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.

STATE OF WEST VIRGINIA, ET AL.,
Petitioners,

v.

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

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

BRIEF OF MEMBERS OF CONGRESS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

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A complete list of the 9 U.S. Senators and the 121 Members of the House of Representatives participating as *amici curiae* is provided in the appendix. Among them are:

REP. HAKEEM JEFFRIES
House Democratic Leader

SEN. MAZIE K. HIRONO
Lead Senate Amicus *on Brief*

REP. BECCA BALINT
Lead House Amicus *on Brief*
Co-Chair, Congressional Equality Caucus

REP. TERESA LEGER FERNÁNDEZ
Co-Lead House Amicus *on Brief*
Chair, Democratic Women's Caucus

REP. KATHERINE M. CLARK
House Democratic Whip

REP. PETE AGUILAR
Chairman, House Democratic Caucus

REP. NANCY PELOSI
Speaker Emerita of the
House of Representatives

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SUMMARY OF THE ARGUMENT AND STATEMENT OF INTEREST OF *AMICI CURIAE*[1]

Amici are 9 United States Senators and 121 Members of the United States House of Representatives (together, "Members of Congress"). A complete list of *Amici* appears in the appendix of this brief.

As legislators themselves, the undersigned Members of Congress offer their perspective on why categorial bans are the improper tool to address participation in youth sports teams. *Amici* have an interest in protecting the privacy, safety, health, and rights of the American people, including students who are transgender and cisgender. Categorical bans—such as the bans in West Virginia and Idaho—undermine those protections and the ability of transgender students to be part of their school community.

Amici have differing views on what, if any, regulations are appropriate to govern participation in single-sex teams and programs. But *Amici* believe that categorical bans preventing transgender students from participating on sports teams consistent with their gender identity impose significant harm on all children—especially girls. On top of that, such categorical bans do not meet the standards this Court has put in place to assess discrimination based on sex—whether as a matter of Title IX or under the Equal Protection Clause. This Court should not permit states to legalize sex discrimination against children who merely

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[1] No counsel for any party authored this brief in whole or in part, and no person other than *Amici*, their counsel, and their members made a financial contribution to its preparation or submission.

want to play sports with their friends on teams matching their gender identity.

Amici respectfully urge the Court to rule for Respondents, Hecox and B.P.J.

ARGUMENT

I. Categorical bans harm all girls and women through harassment and policing of children's "reproductive biology."

Concerns with categorical bans are not just a parade of horribles—they reflect an unfortunate trend well underway.

Reports have already surfaced of girls—both transgender and cisgender—having their reproductive biology investigated by adult sporting officials. For example, a Utah high school athletics association secretly investigated a female student without telling her parents. THE GUARDIAN, "Utah school secretly investigated if winning female student athlete is transgender," (Aug. 18, 2022) https://perma.cc/F746-73AH. Parents of other students, who had lost to the athlete, had accused her of being transgender. *Ibid.* She was not transgender, and the Republican governor of Utah described the situation as "disturbing." *Ibid.* The same association had investigated other complaints received because "an athlete doesn't look feminine enough" and none of those allegations that the students were transgender were verified to be true. *Ibid.*

In another incident, a Utah state school board member falsely suggested in 2024 that a high school basketball athlete was transgender—subjecting her to "relentless harassment and bullying, including threats of violence." Jenny Gross, "Utah School Board

Member Is Censured After Questioning Student's Gender" THE NEW YORK TIMES (Feb. 16, 2024) https://perma.cc/54WF-SHUW. The girl's father reported that people were "putting pictures of other people's children on the internet and then allowing people to just bully a child." Kiara Alfonseca, "Utah official falsely suggests teen student is transgender, now faces calls to resign" ABC NEWS (Feb. 9, 2024) https://perma.cc/6V3H-3YYF. The school board member later admitted that she had merely speculated that the student was transgender because of her "larger physical build." *Ibid.* The admission shows how these bans lead to the scrutinization of all girls' bodies.

In Florida, in yet another incident, a school investigated a transgender student's participation in girls' sports. Investigators repeatedly asked other individuals—including children—to describe how the student appeared in various stages of undress. As the Washington Post reported, officers "pushed multiple adults to describe her physically, and they asked three girls on the volleyball team if they'd ever seen [the child] undressed." Casey Parks, "Her trans daughter made the volleyball team. Then an armed officer showed up." THE WASHINGTON POST (Sept. 28, 2024) https://perma.cc/ZM58-ULV5. Going further than asking inappropriate questions to children, investigators also pressed a guidance counsellor to provide information on the student that the counselor believed might break the law to provide. *Ibid.*

All parents should be concerned by the idea that under these laws a school may investigate their child's physical attributes and "reproductive biology." No

child should need to be scrutinized as they undress in order to participate in a sport.

Amici fear that these deeply concerning incidents will only multiply if categorical bans are allowed to stand.

II. Categorical bans undermine the ability of transgender students to participate in their school community and are not substantially related to an important government interest.

This Court has long recognized that, under the Equal Protection Clause, sex classification cannot be cause "for denigration of the members of either sex or for artificial constraints on an individual's opportunity." *United States* v. *Virginia*, 518 U.S. 515, 533 (1996). Under established precedent, governments "who seek to defend gender-based government action must demonstrate an 'exceedingly persuasive justification' for that action." *Id.* 531. That requires a showing "at least that the classification serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives." *Id.* 524 (quotation omitted).

Categorical bans, such as proposed federal legislation or the laws at issue here, cannot meet that standard, nor even rational basis review.

Several *Amici* heard directly from transgender girls who would have been impacted by a federal categorical ban on transgender students participating in school sports consistent with their gender identity. These girls shared that they participate in school sports for the same reasons as many children do: to

be part of a community, spend time with their friends, learn sportsmanship, and challenge themselves.

For example, members had the opportunity to hear multiple times from Rebekah, a transgender girl who was then a 16-year-old. Anyone can hear some of her statements, which have been preserved on YouTube.[2] On the steps of the Capitol, she explained that sports gave her "confidence, strength, and a place to belong." It taught her "grit, determination, and learning to work with others towards a common goal." *Id.* She had already been living as her authentic self for eight years when she started playing field hockey and "fell in love." See *supra* n. 2. As she put it "It's fun, full of speed and excitement and getting to hit a ball with a stick—who doesn't love that?" *Ibid.*

Rebekah explained the tremendous benefit she received from participating in youth sports. Playing field hockey was the "hardest and most rewarding thing" she did and provided her "confidence, strength and a place to belong." See *supra* n. 2. She found community in the team. And she learned the value of hard work, perseverance, grit, determination, and cooperation. Sports are one of the most "American experiences in any childhood," Rebekah explained. *Ibid.* A categorical sports ban would have alienated her from her community and prevented her from participating in a key activity that helped her better herself.

Rebekah's comments reflect why most transgender young people participate in school sports—to be part

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[2] https://www.youtube.com/watch?v=xQHZKS0hEG8&t=84s

of a team and spend time with their friends. Participation in school athletics is important for that very reason: it teaches important lessons like perseverance, dedication, self-assurance, sportsmanship, and teamwork. Categorically banning children from these benefits serves no rational aim whatsoever. As Rebekah's mom said: "To be categorically excluded from being a full member of her school community in this way would impact every part of her life—and separate her not just from her peers but the coaches and mentors helping her grow into the best version of herself." See *supra* n. 2.

Everyone wants sports to be fair, but categorical bans are not tailored to achieve that end. In fact, they promote unfairness by precluding students from obtaining the benefits of youth sports on the basis of sex. Nor is there sufficient tailoring: these categorical bans do not distinguish between the age of participants, the sport being regulated, or the level of competition. Some ban children as young as kindergarteners from participating on school sports teams with their friends.

Categorical bans thus lack the required substantial relationship to achieving an important government interest. That they would apply alike to Division I basketball teams and middle school volleyball games—all while preventing students from experiencing the benefits of youth sports because of their sex—shows as much. The breadth of these bans demonstrates their lack of reasonableness in achieving the intended goals.

Certainly, supporting girls and women in athletics is an important government interest. But that does

not require categorial bans. Instead, it requires fulfilling Title IX's promise of equality. Policing girls' appearance and their "reproductive biology" does not do that. Girls already had 1.3 million fewer opportunities to play high school sports than boys in 2019–2020. WOMEN'S SPORTS FOUNDATION, "Do You Know the Factors Influencing Girls' Participation in Sports?" https://perma.cc/T97Z-D4SU (last visited Oct. 28, 2025). And male athletes receive a quarter of a billion dollars more than female athletes in athletic scholarships each year. WOMEN'S SPORTS FOUNDATION, "Report: 50 Years of Title IX We're Not Done Yet" (May 13, 2022) https://perma.cc/DB9L-VXB3. Categorical bans do nothing to alleviate these disparities while legalizing discrimination against children playing sports with their friends.

III. The recent failures to amend Title IX show the weaknesses in Petitioners' strained interpretations.

1. The pursuit of these bills tacitly acknowledges that categorical bans are inconsistent with Title IX under this Court's precedent. Title IX's plain language and congressional intent are clear: "No person in the United States shall, on the basis of sex * * * be subjected to discrimination[.]" 20 U.S.C. § 1681. As this Court observed in *Bostock*, "there is [no] such thing as a 'cannon of donut holes,' in which Congress's failure to speak directly to a specific case that falls within a more general statutory rule creates a tacit exception." *Bostock* v. *Clayton County, Georgia*, 590 U.S. 644, 669 (2020). Rather, broad prohibitions on discrimination based on sex "prohibit[] all forms of discrimination because of sex, however they may manifest themselves or whatever labels might attach

to them." *Id.* 670. Categorical bans encouraging discrimination based on sex fly in the face of Title IX's text and purpose as well as this Court's precedent.

Recently, some members of Congress have sought to rewrite Title IX to impose a categorical ban like those at issue here. See, *e.g.*, H.R. 5603, S. 4649 (116th Cong.); H.R. 426, S. 251 (117th Cong.); H.R. 734, S. 613 (118th Cong.). All have failed. These attempts to change Title IX strongly suggest that the bills' authors understand that Title IX's clear language already prohibits discrimination based on transgender status.

2. The Congressional Record shows that categorial bans are harmful to children and are not tailored to advance any reasonable governmental interest. For example, the House passed a bill to separate teams based on "reproductive biology and genetics at birth" on a near-party line vote, but the House bill has not been taken up in the Senate. When the Senate sought to bring up S. 9, the companion legislation, cloture on the motion to proceed to the bill failed by a vote of 51-45. See Motion to Invoke Cloture: Motion to Proceed to S.9 (Mar. 3, 2025). That bill would amend 20 U.S.C. § 1681 to add: "It shall be a violation * * * to permit a person whose sex is male to participate in an athletic program or activity that is designated for women or girls" and, for athletics, "sex shall be recognized based solely on a person's reproductive biology and genetics at birth." 171 Cong. Rec. H126 (daily ed. Jan. 14, 2025).

The arguments against these bills show how harmful categorical bans can be. The bill "open[s] the door to harassment and privacy violations." Remarks of Rep. Suzanne Bonamici, 171 Cong. Rec. H127 (daily

ed. Jan. 14, 2025). Enforcement may result in nearly unspeakable intrusions on privacy, as minor students would need to undergo exams or genital inspections to prove that they are on a sports team corresponding with their "reproductive biology." As the National Women's Law Center and Women's Sports Foundation, among dozens of other signatories, noted in a letter to Congress, the bill would "inevitably lead to * * * 'sex verification' practices," forcing girls "to submit to a variety of invasive, humiliating, and unscientific practices," disproportionately targeting girls who "do not conform to sexist stereotypes." 171 Cong. Rec. H134 (daily ed. Jan. 14, 2025) (Letter led by the National Women's Law Center and Women's Sports Foundation of more than 70 Women's and Girls' Rights Organizations).[3] And as Senator Hirono has

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[3] More fully: H.R. 28 "would inevitably lead to schools and athletic associations adopting 'sex verification' practices which may include forcing women and girls to submit to a variety of invasive, humiliating, and unscientific practices for the purported purpose of determining whether they are 'really' girls or women. These procedures make all women and girls vulnerable to sexual abuse, but are especially likely to be used to target Black and brown women and girls who do not conform to white ideals of femininity, other women and girls who do not conform to sexist stereotypes, and nonbinary and gender nonconforming students. If H.R. 28 and S. 9 become law, it would permit school districts, colleges and universities, and athletics associations to become the arbiters of who is 'sufficiently' feminine to play, thereby perpetuating harmful racist and sexist stereotypes that punish students for who they are or how they look, and placing students at further risk for sexual abuse, including harassment." 171 Cong. Rec. H127 (daily ed. Jan. 14, 2025) (Letter of the National Women's Law Center and

noted, those "sex tests [would] invade every girls' privacy" as the price of participation in youth sports. Sen. Mazie Hirono, "Senator Hirono Blocks GOP Attempt to Advance Anti-Transgender Legislation" (June 23, 2022) https://perma.cc/V3WD-6F5Y.

Further, the "one-size-fits-all" national ban would apply "equally to every sport, from K-12 schools to colleges," with no tailoring by age or sport. Remarks of Rep. Suzanne Bonamici, 171 Cong. Rec. H127 (daily ed. Jan. 14, 2025). The bill would all but eliminate the opportunity for transgender students—who already face discrimination, some of it legalized—to experience the joy and character-building attendant in youth sports. Members emphasized the importance for all children—trans and cisgender alike—to have the chance to be part of a team, to learn the lessons of sportsmanship, and to push themselves to reach their fullest potential.

No wonder, then, that opposition to categorical bans is bipartisan. For example, the Republican Governor of Utah vetoed a bill in his state out of concern for the discrimination experienced by transgender students. "When in doubt," he said, "I always try to err on the side of kindness, mercy, and compassion." THE SALT LAKE TRIBUNE, "Here's Utah Gov. Cox's statement on vetoing the transgender sports bill" (Mar. 22, 2022) https://perma.cc/ST6P-TRJB. Another example comes from Indiana. That state's governor also vetoed a categorical ban because there is no "existing problem in K-12 sports in Indiana." *See also,*

Women's Sports Foundation joined by additional national organizations).

Letter to Speaker of the Indiana House of Representatives Todd Huston from Governor Eric Holcomb Vetoing HEA 1041 (Mar. 21, 2022), https://ipbs.org/projects/assets/Veto-HEA-1041.pdf. "After thorough review," he found "no evidence to support" claims that "consistency and fairness in competitive female sports are not currently being met." *Ibid.*

CONCLUSION

The categorical bans at issue here discriminate on the basis of sex and do so without being substantially related to an important government interest. Because of that, *Amici* respectfully submit that the Court should rule in favor of Hecox and B.P.J.

Respectfully Submitted,

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NOVEMBER 2025

APPENDIX

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APPENDIX A

COMPLETE LIST OF *AMICI CURIAE*

United States Senators (9)

Tammy Baldwin
Mazie K. Hirono
Edward Markey
Jeff Merkley
Patty Murray
Alex Padilla
Adam Schiff
Elizabeth Warren
Ron Wyden

Members of the United States House of Representatives (121)

Pete Aguilar
Gabe Amo
Yassamin Ansari
Becca Balint
Nanette Barragán
Joyce Beatty
Wesley Bell
Donald S. Beyer Jr.
Suzanne Bonamici
Shontel M. Brown
Julia Brownley
Salud Carbajal
André Carson
Greg Casar
Sean Casten
Judy Chu
Gilbert R. Cisneros, Jr.
Katherine M. Clark
Emanuel Cleaver, II
Steve Cohen
Joe Courtney
Angie Craig
Jasmine Crockett
Sharice L. Davids
Danny K. Davis
Madeleine Dean
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Sarah Elfreth

Veronica Escobar

Adriano Espaillat

Dwight Evans

Lizzie Fletcher

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Valerie P. Foushee

Maxwell Alejandro Frost

Jesús G. "Chuy" García

Robert Garcia

Sylvia R. Garcia

Jimmy Gomez

Al Green

Jared Huffman

Glenn Ivey

Sara Jacobs

Pramila Jayapal

Hakeem Jeffries

Henry C. "Hank" Johnson, Jr.

Julie E. Johnson

Sydney Kamlager-Dove

William R. Keating

Robin L. Kelly

Ro Khanna

Raja Krishnamoorthi

Greg Landsman

Rick Larsen

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Sam T. Liccardo

Ted W. Lieu

Stephen F. Lynch

Doris Matsui

Sarah McBride

April McClain Delaney

Jennifer McClellan

Betty McCollum

James P. McGovern

LaMonica McIver

Rob Menendez

Gwen S. Moore

Kelly Morrison

Kevin Mullin

Jerrold Nadler

Eleanor Holmes Norton

Alexandria Ocasio-Cortez

Ilhan Omar

Frank Pallone, Jr.

Chris Pappas

Nancy Pelosi

Scott H. Peters

Brittany Pettersen

Chellie Pingree

Mark Pocan

Mike Quigley

Delia C. Ramirez

Emily Randall

Jamie Raskin

Luz Rivas

Deborah K. Ross

Andrea Salinas

Linda T. Sánchez

Mary Gay Scanlon

Jan Schakowsky

Bradley S. Schneider

Hillary Scholten

Robert C. "Bobby" Scott

Terri A. Sewell

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Juan Vargas

Nydia M. Velázquez

James R. Walkinshaw

Maxine Waters

Bonnie Watson Coleman

Nikema Williams

Frederica S. Wilson