

Nos. 24-38, 24-43

IN THE
Supreme Court of the United States

BRADLEY LITTLE, IN HIS OFFICIAL CAPACITY AS
GOVERNOR OF THE STATE OF IDAHO, ET AL.,
Petitioners,

v.
LINDSAY HECOX, ET AL.,
Respondents.

STATE OF 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 FOR GLBTQ LEGAL ADVOCATES &
DEFENDERS AND THE NATIONAL CENTER FOR
LGBTQ RIGHTS AS *AMICI CURIAE* SUPPORTING
RESPONDENTS**

SAMBO (BO) DUL	BENJAMIN GASTEL
<i>Counsel of Record</i>	MEGAN KILLION
D. ANDREW GAONA	HERZFELD, SUETHOLZ,
AUSTIN C. YOST	GASTEL, LENISKI,
COPPERSMITH BROCKELMAN PLC	AND WALL PLLC
2800 N. Central Ave., Suite 1900	1920 Adelia St.
Phoenix, AZ 85004	Nashville, TN 37212
(602) 381-5486	(615) 800-6225
bdul@cblawyers.com	ben@hsglawgroup.com

(Additional counsel listed on inside cover)

SHANNON MINTER
AMY WHELAN
RACHEL BERG
NATIONAL CENTER FOR
LGBTQ RIGHTS
1401 21st Street, #11548
San Francisco, CA 95811
(415) 365-1320

CHRIS ERCHULL
ANGELA WU
GLBTQ LEGAL ADVOCATES
& DEFENDERS
18 Tremont Street, Suite 950
Boston, MA 02108
(617) 426-1350
cerchull@gladlaw.org

*Counsel for Amici Curiae GLBTQ Legal Advocates &
Defenders and National Center for LGBTQ Rights*

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INTEREST OF *AMICI CURIAE*

Amici curiae are GLBTQ Legal Advocates & Defenders and the National Center for GLBTQ Rights.¹ Through their representation of transgender student-athletes challenging categorical sports bans in multiple jurisdictions, *amici* have developed substantial expertise in the legal and factual issues presented here. *Amici* therefore submit this brief in support of Respondents.

GLBTQ Legal Advocates & Defenders (GLAD Law) is a legal rights organization that seeks equality for all persons under the law regardless of their sexual orientation, transgender status, or HIV status. Since 1978, GLAD Law has worked nationally to advance its mission through strategic litigation, public policy advocacy, and education. GLAD Law has an enduring interest in GLBTQ families and children, including GLBTQ students in public schools.

The National Center for GLBTQ Rights (NCLR) is a national non-profit legal organization dedicated to protecting and advancing the civil rights of lesbian, gay, bisexual, and transgender people and their families through litigation, public policy advocacy, and public education. Since its founding in 1977, NCLR has played a leading role in securing fair and equal treatment for GLBTQ people and their families in

¹ Pursuant to Sup. Ct. R. 37.6, *amici curiae* affirm that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No persons other than *amici curiae*, their members, or their counsel made a monetary contribution to the preparation or submission of this brief.

cases across the country involving constitutional and civil rights. NCLR has a particular interest in promoting equal opportunity for LGBTQ people in educational institutions through legislation, policy, and litigation.

SUMMARY OF ARGUMENT

These cases involve state laws that categorically ban all transgender girls from female sports teams in public schools because they are transgender, regardless of their age, physiology, medical treatment, or the nature of the sport or level of competition. Idaho Code §33-6203 (2024); W. Va. Code Ann. §18-2-25d (2021). As sex-based classifications, these bans require and fail heightened scrutiny because they sweep far more broadly than their stated objectives of promoting fair athletic opportunities and reducing injury risk. The bans cannot be constitutionally applied to transgender girls like Respondents who lack any athletic advantage over other girls. The Courts of Appeals for the Fourth and Ninth Circuits correctly enjoined enforcement of these bans.

Amici submit this brief to show that states across the country have adopted less restrictive, more tailored alternatives to categorical bans, including individualized eligibility assessments for transgender girls in school sports. These policies demonstrate workable alternatives that address fairness and safety concerns without improperly relying on transgender status alone as a proxy for athletic advantage. As these policies recognize, the mere fact that a girl is transgender does not indicate whether she has an athletic advantage over other girls. *Amici*

therefore respectfully ask this Court to affirm the decisions of the Fourth and Ninth Circuits.

ARGUMENT

I. Heightened scrutiny is the appropriate level of review for the sex-based classification at issue here, as the lower courts in these cases recognized.

This Court has established that “all gender-based classifications . . . warrant heightened scrutiny,” requiring the state to show “at least that the challenged classification serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives.” *United States v. Virginia*, 518 U.S. 515, 533, 555 (1996) (citation modified) [hereinafter *VMJ*].

Under heightened scrutiny, legislatures must justify sex-based classifications with an “exceedingly persuasive” rationale that “must not rely on overbroad generalizations about the different talents, capacities, or preferences of males and females.” *Id.* at 532–533.

The challenged bans define sex as fixed at birth to categorically prohibit all transgender girls from participating on any female teams. Idaho Code §33-6203(1); W. Va. Code Ann. §§18-2-25d(b), (c)(1). By drawing this expressly sex-based line, these bans constitute sex-based classifications that require heightened scrutiny, as the district and appellate courts in these cases correctly held. *See Hecox v. Little*, 479 F. Supp. 3d 930, 975 (D. Idaho 2020) (determining that “heightened scrutiny is appropriate” to review Idaho’s ban, pursuant to *Craig v. Boren*, 429 U.S. 190 (1976),

VMI, and Ninth Circuit case law); *Hecox v. Little*, 104 F.4th 1061, 1074 (9th Cir. 2024) (holding that heightened scrutiny applies to Idaho’s ban because it “certainly classifies on the basis of sex” and “also classifies based on transgender status, triggering heightened scrutiny on both grounds”); *B.P.J. v. W. Va. State Bd. of Educ.*, 649 F. Supp. 3d 220, 229 (S.D. W. Va. 2023) (finding “no debate” that heightened scrutiny applies because West Virginia’s ban “plainly separates student athletes based on sex”); *B.P.J. by Jackson v. W. Va. State Bd. of Educ.*, 98 F.4th 542, 557 (4th Cir. 2023) (agreeing with the district court that heightened scrutiny applies, due in part to the West Virginia ban’s “requirement that all teams be designated male, female, or co-ed”).

II. The bans cannot be constitutionally applied to Respondents because they categorically exclude these girls despite the absence of any athletic advantage.

Idaho, West Virginia, and other states claim their bans “protect[] women and girls” and promote “fair and safe athletic opportunities for women.” W. Va. Br. 40, 44; Idaho Br. 35. They justify these bans by citing statistics showing that “[o]n average, men are faster, stronger, bigger, more muscular, and have more explosive power than women.” Idaho Br. 2, 7–11; W. Va. Br. 28, 35. While fairness and safety in athletics are important, the categorical bans fail heightened scrutiny as applied to Respondents because these statistics do not apply to them. Medical evidence and factual findings from multiple district courts establish that Respondents—transgender girls who have the same level of circulating testosterone as other girls—

do not possess the physiological characteristics that create these average differences. Excluding these specific girls is therefore not “substantially related” to promoting fairness or reducing injury risk in girls’ sports.

A. The bans cannot be constitutionally applied to Respondents because the States’ statistical justification does not apply to transgender girls who have been treated with puberty blockers.

The district court’s findings in *Tirrell v. Edelblut*, 748 F. Supp. 3d 19 (D.N.H. 2024), demonstrate why categorical bans fail as applied to transgender girls like Respondents. There, the court enjoined New Hampshire’s ban as applied to two transgender girls, finding that excluding them from girls’ sports did “nothing to enhance fairness or safety in girls’ sports.” *Id.* at 41. Based on uncontested medical evidence, including testimony from a pediatric endocrinologist, the court explained:

When transgender girls and their parents seek treatment for gender dysphoria around the onset of puberty, providers may prescribe puberty-blocking medication to prevent the development of male physical characteristics. *Id.* at 26. A transgender girl prescribed such medication “will not experience male puberty and will not experience physical changes caused by testosterone, such as male muscular development, facial hair, or an Adam’s apple.” *Id.* Medical providers may then prescribe hormones to induce female puberty. A transgender girl receiving this treatment

“typically has the same levels of estrogen and testosterone as other girls and significantly lower testosterone than pubescent boys.” *Id.*

These findings demonstrate why the States’ statistical justification does not apply to transgender girls who have been treated with puberty blockers. “Before puberty, there are no significant differences in athletic performance between boys and girls.” *Id.* “After puberty, boys on average perform better than girls in most sports” due to “[d]isparities in testosterone production,” which “results in increased muscle mass and strength.” *Id.* But “[a] transgender girl who does not experience male puberty and who receives hormone therapy to induce female puberty will not have an athletic advantage over other girls as a result of being born with a male anatomy.” *Id.* Because Respondents have the same level of circulating testosterone as other girls, they do not possess the testosterone-driven physiological advantages that justify sex-separated athletics, which is what the district courts below concluded based on expert testimony. Applying these categorical bans to Respondents therefore cannot survive heightened scrutiny; the exclusion bears no substantial relation to fairness or safety when the excluded individuals lack any relevant athletic advantage.

Other federal courts have similarly found that transgender girls who have not experienced male puberty have no athletic advantage over other girls and pose no increased risk of injury. The Arizona district court concluded that “transgender girls, who have not experienced male puberty, play like girls” and found “no logical connection between prohibiting them from

playing on girls’ sports teams and the goals of preventing unfair competition in girls’ sports or protecting girls from being physically injured by boys.” *Doe v. Horne*, 683 F. Supp. 3d 950, 968 (D. Ariz. 2023), *aff’d*, 115 F.4th 1083 (9th Cir. 2024), *petition for cert. filed*, No. 24-449 (U.S. Oct. 24, 2024). Similarly, the Idaho district court found that transgender girls treated with puberty blockers and female hormone therapy “never experience the high levels of testosterone and accompanying physical changes associated with male puberty, and instead go through puberty with the same levels of hormones as other girls.” *Hecox*, 479 F. Supp. 3d at 980. These girls “develop typically female physiological characteristics, including muscle and bone structure, and do not have an ascertainable [athletic] advantage” over other girls. *Id.* The court therefore concluded that the categorical ban “has no relationship to ensuring equality and opportunities for female athletes in Idaho.” *Id.* at 982. As the Ninth Circuit observed, these bans impermissibly “ban[] transgender women’s participation not just in high school and college athletics, but elementary school and club sports,” sweeping far more broadly than any governmental interest could justify. *Hecox*, 104 F.4th at 1085.

The disconnect between the States’ interest in fairness and the transgender sports bans is underscored by the undisputed facts about how Respondents and similar girls live their daily lives at school. The West Virginia and Idaho sports bans are overbroad because they single out a small group of students who are recognized and integrated as girls in every aspect of school life, yet are categorically barred from girls’ athletics with no consideration of how their

inclusion would affect competitive fairness. See *B.P.J.*, 98 F.4th at 564 (plaintiff publicly lived as a girl since the third grade and obtained a state-issued birth certificate listing her sex as female, with her “family, teachers, and classmates” all knowing her as a girl); *Tirrell*, 748 F. Supp. 3d at 26–27 (girls’ soccer team was plaintiff’s “primary social outlet,” and school officials supported her participation on girls’ teams); *Horne*, 683 F. Supp. 3d at 959–960 (both plaintiffs had legally changed their names, obtained female gender markers on official documents, and lived openly as girls for years with the support of their schools and communities). While athletics may present distinct considerations from classroom inclusion, blanket exclusions like the statutes at issue here disregard the actual impact on fairness in sports—or the lack of impact—while also disregarding how students actually live.

In sum, the States’ reliance on statistics about average male athletic performance cannot justify excluding transgender girls like Respondents from school sports because their exclusion bears no substantial relation to the States’ stated goals of fairness and safety.

III. Less restrictive alternatives to categorical bans exist.

Categorical prohibitions like the challenged transgender sports bans cannot survive heightened scrutiny because less restrictive alternatives exist to advance Petitioners’ proffered objectives. Schools and athletic associations in several states for many years have assessed transgender students’ eligibility on an

individualized basis, demonstrating that such approaches are workable alternatives to categorical exclusion. Policies like these serve the states' competitive fairness objectives without categorically denying opportunities to all transgender girls based on a false assumption that being transgender is an accurate proxy for athletic advantage. The ready availability of these approaches shows that categorical bans are not sufficiently tailored to any important state interests.

In Illinois, for example, a transgender high school student who wishes to participate in sex-separated state athletic events or activities must seek approval from the Illinois High School Association.² The Association considers “[w]hether allowing eligibility would be inconsistent with concepts of fairness in competition or present a risk of injury to the participants,” and its ruling is “based on the individual circumstances presented and not based on preconceived notions or assumptions.”³ For a transgender girl to be eligible to play on a girls' team, the Association may consider whether the student lives as a girl in daily life, based on statements from the student and those who know her, and relevant medical information.⁴ Similarly, in Michigan, transgender girls' eligibility in

² Ill. High Sch. Ass'n, Handbook with Illustrations: 2025-26 School Term 125 (2025), <https://ihsa-assets-prod.nyc3.digitaloceanspaces.com/documents/download-center/Documents/2025-26-ihsa-handbook-20250722084546-9467.pdf> [https://perma.cc/78DW-C8FX].

³ *Id.* at 125–126.

⁴ *Id.*

Michigan High School Athletic Association tournaments is determined on a “case-by-case basis.”⁵

Other states have created statewide review boards specifically tasked with evaluating transgender students’ athletic eligibility on a case-by-case basis. For many years, Maine had a committee that reviewed transgender students’ requests to participate on sex-separated sports teams.⁶ The committee considered evidence like students’ prior athletic participation and documentation that the students lived in a sex different from their birth sex, with the goal of both “maximizing the opportunities for all students to participate in interscholastic activities and athletics” and “ensuring fair competition and adequate protection of student athletes.”⁷ From 2013 to

⁵ Mich. High Sch. Athletic Ass’n, 2023-2024 Handbook 123 (2023), <https://www.mhsaa.com/sites/default/files/Administrators/2024%20MHSAA%20Handbook%20Final%20-%20August%20Update.pdf> [<https://perma.cc/6WWE-F6WF>]; *see also* Hannah Dellinger, *Michigan Senate Democrats Won’t Consider a Trans Athlete Sports Ban. Will Trump Target the State?*, Chalkbeat (May 30, 2025), <https://www.chalkbeat.org/detroit/2025/05/30/michigan-senate-will-not-consider-trans-student-athlete-sports-ban-bills/> [<https://perma.cc/KW7X-BFYK>] (director of communications for the Michigan High School Athletic Association explaining that decisions are made “based on where in the transitioning process a student is at the time”).

⁶ Maine has since adopted a different policy that vests individual schools with “the sole authority” to determine transgender students’ eligibility to participate in statewide sex-separated activities. Me. Principals’ Ass’n, 2025-2026 Handbook 39–40 (2025), <https://mpaprof.org/wp-content/uploads/2025/07/MPA-Handbook.pdf> [<https://perma.cc/7TN9-U2F2>].

⁷ Me. Principals’ Ass’n, 2022-2023 Handbook 23–25 (2022), <https://mpaprof.org/wp-content/uploads/2022/10/handbook.pdf> [<https://perma.cc/D4SG-FX7F>].

2021, the Committee held hearings for fifty-six transgender students who wished to participate in high school athletics.⁸

The Utah Legislature established a state-level commission to evaluate transgender students' athletic eligibility on a case-by-case basis.⁹ Utah Code §53G-6-1003 (2025). The commission consists of medical professionals, a statistician, a representative of an athletic association, and an athletic trainer, and is responsible for establishing “a baseline range of physical characteristics for students participating in a specific gender-designated activity at a specific age[.]” *Id.* at (2)(a), (8)(a). The commission considers a transgender girl's eligibility at a non-public¹⁰ meeting where the student may submit information and the commission may request additional information that is “limited to the extent possible to protect the student's privacy.” §§53G-6-1004(2)(b), (2)(c). Based on the preponderance of the evidence, the commission then determines whether permitting the student to participate would “present a substantial safety risk

⁸ *In Opposition of LD 930: An Act to Allow Only Students of Female Gender to Participate in Women's and Girl's Scholastic Sport*, 131st Leg., 1st Spec. Sess. (Me. 2023) (statement of Michael Bisson, Assistant Exec. Dir., Me. Principals' Ass'n), <https://legislature.maine.gov/legis/bills/getTestimonyDoc.asp?id=178976> [<https://perma.cc/J5B4-NJEK>].

⁹ The Wyoming Legislature has enacted legislation to create a similar state-level review board, though the legislation has not gone into effect. Wyo. Code §§21-25-201-205 (2025).

¹⁰ The only individuals in attendance are the student, the student's parents, commission members and staff, and any witnesses corroborating the student's eligibility. §53G-6-1004(2)(d)(i).

... that is significantly greater than the inherent risks of the given activity,” or would “likely give the student a material competitive advantage[.]” *Id.* at (3)(a)(i).

Athletic associations continue to innovate new policies that maximize athletic opportunities for all girls while ensuring fairness in competition. For instance, at a recent California track and field meet, the state’s interscholastic federation implemented a “pilot entry process” that increased the number of non-transgender athletes who could qualify for the meet based on the number of transgender athletes who qualified.¹¹ After the long jump event, two student-athletes—including AB Hernandez, a transgender girl—were awarded first place.¹² The two winners shared a podium, high-fived, and embraced.¹³ In the high jump event, AB again shared the podium with other girls. One competitor said that the experience was “really fun,” and another reflected that the opportunity to compete with AB “gave me the medal that I

¹¹ Cal. Interscholastic Fed’n, *Statement Regarding 2025 CIF State Track and Field Championships* (May 27, 2025), https://www.cifstate.org/news/2025_tf_statement_5.27.25 [<https://perma.cc/7KFR-TCUY>].

¹² Orlando Mayorquín & Juliet Macur, *Trans Athlete in Political Storm Earns, and Shares, First Place in Event*, N.Y. Times (June 1, 2025), <https://www.nytimes.com/2025/06/01/us/trans-athlete-california-track-meet.html> [<https://perma.cc/2VQ5-SE7D>].

¹³ *Id.*

deserve” and “gave [AB] the medal that she deserves.”¹⁴

Schools, athletic associations, and state legislatures have for many years crafted policies that seek to balance fairness with maximal opportunity for all students. Sweeping categorical bans do the opposite and prevent schools and athletic associations from developing tailored policies that ensure that unlawful sex discrimination is not the basis for excluding individual students from opportunities in school sports.

CONCLUSION

For the foregoing reasons, this Court should affirm the decisions below.

¹⁴ KCRA 3, *Trans Athlete AB Hernandez Shares Podium After Wins at Track and Field Championships*, at 1:41 (YouTube, June 1, 2025), <https://youtu.be/0YGvGSUqn-4&t=101> [<https://perma.cc/F6G9-Y3BS>].

Respectfully submitted,

BENJAMIN GASTEL	SAMBO (BO) DUL
MEGAN KILLION	<i>Counsel of Record</i>
HERZFELD, SUETHOLZ,	D. ANDREW GAONA
GASTEL, LENISKI, AND	AUSTIN C. YOST
WALL PLLC	COPPERSMITH
1920 Adelia St.	BROCKELMAN PLC
Nashville, TN 37212	2800 N. Central Ave., Ste. 1900
(615) 800-6225	Phoenix, AZ 85004
ben@hsglawgroup.com	(602) 381-5486
	bdul@cblawyers.com
SHANNON MINTER	CHRIS ERCHULL
AMY WHELAN	ANGELA WU
RACHEL BERG	GLBTQ LEGAL ADVOCATES
NATIONAL CENTER FOR	& DEFENDERS
LGBTQ RIGHTS	18 Tremont Street, Ste. 950
1401 21st Street, #11548	Boston, MA 02108
San Francisco, CA 95811	(617) 426-1350
(415) 365-1320	cerchull@gladlaw.org

*Counsel for Amici Curiae GLBTQ Legal Advocates &
Defenders and National Center for LGBTQ Rights*