

Nos. 24-38, 24-43

IN THE
Supreme Court of the United States

BRADLEY LITTLE, IN HIS OFFICIAL CAPACITY AS
GOVERNOR OF IDAHO, *et al.*,

Petitioners,

v.

LINDSAY HECOX, *et al.*,

Respondents.

WEST VIRGINIA, *et al.*,

Petitioners,

v.

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

Respondent.

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

**BRIEF FOR COACHES, TEAMMATES,
COMPETITORS, AND ALLIES OF TRANSGENDER
ATHLETES AS AMICI CURIAE SUPPORTING
RESPONDENTS**

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INTEREST OF AMICI CURIAE¹

Amici curiae are ten athletes and coaches who have competed in a range of individual and team sports. In their personal experiences, the inclusion of transgender women in sports has promoted, not undermined, competition and fairness. They have seen firsthand how laws excluding transgender women from participating in women's sports have an adverse impact not only on transgender athletes, but also on the sports themselves and the many other individuals who are involved in those sports.

As the personal stories of the amici demonstrate, the alleged harms caused by any participation by transgender women in women's sports are unfounded. Amici have witnessed firsthand that allowing transgender women to participate in women's sports, consistent with applicable rules, neither poses safety concerns nor gives transgender women an unfair advantage. To the contrary, they have seen how the exclusion of transgender women would diminish women's sports.

The amici, whether involved in individual sports, team sports, or full-contact sports, have come to these conclusions after decades of combined experience in their respective sports. Amici recognize that this is a topic that engenders strong feelings and that there is no uniform view. But amici believe that their experiences are broadly representative and strongly support the

¹ No counsel for a party authored this brief in whole or in part, and no entity or person, other than amici curiae and their counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

inclusion of transgender women athletes. Amici therefore have a direct interest in the Court interpreting federal law to prohibit discrimination against transgender athletes, which they believe will have a significant, positive impact on each of their sports.

SUMMARY OF ARGUMENT

The amici are coaches, teammates, competitors, and allies of transgender athletes who have come to understand through their experiences that transgender women's participation in women's sports does not detract from, and indeed benefits, the experience of cisgender women and women's sports as a whole. The amici, who are geographically diverse, have a variety of sports backgrounds and experiences, including cycling, running, rugby, and ultimate frisbee. Contrary to certain depictions of transgender athletes, transgender women have neither posed a threat to their safety nor taken competitive opportunities away from them. In the amici's experiences, the suggestion that transgender women are necessarily better competitors is unfounded. And although competitive dynamics and the qualities contributing to an athlete's success differ across their four sports, and indeed across all sports, all amici agree that the participation of transgender athletes, consistent with applicable rules, is fundamentally fair.

ARGUMENT

The following are amici's personal experiences competing with and coaching transgender athletes.

I. CYCLING – ERIN AYALA, ELIZABETH TOBEY, ADAM MYERSON, LUCIE VAGNEROVA, AND ROSY METCALFE

Amici Erin Ayala, Elizabeth Tobey, Adam Myerson, Lucie Vagnerova, and Rosy Metcalfe are cyclists with years of experience both competing and coaching. Ayala, a sport psychologist who began cycling competitively in 2016, is the co-founder of a nine-member team that races in the women’s peloton. Tobey currently cycles as part of the KruisCX team, serves as the Secretary and Women/Trans/Femme/Non-Binary Cycling Representative on the New York State Bicycle Racing Association, and recently served for three years on the board of the Century Road Club Association, the leading race promoter in New York City. Myerson is a former professional cyclist and multi-time national champion who has been coaching elite cycling athletes for the past 25 years. Vagnerova competes at the highest levels of amateur cycling and has co-founded the team W.0 Racing whose mission is in part to grow women’s cycling. Metcalfe previously raced mountain bikes competitively at the regional level and has coached biking for individuals.

Several cycling amici have significant experience racing alongside (and against) transgender women athletes, and all agree that they have not experienced any unfairness because of transgender women competing in women’s cycling competitions. Ayala recalls racing against a transgender woman in 2018 at a national series event in Milwaukee. Her competitor was particularly skilled at “taking lines”—a skill where a racer whips around a competitor quickly, and where biking at the right angle is key—and Ayala remembers being impressed both by the woman’s skill and by how much fun she had racing her. After the transgender competitor beat Ayala in 2018, the two raced against

each other the next year, with Ayala prevailing. “She was racing at the same level as me and belonged at that level,” Ayala says. “She’s like any other woman racing with me and mentoring me, and she’s been racing longer than me.” Since then, Ayala has beaten numerous other transgender cyclists, whether because of her superior skill, strategy, or power, or one of the other many factors contributing to her performance. Like Ayala, Tobey and Vagnerova also have substantial experience cycling against transgender athletes. And like Ayala, they have finished ahead of and behind transgender women in races.

Myerson has coached many transgender women cyclists in his decades of experience, and these athletes have varied greatly in terms of experience and competitiveness. For example, he has coached transgender athletes who have placed at national competitions, as well as transgender athletes who are only average cyclists. As a coach, Myerson collects data on his athletes, including athletes he has coached before and after their transitions. Based on these data, his athletes—whether cisgender or transgender—typically improve as he would expect them to based on their training. The transgender women he has coached after their transitions have not improved more or less than the cisgender women he has coached. He recalls training two women who were competing at similar levels, one of whom is cisgender and the other of whom is transgender. He coached them in the same ways, and they had similar levels of success during their partnerships.

Vagnerova explains that cycling is a tactical sport and that “people are missing the point of the sport when they overemphasize certain markers of human physiology”—the strongest person, she adds, does not

always win the race. Indeed, the mental nature of the sport is one reason she enjoys it. When she arrives at the starting line, she strategizes based on her competitors' various strengths how she should conduct her race. She also must strategize with her teammates, who work together to create advantages for each other during the race. Myerson likens cycling races to "speed chess on a treadmill." A competitive cyclist is always trying to think several steps ahead of other racers while in constant physical discomfort. They must consider how well they can "draft" behind the rider directly in front of them, as well as how well they and their competitors can take corners. He sees no gender advantage in these skills.

Tobey adds that there are many factors that go into a cyclist's performance: "The ability to train and to learn how to race—from cycling skills to the mental game and even nutrition—is a differentiator no matter your biological or genetic makeup." She and Ayala also point out that cycling is an expensive sport, from equipment to coaching and more, and financial resources have a significant but rarely discussed impact on an athlete's performance.

Metcalfe likens the push to exclude transgender women from women's cycling to earlier efforts to exclude women from competitive cycling and believes that the exclusion of transgender women from women's cycling will ultimately undermine competitions for all women cyclists. The other cycling amici agree. Ayala, Myerson, and Vagnerova are concerned that the exclusion of transgender women—despite being few in number—would create a less dynamic sport for other cyclists. Vagnerova and Ayala say that women's cycling currently accounts for a small portion of the overall cycling community. New York City, for example, has a

thriving cycling scene, but some women's races will have only four or five competitors. Vagnerova explains that it is constant work to introduce people to the sport given the financial and skill-based barriers to entry, so she welcomes any athlete who wants to compete. She also believes every additional cyclist makes a race more dynamic and tactical, and therefore more competitive, a sentiment that Myerson echoes.

The exclusion of transgender women from women's cycling harms the sport in other ways as well. USA Cycling, the national governing body for bicycle racing, recently issued a policy banning all transgender women from competing in women's cycling categories. The cycling amici believe that this policy harms all women cyclists. Tobey says that enforcement is invasive, with any racer permitted to accuse another of being a transgender woman. Tobey recalls a recent instance of an athlete who repeatedly has been flagged to USA Cycling as a transgender woman. USA Cycling required her to submit paperwork to confirm her sex assigned at birth. After an extensive investigation, she was ultimately able to prove that she is not a transgender woman, and so she is allowed to compete, but she continues to be accused by a small set of other competitors. Vagnerova shares this frustration, saying that there is likely to be a substantial amount of gender policing at women's competitions under the new policy. "There is potential for immediate suspicion," she says, if you do not present feminine enough, "and anyone can report you for that reason alone." Tobey "cannot imagine continuing to do this sport—which we do for fun—when that is happening to you."

II. RUNNING – AMY RUSIECKI

Amicus Amy Rusiecki works and competes in the world of professional trail running. In addition to being a runner herself and a three-time member of the U.S. trail running team, Rusiecki is the administrator of some of the sport's leading races: the Vermont 100 and seven other races under the Beast Coast Trail Running umbrella. She also coaches individual trail running athletes, building on her prior work as the coach of the running team at Hampshire College.

Rusiecki believes that permitting transgender women to compete in women's sports is fundamentally fair—and that, in her experience, there is nothing to substantiate concerns that transgender women have a competitive advantage. Rusiecki knew one transgender woman runner who, after satisfying the hormone requirements that USA Track & Field had in place, began racing in the women's category. She recalls that this woman finished with similar placements in the women's races to those she achieved in men's races before her transition.

In Rusiecki's experience, there are many factors that determine how successful an athlete will be in trail running. These include factors such as an athlete's fitness, strength, speed, and agility—which can and will vary from athlete to athlete and from race to race. But, as Rusiecki recounts, there is a significant mental aspect to trail running. And the longer that a race is (for example, the Vermont 100 is a 100-mile race), an athlete's nutrition becomes a significant factor in determining success. But these are only some of the thousands of variables that contribute to an athlete's success on race day, the vast majority of which cannot be measured. In Rusiecki's experience, these factors do

not give transgender women an advantage in women's trail running.

Given her experience, Rusiecki believes that it is unfair to single out a person's gender identity for scrutiny. She has never seen an athlete register in a gender category with which they do not identify in order to win a race.

III. RUGBY – EMMA MCKAY

Amicus Emma McKay has worked professionally in the sport of rugby. She played rugby in college, and after her graduation played for a club-level team in Vancouver. She later shifted to coaching and has coached a Division II women's club team at San Francisco Golden Gate Rugby, with athletes ranging in age from 18 to 38 years old. She has competed against and coached transgender women athletes and believes, from her experience, that it is fair for transgender women to participate in women's sports and that their participation does not detract from fair competition.

McKay, who previously coached a successful transgender woman, emphasizes that this athlete's success did not result from her being a transgender woman but rather because of her hard work. "I've known a lot of cisgender women like that," she says. "You work hard, ask questions, are curious, and you learn. That learning curve is about how much effort you put in as an athlete. People have an ability physically and naturally and will hone it." At the time when McKay was coaching, USA Rugby—the relevant governing body—had rules in place that allowed transgender women to play on women's teams if they conformed to certain guidelines related to length of time since transition and hormone levels. The athlete she coached qualified to play on women's teams under these rules, so

she competed for McKay's team. She "was a great athlete, but wasn't the quickest or strongest person on the field—she played the way I coached her: safety first."

Given that rugby is a physical, full-contact sport, advocates of laws like West Virginia's and Idaho's have sought exclusion of transgender athletes from rugby based on safety and fairness concerns. In McKay's experience, however, success in rugby is about so much more than physical size and strength alone. Rugby is highly skill-based and requires teams to understand their teammates' own strengths and weaknesses, as well as the strengths and weaknesses of their competitors. "If you don't know how to leverage your size and strength, it's useless," she explains. "I once coached a gal who weighed 100 pounds and was new to rugby—she came to every single practice, learned the right techniques, and was tackling opponents twice her size." As to her own experience, she adds that she was "five-foot-eight-inch and 140 pounds" and still competed at a high level. Rugby is a team sport, she notes, and a team with top notch athletes can fail without proper team cohesion.

Injuries in rugby, McKay observes, often have little to do with opponents' size or strength but rather with skill issues; tackling techniques in rugby are unique and distinct from other contact sports, and incorrect technique can result in injury. "You need to know how to hit without being hurt," she explains. Women rugby players come in all shapes and sizes—that includes transgender women.

Per McKay, "everybody has that one thing in common—the sport. It's all about rugby and the people first. Everything else is secondary." When McKay's

team once competed, and lost, against a team with a star transgender player, no one on her team believed they lost unfairly and no one blamed it on the transgender woman on the other team. They accepted that their team lost against another team, not a single player.

McKay underscores that playing with and coaching transgender athletes taught her and her players that transgender athletes are just like everyone else—including because she did not know at first that she was coaching a transgender player. In fact, McKay did not know that the player was transgender until after she had been on the team for six months.

In McKay's view, banning transgender women from competing in women's sports deprives all women in sports of teammates and competitors, as well as key opportunities for learning and personal growth.

IV. ULTIMATE FRISBEE – MADDY FREY, RACHELLE DEPNER, AND JARED WEYBRIGHT

Maddy Frey, Rachelle Depner, and Jared Weybright have years of experience playing on, coaching, and leading ultimate frisbee teams. Frey, a former college soccer player, discovered ultimate frisbee and played at the amateur level for 10 years before helping found, and lead, the Premier Ultimate League (PUL) and one of its constituent teams, Atlanta Soul. Depner, also a former ultimate frisbee player, is head coach of a high-school-age ultimate frisbee team in Eugene, Oregon. Weybright, who previously played ultimate frisbee for the University of Oregon, is president of the board of Emerald Valley Ultimate, a youth ultimate frisbee league. Depner and Weybright also previously coached the University of Oregon women's ultimate frisbee team.

As a co-founder of the PUL, Frey was driven by a desire to expand opportunities in professional ultimate frisbee. Previously, the only professional ultimate frisbee league was male dominated despite being technically open to men and women.²

Frey, Depner, and Weybright all agree that, in their experience, participation of transgender women does not create unfairness for other women in ultimate frisbee. As Frey explains, ultimate frisbee is a highly accessible sport. It is not yet ubiquitous and often attracts athletes who previously played other sports and therefore already have “athletic instinct.” But ultimate frisbee is “much easier to pick up than soccer because you use your hands, not your feet.” Still, development of disc and positioning skills is critical to advancement. Depner emphasizes that ultimate frisbee is a team sport, and different positions require different skillsets. For handlers, disc skills are paramount; for receivers, speed and movement skills are more relevant. Taller players may have an advantage jumping, but Depner explains that more compact players may have an advantage throwing under or around their opponents. Depner further explains that if physical attributes were the only or primary determinant of team success, “we’d have height and weight classifications in everything.” But, she says, “I have a player that’s four-foot-eleven-inch and another is six-foot-one-inch. And both players are cisgender.” Frey agrees: “Just being taller, shorter, bigger, or stronger doesn’t make you the best.” “There

² See Adam Zagoria, *Born of a Boycott, a Women’s Ultimate Frisbee League Charts Its Own Path*, N.Y. Times (June 28, 2019), <https://www.nytimes.com/2019/06/28/sports/professional-ultimate-frisbee.html>.

are transgender players,” she adds, “but they’re not always the best.”

Depner and Frey both recall competing with transgender players, and neither encountered any problems and instead believe the experience benefited them. Depner explains: “I stopped playing a number of years ago, but even then, I remember playing with transgender women athletes. I don’t remember it being a big deal.” Frey similarly recalls a game where she was matched against a transgender woman—meaning the two players guarded one another throughout the game. In professional ultimate frisbee, matching can involve weeks of research, including watching film of your intended “match.” “It was just a really fun battle,” she says. “She beat me sometimes, and I beat her sometimes.” More than that, it “shaped my personal experience; playing against them and experiencing the competition and fairness myself reaffirmed my belief that there is nothing unfair about letting them participate.”

All three are dismayed by the backlash against transgender athletes. Depner notes with sadness that her high-school-age team has endured abuse because of its inclusion of transgender athletes. But that backlash comes “very rarely from players themselves—it’s the adults.”

CONCLUSION

Amici ask this Court to recognize that federal law prohibits discrimination against transgender athletes and affirm the judgment below.

Respectfully submitted.

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