girl’s elementary and middle schools to look at her file and determined “she’d always been a female.”²⁷ This was not an isolated incident: UHSAA admitted that it routinely investigates athletes who don’t “look feminine enough” in response to complaints.²⁸

In another instance in Utah, the father of a basketball player on the girl’s junior varsity team publicly confronted the principals of both competing teams at a game, demanding that a 17-year-old girl be excluded because he believed she was transgender.²⁹

²⁴ Associated Press, *Utah School Secretly Investigated If Winning Female Student Athlete is Transgender*, Guardian (Aug. 18, 2022), <https://perma.cc/RM9F-G4WF>; Zoe Christen Jones, *Utah Investigates Winning Student-Athlete’s Gender After Parents of Second- and Third-Place Finishers Submit Complaints*, CBS News (Aug. 18, 2022), <https://perma.cc/S865-EB24>.

²⁵ Associated Press, *supra* note 24.

²⁶ See *id.*

²⁷ See *id.*

²⁸ See *id.*

²⁹ Robert Gehrke, *An Angry Utah Parent Accused a High School Basketball Player of Being Transgender. Will it Keep Happening?*, Salt Lake Trib. (Jan. 27, 2024), <https://perma.cc/97MW-GW2P>.

The parent yelled, “I wasn’t born yesterday, I know that’s a boy and you better be able to prove yourself because I am going to the top.”³⁰

As these examples demonstrate, efforts to identify and exclude transgender athletes inevitably target girls and women based on their appearance or demeanor: for having short hair, wearing baggy or more “masculine” clothing, or having a muscular build.³¹ In singling girls out for investigation, schools and associations will rely on the kinds of sex stereotypes that the Court has long recognized as impermissible sex discrimination. *See, e.g., Price Waterhouse v. Hopkins*, 490 U.S. 228, 235, 256 (1989) (finding that an employer’s suggestion that a female employee “walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry” constituted sex discrimination); *Bostock v. Clayton Cnty.*, 590 U.S. 644, 659 (2020) (“[A]n employer who fires a woman, Hannah, because she is insufficiently feminine [is liable under Title VII.]”); *see also, e.g.*, 29 C.F.R. § 38.7(d)(1) (prohibiting employment “[d]iscrimination on the basis of sex stereotypes, . . . includ[ing] failure

³⁰ *See id.*

³¹ *See, e.g.*, Associated Press, *supra* note 24; Emma Tucker, *Utah School District Takes Steps to Protect Teen After School Board Member Appears to Question Girl’s Gender on Social Media*, CNN (Feb. 8, 2024), <https://www.cnn.com/2024/02/08/us/natalie-cline-controversy-student-gender-social-media-posts>; Brooke Baitinger, *Adults Interrupt Track Meet to Accuse 9-Year-Old Girl of Being Transgender, Parents Say*, Sacramento Bee (June 14, 2023), <https://perma.cc/G2MC-HXP8>.

to comply with gender norms and expectations for dress, appearance and/or behavior, including wearing jewelry, make-up, high-heeled shoes, suits, or neckties”).

Girls are also singled out for investigation simply for being “too good” at their sports. Laws like H.B. 500 and H.B. 3293 reinvigorate old suspicions about women who excel at sports.³² Just as elite women athletes like Helen Stephens were labeled “men masquerading as women,” *see* Part I, *supra*, today’s high-performing girl athletes risk having their sex questioned just for succeeding in their athletic pursuits. These laws undo decades of progress under Title IX that have allowed girls and women to participate and excel in sports.

Black and brown girls will bear the brunt of the scrutiny encouraged by H.B. 500 and H.B. 3293. Because Black girls and women are more likely to be perceived as “masculine” or “strong,”³³ they are especially likely to face scrutiny under laws that restrict eligibility for girls’ and women’s sports. One landmark study, which presented participants with short video clips of Black women and men and white women and men, found that participants were more

³² *See* Buckwald, *supra* note 18, at 19 (“[F]emale athletes who display superior athleticism frequently face accusations that they are not ‘real women’ or not ‘real biological females.’”).

³³ Patricia Vertinsky & Gwendolyn Captain, *More Myth than History: American Culture and Representations of the Black Female’s Athletic Ability*, 25 J. Sport Hist. 532, 544 (1998) (discussing how conceptions of Black women as “masculine” stemmed from justifications about their “natural suitability” for slavery”).

likely to misidentify Black women as men—more than they miscategorized any other group.³⁴ Black and brown women athletes—from tennis legend Serena Williams to Women’s National Basketball Association player Brittney Griner—routinely face rumors that they are “not women” at all.³⁵ Under H.B. 500 and H.B. 3293, Black girls on their school soccer team or high school track and field team, for instance, risk being subjected to the same increased level of scrutiny.

H.B. 500 and H.B. 3293 do not protect girls and women; instead, they leave them vulnerable to having their sex questioned merely for failing to comport with stereotypes that this Court has held should be consigned to the dustbin of history. *See Frontiero v. Richardson*, 411 U.S. 677, 684 (1973).

B. All girls and women will face public scrutiny and harassment, harming their mental health.

Once they are stereotyped and identified for investigation, girls and women risk public scrutiny and outright threats and harassment, simply for wanting to participate in sports. At their best, sports offer students a chance to build confidence. But under

³⁴ *See, e.g.*, Phillip Atiba Goff et al., “Ain’t I a Woman?”: *Towards an Intersectional Approach to Person Perception and Group-Based Harms*, 59 *Sex Roles* 392, 399 (2008).

³⁵ *See, e.g.*, *Queen Serena: The Power and the Glory*, *Harper’s Bazaar* (May 30, 2018) <https://perma.cc/MC6T-8DU8> (Serena reflecting that scrutiny about her gender and body has been hard); Sarah Lyall, *Brittney Griner, in Her Own Words*, *N.Y. Times* (May 7, 2024), <https://www.nytimes.com/2024/05/07/books/review/brittney-griner-coming-home.html> (Brittney discussing harassment due to “her height, her deep voice and her flat chest”).

H.B. 500 and H.B. 3293, sports will now be sites for public scrutiny of adolescent girls' bodies. During the Senate Education Committee debate over H.B. 3293, doctors testified that challenging a girl's eligibility to participate in sports could be "embarrassing," "humiliating," and "psychologically devastating." 24-43 J.A. 280–81, 288. H.B. 500 and H.B. 3293 thus create a dangerous environment for girls that is detrimental to their mental and physical health.

Girls—some as young as elementary school aged—have already experienced harassment because of the intense public focus on transgender athletes. As a 9-year-old girl in British Columbia went up to take her turn in the track and field finals, she was publicly harassed by the grandfather of another competitor. He yelled: "hey, this is supposed to be a girls' event, and why are you letting boys compete?" and demanded the girl's mother prove her daughter's sex.³⁶ The girl, who had a pixie haircut, was brought to tears, shaken, and unable to focus on the rest of the event.³⁷ She later told her parents she thought she "would have placed if that man hadn't shouted at [her]."³⁸ Harassment incidents like this will only increase if H.B. 500 and H.B. 3293 take effect.

Public scrutiny can also make girls a target for widespread online harassment. When a Utah school board member questioned the sex of a short-haired girl who played on her high school basketball team, the girl quickly became the target of a "firestorm" of

³⁶ Baitinger, *supra* note 31.

³⁷ *Id.*

³⁸ *See id.*

cyberbullying.³⁹ The girl, “a lead scorer on the basketball team, had already faced bullying from other students after she decided to cut her hair, with some shouting derogatory comments at her while she played, like, ‘Get that boy out of the game.’”⁴⁰

Because laws seeking to exclude transgender girls encourage—or in the case of Idaho’s H.B. 500, even enlist—competitors and community members to question girls about their sex, they give bad actors a tool to bully or harass students. In many cases, competitors or their family have taken advantage of these laws to question a successful athlete’s sex, leveraging gender “disputes” to cast doubt on accomplished competitors. Teammates and classmates can also use these laws to bully those who may not fit sex stereotypes.

For girls at the center of this harassment and questioning, the experience can be psychologically devastating.⁴¹ Having their sex publicly questioned

³⁹ Matt Lavietes, *Utah Official Faces Calls to Resign After Falsely Suggesting Teen Girl is Transgender*, NBC News (Feb. 8, 2024), <https://perma.cc/FF5E-YAHG>; Kiara Alfonseca, *Utah Official Falsely Suggests Teen Student Is Transgender, Now Faces Calls to Resign*, ABC News (Feb. 9, 2024), <https://perma.cc/TZY9-NVDF>.

⁴⁰ Jenny Gross, *Utah School Board Member Is Censured After Questioning Student’s Gender*, N.Y. Times (Feb. 16, 2024), <https://www.nytimes.com/2024/02/16/us/utah-natalie-cline-censored.html>; Tucker, *supra* note 30.

⁴¹ See Allegra R. Gordon, et al., *Gender Expression, Violence, and Bullying Victimization: Findings From Probability Samples of High School Students in 4 US School Districts*, 88 J. Sch. Health 306–314 (2018), <https://doi.org/10.1111/josh.12606> (concluding that those who do not conform to sex stereotypes face

has left girls “distraught[,] frustrated,”⁴² and “stress[ed],”⁴³ their confidence shattered.⁴⁴ One parent described the experience of their daughter being publicly scrutinized about her sex and bullied online for her appearance as “one of the most painful things the family had endured.”⁴⁵ Under H.B. 500 and H.B. 3293, this will be the harsh new reality girls and women consistently face.

Many girls already face harassment about their appearance and about whether they present as “feminine enough.”⁴⁶ Potential questioning about their sex will only exacerbate this harassment and existing “pressure to adhere to these gender role expectations.”⁴⁷ Girls perceived as not conforming to sex stereotypes are at a “high risk of bullying victimization, discrimination, and violence,”⁴⁸ and often experience stress and anxiety about their

greater risks of school-based victimization); Dennis E. Reidy, et al., *Feminine Discrepancy Stress and Psychosocial Maladjustment Among Adolescent Girls*, 49 *Child Psychiatry Hum Dev.* 176–186 (2018), <https://doi.org/10.1007/s10578-017-0739-7> (concluding that stress about not conforming to sex stereotypes can adversely impact children’s health).

⁴² Gross, *supra* note 40.

⁴³ Gehrke, *supra* note 29.

⁴⁴ Baitinger, *supra* note 31.

⁴⁵ Gross, *supra* note 40.

⁴⁶ See Gordon, et al., *supra* note 41.

⁴⁷ See Reidy, et al., *supra* note 41; *id.* (“A wealth of data suggest that there are social and even physical consequences for appearing gender discrepant.”).

⁴⁸ See Gordon, et al., *supra* note 41.

differences.⁴⁹ They also experience violence and miss school at higher rates,⁵⁰ leading to “adverse mental and physical health outcomes, including depression and suicidality[.]”⁵¹ Subjecting girls to scrutiny and harassment over their sex thus threatens serious harm to their mental and physical health.

Under H.B. 500 and H.B. 3293, all girls—athletes or not—will be vulnerable to questioning and harassment, heightening students’ stress and anxiety.⁵² Ultimately, laws like H.B. 500 and H.B. 3293 create a culture of surveillance restricting all girls’ self-expression—both within and beyond athletics. Faced with these pressures, girls and women will be deterred from participating in sports altogether, including some who may feel pushed to quit sports at an early age. By pushing girls and women out of sports, H.B. 500 and H.B. 3293 deprive them of key social and developmental benefits. Studies show that students who participate in school sports enjoy higher levels of academic performance, fewer discipline referrals, higher graduation rates, and eventually higher incomes and employment rates.⁵³

⁴⁹ *See id.*

⁵⁰ *See id.*

⁵¹ *Id.* Harassment due to perceived gender nonconformity impacts all children, regardless of their sexual orientation, as many heterosexual youth report gender nonconformity. *Id.*

⁵² Reidy, et al., *supra* note 41. Pressure to conform to gender roles “may also impact health risks for more gender conforming adolescents[.]” Gordon et al., *supra* note 41.

⁵³ Nat’l Fed. of State High Sch. Ass’ns, *The Case for High School Activities*, <https://perma.cc/LK6N-TX92> (last visited Oct.

Sports participation confers life-long health benefits as former student athletes are less likely to smoke cigarettes, use marijuana, or drink alcohol.⁵⁴ Schools and communities with inclusive athletic policies “report lower suicide, greater school safety, and higher grades” for all students, not just transgender students.⁵⁵ H.B. 500 and H.B. 3293 not only harm students’ mental health—they deprive girls and women of the social and developmental benefits of sports participation that Title IX sought to secure.

C. The laws subject girls and women to invasive and coercive sex “verification” policies.

H.B. 500 and H.B. 3293 direct schools to divide sports teams by “biological sex.” W. Va. Code § 18-2-25d(b)(1); Idaho Code § 33-6203(1). To enforce this division, Idaho specifies a process to “verify” a student’s sex in the case of a “dispute,” requiring a “routine sports physical examination relying only on one (1) or more of the following: the student’s reproductive anatomy, genetic makeup, or normal endogenously produced testosterone levels.” Idaho Code § 33-6203(3). Though West Virginia does not expressly provide for a sex verification process, H.B. 3293 permits schools and athletic associations to use sex verification in the event of a dispute. *See* W. Va.

15, 2025); Women’s Sports Foundation, *Chasing Equity*, 28–29 (2000), <https://perma.cc/F7G7-XKUA>.

⁵⁴ Nat’l Fed. of State High Sch. Ass’ns, *supra* note 53.

⁵⁵ Jacqueline Brant, *Sword or Shield? The Weaponization of Title IX Against Transgender Athletes*, 42 Minn. J. L. & Ineq. 91, 114–115 (2024).

Code § 18-2-25d(b)(1) (defining “[b]iological sex” as “based solely on the individual’s reproductive biology and genetics at birth”).⁵⁶

Because H.B. 500 and H.B. 3293 restrict access only to “teams or sports designated for females, women, or girls,” only girls and women must risk sex verification in order to join a sports team. Idaho Code § 33-6203(2); W. Va. Code § 18-2-25d(c)(2). Boys and men are exempt from these burdens.

Idaho and West Virginia are not outliers. At least twenty states with laws restricting transgender students’ athletic participation require medical examination or testing of students or permit schools and associations *carte blanche* to impose intrusive sex verification practices.⁵⁷

⁵⁶ H.B. 3293 initially included language requiring students to provide copies of their birth certificate reflecting their “sex at time of birth” or a “signed physician’s statement indicating the pupil’s sex,” *see* W. Va. Leg. Originating H.B. 3293 (Mar. 16, 2021), § 18-2-5c(a) & (e), <https://perma.cc/NJZ8-PJD6>, but the legislature ultimately removed this provision and added a private cause of action for “any” student “aggrieved” by a violation of H.B. 3293. *See* W. Va. Code § 18-2-25d(d).

⁵⁷ *See, e.g.*, Ky. Rev. Stat. Ann. § 156.070(2)(e) (requiring an “annual medical examination” for student athletes); Neb. Rev. Stat. § 79-3804(5) (requiring “a document signed by a doctor or signed under the authority of a doctor”); N.H. Rev. Stat. Ann. § 193:41(IV) (requiring, if original birth certificate is not available, “other evidence indicating the student’s sex at the time of birth”). Various statutes define “biological sex,” with reference to sex organs, chromosomes, and/or hormone levels, but do not specify how schools should verify it. *See* Kan. Stat. Ann. § 60-5602(a); N.D. Cent. Code § 15.1-39-01(2); Ga. Code Ann. § 20-3-15(3), (9); Ind. Code § 20-33-13-4(b); N.C. Gen. Stat. § 116-401(b); Utah Code Ann. § 53G-6-901(3); Wyo. Stat. Ann. § 21-25-

These laws expose girls—some as young as elementary school aged—to intrusive and medically unnecessary examinations and testing, including strip searches and blood tests. This Court has recognized that strip searches of schoolchildren are uniquely “embarrassing, frightening, and humiliating” in light of their “adolescent vulnerability.” *Safford Unified Sch. Dist. No. 1 v. Redding*, 557 U.S. 364, 374–75 (2009) (noting that such searches are “fairly understood as so degrading that a number of communities have decided that strip searches in schools are never reasonable and have banned them”). Requiring students to submit to a blood test constitutes “an invasion of bodily integrity [that] implicates an individual’s ‘most personal and deep-rooted expectations of privacy.’” *See Missouri v. McNeely*, 569 U.S. 141, 148 (2013); *see also Skinner v. Ry. Lab. Executives’ Ass’n*, 489 U.S. 602, 617 (1989) (recognizing a privacy interest in medical information that can be obtained through testing of bodily fluids).

H.B. 500 permits anyone, including fellow competitors, to “dispute” a student’s sex. Idaho Code § 33-6203(3). When this happens, H.B. 500 directs health care providers to “verify” the student’s “biological sex” by looking to “the student’s reproductive anatomy, genetic makeup, or normal endogenously produced testosterone levels.” *Id.* Although the statute describes this as a “routine

101(a)(iv). Other statutes do not define “biological sex.” *See* Ala. Code § 16-1-52; Ariz. Rev. Stat. Ann. § 15-120.02; Ark. Code Ann. § 6-1-107; Miss. Code Ann. § 37-97-1; Mont. Code Ann. § 20-7-1306; Ohio Rev. Code Ann. § 3313.5320; Tenn. Code Ann. § 49-6-310(a).

sports physical examination,” routine sports physicals do not include genital or pelvic examinations, genetic testing, or blood testing for hormone levels. 24-38 J.A. 295.⁵⁸ If strip searches exceed students’ reasonable expectations of privacy, so do genital examinations. *Safford*, 557 U.S. at 375.

In effect, an Idaho third grader who wishes to join her school soccer team could be forced to undergo an “embarrassing, frightening, and humiliating” genital examination, *Safford*, 557 U.S. at 374–75—echoing the “nude parades” of decades past—just because a stranger raised questions about her short hair or loose clothing. Her parents could be placed in the difficult position of authorizing a medically unnecessary blood test or ultrasound. Regardless of the results, her exclusion just for tests could feed rumors and become fodder for schoolyard taunts. *See* Section II.B, *supra*.

This risk is very real, especially for any girl who does not conform to sex stereotypes. Girls as young as nine have already been questioned for having short hair or for not appearing sufficiently “feminine.” *Id.* Students like Jane Doe, the respondent in *Hecox*, who have an athletic build and rarely wear skirts or dresses, face a difficult choice: conform to sex stereotypes or risk having their sex “disputed” and being subjected to invasive and medically unnecessary examinations. 24-38 J.A. 215.

H.B. 500 subjects girls, even those in elementary school, to sex verification requirements that have proved traumatic for even elite athletes. For example,

⁵⁸ As Respondent Jane Doe explained, she has “never had to endure blood tests, genetic tests, or genital tests in order to participate in sports.” 24-38 J.A. 215.

when speculation circulated about decorated middle-distance runner Caster Semenya’s “muscular build and deep voice,” Semenya “had no choice but to comply with” a battery of tests, including a genital examination and blood samples.⁵⁹ Confidential details of her medical examination were leaked to the press, fueling rampant speculation about her sex in the lead up to the 2009 World Championships.⁶⁰ She described the experience of millions scrutinizing her body and appearance as “the most profound and humiliating experience of [her] life.”⁶¹ When Annet Negesa, a middle-distance runner from Uganda, faced similar scrutiny, a team of doctors associated with World Athletics recommended that she undergo a medically unnecessary procedure to continue competing in women’s sports.⁶² She was told it was “a simple surgery—like an injection.”⁶³ But when she woke up, she found scars on her abdomen and discharge papers describing an invasive procedure removing internal organs.⁶⁴ Semenya and Negesa are not alone. In their efforts to enforce sex verification, sports authorities

⁵⁹ *Gender Test Reports Trigger Criticism from South Africa*, Wash. Post (Sept. 12, 2009), <https://www.washingtonpost.com/archive/sports/2009/09/12/gender-test-reports-trigger-criticism-from-s-africa/0dd7dd30-83ac-4cea-abf8-026be166df48/>; *Semenya v. Int’l Assoc. of Athletics Feds.*, 2018/O5794, 2018/O5798 ¶ 75 (Ct. Arb. Sport 2018).

⁶⁰ *Semenya*, *supra* note 59 at ¶ 74.

⁶¹ *Id.*

⁶² Human Rights Watch, *supra* note 11, at 1–2.

⁶³ *Id.* at 2.

⁶⁴ *Id.*

have subjected countless women athletes to invasive and medically unnecessary examinations and even life-changing procedures without informed consent.⁶⁵

H.B. 500 proposes to apply a grab-bag of sex testing requirements from elite athletics to elementary school soccer players, high school swimmers, and college runners, for instance. If these requirements proved demeaning and violating for adult athletes, they are doubly so for vulnerable adolescent girls. *See Safford*, 557 U.S. at 375 (noting that “adolescent vulnerability intensifies the patent intrusiveness” of being forced to disrobe). If elite athletes felt coerced to comply with invasive sex verification procedures,⁶⁶ girls hoping to participate on a team with their friends, build their self-esteem through competition, or even earn college scholarships are unlikely to fare better. And if the public scrutiny was “humiliating” for elite athletes accustomed to media attention,⁶⁷ such scrutiny is devastating for adolescents who are especially sensitive to the opinions of their peers. This level of intrusion and coercion has no place in schools.

Respondent Jane Doe articulates the concerns well: “I think it is unfair that my ability to compete on my high school soccer or track team—something I love to do and am hoping helps pave a way for me to attend college—could be taken away if I am not willing to undergo invasive tests.” 24-38 J.A. 216. Faced with the risk of sex “testing,” many girls and women, especially those who do not conform to sex stereotypes, may

⁶⁵ *Id.* at 49–67.

⁶⁶ *Semenya*, *supra* note 59, ¶ 75.

⁶⁷ *Id.* ¶ 74.

simply steer clear of sports altogether, absorbing the message that sports are not for them.

For many young athletes, requiring them to prove their sex to play will put sports out of their financial reach. These laws impose a significant financial burden on the families of challenged athletes. Medical examinations, hormone tests, or chromosomal tests that are not medically indicated are unlikely to be covered by insurance. Families of girls whose sex is disputed may be put in the position of either paying thousands of dollars for testing to prove their child's sex, or having their child forgo athletic participation.⁶⁸

H.B. 500 would shut intersex girls and women out of sports altogether. Laws like H.B. 500 assume that students can be readily divided into “male” and “female” categories based on “biological sex.” Idaho Code § 33-6201; W. Va. Code § 18-2-25d(b)(1). But intersex students’ “reproductive biology and genetics at birth” do not neatly align with either category. W. Va. Code § 18-2-25d(b)(1). Nearly two percent of babies born each year have natural variations in their reproductive anatomy, genetic makeup, or hormone levels which fall outside of “male” or “female” categories.⁶⁹ “Intersex” is an umbrella term for these

⁶⁸ Sex verification can cost up to \$10,000. *See* GLAAD, *Sex Verification Testing: What You Need to Know* (2025), <https://perma.cc/AH7C-TUEK> (estimating the cost of hormone level analysis at \$300–\$800, pelvic ultrasound or MRI at \$500–\$3,000, and chromosomal testing at \$1,000–\$2,500). These costs will likely be borne by athletes and their families. *See, e.g.*, Tenn. Code Ann. § 49-6-310(a).

⁶⁹ *See What Is Intersex?*, InterACT (Nov. 5, 2025), <https://perma.cc/P6P8-4JRK>; Michelle J.K. Osterman et al.,

variations. Intersex women may identify with the sex they were assigned at birth and that aligns with how they were raised, even if their bodies or genetics do not wholly align with typical “female” anatomy or genetics.⁷⁰

Even if intersex girls and women attempt to “prove” their place in women’s sports, they must undergo invasive sex “testing” to do so. Because many intersex adolescents are not aware they are intersex,⁷¹ sex verification requirements could force intersex girls to grapple with their status before they would otherwise learn. And if their sex is publicly questioned, intersex students could be “outed” to their family and community—at tremendous social cost.⁷²

Even when laws like H.B. 3293 do not explicitly require medical sex testing, they nonetheless subject girls to intrusive practices. Some school districts and athletics officials have already moved to impose sex

Births: Final Data for 2023, 74 Nat’l Vital Stats Reps. 1, 2 (Mar. 18, 2025), <https://perma.cc/BYF5-MLMG>. Research suggests that intersex variations are more common among female athletes. Julianna Photopoulos, *The Future of Sex in Elite Sport*, *Nature* (Mar. 31, 2021), <https://perma.cc/KD7Y-LXQA> (noting that female athletes in one track and field world championship were 140 times more likely to have one intersex variation than the general population).

⁷⁰ See *FAQ: Intersex, Gender, and LGBTQIA+*, InterACT (July 14, 2025), <https://perma.cc/MWN6-W63Y>.

⁷¹ See *What Is Intersex?*, *supra* note 69.

⁷² See InterACT, Comment Letter on Proposed Mandatory Civil Rights Data Collection 1–4 (Feb. 11, 2022), <https://perma.cc/VRJ5-VB94> (discussing how intersex students face harassment and bullying based on their sex characteristics).

verification, even in the absence of an explicit mandate to do so. For example, after Utah enacted a law excluding transgender athletes that did not expressly mandate sex testing, the UHSAA took it upon itself to investigate complaints about girls who didn't "look feminine enough" in an effort to preemptively comply with Utah's law.⁷³ Meanwhile, an Arizona school district recently demanded that a student undergo chromosomal testing, in the absence of any legal requirement to do so.⁷⁴

West Virginia could easily follow suit. Because H.B. 3293 imposes the stick of private enforcement, West Virginia school districts, colleges, universities, and athletic associations are even more incentivized to use every possible measure to identify transgender students, even if it means subjecting countless students to invasive sex testing. W. Va. Code § 18-2-25d(d). If these measures are permitted, there is nothing stopping states from requiring all girls and

⁷³ See Associated Press, *supra* note 24. Like H.B. 3293, Utah's law, prohibits "student[s] of the male sex," as "determined by an individual's genetics and anatomy at birth" from competing on a girls' or women's team, but it does not authorize a specific sex verification process. Utah Code Ann. §§ 53G-6-901(3) & 53G-6-902(1)(b). UHSAA believed it was acting in compliance with Utah state law. Associated Press, *supra* note 24.

⁷⁴ An Arizona school district directed an eighth-grade boy to obtain a chromosomal analysis to participate on the boys' basketball team. Due to a clerical error, the boy's birth certificate lists him as female. Austin Walker, *Clerical Error Forces Queen Creek Biological Boy onto Girls' Basketball Team*, AZ Family (Oct. 17, 2025), <https://perma.cc/6DNV-ATFA>. The district claims that state law requires them to do so, but Arizona's law does not restrict any student from participating on teams designated for boys. See Ariz. Rev. Stat. Ann. § 15-120.02(C).

women to undergo invasive sex testing as a condition of participation in sports. Girls in schools should not be subject to the kind of needless government intrusion that this Court has already recognized violates students' reasonable expectations of privacy. *See Safford*, 557 U.S. at 374–75; *McNeely*, 569 U.S. at 148.

III. H.B. 500 and H.B. 3293 force schools and athletic associations to implement unworkable and intrusive sex “verification” policies.

Idaho and West Virginia place schools and athletic associations between a rock and a hard place. If schools and associations investigate every disputed athlete, they must impose coercive and intrusive procedures on these athletes, sparing not even young girls. And even if they resort to intrusive and faulty tests, schools and associations risk becoming mired in intractable questions about the nature of “biological sex” that have stumped elite sports authorities. If, on the other hand, they fail to investigate every dispute—however flimsy—they risk facing state enforcement or lawsuits from the students' competitors.

Schools and athletic associations—as the history of sex “verification” in elite athletics demonstrates, Part I, *supra*—have no viable way of verifying students' sex. Even if schools and associations are inclined to implement sex testing despite its myriad harms, *see* Section II.C., *supra*, “biological sex” cannot be decisively determined by administering a simple test *en masse*. Take the experience of the International Volleyball Federation (FIVB): After an unproven allegation of a man competing, the FIVB adopted chromosomal testing for all athletes,

assuming it could confirm participants' sex through a quick cheek swab.⁷⁵ But for three athletes at the 1991 Women's Junior World Championship, the cheek swabs produced "inconclusive" results.⁷⁶ For two of the athletes, their results were found to be faulty only after they had already missed nearly three days of the tournament.⁷⁷

Contemporary genetic testing is no panacea. Some sports authorities, disillusioned by past failures, have moved to testing for the SRY gene, which is found on the Y chromosome, as a proxy for biological sex.⁷⁸ But experts—including the scientist who discovered the gene—warn that the SRY gene is not "a reliable proxy for determining biological sex."⁷⁹ Because "biological sex is much more complex, with chromosomal, gonadal (testis/ovary), hormonal and secondary sex characteristics all playing a role," *see* note 69, testing for a single gene cannot conclusively establish an individual's sex.⁸⁰ *See* 24-43 Pet'rs Br. 10 (noting that sex depends on a range of factors, including "chromosomes, hormone prevalence, and external and internal anatomy").

⁷⁵ Lindsay Parks Pieper, *Sex Testing in Volleyball*, 42 Int'l J. Hist. Sport 876, 877 (2025).

⁷⁶ *Id.* at 876.

⁷⁷ *Id.*

⁷⁸ Andrew Sinclair, *World Athletics' Mandatory Genetic Test for Women Athletes is Misguided. I Should Know – I Discovered the Relevant Gene in 1990*, Conversation (Aug. 3, 2025), <https://perma.cc/W69X-4BGB>.

⁷⁹ *Id.*

⁸⁰ *Id.*

Physical exams and hormone testing are even worse. Past efforts to exclude athletes based on physical examinations have erroneously excluded many women for having traits like small breasts.⁸¹ Similarly, using hormone levels can exclude women with common conditions, like polycystic ovary syndrome, which affects as many as 13 percent of women of reproductive age and causes higher testosterone levels.⁸²

Given such challenges, it is no surprise that even elite sports authorities have struggled to impose a workable sex verification regime, despite decades of trial and error.⁸³ *See* Part I, *supra*. A school district or association, marshalling far fewer resources, is unlikely to fare better.

Faced with such a quagmire, schools and associations may be tempted to relax enforcement. But these laws come with sharp teeth. For example, H.B. 3293 explicitly authorizes any student “aggrieved” by a violation of the section—that is, a failure to enforce the division of teams based on “biological sex”—to sue. W. Va. Code § 18-2-25d(d). Thus, H.B. 3293 effectively instructs West Virginia schools, colleges, and universities to determine a student’s “reproductive biology and genetics at birth” by whatever means necessary—or risk litigation. Similarly, H.B. 500’s sponsor warned that should schools fail to effectively

⁸¹ *See* Heggie, *supra* note 9 at 159–60.

⁸² World Health Org., *Polycystic Ovary Syndrome* (Feb. 7, 2025), <https://perma.cc/9JAZ-FASA> (noting that the condition can cause “an elevated blood level of testosterone”).

⁸³ *See generally* Photopoulos, *supra* note 69 (reviewing history of sex verification policies in elite athletics).

exclude transgender girls and women, “the parents of girls whose spots were taken by biological boys” could take legal action. 24-38 J.A. 108.

States like Idaho and West Virginia saddle schools and athletic associations with an impossible choice: take on the fraught task of investigating students’ biological sex—even through intrusive sex verification procedures—or face litigation. If schools decide to subject girls to invasive testing, they violate their students’ privacy and dignity. If they don’t verify strictly enough, they face private lawsuits under provisions like H.B. 3293. There is no workable way to implement these laws.

Faced with this double bind, schools and associations may resort to excluding any athlete whose status is disputed, barring countless girls and women from school sports and closing the doors that Title IX sought to open.

* * *

All girls are entitled to a fair opportunity to participate in sports. Laws like H.B. 500 and H.B. 3293 threaten all girls and women. They invite schools to scrutinize girls’ and women’s bodies, especially those who do not conform to archaic feminine stereotypes. They subject women to harassment and invasive sex testing—resulting in humiliation and violations of their privacy. These harms will deter girls and women from participating in sports—contrary to the aims of Title IX. The Court should protect the privacy, dignity, and wellbeing of all girls and women in school sports.

CONCLUSION

For the foregoing reasons, *amici curiae* respectfully request that this Court affirm the judgment of the United States Court of Appeals for the Ninth Circuit and the judgment of the United States Court of Appeals for the Fourth Circuit.

Respectfully submitted,

Lucy K. Walker
Ashlyn L. Hare
Clarice S. Tenorio
HUTCHINSON BLACK & COOK
921 Walnut Street, Suite 200
Boulder, CO 80302

Naomi R. Shatz
Inga Bernstein
Tess Halpern
ZALKIND DUNCAN & BERNSTEIN
2 Oliver Street, Suite 200
Boston, MA 02109

Tara Ford
Counsel of Record
Molly Mauck
Rachel Stein
Yi Li
Vanessa Rae Young
Elizabeth Graves-Meyerhoff
PUBLIC COUNSEL
610 S. Ardmore Avenue
Los Angeles, CA 90005
(213) 385-2977, ext. 188
tford@publiccounsel.org

November 17, 2025

APPENDIX

TABLE OF CONTENTS

List of Amici Curiae Advocates for Girls' and
Womens' Rights 1a

**LIST OF AMICI CURIAE
ADVOCATES FOR GIRLS' AND WOMEN'S
RIGHTS IN SUPPORT OF RESPONDENTS
Nos. 24-38, 24-43**

1. A Better Balance
 2. Alliance for Girls
 3. American Association of University Women
 4. Clearinghouse on Women's Issues
 5. Education Law Center Pennsylvania
 6. Equal Rights Advocates
 7. Feminist Majority Foundation
 8. Gender Justice
 9. GLSEN
 10. League of Women Voters
 11. National Organization for Women
Foundation
 12. Public Counsel
 13. Virginia Sexual and Domestic Violence
Action Alliance
 14. Women's Law Project
 15. Women Lawyers On Guard Inc.
 16. The Womxn Project
-