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

BRIEF OF AMICUS CURIAE MOUNTAIN STATES LEGAL FOUNDATION IN SUPPORT OF PETITIONERS

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Mountain States Legal Foundation ("MSLF") is a nonprofit public-interest law firm organized under the laws of the State of Colorado. MSLF is dedicated to bringing before the courts issues that are vital to the defense and preservation of individual liberties: the right to equal justice under law, the right to speak freely, the right to own and use property, and the need for limited and ethical government.

Since its creation in 1977, MSLF attorneys have litigated the proper interpretation and application of statutory, regulatory, and constitutional provisions. *See, e.g.*, *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200 (1995) (MSLF serving as lead counsel); *Marvin M. Brandt Revocable Tr. v. U.S.*, 572 U.S. 93 (U.S., 2014) (MSLF serving as lead counsel); *Bondi v. VanDerStok*, 145 S. Ct. 857 (2025) (MSLF serving as co-counsel).

[1] Per Supreme Court Rule 37.6, the undersigned affirms that no counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of the brief.

SUMMARY OF THE ARGUMENT

There are only two sexes. That proposition has been established again and again by this Court's precedents, and indeed is fundamental to the doctrinal origins of intermediate scrutiny in prominent cases regarding sex discrimination. *See Frontiero v. Richardson*, 411 U.S. 677, 686 (1973) ("[S]ex, like race and national origin, is an immutable characteristic determined solely by the accident of birth[.]") (emphasis added); *accord U.S. v. Skrmetti*, 145 S. Ct. 1816, 1856 (2025) (Alito, J., concurring) ("What [our] cases have always meant by 'sex' is the status of having the genes of a male or female. That was the common understanding of the term in 1971 when the Court, in *Reed v. Reed*, first held that a law that discriminated against women violated the Equal Protection Clause. … And all the Court's subsequent cases in this line have shared that understanding.") (full citation omitted).

And relevant here, the Court has recognized that there are scientific distinctions between the sexes, which are biologically determined, and which present differently with respect to physical traits. *United States v. Virginia*, 518 U.S. 515, 533 (1996) ("Physical differences between men and women, however, are enduring: '[T]he *two sexes* are not fungible[.]'") (quoting *Ballard v. United States*, 329 U.S. 187, 193 (1946)) (emphasis added); *Tuan Anh*

Nguyen v. I.N.S., 533 U.S. 53, 68 (2001) ("[T]he mother's knowledge of the child and the fact of parenthood have been established in a way not guaranteed in the case of the unwed father."); *Newport News Shipbuilding and Dry Dock Co. v. EEOC*, 462 U.S. 669, 684 (1983) ("[O]nly women can become pregnant[.]"); *accord Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2346 (2022) (dissenting opinion of Breyer, Sotomayor, and Kagan, JJ.) ("[A] majority of today's Court has wrenched this choice from *women* and given it to the States.") (emphasis added).[2]

West Virginia's law echoes the Court's prior holdings by bifurcating its athletic opportunities by sex, and preventing biological males from competing

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[2] *See also* Brief for Equal Protection Constitutional Law Scholars Serena Mayeri, Melissa Murray, and Reva Siegel as Amici Curiae Supporting Respondents, *Dobbs v. Jackson Women's Health Org.*, No. 19-1392 (U.S. Sept. 20, 2021) (available at https://www.supremecourt.gov/DocketPDF/19/19-1392/193048/20210920164113157_19-1392%20bsac%20Equal%20Protection%20Constitutional%20Law%20Scholars%20Final.pdf) (last accessed Sept. 17, 2025) (arguing that abortion bans are unconstitutional sex discrimination under the Equal Protection Clause because they target pregnancy, which "singles out pregnant women for coercive regulation," and "by its terms, the law is designed to deprive women, and not men, of their right to make choices about whether or not to have children").

against biological females. That is good for competitive fairness. But it is also good for other reasons. Fundamentally, the principle at issue in this case is not limited to sports. Whether or not there are two sexes, and whether or not schools and institutions may bifurcate certain programs and activities by sex—including the use by teachers and staff of pronouns, honorifics, and other sex-based speech—reverberates across a host of contexts. Here, MSLF is most concerned about the implications for free speech if schools, teachers, and peers may not use biological sex as outcome-determinative for their speech in the educational environment, lest they be accused of discrimination and harassment.

ARGUMENT

I. There Are Only Two Sexes.

This Court's jurisprudence has uniformly treated "sex" as an objective, biological concept, referring to "our most basic biological differences." *Tuan Anh Nguyen*, 533 U.S. at 73. The Court has characterized sex as an "immutable" characteristic "determined solely by the accident of birth." *Frontiero*, 411 U.S. at 686 (plurality opinion). As Justice Alito recently confirmed, "What [this Court's equal protection] cases have always meant by "sex" is the status of having the genes of a male or female." *United States v. Skrmetti*, 145 S. Ct. 1816, 1856 (2025) (Alito, J., concurring in part). In *Skrmetti*, this Court

reaffirmed this understanding of sex as rooted in immutable biology, endorsing the Food and Drug Administration's recognition that "'biological differences between men and women (differences due to sex chromosome or sex hormones) may contribute to variations seen in the safety and efficacy of drugs.'" *Id.* at 1829–30 (citation omitted).

This consistent judicial understanding reflects the original public meaning of "sex" both at the ratification of the Fourteenth Amendment and the enactment of Title IX in 1972. At both points in history, the term "sex" universally referred to the binary, biological distinction between male and female. The concept of "gender identity" as a subjective, internal sense of self, divorced from biology, was entirely foreign to the legislators and the public who adopted these provisions. *See Adams ex rel. Kasper v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791, 809 (11th Cir. 2022) (en banc) (recognizing that the Court's sex-discrimination jurisprudence is grounded in biological differences).

Some lower courts, unfortunately, have eschewed this historical understanding, engaging instead in anachronistic interpretation by imposing modern, contested definitions of gender identity onto the fixed term "sex." This approach violates fundamental principles of textualism and originalism, which require courts to interpret legal texts according

to their meaning at the time of enactment, not according to evolving social norms or ideological preferences. *See N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 20 (2022) (requiring constitutional analysis to be rooted in the text and "historical tradition" rather than judicial interest balancing).

The Ninth Circuit's approach in *Hecox v. Little* is particularly flawed. It suggested that the ratifiers of the Fourteenth Amendment would not have understood modern scientific definitions of "biological sex" involving genetics or hormones. *See Hecox v. Little*, 104 F.4th 1061, 1076 n.9 (9th Cir. 2024) ("[T]estosterone was not named and isolated as a hormone until 1935."). This is irrelevant. The ratifiers undeniably understood the immutable distinction between men and women, which is the distinction the laws at issue maintain. By redefining "sex" through judicial fiat, the lower courts usurp the legislative function and imperil the right to speak in ordinary terms about men and women.

Most recently, in *Bostock v. Clayton County,* 590 U.S. 644 (2020), this Court relied on the time-tested truth that sex is binary and biologically determined. *Bostock*'s key passage is the following:

> [T]ake an employer who fires a transgender person who was identified as a male at birth but who now identifies as a female. If the

> employer retains an otherwise identical employee who was identified as female at birth, the employer intentionally penalizes a person identified as male at birth for traits or actions that it tolerates in an employee identified as female at birth. Again, the individual employee's sex plays an unmistakable and impermissible role in the discharge decision.

590 U.S. at 659–60; *see also* U.S. DEP'T OF EDUC., OFF. FOR CIVIL RTS., *Annual Report to the Secretary, the President, and the Congress*, at 27 (2021) ("The Court's holding stated that it was assuming that sex referred to an employee's biological sex, but in fact the Court's holding in *Bostock* relies on that assumption, by noting that the employee who identifies as female is biologically male[.]")[3]. Thus, contrary to the idea that *Bostock* is a crowbar that can be used to pry open traditionally female spaces to biological males, in reality, it is an affirmation that there are only two sexes, and that they are fundamentally distinct.

Yet the Ninth Circuit characterized reliance on biology as a potential "pretext to exclude transgender women." *Hecox*, 104 F.4th at 1078. Similarly, the Fourth Circuit concluded that defining sex by biology

[3] https://www.ed.gov/sites/ed/files/about/reports/annual/ocr/report-to-president-and-secretary-of-education-2020.pdf (last accessed Sept. 17, 2025).

was done solely "to exclude transgender girls," which it deemed "the definition of gender identity discrimination." *B.P.J. ex rel. Jackson v. W. Va. State Bd. of Educ.*, 98 F.4th 542, 556 (4th Cir. 2024).

The reasoning of these courts is fatally flawed. Adherence to the original, bifurcated meaning of "sex"—the definition consistently employed by this Court and understood when Title IX was enacted in 1972—is not pretextual; it is fidelity to the law as written. The States' reliance on biology is merely a recognition of the enduring physiological differences that necessitate sex separation in athletics. These differences are objective scientific realities. *See United States v. Virginia*, 518 U.S. 515, 533 (1996).

If a biological male may demand to play on the women's sports team, lest the individual be able to invoke the specter of discrimination, why not also demand female pronouns, female honorifics like Ms., She, Madam, and Ma'am? The constitutional injury to speech will stem from both suppressing traditional and compelling modern viewpoints related to subjective gender identity over sex. *See Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995) (explaining that the government's First Amendment violation is "all the more blatant" when it targets "particular views taken by speakers on a subject").

Regulating speech that is grounded in objective scientific fact is a particularly egregious First Amendment violation. Compelling individuals to deny, or remain silent about, these objective realities distorts the constitutional structure, and fosters an environment where ideological shifts force schools to affirm identities contrary to biological facts. This Court should steer the lower courts far away from this path.

II. Consistent with this Court's Jurisprudence, Title IX Contemplates Only Two Sexes.

The text of Title IX is not ambiguous. It disallows recipients of federal funds like schools from discriminating on the basis of sex, and treats sex as limited to the binary categories of male and female, both objective and fixed. *See Neese v. Becerra*, No. 2:21-cv-163, 2022 WL 1265925, at *12 (N.D. Tex. Apr. 26, 2022) ("Title IX presumes sexual dimorphism in section after section, requiring equal treatment for each 'sex.'") vacated on other grounds by *Neese v. Becerra*, 123 F.4th 751 (5th Cir. 2024); *see also*, *e.g.*, 20 U.S.C. § 1681(a)(2) ("[T]his section shall not apply . . . in the case of an educational institution which has begun the process of changing from being an institution which admits only students of *one sex* to being an institution which admits students of *both sexes*[.]") (emphasis added); *id.* (referring once again

to "one sex" and "the other sex"); *see also* 20 U.S.C. § 1681(a)(8) ("[T]his section shall not preclude father-son or mother-daughter activities at an educational institution, but if such activities are provided for students of *one sex*, opportunities for reasonably comparable activities shall be provided for students of *the other sex*[.]") (emphasis added).

From the beginning, Title IX regulations confirmed this textual reading, establishing a binary, objective, and immutable meaning of sex within the statute's terms. *See*, *e.g.*, 34 C.F.R. § 106.34(a)(3) ("Classes or portions of classes in elementary and secondary schools that deal primarily with human sexuality may be conducted in separate sessions for *boys and girls*.") (emphasis added); 34 C.F.R. § 106.33 ("A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of *one sex* shall be comparable to such facilities provided for students of the *other sex*.") (emphasis added); 34 C.F.R. § 106.54(b) ("A recipient shall not make or enforce any policy or practice which, on the basis of sex … [r]esults in the payment of wages to employees of *one sex* at a rate less than that paid to employees of *the opposite sex* for equal work…") (emphasis added); *cf.* 34 C.F.R. § 106.37(c)(1) ("To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of *each sex* in proportion to the

number of students of *each sex* participating in interscholastic or intercollegiate athletics.") (emphasis added).

Non-biological gender identity is not found in the text of Title IX, nor is it consistent with decades of interpretation of that statute. Indeed, in its 2020 regulations on the topic of sexual harassment in schools, the Department of Education once again properly emphasized this point: "Title IX and its implementing regulations include provisions that presuppose sex as a binary classification, and provisions in the Department's current regulations, which the Department did not propose to revise in this rulemaking, reflect this presupposition." Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 85 Fed. Reg. 30,026, 30,178 (May 19, 2020).

The structure and purpose of Title IX confirm that it was designed to ensure equal opportunities for women based on the recognition of biological differences, not to erase those differences. Unlike Title VII, Title IX explicitly contemplates and authorizes sex separation in numerous contexts. *See, e.g.*, 20 U.S.C. § 1686 (permitting "separate living facilities for the different sexes"); 34 C.F.R. § 106.41(b) (authorizing separate athletic teams). These provisions demonstrate Congress's clear intent to

permit distinctions based on the objective, binary understanding of sex. The attempt by the lower courts to redefine "sex" to include "gender identity" misreads the statute.

Moreover, the attempt to graft the logic of *Bostock* onto Title IX ignores critical textual and structural differences, and the explicit limitations articulated in *Bostock* itself. *Bostock* addressed a narrow question under Title VII: whether an employer who fires an individual merely for being homosexual or transgender discriminates "because of such individual's sex." *Id.* at 681. The Court explicitly limited its holding, and expressly declined to address the implications for other statutes or contexts: "we do not purport to address bathrooms, locker rooms, or anything else of the kind." *Id.*

Applying *Bostock* to mandate the integration of biological males into female spaces disregards this limitation, and undermines the very purpose of Title IX—to ensure equal opportunities by recognizing the physiological advantages that males possess. *Bostock* was never about whether employers had to affirm an employee's subjective gender identity. It was about termination of employment alone. *Bostock*, 590 U.S. at 681 ("Under Title VII . . . we do not purport to address bathrooms, locker rooms, or anything else of the kind. The only question before us is whether an employer who fires someone simply for being homosexual or

transgender has discharged or otherwise discriminated against that individual 'because of such individual's sex.'").

And following *Bostock*, the Department of Education's Office of the General Counsel (OGC) correctly analyzed the limited impact of that decision on Title IX, concluding that the statutes are materially different. *See* U.S. DEP'T OF EDUC., OFF. OF THE GENERAL COUNSEL, Memorandum for Kimberly M. Richey, *Re: Bostock v. Clayton Cty.* (Jan. 8, 2021).[4] Specifically, the OGC emphasized that *Bostock*'s logic could not override the specific requirements of Title IX:

> Question 3: How should OCR view allegations that a recipient targets individuals for discriminatory treatment on the basis of a person's transgender status or homosexuality?
>
> Answer: Although *Bostock* expressly does not decide issues arising under Title IX or other differently drafted laws, the logic of *Bostock* may, in some cases, be useful in guiding OCR's understanding as to whether the alleged discrimination on the basis of a

[4] https://www.ed.gov/sites/ed/files/about/offices/list/ocr/correspondence/other/ogc-memorandum-01082021.pdf (last accessed Sept. 17, 2025).

> person's transgender status or homosexuality necessarily takes into account the person's biological sex and, thus, constitutes discrimination on the basis of sex. …
>
> However, we emphasize that Title IX and its implementing regulations, unlike Title VII, may *require* consideration of a person's biological sex, male or female. 20 U.S.C. §§ 1681(a), 1686; 34 CFR §§ 106.32(b), 106.33, 106.34, 106.40, 106.41, 106.43. 106.52, 106.59, 106.61. …

Id. at 4 (emphasis in original). This analysis recognizes that in contexts like athletics (governed by 34 C.F.R. § 106.41), biological sex, alone, is necessarily outcome-determinative. The OGC concluded:

> Consequently, we believe a recipient generally would not violate Title IX by, for example, recording a student's biological sex in school records, or referring to a student using sex-based pronouns that correspond to the student's biological sex, or refusing to permit a student to participate in a program or activity lawfully provided for members of the opposite sex, regardless of transgender status or homosexuality.

Id.; see also U.S. DEP'T OF EDUC., OFF. FOR CIVIL RTS., OCR Letter to Congressman Mark Green (2020) ("By itself, refusing to use transgender students' preferred pronouns is not a violation of Title IX and would not trigger a loss of funding or other sanctions. To the extent any prior OCR sub-regulatory guidance, field instructions, or communications are inconsistent with this approach, they are inoperative.").[5]

The approach adopted by the Fourth Circuit, which demands an individualized assessment of eligibility based on subjective factors such as "outward physical characteristics," *B.P.J.*, 98 F.4th at 562, is in deep tension with the Court's precedents holding that sex is biological and immutable. And it opens to the door to profound First Amendment difficulties, by implicating speech considerations related to an ideological view of whether someone truly is male or female. This framework mandates that schools engage in constant, subjective evaluations and administrative "speech"—such as whether to use male or female pronouns, male or female honorifics, or how to frame public announcements—to reflect subjective identities over objective biological sex.

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[5] https://www.ed.gov/sites/ed/files/about/offices/list/ocr/correspondence/congress/20200309-title-ix-and-use-of-preferred-pronouns.pdf (last accessed Sept. 18, 2025).

This Court has consistently prohibited government compulsion of affirmations that contradict one's beliefs. *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). The requirement for case-by-case evaluations demands ongoing administrative endorsement of a non-originalist view of sex. It compels affirmations at odds with the enduring physiological differences this Court has recognized. *See United States v. Virginia*, 518 U.S. at 533. This subjective standard erodes the constitutional structure by mandating ideological conformity in public records.

Moreover, the individualized assessment paradigm creates awkward, vague, and subjective standards—such as evaluating a student's duration of public gender identification, use of puberty blockers, or "outward physical characteristics" like fat distribution and bone size—all of which invite arbitrary and capricious enforcement of speech-related mandates by school officials. *B.P.J.*, 98 F.4th at 564. Such amorphous criteria fail to provide fair notice of what constitutes compliance, leaving administrators, students, and parents without clear guidance on eligibility determinations.

Here, the proposed case-by-case evaluations would transform schools, teachers, and even the school janitor into ad hoc tribunals, requiring guesses into physical attributes and personal histories—

burdens that not only strain administrative resources but also heighten the risk of inconsistent, biased decisions surrounding whether certain speech was harassing or not.

These dangers reinforce the administrability concerns already noted: categorical rules based on objective biological sex provide the clarity and uniformity that subjective assessments cannot. *Cf. Lange v. Houston County,* — F.4th —, 2025 WL 2602633, at 3–6 (11th Cir. 2025) (*en banc*) (holding that employer-provided health insurance plan's denial of coverage for gender-affirming care does not discriminate on the basis of sex, transgender status, or sex stereotypes under Title VII, as the plan treats all employees equally regardless of sex and does not penalize transitioning). By essentially mandating such unworkable standards, the lower courts imposed a regime incompatible with the marketplace of ideas, with speech based on religious principles, and with the ordinary day-to-day speech of millions of Americans.

III. Just Like Sports, Many Forms of Speech—Like Pronouns—Depend on Sex-based Classifications.

If permitted to stand, the Fourth and Ninth Circuits' decisions will transform the Equal Protection Clause and Title IX into an instrument of ideological coercion, compelling speech and enforcing viewpoint

discrimination in violation of the First Amendment. The mechanism through which this violation occurs is the transformation of anti-harassment policies into tools of censorship by subverting the standard articulated in *Davis ex rel. LaShonda D. v. Monroe County Board of Education*, 526 U.S. 629 (1999).

Under *Davis*, schools are liable under Title IX only for deliberate indifference to harassment "that is so severe, pervasive, and objectively offensive that it effectively bars the victim's access to an educational opportunity or benefit." *Id.* at 650. This standard requires objective offense, ensuring that schools do not suppress protected speech merely because it is unpopular.

If, however, the recognition of biological reality—such as using biological sex as determinative for pronouns and honorifics—is deemed discrimination and "harassment" based on gender identity, the *Davis* standard is rife for weaponization. Schools will be compelled to suppress ordinary such speech to avoid liability. Only "gender affirming" speech will be tolerated, and in fact mandated.

In short, the controversy in this case extends well beyond the athletic field; it implicates the fundamental freedoms protected by the First Amendment. The lower courts' interpretations impose an ideological framework that fundamentally conflicts

with the constitutional rights of students and faculty. By disallowing individuals from using speech that treats biological sex—rather than self-announced gender identity—as the touchstone for pronouns, honorifics, and other conduct, the decisions below mandate the affirmation of subjective gender identity, transforming educational institutions from forums of open inquiry into environments of enforced ideological conformity. The recognition of objective biological reality—the approach taken by West Virginia and Idaho—avoids these severe constitutional infringements.

It is a foundational principle of First Amendment jurisprudence that the government is prohibited from compelling individuals to profess beliefs they do not hold. "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). This includes the freedom from being forced to become "an instrument for fostering public adherence to an ideological point of view he finds unacceptable." *Wooley v. Maynard*, 430 U.S. 705, 715 (1977).

Any interpretation of the Equal Protection Clause or Title IX that forces schools and speakers to

blur biological lines—by making them ignore biology—will absolutely reverberate on speech. In other words, requiring adherence to asserted gender identity inevitably leads to policies compelling students and faculty to use pronouns inconsistent with an individual's biological sex. Under this framework, "misgendering" is frequently treated not as protected expression, but as actionable harassment.

As the Sixth Circuit has recognized, compelling a professor to use specific pronouns is not a neutral matter of classroom management, but a form of compelled academic speech that forces the speaker "convey a powerful message implicating a sensitive topic of public concern." *Meriwether v. Hartop*, 992 F.3d 492, 508 (6th Cir. 2021). When a school disciplines a teacher or student for refusing to use pronouns that contradict their convictions, the government "wields its authority" against their First Amendment freedoms. *Id.* at 507. The court concluded that academic freedom protects the right to express views on such matters of public concern, even when those views conflict with administrative policies or the preferences of others. *Id.* at 507–08.

This Court has repeatedly reaffirmed the prohibition against compelled speech, recognizing that the government cannot force individuals to affirm beliefs they do not hold. *See 303 Creative LLC v.*

Elenis, 600 U.S. 570, 587 (2023) (government may not compel "an individual to speak in ways that align with its views but defy her conscience"); *Janus v. AFSCME, Council 31*, 585 U.S. 878, 887 (2018) ("Forcing free and independent individuals to endorse ideas they find objectionable is always demeaning.").

The consequences of this enforced orthodoxy are already apparent. Teachers have been disciplined or terminated for refusing to use preferred pronouns or for voicing objections to gender fluidity policies based on their deeply held convictions. *See L.M. v. Town of Middleborough*, 145 S. Ct. 1489, 1490 (2025); (Alito, J., dissenting from denial of certiorari) ("[W]hen L. M., a seventh grader, wore a t-shirt that said 'There Are Only Two Genders,' he was barred from attending class."); *Vlaming v. West Point Sch. Bd.*, 302 Va. 504 (Va. 2023) ("Vlaming's refusals, the School Board stated, had violated School Board Policies AC and GBA/JFHA, which prohibited discrimination and harassment based on gender identity."); *see also Loudoun Cty. Sch. Bd. v. Cross*, No. 210584, 2021 WL 9276274, *1 (Va. Aug. 30, 2021) (educator placed on administrative leave for speaking out at a school board meeting about a transgender policy stating, 'I will not affirm that a biological boy can be a girl and vice versa because it is against my religion. It's lying to a child. It's abuse to a child. And it's sinning against our God.").

In Wisconsin, middle school students faced sexual harassment complaints merely for using biologically accurate pronouns. *See* Isabel Vincent, *Keil, Wisconsin school district charges kids for using wrong pronouns*, New York Post (May 14, 2022).[6] These examples illustrate the severe chilling effect of the lower courts' interpretations.

The First Amendment implications extend into the core of the educational mission: the curriculum. Educators in fields such as biology, health, and civics would be compelled to teach and affirm that sex is fluid, subjective, and divorced from biology, regardless of their own convictions or the scientific consensus. This violates the recognized principles of academic freedom that are "a special concern of the First Amendment." *Keyishian v. Bd. of Regents of Univ. of State of N.Y.*, 385 U.S. 589, 603 (1967).

The lower courts' rulings transform this environment into one of ideological conformity, where educators must espouse the government's preferred view or face disciplinary action. The recognition of objective biological reality—the approach taken by West Virginia and Idaho—avoids these severe

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[6] https://nypost.com/2022/05/14/kiel-wisconsin-school-charges-kids-for-using-wrong-pronouns/ (last accessed Sept. 17, 2025).

constitutional infringements by respecting the freedom of conscience of students and educators alike.

CONCLUSION

The judgments of the United States Courts of Appeals for the Fourth and Ninth Circuits should be reversed.

Respectfully submitted,

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