

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*

**AMICI CURIAE BRIEF OF JOHN ADAMS
ACADEMIES, CHINO VALLEY UNIFIED
SCHOOL DISTRICT, TEMECULA VALLEY
UNIFIED SCHOOL DISTRICT, MURRIETA
VALLEY UNIFIED SCHOOL DISTRICT,
PERRIS UNION HIGH SCHOOL DISTRICT,
PLACER UNION HIGH SCHOOL DISTRICT,
KERN COUNTY BOARD OF EDUCATION,
ORANGE COUNTY BOARD OF EDUCATION IN
SUPPORT OF PETITIONERS**

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TABLE OF CONTENTS

TABLE OF CONTENTS	I
TABLE OF AUTHORITIES.....	III
INTEREST OF AMICI CURIAE	1
BACKGROUND	4
SUMMARY OF THE ARGUMENT	8
ARGUMENT	9
I. Allowing Male Students Into Historically Intimate Female Spaces Causes Female Students Physical and Psychological Harm..	11
A. Biological Realities Endanger Female Students' Safety and Privacy.	11
B. Sex-Segregated Intimate Spaces are an Aspect of the Culmination of Thousands of Years of Progress for Women.	19
II. Altering the Definition of Sex to Conform to Ideological or Political Objectives Instead of Biology Obscures Truth and Undermines the Rights of Teachers and Students Alike.	21
A. The Fourth Circuit Holding Effectively Forces K-12 Schools to Affirm a Political Ideology to Which They Disagree.....	22

B. Requiring Schools to Affirm Political Ideology Over Scientific Fact Harms Students and Teachers Alike.	24
CONCLUSION	26

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Adams v. Sch. Bd. of St. Johns Cnty.</i> , 57 F.4th 791 (11th Cir. 2022)	16
<i>B.P.J. v. W. Va. Bd. of Educ.</i> , 98 F.4th 542 (4th Cir. 2024)	10, 15, 16, 19, 22, 23
<i>Bd. of Educ. v. Earls</i> , 536 U.S. 822 (2002)	3
<i>Bostock v. Clayton Cnty.</i> , 590 U.S. 644 (2020)	26
<i>Carcaño v. McCrory</i> , 203 F.Supp.3d 615 (M.D.N.C. 2016)	19
<i>Epperson v. Arkansas</i> , 393 U.S. 97 (1968)	25
<i>Frontiero v. Richardson</i> , 411 U.S. 677 (1973)	26
<i>Ginsberg v. New York</i> 390 U.S. 629 (1968)	16
<i>Hecox v. Little</i> , 104 F.4th 1061 (9th Cir. 2024)	18, 22, 23

<i>Lee v. Downs</i>	
641 F.2d 1117 (4th Cir. 1981)	18
<i>Mahanoy Area Sch. Dist. V. B.L. ex rel. Levy,</i>	
594 U.S. 180 (2021).....	2
<i>Mahmoud v. Taylor,</i>	
145 S. Ct. 2332 (2025).....	2
<i>Michael M. v. Superior Court of Sonoma Cnty.,</i>	
450 U.S. 464 (1981).....	10, 25
<i>Rinaldi v. Yeager,</i>	
384 U.S. 305 (1966).....	9, 25
<i>U.S. v. Virginia,</i>	
518 U.S. 515 (1996).....	16
<i>W. Virginia State Bd. of Ed. v. Barnette,</i>	
319 U.S. 624 (1943).....	9, 21, 24, 26
<i>York v. Story,</i>	
324 F.2d 450 (9th Cir. 1963)	18
Statutes	
20 U.S.C. § 1681	5
20 U.S.C. § 1681(a).....	6, 8, 10
20 U.S.C. § 1686	8, 10
20 U.S.C. § 3401	5
Ca Educ. Code § 221.5(f)	23

Ca Educ. code § 51933(b)	26
Ca Educ. code § 51934.....	26
W. Va. Code § 18-2-25d	3

Rules

U.S. Supreme Court Rule 37	1
----------------------------------	---

Regulations

34 C.F.R. § 106.33	4, 6, 8, 10
--------------------------	-------------

Other Authorities

Abby Patkin, “Injuries involving trans basketball player at Mass. school spark controversy”, Boston.com, Mar. 4, 2024, available at https://www.boston.com/news/high-school-sports/2024/03/01/injuries-involving-trans-basketball-player-at-mass-school-spark-controversy/ , last visited Sept. 18, 2025	13
Amzad Hossain, et. al., Access to toilets and violence against women, 114 J. of Env’t Econ. & Mgmt. 102695 (July 2022)	20
Anne-Lise Goddings, et. al., Understanding the Role of Puberty in Structural and Functional Development of the Adolescent Brain, 29 J. Res. Adolescence 32 (2019)	16

Antonina Jedrejczak, “Young Girls Are Dropping Out Of Sports — Here’s Why It’s A Problem,” Rrefinery29, Nov.	13
Burlette Carter, Sexism in the “Bathroom Debates”, 37 Yale L. & Pol’y Rev. 227 (2018).....	5, 20
Candace Kruttschnitt, Gender and Interpersonal Violence, 3 Understanding and Preventing Violence 293 (1994)	17
Catherine Crocker, Ginsburg Explains the Origins of Sex, Gender, Los Angeles Times, (Nov. 21, 1993)	26
Cecilia Dhejn, et. al., Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden, 6 (Issue 2) PLoS ONE 6 (2011)	17
Cyd Zeigler, “6 truths and myths about Lia Thomas, trans athletes and women’s swimming,” OutSports, Jan 6., 2022, available at https://www.outsports.com/2022/1/6/22867761/lia- thomas-penn-swimming-trans-truth-myth/ , last visited Sept. 18, 2025	12
Emma N. Hilton and Tommy R. Lundberg, “Transgender women in the female category of sport: perspectives on testosterone suppression and performance advantage,” Sports Medicine, vol. 51 (2021)	13

- Erin Wilson and Gretchen Kerr, “Gender-based violence in girls’ sports”, *Adolescents*, vol. 3, No. 2 (Apr. 2023)14
- “Former high school athlete injured during ‘hostile’ volleyball game by transgender player,” Fox News, Aug. 17, 2023 available at <https://www.foxnews.com/video/6334032228112?msockid=225ab66cf16d6e0a1e1aa070f0e96fa2>, last visited Sept. 18, 2025.....13
- Grace Abels, What is ‘sex’? What is ‘gender’? How these terms changed and why states now want to define them, PolitiFact (Mar. 22, 2024) (noting that “Until the mid-20th century, Americans’ understanding of ‘sex’ was largely biological and binary.”)25
- G.K. Chesterton, *The Drift from Domesticity*
Chesterton, *The Drift from Domesticity*, available at <http://thedomesticempire.com/wp-content/uploads/2022/07/Drift-From-Domesticity-the-Thing.pdf>, last visited Sept. 18, 2025.....4
- Harvey Wilson, Average Human Running Speeds- Insight by Age and Gender, RunningForWellness, Dec. 17, 2024, available at https://runningforwellness.com/average-human-running-speeds/#google_vignette, last visited Sept. 18, 2024.12
- Joe Kettke, More than 2.8 million Americans identify as transgender, report finds, NBC News, Aug. 22,

- 2025, available at <https://www.nbcnews.com/nbc-out/out-news/28-million-americans-identify-transgender-report-finds-rcna226465>, last visited Sept. 18, 202518
- Katy Steinmetz, The Transgender Tipping Point, TIME, May 29, 2014 available at <https://time.com/135480/transgender-tipping-point/>, last visited Sept. 18, 20257
- Kirsty Forsdike and Simone Fullagar, “Addressing the complexity of violence against women in sport”, Journal of Sport Management, vol. 35, No. 5 (Dec. 2021)14
- Lise Eliot, Brain Development and Physical Aggression: How a Small Gender Difference Grows into a Violence Problem, 62 Current Anthropology S23 (2021)17
- Lori Ward and Jamie Strashin, “Sex offences against minors: investigation reveals more than 200 Canadian coaches convicted in last 20 years”, CBC News, Feb. 10, 2019, available at <https://www.cbc.ca/sports/amateur-sports-coaches-sexual-offences-minors-1.5006609>, last visited Sept. 18, 202514
- Marquise Francis, Poll: Most American oppose trans women competing in female sports, including 2 of 3 in Gen Z, NBC News, May 1, 2025, available at <https://www.nbcnews.com/politics/politics-news/poll-americans-oppose-trans-women->

competing-female-sports-2-3-gen-z-rcna203658, last visited Sept. 18, 2025	2
NCHS Data Brief, Measures of Muscular Strength in U.S. Children and Adolescents Dec. 2013, available at https://www.cdc.gov/nchs/data/databriefs/ db139.pdf , last visited Sept. 18, 2025	11
Reem Alsalem, <i>United Nations General Assembly the Report of the Special Rapporteur on Violence Against Women and Girls, its Causes and Consequences</i> , Aug. 27, 2024, available at https://documents.un.org/ doc/undoc/gen/n24/249/94/pdf/n2424994.pdf , last visited Sept. 18, 2025.....	9
Royal Commission into Institutional Responses to Child Sexual Abuse of Australia, Final Report: Sport, Recreation, Arts, Culture, Community and Hobby Groups (Australia, 2017)	14
Ryan Anderson, Transgender Ideology Is Riddled With Contradictions. Here Are the Big Ones, The Heritage Foundation (Feb. 9, 2018)	24
“Safe and fair sport matters to women and girls on every level,” WomenInSport, available at https://womeninsport.org/safe-and-fair-sport-for- women-and-girls/ , last visited Sept. 18, 2025.....	14
Sex Matters, “Reclaiming Kenwood Ladies’ Pond for women”, Aug. 29, 2022, available at https://sex-	

matters.org/posts/updates/ladies-pond/, last visited Sept. 18, 2025.....	14
Timothy A. Roberts, Joshua Smalley, Dale Ahrendt, Effect of gender affirming hormones on athletic performance in transwomen and transmen: implications for sporting organisations and legislators, British Journal of Sports Medicine 2021, available at https://bjsm.bmj.com/content/55/11/577 , last visited Sept. 18, 2025.....	12
Tommy R. Lundberg, et. al., “The International Olympic Committee framework on fairness, inclusion and nondiscrimination on the basis of gender identity and sex variations does not protect fairness for female athletes”, Scandinavian Journal of Medicine and Science in Sports, vol. 34, No. 3 (March 2024)	14
Yaron Steinbuch, “Injured North Carolina volleyball player urges transgender ban for female sports teams in schools”, New York Post, Apr. 21, 2023 “Injured North Carolina volleyball player urges transgender ban for female sports teams in schools”, New York Post, Apr. 21, 2023, available at https://nypost.com/2023/04/21/nc- volleyball-player-urges-transgender-ban-for- schools-female-sports/ , last visited Sept. 18, 2025	13

U.S. Dep't of Justice, Civil Rights Division, Title IX Legal Manual, available at https://www.justice.gov/s ites/default/files/crt/legacy/2010/12/14/ixlegal.pdf , last visited Sept. 18, 2025	3
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INTEREST OF AMICI CURIAE¹

Pursuant to Supreme Court Rule 37, *amici curiae* respectfully submit this brief to protect the rights, educational standards, and privacy of school communities, school faculties, students, and parents nationwide and urge this Court to reverse the Fourth Circuit ruling. *Amici* are a coalition of California public school districts and charter schools charged with providing safe educational environments for students. *Amici curiae* include John Adams Academies, Chino Valley Unified School District, Temecula Valley Unified School District, Murrieta Valley Unified School District, Perris Union High School District, Placer Union High School District, Kern County Board of Education, and Orange County Board of Education. Each receives federal funding to operate its services and programs. Collectively, *amici* educate several thousand students across urban, suburban, and rural communities. And each provides its students with a wide range of athletic and extracurricular programs. *Amici* have a compelling interest in preserving the safety and well-being of their students and promoting an educational experience based on truth.

While students are at school, *amici* play an important role in the lives of their students and their families. *Amici* serve a key function in carrying out and honoring the rights of parents to control the

¹ *Amici curiae* certify that no counsel for a party authored this brief in whole or in part and no person or entity, other than *amici*, their members, or their counsel, has made a monetary contribution to its preparation or submission.

upbringing of their children. *Mahmoud v. Taylor*, 145 S. Ct. 2332 (2025). At the same time, *amici* must carry out the responsibility of ensuring the safety, privacy, and well-being of the schoolchildren placed in their care. *Mahanoy Area Sch. Dist. V. B.L. ex rel. Levy*, 594 U.S. 180, 187 (2021) (“[S]chools at times stand *in loco parentis*, *i.e.*, in the place of parents.”). Each *amici* has the responsibility of maintaining the “health[] and safety” of its students while they are on campus or taking part in school programs and activities. *Bd. of Educ. v. Earls*, 536 U.S. 822, 831 (2002).

As educators entrusted with protecting students, *amici* have firsthand insight into the significant psychological and physical risks female students face when males are permitted in their spaces. *Amici* have observed how validating boys’ transgender identities can harm female students. For the purposes of this brief, however, *amici* focus specifically on the undesired impact and loss of opportunity that female students experience when boys are allowed into their intimate spaces, such as bathrooms, locker rooms, and dormitories. Most Americans support laws that protect female students, such as those enacted in West Virginia and Idaho. See Marquise Francis, *Poll: Most American oppose trans women competing in female sports, including 2 of 3 in Gen Z*, NBC News, May 1, 2025, available at <https://www.nbcnews.com/politics/politics-news/poll-americans-oppose-trans-women-competing-female-sports-2-3-gen-z-rcna203658>, last visited Sept. 18, 2025 (noting around 75% of people polled did not support trans women (biological men) in women’s sports). Yet despite this apparent support, *amici* have

witnessed female students who voiced their discomfort with men sharing their intimate spaces face ostracism and be labeled as bigots by the vocal minority of fellow students, teachers, and coaches.

Amici have further witnessed the harm to students inside the classroom when teachers are required to reject objective truth and use compulsory words and language to further a political ideology. As institutions of education, a teacher's focus should be devoted to inspiring students to learn and seek the discovery of truth. *Amici* believe that the current politicized gender ideology unmoors the concept of gender and sex from their objective reality. *Amici* have experienced how this creates cognitive dissonance and cynicism in the classroom.

Amici have implemented, or seek to implement, resolutions and policies that preserve historically sex-segregated spaces, similar to the West Virginia statute requiring public schools to designate sports teams "based on biological sex" and prohibiting males from participating on teams "designated for females, women, or girls," W. Va. Code § 18-2-25d, as well as Idaho's analogous law. *Amici* have a significant interest in protecting female students from potential physical and psychological harms that occur when men are permitted to enter women's intimate facilities and athletic competitions. However, under California law, which governs the schools *amici* lead, and the Ninth Circuit's interpretation of Title IX, *amici* face significant liability if they do not permit males to compete in women's sports or otherwise invade historically sex-segregated spaces. Therefore, *amici* face a legal dilemma: California law expressly

requires schools to allow male students to participate on girls' athletic teams and use girls' locker rooms, but it seems clear that the original meaning of Title IX and its regulations impose no such requirements—and, in fact, prohibit such access.

Furthermore, as educators, *amici* oppose attempts to conflate or redefine the terms “sex” and “gender” for purposes of pushing political agendas at the cost of truth. Forcing educators to teach that truth is subjective, sex classifications are mutable, and reality can be redefined leads to cynicism and confusion in both students and teachers. *Amici Curiae* hold special knowledge pertaining to Title IX, its implementing regulations, including 34 C.F.R. 106.33, and the negative effect of departing from their original meaning and intent in the educational environment. Therefore, *amici* submit this brief to protect both the young male and female students entrusted to their care and to promote each student's growth, maturity, and education in a safe atmosphere.

BACKGROUND

Chesterton's fence is a principle that warns against changing the *status quo* before one fully understands how it came to be.² It advises that if one comes across a gate that blocks a road and the purpose of the gate is not readily apparent, it is unwise to hastily remove it. Rather, one may suppose that there

² G.K. Chesterton, The Drift from Domesticity, available at <http://thedomesticempire.com/wp-content/uploads/2022/07/Drift-From-Domesticity-the-Thing.pdf>, last visited Sept. 18, 2025.

is likely a reason the gate was built. Only once that reason is understood, can one begin to properly weigh the effect and cost of removing it. Sex-segregation of intimate spaces for women is a societal norm that has developed over thousands of years and has been the *status quo* in the United States since its inception. See Burlette Carter, *Sexism in the “Bathroom Debates”*, 37 Yale L. & Pol’y Rev. 227, 268-281 (2018).

In accordance with the traditional concept of the biological distinctions between women and men and the protection of intimate spaces separated by sex, Congress passed Title IX. In 1979, President Carter signed the Department of Education Organization Act, establishing the Department of Education. 20 U.S.C. § 3401 *et seq.* Seven years earlier in 1972, Congress passed and President Nixon signed Title IX of the 1972 Education Amendments into law. 20 U.S.C. § 1681, *et seq.* Title IX sought to rectify the inequity women faced in the workforce and to address the gender earnings gap by enabling the progress of women and girls in education.³ As legislative history reveals, the law focused on combating the economic disadvantages women faced in the workplace by addressing differential treatment on the basis of sex in education. See, *e.g.*, 118 Cong. Rec. 5803-07 (1972). Title IX provides:

No person in the United States shall, on the basis of sex, be excluded from participation in,

³ See, *e.g.*, U.S. Dep’t of Justice, Civil Rights Division, Title IX Legal Manual, available at <https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/ixlegal.pdf>, last visited Sept. 18, 2025.

be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance[.]

20 U.S.C. § 1681(a). Notably, Title IX recognizes the biological and physiological differences between men and women. Title IX also importantly provides that,

Notwithstanding anything to the contrary contained in this chapter, nothing contained herein shall be construed to prohibit any educational institution receiving funds under this Act, from maintaining separate living facilities for the different sexes.

Id. § 1686. Title IX’s implementing regulation, C.F.R. § 106.33, expressly allows for schools to designate separate facilities based on sex:

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. 34 C.F.R. § 106.33.

The terms or concept of gender identity or transgenderism appear nowhere in Title IX, its enacting regulations, or its legislative history. In sum, Title IX: 1) requires that schools not discriminate on the basis of sex in order to receive federal funding; 2) states that separate “toilet, locker room, and shower facilities” on the basis sex are

permissible; and 3) includes no provisions pertaining to the special treatment or exemptions from compliance on the basis of gender identity or transgenderism.

For well over 40 years, Title IX permitted schools to provide separate bathrooms, changing rooms, and showering facilities on the basis of sex, with discretion resting at the state and local school levels. The clear meaning of the legislation was never questioned. However, in recent years with the prominent rise of the transgender agenda, the use of the bathroom and changing rooms based upon an individual's biological sex has become part of the divided American political landscape. To some, Title IX's interpretation has become fluid and no longer serves as the long-standing barrier protecting women from biological men, identifying as women, from encroaching upon women's private spaces. Katy Steinmetz, *The Transgender Tipping Point*, TIME, May 29, 2014 available at <https://time.com/135480/transgender-tipping-point/>, last visited Sept. 18, 2025 (describing how activists treated transgender rights as the next "civil rights frontier" after gay marriage was legalized). This argument has been hastily constructed without an understanding of why sex-segregated spaces are necessary to ensure women's equal opportunities in education, athletics, and the workplace. Some political ideologues claim that fairness requires removing sex-segregated barriers because they harm men who identify as women. Yet, in arguing in favor of this purported idea of fairness, they subvert the concept by creating circumstances that are profoundly unfair to women and girls. They overlook that Title IX's protections exist to safeguard

women and girls, that the protections are grounded in the sexes' distinct psychological, and physiological differences and that eliminating these protections have and will continue to disadvantage women. Laws such as Title IX that create sex-segregated intimate spaces stand as proof of women's triumph over outdated stereotypes that once denied them their own place in the public sphere. This Court is now presented with the opportunity to ensure that female students receive the full protections and benefits guaranteed under Title IX and the Equal Protection Clause.

SUMMARY OF THE ARGUMENT

Title IX allows educational institutions to provide separate facilities on the basis of sex, recognizing the biological and physiological differences between men and women. 20 U.S.C. § 1681(a); 20 U.S.C. § 1686. Title IX's implementing regulation also clearly permits the designation of "separate toilet, locker room, and shower facilities on the basis of sex." 34 C.F.R. § 106.33. Congress passed Title IX to specifically provide women with greater opportunities in education. Reversing course and departing from the original meaning and intent of Title IX can cause and has caused significant harm to female students and to the rights of school administrators, teachers, and students.

Amici address three main problems with the holding of the Fourth Circuit that require reversal. First, females are more likely to sustain both physical and psychological harm by allowing male students into female spaces, such as girls sports and intimate

spaces such as girls’ bathrooms and locker rooms.⁴ The lower courts failed to adequately consider the real effect this issue has on female students. Second, allowing sex-segregated spaces is based on the biological reality that females are different from males, a value that has been recognized and deemed worthy of protection for thousands of years. Carter, 37 Yale L. & Pol’y Rev. at 227, 258-262, 279 (2018) (laying forth historical examples of sex-segregated spaces). And third, affirming the Fourth Circuit holding will require orthodoxy in our nation’s schools “in politics, nationalism, religion, or other matters of opinion.” *W. Virginia State Bd. of Ed. v. Barnette*, 319 U.S. 624, 642 (1943) [“Barnette”]. Antithetical to the previous rulings of this Court, the lower court rulings require school administrators, teachers, and students to uphold a political ideology to which they do not agree and to ignore the differences between the sexes in both their speech and in their actions. *Id.*; see also *Michael M. v. Superior Court of Sonoma Cnty.*, 450 U.S. 464, 471 (1981) (recognizing differences between males and females); *Rinaldi v. Yeager*, 384 U.S. 305, 309 (1966) (same).

ARGUMENT

Title IX and its implementing regulations recognize the biological difference between men and

⁴ Reem Alsalem, *United Nations General Assembly the Report of the Special Rapporteur on Violence Against Women and Girls, its Causes and Consequences*, Aug. 27, 2024, available at <https://documents.un.org/doc/undoc/gen/n24/249/94/pdf/n2424994.pdf>, last visited Sept. 18, 2025.

women. And, pertinent here, Title IX expressly permits schools to provide separate toilet, locker room, and shower facilities on the basis of biological sex. 20 U.S.C. § 1686; 34 C.F.R. § 106.33. The Fourth Circuit ruling in *B.P.J. v. West Virginia*, however, failed to recognize that Title IX allows educational institutions to provide separate facilities on the basis of sex, recognizing the biological and physiological differences between men and women. 20 U.S.C. § 1681(a); 20 U.S.C. § 1686. Title IX’s implementing regulation also clearly permits the designation of “separate toilet, locker room, and shower facilities on the basis of sex.” 34 C.F.R. § 106.33. The lower court fails to weigh the broader implications of how expanding the definition of “sex” beyond the original meaning of Title IX to include gender identity would affect women and girls. *B.P.J. v. W. Va. Bd. of Educ.*, 98 F.4th 542 (4th Cir 2024). The Fourth Circuit ruling narrowly examined whether allowing prepubescent boys to compete in girls’ sports raised questions of safety and fairness. *Id.*; see also *Hecox v. Little*, 04 F.4th 1061 (9th Cir. 2024).⁵ This limited focus overlooked the broader implications, and the courts’ logic can be used to justify granting some males access to women’s bathrooms, locker rooms, and dormitories. The courts concentrated primarily on differences in testosterone levels, musculature, and bone density in female athletes, but they did not address the

⁵ Amici address *Little, et. al., v. Hecox* (No. 24-38) as well because the issues substantially overlap with those presented in this case. Amici’s analysis, however, is limited to the arguments properly before the court in *West Virginia, et al., v. B.P.J.* (No. 24-43).

psychological and physical risks posed by admitting biologically male students into intimate female spaces.

I. Allowing Male Students Into Historically Intimate Female Spaces Causes Female Students Physical and Psychological Harm.

A. Biological Realities Endanger Female Students' Safety and Privacy.

Female students “are more vulnerable to sustaining serious physical injuries when female-only sports spaces are opened to males.”⁶ Indeed, male students have a biological advantage over female students.⁷ Biological boys can hold a plank for ninety-one seconds, compared to girls’ seventy-seven seconds. *Id.* Boys can complete ten pull ups, while girls can only complete four. *Id.* Boys’ knee extension strength and grip strength far surpasses that of girls. *Id.* Boys’ average running speed is far faster than girls’.⁸ These are biological realities. Given the natural physical

⁶ Alsalem, U.N. Special Rapporteur Report, *supra* note 3.

⁷ NCHS Data Brief, Measures of Muscular Strength in U.S. Children and Adolescents, *Dec. 2013*, available at <https://www.cdc.gov/nchs/data/databriefs/db139.pdf>, last visited Sept. 18, 2025.

⁸ Harvey Wilson, Average Human Running Speeds- Insight by Age and Gender, RunningForWellness, Dec. 17, 2024, available at https://runningforwellness.com/average-human-running-speeds/#google_vignette, last visited Sept. 18, 2024.

advantage held by male students over their female counterpart, it is not difficult to understand how Lea Thomas, a biological male who swam in the NCAA as a female, won a swimming competition by thirty-eight seconds in a sport known for narrow separations between the athletes' times, sometimes down to the hundredth of a second.⁹ The use of hormones used in gender transitioning does not even the playing field, as biological males continue to hold a physical advantage over females.¹⁰ Due to these biological realities, female athletes have sustained physical injuries, as well as psychological harm and significant discouragement.

Female students on their school teams designated for females have sustained multiple physical injuries due to the inclusion of biological males on their teams.¹¹ Reported injuries have included “knocked

⁹ Cyd Zeigler, “6 truths and myths about Lia Thomas, trans athletes and women’s swimming,” OutSports, Jan 6., 2022, available at <https://www.outsports.com/2022/1/6/22867761/lia-thomas-penn-swimming-trans-truth-myth/>, last visited Sept. 18, 2025.

¹⁰ See, e.g., Timothy A. Roberts, Joshua Smalley, Dale Ahrendt, Effect of gender affirming hormones on athletic performance in transwomen and transmen: implications for sporting organisations and legislators, *British Journal of Sports Medicine* 2021, available at <https://bjsm.bmj.com/content/55/11/577>, last visited Sept. 18, 2025 (finding that biological males continue to hold a physical advantage over biological females two years into taking estrogen).

¹¹ Alsalem, U.N. Special Rapporteur Report, *supra* note 3; Emma N. Hilton and Tommy R. Lundberg, “Transgender women in the female category of sport: perspectives on testosterone

out teeth,” “concussions resulting in neural impairment,” “broken legs,” and “skull fractures.”¹² Female students are more likely than male athletes to leave sports due to discouragement.¹³ When male students are included on girls’ teams, female students will “self-exclude” out of fear of sustaining a physical injury or due to moral objections and privacy concerns based on sharing bathrooms, locker rooms, and other private spaces with the opposite sex.¹⁴ These concerns

suppression and performance advantage”, *Sports Medicine*, vol. 51 (2021).

¹² Alsalem, U.N. Special Rapporteur Report, *supra* note 3; see also Yaron Steinbuch, “Injured North Carolina volleyball player urges transgender ban for female sports teams in schools”, *New York Post*, Apr. 21, 2023, available at <https://nypost.com/2023/04/21/nc-volleyball-player-urges-transgender-ban-for-schools-female-sports/>, last visited Sept. 18, 2025; Abby Patkin, “Injuries involving trans basketball player at Mass. school spark controversy”, *Boston.com*, Mar. 4, 2024, available at <https://www.boston.com/news/high-school-sports/2024/03/01/injuries-involving-trans-basketball-player-at-mass-school-spark-controversy/>, last visited Sept. 18, 2025; “Former high school athlete injured during ‘hostile’ volleyball game by transgender player”, *Fox News*, Aug. 17, 2023, available at <https://www.foxnews.com/video/6334032228112?msocid=225ab66cf16d6e0a1e1aa070f0e96fa2>, last visited Sept. 18, 2025.

¹³ Antonina Jedrejczak, “Young Girls Are Dropping Out Of Sports — Here’s Why It’s A Problem,” *Refinery 29*, Nov. 20, 2027, available at <https://www.refinery29.com/en-us/girls-quitting-sports-reasons>, last visited Sept. 18, 2025 (stating that 32% of female athletes drop out of sports due to feeling like they “are not good enough.”).

¹⁴ “Safe and fair sport matters to women and girls on every level,” *WomenInSport*, available at <https://womeninsport.org/safe-and-fair-sport-for-women-and-girls/>, last visited Sept. 18, 2025; Sex Matters, “Reclaiming Kenwood Ladies’ Pond for women”, Aug.

are compounded by the reality that female students and female athletes are far more likely to sustain psychological harm and sexual harassment.¹⁵

For female students, inclusion of biological athletes can blur the line between when physical touching might cross into inappropriate touching. And even when the female students report inappropriate touching from a male teammate, school officials may be hesitant to take any action to protect the female athletes. *See, e.g., McPherson et al. v. Jurupa Unified Sch. Dist.*, et al., Case No. 5:25-cv-02362 (C.D. Cal.), ECF No. 1, Verified Compl., Sept. 9, 2025 (describing male teammate making inappropriate comments mocking female anatomy and touching female student

29, 2022, available at <https://sex-matters.org/posts/updates/ladies-pond/>, last visited Sept. 18, 2025; Tommy R. Lundberg, et. al., “The International Olympic Committee framework on fairness, inclusion and nondiscrimination on the basis of gender identity and sex variations does not protect fairness for female athletes”, *Scandinavian Journal of Medicine and Science in Sports*, vol. 34, No. 3 (March 2024).

¹⁵ Erin Wilson and Gretchen Kerr, “Gender-based violence in girls’ sports”, *Adolescents*, vol. 3, No. 2 (Apr. 2023); see also Lori Ward and Jamie Strashin, “Sex offences against minors: investigation reveals more than 200 Canadian coaches convicted in last 20 years”, *CBC News*, Feb. 10, 2019, <https://www.cbc.ca/sports/amateur-sports-coaches-sexual-offences-minors-1.5006609>, last visited Sept. 18, 2025; Royal Commission into Institutional Responses to Child Sexual Abuse of Australia, *Final Report: Sport, Recreation, Arts, Culture, Community and Hobby Groups* (Australia, 2017); Kirsty Forsdike and Simone Fullagar, “Addressing the complexity of violence against women in sport”, *Journal of Sport Management*, vol. 35, No. 5 (Dec. 2021).

plaintiffs in an unwanted manner, yet the behavior went unaddressed after plaintiffs reported their discomfort and concern to school authorities). These pressures take a toll on female students. A United Nation’s study found for female athletes even just knowing that “they may be competing against males included in female sports, including males that identify as females or males with specific XY differences in sex development, causes extreme psychological distress due to the physical disadvantage, the loss of opportunity for fair competition and of educational and economic opportunities and the violation of their privacy in locker rooms and other intimate spaces[.]”¹⁶

The lower courts’ rulings ignored any of these considerations. The lower courts held that the term “sex” includes consideration of a student’s purported gender identity. *See, e.g., B.P.J.*, 98 F.4th at 563. While the courts’ hedged their opinions to the field of sports, those opinions necessarily will apply to allow male students who self-identify as female into women’s intimate spaces. *See Adams v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791, 819 (11th Cir. 2022) (Lagoa, J., concurring) (noting that if “sex” in Title IX was read to include the concept of gender identity” it “would have become the law of this Circuit for all aspects of the statute.”). In other words, if it constitutes discrimination under Title IX to prohibit male students that self-identify as women from competing on women’s sports teams, it must be

¹⁶ Alsalem, U.N. Special Rapporteur Report, *supra* note 3.

discrimination to keep the same male students out of women's locker rooms, bathrooms, and lodgings.

The law recognizes that adolescents are particularly vulnerable to psychological and physical harm, especially regarding sexuality, nudity, and intimate matters. For example, in *Ginsberg v. New York*, this Court upheld a statute prohibiting the sale to minors of magazines depicting nudity and sexual conduct while allowing sales to adults. 390 U.S. 629 (1968). Adolescence is a formative period in which behavioral patterns are established, the sense of self develops, and understanding of sensuality, pleasure, and impulse is shaped. Schools may reasonably determine that requiring young women to share private spaces with male students—where they are expected to undress or sleep—undermines healthy development. Yet, the rulings in *B.P.J.* and *Hecox* risk preventing schools from implementing such protective policies.

Similarly, studies have shown that puberty produces sex-specific effects on the development of various brain regions. Anne-Lise Goddings, et. al., *Understanding the Role of Puberty in Structural and Functional Development of the Adolescent Brain*, 29 J. Res. Adolescence 32 (2019) (detailing numerous structural differences between male and female brains). This Court has recognized such differences between males and females. *U.S. v. Virginia*, 518 U.S. 515, 533 (1996) (“Inherent differences” between men and women, we have come to appreciate, remain cause for celebration...”). This indicates that students experience the world differently based on their sex. Social science research further demonstrates that

male and female behavior differs in observable and meaningful ways. Lise Eliot, *Brain Development and Physical Aggression: How a Small Gender Difference Grows into a Violence Problem*, 62 *Current Anthropology* S23 (2021) (noting that physical aggression is one of the largest behavioral differences between the sexes). For instance, males tend to exhibit higher levels of aggression, with biological sex being the factor that accounts for the largest differences in the prevalence and nature of interpersonal violence. Candace Kruttschnitt, *Gender and Interpersonal Violence*, 3 *Understanding and Preventing Violence* 293 (1994). Gender identity appears to be less relevant, as males who identify as female display rates of interpersonal violence statistically closer to those of males than females. Cecilia Dhejtn, et. al., *Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden*, 6 (Issue 2) *PLoS ONE* 6 (2011) (noting that male-to-female individuals “retained a male pattern regarding criminality” and violent crime in particular).

Further, allowing male students into female spaces harms young women psychologically. Many of the *amici* school districts receive first-hand reports from young women and their parents that female students feel ashamed, uncomfortable, and embarrassed when required to share intimate spaces with male students. In *Lee v. Downs*, the Fourth Circuit noted that “involuntary exposure of [genitals] in the presence of people of the other sex may be especially demeaning and humiliating” in holding forced removal of a prisoner’s undergarments in the presence of the opposite sex was an invasion of a

privacy. 641 F.2d 1117, 1120 (4th Cir. 1981). This right of privacy granted to prisoners is not extended to female students. Instead, female students are forced to change in front of their male peers or avoid showering and changing until they reach the safety of their home. This undermines the principle discussed by the Ninth Circuit that “[t]he desire to shield one’s unclothed figure[] from view of strangers, and particularly strangers of the opposite sex, is impelled by elementary self-respect and personal dignity.” *York v. Story*, 324 F.2d 450, 455 (9th Cir. 1963). In *Hecox*, the Ninth Circuit noted that the transgender plaintiff claimed it was “embarrassing and painful” to participate on the men’s team. 104 F.4th at 1083. In its ruling, however, the Ninth Circuit failed to adequately address the effect that its ruling would have on the other 99% of the population, which includes girls. See Joe Kettke, *More than 2.8 million Americans identify as transgender, report finds*, NBC News, available at <https://www.nbcnews.com/nbc-out/out-news/28-million-americans-identify-transgender-report-finds-rcna226465>, last visited Sept. 18, 2025 (discussing that individuals identifying as transgender constitute less than 1% of the population). This ruling directly impacts female students who have experienced disadvantages, embarrassment, and harm due to allowing boys and men to encroach upon their private and traditionally protected spaces.

Finally, the need for private spaces arises from physiological differences between the sexes, making an individual’s self-identified gender irrelevant. See *Carcaño v. McCrory*, 203 F.Supp.3d 615, 642 (M.D.N.C. 2016) (noting “the Supreme Court and

Fourth Circuit precedent supports Defendants' position that physiological characteristics distinguish men and women for the purposes of bodily privacy"). Female students' self-respect and sense of personal dignity is violated when they are required to change in front of strangers of the opposite sex. See, *e.g.*, *Lee*, 641 F.2d at 1119 (noting that what makes these circumstances "demeaning and humiliating" are objective differences between the sexes). Accordingly, the courts in *B.P.J.* and *Hecox* erred by failing to consider the real consequences that permitting males in female spaces would have to female students.

B. Sex-Segregated Intimate Spaces are an Aspect of the Culmination of Thousands of Years of Progress for Women.

The aforementioned principle of Chesterton's Fence advises against removing a rule until one understands the purpose for which the rule was created. Since ancient times, humans have understood that allowing men into intimate female spaces posed a threat to women physically and psychologically. See Carter, 37 Yale L. & Pol'y Rev. at 227, 258-62, 279 (laying forth historical examples of sex-segregated spaces). Since the founding of America, the common social understanding has led to the enactment of laws, regulations, and ordinances requiring sex-segregated intimate spaces as measures that protect the dignity and privacy of women and protect women from sexual harassment. *Id.* at 279-81.

In *Sexism in the "Bathroom Debates,"* Burlette Carter debunks the idea that creating such private

spaces for women was the result of outdated Victorian ideals regarding modesty. *Id.* at 268-78. Rather, such laws were created in response to the threat posed by sharing such spaces with men. *Id.* Ancient histories are full of tragedies and warnings of women whose private spaces were invaded by men. *Id.*

In the United States, the absence of private, intimate spaces for women outside the home became a civil rights issue because it hindered their ability to participate in public life without harassment. *Id.* at 253. Women who sought to engage in public activities without such facilities often faced humiliation and harassment when attending to basic bodily needs due to biological differences and the prevalence of male prurience. *Id.* Similarly, the lack of private changing spaces has been linked to higher rates of assault. See Amzad Hossain, et. al., *Access to toilets and violence against women*, 114 J. of Env't Econ. & Mgmt. 102695 (July 2022).

The introduction of sex-segregated spaces advanced women's ability to participate equally in public life. It soon became standard in the United States to maintain sex-segregated facilities in public baths, healing springs, ships, prisons, and other multi-entry spaces. See Carter, 37 Yale L. & Pol'y Rev. at 268–78. With industrialization and the labor movement, laws requiring sex-segregated spaces in factories were among the earliest protections against harassment. *Id.* at 279–88. As women's rights progressed, separated intimate spaces became common in offices, courthouses, and other public venues, granting women equal access to education and employment opportunities. *Id.*

The barrier preventing males from entering women's bathrooms, locker rooms, and lodgings reflects the physiological and psychological differences between the sexes. These laws acknowledge the harm to women that occurs when males are allowed into such spaces. Permitting males in female bathrooms at school increases parental concern and distracts from the educational experience for students. Before any decision is made to remove this barrier, this Court must weigh the costs to women carefully. The physical and mental well-being of female students should be considered when deciding whether to place biological male athletes on the girls' team.

II. Altering the Definition of Sex to Conform to Ideological or Political Objectives Instead of Biology Obscures Truth and Undermines the Rights of Teachers and Students Alike.

Freedom of thought is critical to education. This Court once famously stated, "[i]f 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." *Barnette*, 319 U.S. at 642. As institutions of education, *amici curiae* are tasked with educating our youth and teaching them the skills, values, and character traits to discern truth and act accordingly. The Fourth ruling now requires them to support and teach an idea that contradicts their values, leading to confusion and harm in the school environment. Issues regarding biological sex and

gender in the schools pose significant issues for school administrators, especially as to what cognitive and formative effect the treatment of such issues modify a child's ability to understand, trust, and perceive truth. The Fourth holding requires administrators and teachers to further what "shall be orthodox in politics, nationalism, religion, or other matters of opinion" and compel them to speak accordingly. *Id.*

A. The Fourth Circuit Holding Effectively Forces K-12 Schools to Affirm a Political Ideology to Which They Disagree.

In *B.P.J.* and *Hecox* the issues were framed around a single student's desire to participate in athletics and failed to acknowledge the broader implications of what is being demanded of all stakeholders at a school. *B.P.J.*, 98 F.4th 542; *Hecox*, 104 F.4th 1061. Now schools face liability if they refuse to be complicit in affirming that a male can be a female for purposes of sex discrimination. If a school seeks to regulate opportunities it provides or spaces over which it is responsible based on biological sex, the school must contradict itself by demand of the Fourth Circuit's ruling to allow the opposite sex into that protected space. *See, e.g.*, Ca Educ. Code § 221.5(f) ("A pupil shall be permitted to participate in sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with his or her gender identity, irrespective of the gender listed on the pupil's records."). In other words, the lower courts require that educational institutions must affirm that boys can be girls and girls can be boys.

In California, for example, California school boards, such as *amici*, seek to or have issued resolutions urging athletic governing bodies, the governor, the California Department of Education, and the legislature to support Title IX in protecting the safety and fairness in girls' sports. These boards desire to implement respectful policies that preserve the integrity of girls' sports but have not done so due to the threat of repercussions arising from the Fourth and Ninth Circuit rulings and from California's education code that mandate schools to allow boys on girls' sports teams. *See* Assemb. B. 1266, 2013–2014 Reg. Sess. (Cal. 2013); *B.P.J.*, 98 F.4th 542; *Hecox*, 104 F.4th 1061.

Educational stakeholders—board members, administrators, educators, students, competitors—are faced with a difficult crossroads – (1) comply with a mandate they know is untrue, potentially putting girls at risk; (2) refuse to comply and face legal consequences; or (3) voluntarily exclude themselves. In California, and across the nation, schools, educators, students, and families confront this dilemma. Ultimately, the choice is one of exclusion—not of the transgender athlete, who, according to the State of California and the Fourth Circuit, can participate on any team they identify with, but of the broader community who, for moral, fairness, or safety reasons, cannot accept a definition of sex that requires boys to compete on girls' sports teams.

**B. Requiring Schools to Affirm
Political Ideology Over Scientific
Fact Harms Students and Teachers
Alike.**

Contrary to this Court’s warning in *Barnette*, states like California are requiring educational institutions to affirm a political ideology that men can be women. See *Barnette*, 319 U.S. at 642. The claim that someone’s sex is whatever they claim it to be is a purely metaphysical claim. See Ryan Anderson, *Transgender Ideology Is Riddled With Contradictions. Here Are the Big Ones*, The Heritage Foundation (Feb. 9, 2018); *Epperson v. Arkansas*, 393 U.S. 97 (1968).

This political ideology conflicts with science and our basic understanding. Since ancient times, humans recognized differences between men and women in their genitalia, reproductive roles, and physical characteristics. The term “sex” (with “gender” being a largely interchangeable albeit rarely used term) was created to communicate these insights. Grace Abels, *What is ‘sex’? What is ‘gender’? How these terms changed and why states now want to define them*, PolitiFact (Mar. 22, 2024) (noting that “Until the mid-20th century, Americans’ understanding of ‘sex’ was largely biological and binary.”).

The differences in the sexes, as has been recognized by this Court, are tied to the objective differences between men and women. In *Michael M.*, this Court upheld a statutory rape law that punished young men and not women. In doing so, this Court concluded, “[w]e need not be medical doctors to discern that young men and young are not similarly

situated with respect to the problems and the risks of sexual intercourse.” 450 U.S. at 471. The Court held that “gender-based” classifications were permissible because the law does not demand “things which are different in fact . . . to be treated in law as though they were the same. *Id.* at 469 (citing *Rinaldi*, 384 U.S. at 309 (internal quotation removed)). The Court further noted it has historically upheld statutes that discerned between genders when they “realistically reflect[] the fact that the sexes are not similarly situated in certain circumstances. *Id.* (string cite omitted).

Before she became a justice, Ruth Bader Ginsburg used the term “gender discrimination” when arguing in front of the Supreme Court because she understood it to be synonymous with “sex” but less salacious. Catherine Crocker, *Ginsburg Explains the Origins of Sex, Gender*, Los Angeles Times, (Nov. 21, 1993). Likewise, as Justice Alito has pointed out, when Title IX was written, “sex” was universally defined based on objective biological fact rather than subjective feeling. *Bostock v. Clayton Cnty.*, 590 U.S. 644, 687 (2020) (Alito, J. dissenting); *see also Frontiero v. Richardson*, 411 U.S. 677, 686 (1973) (discussing that sex, like race, is an immutable characteristic).

Likewise, K-12 educational institutions teach basic biology in their science classes that there are two sexes that are objectively different based on physical, physiological, and psychological traits. And, in California, sexual health education must be taught once in both middle school and high school. Ca Educ. code § 51934. During this class, schools must present

information that is “*accurate and objective.*” Ca Educ. code § 51933(b).

Requiring the orthodoxy of the redefinition of a fundamental term such as what is male, female, or sex would necessarily require a wholesale imposition of what must be taught. It will alter the meanings of our fundamental human relationships as it will change how such topics may be addressed in the educational environment. It will profoundly reshape our K-12 educational institutions. The decision before the Court extends far beyond the court; it extends into the classroom; it extends into defining what “shall be orthodox” to the nation. *Barnette*, 319 U.S. at 642.

CONCLUSION

This Court should reverse the lower court judgment of the Fourth Circuit.

Respectfully submitted,

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