

No. 24-43

*In The
Supreme Court of the United States*

WEST VIRGINIA, *et al.*,

Petitioners,

v.

B.P.J., by her next friend and mother Heather
Jackson,

Respondent.

On Writ of Certiorari to the
United States Court of Appeals
for the Fourth Circuit

**BRIEF OF A.C., A MINOR, BY HER NEXT FRIEND
AND MOTHER ABIGAIL CROSS, AMICA CURIAE
IN SUPPORT OF PETITIONERS**

Rita M. Peters
Counsel of Record
5850 San Felipe
Suite 575A
Houston, TX 77057
(540) 830-1229
ritamartinpeters@gmail.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
INTEREST OF AMICA CURIAE	1
SUMMARY OF THE ARGUMENT.....	3
ARGUMENT.....	4
I. It is unfair to force girls to compete against boys in sports.	4
II. Integrating biological males into girls' sports teams creates unique and dangerous opportunities for males to sexually intimidate and harass girls. ..	12
CONCLUSION	16

TABLE OF AUTHORITIES

Cases

United States v. Virginia, 518 U.S. 515 (1996).....14

Statutes

20 U.S.C. § 1681(a)1, 3, 11

34 C.F.R. § 106.413

W. Va. Code § 18-2-25d.1, 16

Other Authorities

2017-18 Civil Rights Data Collection Sexual Violence in K-12 Schools (October2020) (as corrected by Errata Sheet, December 2022),
<https://www.ed.gov/sites/ed/files/about/offices/list/o-cr/docs/sexual-violence.pdf>.16

A. E. Miller, J. D. MacDougall, M. A. Tarnopolsky, & D. G. Sale, *Gender Differences in Strength and Muscle Fiber Characteristics*, 66 Eur. J. Applied Physiology & Occupational Physiology 254 (1993).
10

Athletic.net, <http://athletic.net> (last visited Sept. 11, 2025).11

D. L. Coleman, M. U. Joyner, & D. Lopiano, *Re-Affirming the Value of the Sports Exception to Title IX's General Non-Discrimination Rule*, 27 Duke Journal of Gender Law & Policy 69 (2020)...8

- E. N. Hilton and T. R. Lundberg, *Transgender Women in the Female Category of Sport: Perspectives on Testosterone Suppression and Performance Advantage*, 51 Sports Med. 199 (2021).....9
- Elle Rogers, *The Two Sexes Are Not Fungible: The Constitutional Case Against Transgender-Inclusive Sports*, 28 Tex. Rev. Law & Pol. 243 (Fall, 2023).10
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- Governor of Virginia, *Governor Glenn Youngkin Announces U.S. Department of Education Action on Title IX Violations in Northern Virginia School Divisions* (July 25, 2025), <https://www.governor.virginia.gov/newsroom/news-releases/2025/july/name-1054024-en.html>.15
- National Sexual Violence Resource Center, <http://nsvrc.org/statistics> (last visited Sept. 4, 2025).15
- Salvador Rizzo, *Victim of School Bathroom Sexual Assault Sues Virginia School District*, Wash. Post (Oct. 5, 2023), <https://bit.ly/4181FrB>.15

INTEREST OF AMICA CURIAE¹

A.C. is a female athlete who suffered the injustices that West Virginia's Save Women's Sports Act² was adopted to prevent. She submits this brief in the hope that her story will demonstrate to the Court that allowing biological males to infiltrate women's sports negates the very purpose of Title IX and sexualizes what had previously been safe spaces for girls.

A.C. is a 16-year-old, female athlete who has participated in track and field at Bridgeport Middle School and Bridgeport High School. B.P.J., a biological male who identifies as female, joined the girls' track and field team when A.C. was in seventh grade.

A.C. is nearly two years older than B.P.J., and she initially beat B.P.J. in A.C.'s main events, shot put and discus. But by the following school year B.P.J. became one of the school's top three throwers in shot put and discus, regularly beating A.C. Eventually, B.P.J.'s superior performances pushed A.C. down in the rankings, eliminating her opportunity—and that of other girls—to compete in various events.

But A.C.'s suffering has gone beyond the injustice of losing athletic opportunities because a biological male has been allowed to compete on the

¹ No counsel to any party authored this brief in whole or in part, nor has any party or counsel to a party made a monetary contribution funding the preparation of the brief. No person other than *amica*, its members, and counsel, have made any such monetary contribution.

² W. Va. Code § 18-2-25d.

girls' team. B.P.J. has used his presence in the girls' locker room, on the track, and in the throwing pit for shot put and discus to subject A.C. and her female teammates to sexual bullying.

As a young teenaged girl, A.C. has found it difficult enough to navigate the necessity of changing clothes in the same locker rooms and restrooms as a biological male. It is unconscionable that, as the price for participating in sports, she has been forced to do so alongside a biological male who has regularly made lewd comments to her about his male anatomy and threatened her with sexual assault.

A.C. sincerely hopes that as it decides this case, the Court will bear in mind all that she has suffered in the interest of allowing a biological male to compete on a girls' sports team based on his subjective feelings of sexuality.

As with so many girl athletes, A.C. simply seeks to recover what the law once secured for her: a fair and safe place to compete.

SUMMARY OF THE ARGUMENT

Congress passed Title IX of the Education Amendments of 1972 to ensure equal opportunities for girls in federally funded educational settings, including athletics. 20 U.S.C. § 1681(a); 34 C.F.R. § 106.41. Because inherent physiological differences between males and females give males a decisive advantage over females in sports, the implementing regulations specifically allow teams to be segregated based on sex in contact sports or sports where selection is based on competitive skill. In other words, the law recognizes what everyone knows: it is neither fair nor safe to require females to compete against males in athletics.

Today, however, our society's commitment to ensuring equal opportunities for girls and women seems to have been eclipsed by its commitment to the latest development in the sexual revolution: subjugating the biological reality of sex to one's subjective feelings about one's sex.

While the notion of supporting boys' desires to live as girls may sound progressive, the effect of doing so in the athletic sphere is to relegate girls and women to a playing field dominated by males. Girls are now denied the opportunity that every boy freely enjoys: to compete athletically in contests in which no competitor enjoys a sex-based physiological advantage.

Moreover, as the Court will see from A.C.'s story, opening intimate spaces like girls' restrooms and

locker rooms to biological males is dangerous. It not only robs vulnerable young girls of privacy from the opposite sex that even adults desire and expect, but it also risks exposing them to unwanted sexual advances in a setting where they deserve to be comfortably interacting with their female peers. These costs are far too high to pay in the name of giving males the choice to compete athletically against those who are physiologically disadvantaged on the field.

A.C. prays that this Court will uphold the West Virginia statute as a critical governmental shield protecting girls from the unfairness of having to compete against biological males and the unique harms that arise from being forced to share intimate spaces with them.

ARGUMENT

I. It is unfair to force girls to compete against boys in sports.

A.C. has been playing sports since she was a small child. She has competed in different club, youth, and school sports since, including soccer, gymnastics, swimming, and Brazilian jiu-jitsu. While she excelled at Brazilian jiu-jitsu, she eventually quit that sport because she was competing against boys who were bigger and stronger than she was, and she could not win. It was no longer fun for her to compete once the outcome was primarily dictated by the sex of her opponent.

In her seventh-grade year (the 2021–22 school year), A.C. joined the girls' track and field team at Bridgeport Middle School (BMS). She competed in the 100-meter dash, pole vault, shot put, and discus.

A.C. was surprised when another BMS student named B.P.J. joined the girls' track and field team. Because A.C. knew B.P.J.'s older brother from school, she knew that B.P.J. was a male who identifies as a girl.

During seventh and eighth grade, A.C. competed against B.P.J. in both shot put and discus. At first, she typically beat B.P.J. in both events. After all, B.P.J. was almost two years younger than A.C., and one year behind her in school. But by the end of her seventh-grade season, B.P.J. threw about the same distance as A.C. did in shot put—around 18–20 feet. In discus, A.C. typically threw around 40 feet to B.P.J.'s 30 feet. But in the last meet of the 2021–22 season, B.P.J. suddenly threw almost 20 feet farther: 49' 7".

By the next school year (2022–23), A.C. could tell that B.P.J. had grown a lot. B.P.J. got taller, threw farther, and had developed a deeper and more masculine voice. Before the 2022–23 school year, B.P.J. had never been one of the top athletes at BMS. But during this school year, B.P.J. suddenly became one of the top three throwers in shot put and discus at BMS. On May 13, 2023, B.P.J. threw 16 feet farther in discus than B.P.J. had thrown at the beginning of the season.

There are usually ten meets in discus and shot put each season. At earlier meets schools can send several athletes from their teams to each event. But as the year goes on, the events become more restricted, and often only the top three or four ranked athletes from a school may compete in each event. At the beginning of each school year, BMS holds a scrimmage to establish baseline times and distances in each event, and the coach uses those times to establish each athlete's ranking. Rankings can change during the season if a student sets a new personal record better than that of another athlete.

Until April of 2023, A.C. was in the top three on her team for discus. She was usually in the top three or four for shot put as well. But that changed as B.P.J. started beating A.C.

- In March, 2023, B.P.J. beat A.C. at the Connect Bridgeport Invitational in shot put and in discus.
- In April, B.P.J. beat A.C. at the Pioneer Middle School Invitational in discus.
- Later in April, B.P.J. beat A.C. at the Bobcat Middle School meet in shot put and discus.

When A.C. lost to B.P.J., B.P.J. would sometimes say to her, "you just need to get stronger."

One of the biggest meets of the season is the Mid Mountain 10 MS Championships. It is a conference meet, and only the top three ranked athletes from

BMS in each event get to compete. In the past, A.C. had competed at this meet. But after practice the night before the conference championship meet in 2023, her coach pulled her aside and told her she had been “knocked out” of the conference meet. At that point, B.P.J.—a male almost two years younger than A.C.—had passed A.C.’s personal record in shot put (24’ 1”) by almost three feet (27’) and had passed her personal record in discus (55’ 2”) by more than 10 feet (66’ 0”). Because B.P.J. now ranked in the top three in shot put and discus, A.C. was pushed out of the top three to fourth place at BMS in those events. Thus, she was precluded from even competing in shot put or discus in the Mid Mountain 10 MS Championships on April 29, 2023.

B.P.J. ultimately took 4th overall in girls’ discus and 6th overall in girls’ shot put at the meet. B.P.J.’s participation in the girls’ event meant that many girls placed lower than they otherwise would have placed.

A.C. was angry and discouraged that B.P.J. had taken her spot at the championship meet. Other girls on the team were also upset. But A.C. feared the consequences of speaking out against this injustice. She feared being unfairly labeled as “transphobic,” and decided she had no meaningful choice but to accept the situation. In short, she felt unheard and unseen.

At one point, one of A.C.’s coaches pulled her aside and tried to encourage her. The coach agreed that what had happened to A.C. was unfair, and A.C. felt a little better having her coach’s support. Yet because B.P.J. had pushed A.C. down in the rankings,

she did not get to compete in discus or shot put for the rest of the season, except for an 8th grade-only invitational meet for which B.P.J. (as a 7th grader) was not eligible.

A.C. is reluctant to participate on the track and field team in the future, because it is frustrating and humiliating to be pushed down in the rankings by a male athlete who is participating as a girl. A.C. knows that no matter how hard she works, she will not be able to throw farther than B.P.J. She is excluded from competitions before they even begin, because she is not as strong and athletic as boys her age—or even younger boys like B.P.J.

This is not just pessimistic thinking on A.C.'s part; it is scientific fact. "[T]he [sports] performance gap is so well-understood, and so abundantly documented in easily searchable databases, that it's difficult to take seriously the claim that it is merely 'myth' and 'false stereotype.' Indeed, many on the sport and science side of the discussion have not bothered to try." D. L. Coleman, M. U. Joyner, & D. Lopiano, *Re-Affirming the Value of the Sports Exception to Title IX's General Non-Discrimination Rule*, 27 *Duke Journal of Gender Law & Policy* 69, 91-92 (2020) (citing *For Crying Out Loud 2019, Biology in Sports Matters*, Stathole Sports (Apr. 18, 2019), [http://statholesports.com/for-crying-out-loud-2019-biology-in-sport s-matters/](http://statholesports.com/for-crying-out-loud-2019-biology-in-sport-s-matters/)).

Depending on the sport, some researchers estimate the male-female sports performance gap to be between ten and fifty percent, (10-50%). E. N. Hilton and T. R. Lundberg, *Transgender Women in*

the Female Category of Sport: Perspectives on Testosterone Suppression and Performance Advantage, 51 Sports Med. 199-214, 199 (2021). This performance gap, which becomes significant during puberty, is explained by numerous physiological differences between males and females. *Id.*

Males have:

- larger and denser muscle mass and stiffer connective tissue, providing capacity to exert greater muscular force more rapidly and efficiently;
- reduced fat mass and different distribution of body fat and lean muscle mass, which increases power to weight ratios;
- longer and larger skeletal structure, an advantage in sports where levers influence force application, where longer limb/digit length is favorable, and where height, mass and proportions are directly responsible for performance capacity; and
- superior cardiovascular and respiratory function, with larger blood and heart volumes, higher hemoglobin concentration, greater cross-sectional area of the trachea and lower oxygen cost of respiration.

Id. at 201.

Women, on average, have about half the upper-body strength of men and two-thirds their lower-body

strength. See Elle Rogers, *The Two Sexes Are Not Fungible: The Constitutional Case Against Transgender-Inclusive Sports*, 28 Tex. Rev. Law & Pol. 243, 263 (Fall, 2023) (citing A. E. Miller, J. D. MacDougall, M. A. Tarnopolsky, & D. G. Sale, *Gender Differences in Strength and Muscle Fiber Characteristics*, 66 Eur. J. Applied Physiology & Occupational Physiology 254, 256-59 (1993)).

The fact that a male may identify as a girl does nothing to lessen his decisive physiological advantage over girls in sport.

B.P.J.'s athletic records show that B.P.J. beat over 50 different female athletes in the 2021–22 school year, displacing several of them more than once. In the 2022-23 school year, B.P.J. beat over 100 different female athletes, displacing them almost 300 times. A.C. personally lost to B.P.J. on four separate occasions that school year. For example, on April 20, 2023, she would have been 3rd place at BMS in the 1 kg discus. Instead, she received 4th place, while B.P.J. took 2nd place. The same thing happened in shot put on April 20, 2023. A.C. took 5th place at BMS, while B.P.J. received 4th place.

When one athlete's ranking is lowered due to another athlete's performance, it is referred to as a "displacement." Because middle and high school track and field athletes typically compete against others in their school and region repeatedly over the course of their sports seasons, the girls who are unlucky enough to be forced to compete at a physiological disadvantage against a male athlete are likely to suffer the sting of repeated displacements.

The following table, which compiles records available at <https://www.athletic.net/>³, indicates the unfair effects of B.P.J.'s participation in girls' sports from the 2021-22 school year through the 2024-25 school year:

Number of girls displaced	423
Number of displacements	1100
Number of medals displaced	57

A.C. is just one of the 423 girls who were displaced in sports competitions because they were forced to compete against one physiologically advantaged male.

Congress passed Title IX to ensure that our nation's educational institutions—including their athletics programs—provide girls and women equal opportunities to those of their male counterparts. If their male counterparts, with their decisive competitive advantages in sports, are now permitted to infiltrate girls' sports based on "gender identity," they will eviscerate the equal opportunity that Title IX once provided them: the opportunity to compete in sport against others of their sex. To make matters worse, the injustice done to female athletes will be largely invisible to others. To spectators and college recruiters, it will simply look like one athlete vastly outperforms the rest, when the truth is that he is not the same kind of athlete.

³ Athletic.net, <http://athletic.net> (last visited Sept. 11, 2025).

- II. Integrating biological males into girls' sports teams creates unique and dangerous opportunities for males to sexually intimidate and harass girls.

From the first day B.P.J. participated on the BMS girls' track and field team, A.C. and others on the team knew that B.P.J. was male. While A.C. had never minded changing clothes in front of other girls, she found the idea of changing in front of a male—or having a male change in front of her—disconcerting. But B.P.J.'s participation on the girls' track and field team confronted her with this inevitability.

At first, A.C. decided to change clothes in the girls' restroom instead of the locker room to have more privacy. But at one point, BMS closed the gym locker rooms, forcing the entire girls' team to change in the girls' bathrooms. So she began to change in the bathroom stall whenever she could. At Bridgeport High School, where A.C. attends now, the locker room where the girls change before and after practices has just three private stalls, along with some curtained showers. Most of the locker room area is an open space with lockers. Before practice or a track and field meet, the girls have limited time for changing before warm-ups begin, making it impossible for all the girls to change in a private space.

A.C. feels embarrassed, anxious, and unsafe about the idea of showering in a locker room with a male nearby or of sharing a hotel room with a male. In track and field, the top three finishers in meets advance to the next level of competition, and those competitions are usually out of town. Those

competitors will stay in hotel rooms with their teammates. While A.C. has not yet placed in the top three and been forced to choose between withdrawing from a competition or spending the night in a room with a male, that prospect disturbs her—regardless of whether the male considers himself to be a girl.

And in fact, B.P.J. has given A.C. good reason to be embarrassed, anxious, and fearful when they are in the locker room or restroom together. On multiple occasions, B.P.J. has made offensive and inappropriate sexual comments to A.C. and her teammates. At first, it did not occur often, and A.C. tried her best to ignore it. But during her final year of middle school, B.P.J. began to make inappropriate sexual comments more frequently, and they became increasingly aggressive, vile, and disturbing in nature.

The comments ranged from B.P.J. telling A.C. she had a “nice butt,” to remarks so vulgar that merely repeating them is incredibly embarrassing to A.C. During the end of A.C.’s eighth-grade year, about two to three times per week B.P.J. would look at her and say “suck my d***.” There were usually other girls around who heard this. A.C. heard B.P.J. say the same thing to her other teammates, as well.

B.P.J. also made other, more explicit sexual statements that felt threatening to A.C. At times, B.P.J. told her quietly, “I’m gonna stick my d*** into your pu***.” And B.P.J. sometimes added “and in your a***” as well. These comments, made in the locker room, on the track, and in the throwing pit for discus and shotput, caused A.C. deep distress. She felt

confused about why a male who had been allowed onto the girls' team because he identified as female would still speak to her in a way that no other girl had ever spoken to her.

A.C. reported B.P.J.'s sexual comments to her coach and middle school administrators. Initially, the administrators told A.C. that they were investigating, but they never came back to her to report on any results of their "investigation," and B.P.J.'s behavior did not change. A.C. is reluctant to continue her participation in track and field, given that it requires her to endure unwanted, threatening sexual comments and to change clothes, shower, and use restrooms in close proximity to the male who is making said comments.

A.C.'s story demonstrates that even a male who says he identifies as a girl can inject male-female sexual aggression into intimate girls' spaces when he is allowed to infiltrate them. And the girls have nowhere else to go.

The desire to minimize these risks of sexual intimidation or harassment, along with a desire to preserve modesty and privacy, are the very reason male and female restrooms and locker rooms are separated in the first place. *See United States v. Virginia*, 518 U.S. 515, 550 n.19 (1996) (recognizing that intimate spaces may be segregated to "to afford members of each sex privacy from the other sex.").

The sad truth is that A.C.'s story is not an isolated incident of inappropriate behavior resulting from policies allowing students to use intimate spaces

assigned to the opposite sex. In July, 2025, following reports of various abuses occurring when transgender individuals were allowed to use intimate spaces designated for the opposite sex, the U.S. Department of Education determined that the gender policies of five northern Virginia school divisions violated Title IX.⁴

In Arlington Public Schools, a male sex offender reportedly exposed his genitals to a 9-year-old in the girls' locker room.⁵ Because he said he identified as a girl, he had been allowed to use the girls' locker room for months. In Loudoun County, three male students reported that a female in the boys' locker room had been using her cell phone to record the male students.⁶ In the same district, a male student wearing a skirt sexually assaulted a female in the girls' bathroom.⁷

Sadly, sexual violence is an all-too common experience for women and girls. According to the National Sexual Violence Resource Center, one in five women in the United States experience completed or attempted rape during their lifetimes.⁸ Some of those

⁴ Governor of Virginia, *Governor Glenn Youngkin Announces U.S. Department of Education Action on Title IX Violations in Northern Virginia School Divisions* (July 25, 2025), <https://www.governor.virginia.gov/newsroom/news-releases/2025/july/name-1054024-en.html>.

⁵ *Id.*

⁶ *Id.*

⁷ See Salvador Rizzo, *Victim of School Bathroom Sexual Assault Sues Virginia School District*, Wash. Post (Oct. 5, 2023), <https://bit.ly/4181FrB>.

⁸ National Sexual Violence Resource Center, <http://nsvrc.org/statistics> (last visited Sept. 4, 2025).

instances occur in our nation's public schools. According to the United States Department of Education's Office for Civil Rights, there were 9,649 reported incidents of rape, attempted rape, and sexual assault in K-12 schools during the 2015-16 school year.⁹ That number increased 43% to 13,799 incidents during the 2017-18 school year.¹⁰

Girls who are already vulnerable to sexual assault, or who may have even experienced its trauma, should not be forced to share intimate spaces like restrooms and locker rooms with males. Allowing biological males to infiltrate these spaces is to rob girls of the opportunity to enjoy sports in an environment where they can feel safe and be free from male observation, comment, and potential sexual advances. As persons of equal dignity and equal rights to boys, girls should never be forced to choose between non-participation in sports or sharing intimate spaces with males.

CONCLUSION

Amica respectfully requests that the Court uphold West Virginia's Save Women's Sports Act to preserve girls' opportunity to compete in fair athletic

⁹ *2017-18 Civil Rights Data Collection Sexual Violence in K-12 Schools* (October 2020) (as corrected by Errata Sheet, December 2022),

<https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/sexual-violence.pdf>. Note that the more recent data available, from 2020-21, is acknowledged to be skewed by disruptions in school attendance caused by COVID-19.

¹⁰ *Id.*

contests and to protect them from the harms that result from being forced to share intimate spaces with males.

Respectfully Submitted,

Rita M. Peters
Counsel of Record
5850 San Felipe
Suite 575A
Houston, TX 77057
(540) 830-1229
ritamartinpeters@gmail.com

Counsel for Amica Curiae