

Nos. 24-38, 24-43

IN THE
Supreme Court of the United States

BRADLEY LITTLE, GOVERNOR OF IDAHO, *et al.*,
Petitioners,

v.

LINDSAY HECOX, *et al.*,
Respondents.

WEST VIRGINIA, *et al.*,
Petitioners,

v.

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

**On Writs of Certiorari to the
United States Courts of Appeals
for the Ninth and Fourth Circuits**

**BRIEF OF RILEY GAINES AND 32 COLLEGE
ATHLETES AS *AMICI CURIAE* IN SUPPORT
OF PETITIONER AND ADDRESSING TITLE IX
INJURIES ARISING FROM POLICIES OF
COLLEGE SPORTS GOVERNING BODIES**

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INTEREST OF AMICUS CURIAE¹

Amici are Riley Gaines and 32 current and former college athletes identified in Appendix A who have been harmed by the rules of college sports governing bodies that have authorized and continue to authorize men to take women's places and share women's locker rooms, showers and other private spaces in college sports.

Amici have first-hand knowledge of how the college sports ecosystem works and an interest in the preservation of women-only sports teams and the female category in college sports in the United States.

Amici have experienced that college athletic association transgender eligibility rules are uniformly followed by athletic association's member colleges and universities and result from top-down decision-making imposed by athletic associations and conferences with which all member schools obediently comply. Consequently, the transgender eligibility rules of college athletic associations and conferences have system-wide discriminatory impacts on women.

Amici have been harmed by the college sports governing bodies imposing transgender eligibility rules on federally funded colleges and universities and at national and conference championships which college athletic associations and conferences host and control.

¹ Rule 37 statement: No party's counsel authored any of this brief; *amici* and counsel alone funded its preparation and submission. *See* Sup. Ct. R. 37.6.

SUMMARY OF ARGUMENT

Amici offer their perspective on three issues not substantially addressed in Petitioners' Briefs filed with this Court in *Hecox* and *B.P.J.*:

(1) that the policies of collegiate athletic associations perpetrate privacy and dignitary injuries and emotional trauma upon female student-athletes in violation of Title IX in locker rooms, showers, restrooms, hotel rooms on team road trips, and in other private places traditionally reserved for women, providing an independent and sufficient basis for Idaho's law (and the laws of other states) which protect college student-athletes from such harms,

(2) that college athletics associations are causing *current* harm to women through their transgender eligibility rules, demonstrating that harms suffered by women due to the transgender eligibility policies of college athletic associations are capable of repetition while evading review, and making clear, therefore, that any suggestion by Respondents that a concern over injuries to women is mooted by rule changes of the NCAA or any other organization (or for any other reason) is not well taken, and

(3) that the Fourth Circuit's holding in *B.P.J.* that "Title IX's prohibitions are not limited to organizations that directly receive federal funds: the statute also covers organizations that 'control[] and manage[]' direct funding recipients," *B.P.J.* by

Jackson v. W. Virginia State Bd. of Educ., 98 F.4th 542, 554 (4th Cir. 2024), follows from this Court’s observation in *Nat’l Collegiate Athletic Ass’n v. Smith*, 525 U.S. 459, 460 (1999) (*Smith I*), that entities, including college athletic associations such as the NCAA, that control athletics activities of direct funding recipients can be liable under Title IX.

Amici demonstrate that transgender eligibility rules adopted by scholastic sports governing bodies have been rigorously enforced against women, causing significant emotional and dignitary harms and depriving women student-athletes of equal opportunities and bodily privacy. Such deprivations at public and federally funded schools constitute a fully sufficient basis for upholding the challenged laws by the legislatures in Idaho and West Virginia.

The promulgation, application, and enforcement of transgender eligibility rules by scholastic sport governing bodies may subject those bodies to accountability under Title IX under the “controlling authority” test and/or the Civil Rights Restoration Act. *Amici* submit that the “controlling authority” test for Title IX liability recognized by the Fourth Circuit in *B.P.J.* and previously by this Court in *Smith I* should be preserved and ultimately extended to college sports governing bodies.

ARGUMENT

The Ninth Circuit observed:

In the United States, high school interscholastic athletics are generally governed by state interscholastic athletic associations, such as the Idaho High School Activities Association (IHSAA). The NCAA sets policies for member colleges and universities in Idaho and elsewhere, including Boise State University (BSU).

Hecox v. Little, 104 F.4th 1061, 1070 (9th Cir. 2024). This observation is correct. The transgender eligibility rules of the applicable athletic association (whether high school or college) invariably become the rules of each of the association's member educational institutions.

Therefore, just as the Ninth Circuit did (although reaching the wrong conclusion on the substance and merit of the transgender eligibility rules), it is reasonable for state legislatures to look to the eligibility rules of the National Collegiate Athletic Association (NCAA) to ascertain whether the Title IX rights of female athletes are likely to be adequately protected at NCAA member colleges and universities in their state. When the Idaho Legislature passed its Fairness in Women's Sports Act, it saw that the NCAA's eligibility policies did not protect women's competitive opportunities, as Petitioners' Brief shows. The Idaho Legislature would also have seen that the NCAA's policies undermined women's Title IX and

constitutional privacy rights at federally funded colleges and universities in Idaho and throughout the Country as *amici* show below, providing a second and wholly sufficient reason to uphold the Idaho law.

Sadly, as explained below, the NCAA’s revised transgender eligibility policies *today* still violate Title IX by compromising women’s locker room privacy and safety, and for these reasons, among others, continue to fail women student-athletes at federally funded colleges and universities nationwide.

I. Women Lose Privacy and Equal Opportunities When Trans-Identifying Men Access Women’s Private Spaces

Judge Agee dissenting in *B.P.J.* warned of a “runaway train,” trammeling women’s rights not only on playing fields but in private spaces such as showers, locker rooms, and restrooms that used to be safe and legally protected for women. *See B.P.J. by Jackson v. W. Virginia State Bd. of Educ.*, 98 F.4th 542, 580 (4th Cir. 2024) (Agee, J.) (concurring and dissenting in part). *Amici* themselves have been blindsided in these private spaces due to policies which ignore their privacy rights. And *amici* recognize that rules that favor trans-identifying men over women will eventually indiscriminately victimize not just athletes but all women seeking privacy or protection away from males in private spaces.

Because fundamental interests in women’s privacy and safety are also a fully sufficient basis to uphold the Idaho and West Virginia laws and to reject the reasoning of the courts below, and because the

current rules of the NCAA and other college sports organizations remain a “train wreck” for women, *amici* write to describe their own heartrending and traumatic experiences arising from rules that give men access to women’s private spaces.

Petitioners in *Hecox* and *B.P.J.* focused their briefs primarily upon male performance advantages which by themselves fully justify the Idaho and West Virginia statutes that keep males out of women’s sports to protect women’s equal competitive opportunities. But the Idaho and West Virginia laws should also be upheld for the independently sufficient reason that female athletes are entitled to not have their privacy rights pummeled in locker rooms, showers, restrooms, and other sex-separated spaces and because men competing against women denies women equal opportunities by causing emotional and dignitary harm. The state legislatures in Idaho and Wyoming were well within their scope to protect women from these harms and require that the full panoply of women’s Title IX and constitutional privacy rights in showers, locker rooms, and other private spaces be protected.

NCAA transgender eligibility rules showed no regard for the biology or privacy of women when the Idaho law was passed and continue today to allow men in female athlete’s intimate spaces. This Court has recognized that, “[t]o fail to acknowledge even our most basic biological differences ... risks making the guarantee of equal protection superficial, and so disserving it.” *Nguyen v. I.N.S.*, 533 U.S. 53, 64 (2001).

That women experience emotional trauma

when men invade women's private spaces is not surprising. The same male physiological advantages of aggressiveness, physical size, strength and power that are well described in Petitioners' briefs and which create a massive male performance gap on the playing field also heighten the importance to women of having safe spaces protected against male physical dominance. This too is an essential aspect of equal opportunity for women. The same physical differences that create massive competitive disadvantages for women in sport naturally increase the anxiety and insecurity of women and elevate their personal safety risks when women's private spaces are violated without consent by males.

Furthermore, the importance of protecting women's privacy does not arise solely from the need to protect women against the physical dominance of males. Every individual has a fundamental interest in exercising personal autonomy over their body and a right not to have their genitals exposed to members of the opposite sex without consent. The interest in bodily privacy is longstanding in this Country and is recognized under both Title IX (as explained below) and in this Court's equal protection precedents. *See, e.g., U.S. v. Virginia*, 518 U.S. 515, 550 n.19 (1996) (Ginsburg, J.) (explaining that integrating Virginia Military Institute "would undoubtedly require alterations necessary to afford members of each sex privacy from the other sex in living arrangements").

Title IX's implementing regulations require women have "equal opportunity" with respect to "locker rooms." 34 C.F.R. § 106.41(c)(7). This requires "separate" and "comparable" locker rooms and

showers, 34 C.F.R. § 106.33. Judge Agee further correctly noted that these regulations make clear “that . . . Title IX allows for ‘separate toilet, locker room, and shower facilities on the basis of sex’ so long as they are ‘comparable’ to one another.” *B.P.J.*, 98 F.4th at 579 (Agee, J.) (quoting 34 C.F.R. § 106.33). Further, “Title IX’s statutory carve-out from its general prohibition against sex discrimination applies to ‘living facilities,’ not only bathrooms. 20 U.S.C. § 1686. And the same regulation that authorizes schools to provide separate bathrooms on the basis of sex also permits schools to provide separate ‘locker room ... and shower facilities on the basis of sex.’ 34 C.F.R. § 106.33.” *Adams by & through Kasper v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791, 816 (11th Cir. 2022). Thus, “it defies logic to conclude that Congress meant to allow biological boys who identify as girls to shower with biological girls.” *B.P.J.*, 98 F.4th at 579 (Agee, J.). When adopting Title IX and approving its implementing regulations “Congress clearly intended to affirm certain aspects of sex separation in education—like in restrooms, showers, locker rooms, and sports—within its overall prohibition on sex discrimination.” *Id.* at 580.

Moreover, “guided by the [Nation’s] history and tradition,” the Court recognizes and protects rights that are essential to “our Nation’s concept of ordered liberty.” *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 240 (2022); accord *United States v. Rahimi*, 602 U.S. 680, 690 (2024). It should be uncontroversial that sex-separated spaces in which girls and women may undress outside of a male’s presence are deeply rooted in our nation’s history and essential to a concept of ordered liberty that recognizes the struggles

of women against exploitation, assault, and harassment. *See generally, e.g.,* W. Burlette Carter, *Sexism in the “Bathroom Debates”: How Bathrooms Really Became Separated by Sex*, 37 YALE L. & POL’Y REV. 227, 287–88 (2019) (Describing history of sex-separated bathrooms and arguing, “sex-separation dates back as far as written history will take us. The bathroom has long been treated as unique public space, not as space just like any other. The key reason for the separation was safety and privacy.”); *Grimm v. Gloucester Cnty. Sch. Bd.*, 822 F.3d 709, 734 (4th Cir. 2016), *vacated and remanded*, 580 U.S. 1168 (2017) (Niemeyer, J., concurring and dissenting in part) (“across societies and throughout history, it has been commonplace and universally accepted to separate public restrooms, locker rooms, and shower facilities on the basis of biological sex in order to address privacy and safety concerns arising from the biological differences between males and females” and citing cases); *Adams*, 57 F.4th at 805 (same); *see also Houchins v. KQED, Inc.*, 438 U.S. 1, 5 fn.2 (1978) (“Inmates in jails, prisons, or mental institutions retain certain fundamental rights of privacy”); *Fortner v. Thomas*, 983 F.2d 1024, 1030 (11th Cir. 1993) (“most people have a special sense of privacy in their genitals, and involuntary exposure of them in the presence of people of the other sex may be especially demeaning and humiliating”).

Yet, the majorities in *Hecox* and *B.P.J.* have decided “that transgender individuals get access to the restrooms and sports teams of their choosing,” employing reasoning that makes clear that these courts have decided that trans-identifying males

gaining access to women’s opportunities and safe spaces is simply “more important than biological females’ rights to privacy and to play competitive sports.” *B.P.J.*, 98 F.4th at 580 (Agee, J.). Although, “[n]o Congress has ever intended such a result,” *id.*, some federal courts have regrettably diminished women’s sex-based rights in sports, and with regard to privacy, through decisions untethered to the text of Title IX or this Court’s equal protection precedents in a line of recent cases of which *Hecox* and *B.P.J.* are merely a part. *See, e.g., A.C. by M.C. v. Metro Sch. Dist. of Martinsville*, 75 F. 4th 760 (7th Cir. 2023); *Doe v. Boyerton Area Sch. Dist.*, 897 F. 3d 518 (3d Cir. 2018); *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586 (4th Cir. 2020); *Parents for Privacy v. Barr*, 949 F.3d 1210 (9th Cir. 2020); *Whitaker by Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034 (7th Cir. 2017); *but compare D.P. by A.B. v. Mukwonago Area Sch. Dist.*, 140 F.4th 826, 833 (7th Cir. 2025), *reh’g granted and opinion vacated*, (Disagreeing with *A.C.* and *Whitaker* and endorsing “view” that “the Eleventh Circuit’s decision in *Adams* . . . ‘is closer to the mark.’”); *D.P. by A.B. v. Mukwonago Area Sch. Dist.*, No. 23-2568, 2025 WL 1794428, at *1 (7th Cir. June 30, 2025) (granting panel rehearing to consider whether the court should overrule *Whitaker*, and *A.C.* in light of *United States v. Skrmetti*, 145 S. Ct. 1816, 222 L. Ed. 2d 136 (2025)).

As Judge Agee recognized, “if the commonly understood and accepted limits on restroom usage and sports teams are negated by judicial fiat” there is no apparent “limit,” to the favoritism that the courts crossing these boundaries will eventually bestow on

men who claim a feminine gender identity. *B.P.J.*, 98 F.4th at 580. And the horror stories resulting from federal courts' willingness to strip women of legal protections in deference to the desires of men are just beginning. As the Eleventh Circuit recognized, "equating 'sex' with 'gender identity' or 'transgender status' for purposes of Title IX, [must], at the very least, generally impact living facilities, locker rooms, and showers, in addition to bathrooms, at schools across the country—affecting students in kindergarten through the post-graduate level." *Adams*, 57 F.4th at 816. This makes the experiences of *amici* highly relevant. Should this Court not intervene to correct the federal Circuit Court decisions that refuse to recognize biological sex as the relevant dividing line in sports, showers, locker rooms, restrooms, and other places where sex matters, then injuries like those of *amici* described below will continue to be suffered by other girls and women around the country.

* * *

Therefore, this case presents an important and urgent opportunity to correct the Circuit Court decisions that have permitted the desire of trans-identifying males to inhabit intimate spaces with girls and women to trump the sex-based rights of girls and women.

A. Women Were Traumatized After the NCAA Invited a Man to Compete in the National Women’s Swimming & Diving Championships

Last year a special committee of the Georgia Senate conducted hearings regarding the 2022 NCAA Division I Women’s Swimming and Diving Championships (the “National Championships”), hosted at Georgia Tech University. There, trans-identifying male Lia Thomas (formerly Will Thomas) a previous member of the University of Pennsylvania (UPenn) Men’s Swimming Team was invited by the NCAA to compete and given access to the women’s locker room without advising the female swimmers that Thomas had access to their locker room. Five *amici*, Kylee Alons (North Carolina State University), Grace Countie (University of North Carolina), Riley Gaines (University of Kentucky), Reka Gyorgy (Virginia Tech University) and Kaitlynn Wheeler (University of Kentucky), who among them have won more than 65 NCAA All-American honors, testified before the Senate Committee about the emotional toll they experienced because the NCAA authorized one male swimmer to compete against, and share a locker room and showers with, hundreds of women.²

² The videotaped testimony of *amici* can be viewed at: <https://www.legis.ga.gov/schedule/senate/AQIARgAAAXpEc5CqZhHNm8gAqgAvxFoJAGeQLC1kSDdIixjC7EHFmflAAAAJaYgAAANZQGA2fqFiaHBHrewZqJ2eET4ABFxyqioAAAAuAAADGkRzkKpmEc2byACqACGGA2fEWgMAZ5AsLWRIN0iLGMLsQcWZ8gAAAlpiAAAA>

For some of the country's top collegiate swimmers, competing against a man in a women's championship was deeply disorienting and emotionally painful. Thirty-one-time All-American Kylee Alons testified that she is "still grieving it" more than two years later.

In the National Championships 500-yard freestyle final, Thomas beat University of Virginia swimmer Emma Weyant by more than a body length. Weyant is one of the best and most technically proficient female swimmers in the world, a two-time Olympic silver medalist in the 2021 (Tokyo) and 2024 (Paris) Olympic Games. Kylee Alons testified that, "Thomas was not a technically proficient swimmer and had only qualified for the NCAA Championships because of the physical advantages he possessed as a man." Nevertheless, because Thomas was allowed to compete against Weyant, Thomas "stole the championship celebration from her, a moment for which Emma had worked her whole life." When competing as a male Thomas was unable to even qualify for the NCAA Championships. However, competing against women he won All American honors in all three events in which he competed, including in the 200-yard freestyle, an event in which he had not even been ranked among the top 550 male NCAA swimmers. See generally <https://www.swimmingworldmagazine.com/news/a-look-at-the-numbers-and-times-no-denying-the-advantages-of-lia-thomas/>.

Thomas prevented multiple women from receiving All-American honors, including *amici* Reka Gyorgy, a Virginia Tech University swimmer and

Olympian from Hungary who had also represented her country in multiple European Championships. Thomas displaced Reka from an All-American honor in the 500-yard freestyle event at Reka's last collegiate swim meet. Reka explained, "[b]efore 2022 I never had to prepare myself mentally to swim in competition against a man who is physically bigger and much stronger than I am. This isn't something you can realistically prepare for or compete with because it simply is not a fair match."

Reka wrote a letter to the NCAA explaining how unfair it is to allow men to compete against women. Yet, she never received a response. Reka testified, "I know many who competed against Thomas are still afraid to speak up. Unfortunately, women are bullied and harassed if they speak up to defend women's spaces from male intrusion. The bullying can be especially bad on college campuses. But even though a man beat me in the pool and even though I know some will criticize me and try to suppress my voice, I have decided I am going to fight this new and dangerous philosophy of stealing women's opportunities to give them to men." Kylee Alons said, "[l]ooking back, I can see even more clearly the injustice of hundreds of women being required to suppress our feelings to validate the feelings of one man."



Photo 1: Podium at 2022 NCAA Women's National Championships where a man won and took the place of Reka Gyorgy.

Twenty-two-time All-American Grace Countie recalled that the pressure of competing in the National Championships against a male with such enormous physical advantages caused her to start “shaking” and to become “so nauseous I thought I was going to throw up.” It “was the only time in [her] swimming career that [she] had ever cried before a race.” She spent her time pre-race “sitting in the ready room trying to convince myself that what I was going to experience was normal.” When she dove into the pool she “black[ed] out” and could not execute her race plan, she merely went through the motions.

The NCAA's decision to authorize a man to compete against them communicated powerfully to the best female swimmers in the Country that they lacked worth as women. They were shocked to be stripped of their right to compete solely against other women and

required to submit to a man depriving them of opportunities for which they had worked their entire lives.

University of Kentucky swimmer Riley Gaines described it, “a cruel, traumatizing, psychological experiment that pretends that it’s fair and just and compassionate for a man to take from women, that pretends it is normal for a man to be given access to a woman’s safe spaces, and that requires women to accept it all without saying anything lest they hurt the feelings of the man.” She said it was as if the collegiate women swimmers were being told, “[i]gnore the threat of men, ladies. Don’t worry if a guy follows you into the bathroom. Abandon your instincts that something is off. Loosen your boundaries, stay quiet and take your pants off anyways, get undressed, and stay quiet. That’s the message that we received.”

B. Rights to Sex-Separated Spaces and Bodily Privacy Are Violated by NCAA Rules

Women swimmers at the 2022 National Championships were traumatized by the presence of a 6-foot four-inch man with fully intact male genitalia in the women’s locker room. Kaitlynn Wheeler recalled the first time she learned a man had been given access to the women’s locker room:

Suddenly, the usual buzz of conversation in the locker room noticeably shifted to one of discomfort, awkwardness, and fear. I turned around, exposed and bare, while still inching up my racing suit, only

to see a very large 6'4" man just 10 feet from me. I realized it was Lia Thomas. I was completely shocked and caught off guard. I immediately reached for my towel. He put his belongings down near me and proceeded to pull down his pants and begin changing in front of me.

I was stuck in the most uncomfortable position of my life, with only half of my racing suit pulled up in the presence of a naked man. This felt far from a normal experience – it felt extremely wrong. I glanced around at the other girls and saw that they too were covering themselves, trying to huddle on the opposite side of the locker room as far away from Thomas as they could get in that small space. I returned to inching my racing suit up my torso as quickly as I could manage. As soon as I could, I left the locker room, still in shock at what I had just witnessed, with every fiber of my being crying out in mental torment and humiliation. I have never felt more violated and betrayed than I did at that moment.

Riley Gaines wrote a letter to Georgia Tech President Angel Cabrera,³ explaining the continuing trauma experienced by women whose privacy was not

³ The NCAA granted Georgia Tech's bid to host the Championships.

respected or protected in the locker rooms at Georgia Tech:

There is one question that has come back to me over and over again over the last two years since I visited your campus as a 21-year-old college student in 2022: “Why didn’t you protect me?”

There are images in my mind that I cannot erase. I wish that I could erase these images, that day after day make me feel less safe as a woman. They repeat in my mind late at night when I’m alone, when I’m walking a City street by myself at night, whenever I feel vulnerable, those images come back and the same question comes to my mind, “Why didn’t you protect me?” . . .

Your Georgia Tech University officials knew a naked adult man with full male genitalia was being authorized by Georgia Tech to share a locker room with hundreds of college-age women who would themselves be naked, unable to hide, unable to protect our privacy. This was intentional. This was premeditated. It was sexual harassment, and it happened right here, in the capitol city of the State of Georgia. . . . Let me be clear. I label this as sexual harassment because me and the . . . hundreds of other 18–22-year-old college girls were not asked for our consent and we did not give our

consent to being exploited and exposed to a 6'4" fully naked man. Because you did nothing, that man walked into our women's locker room at your university and saw me undressed down to full nudity. . .

The experiences of women swimmers at the 2022 NCAA National Championships vividly demonstrate the gross unfairness, denial of equal opportunities, and deprivation of privacy arising from allowing men to compete on women's sports teams.

C. Women's Privacy Violated by Men in College Volleyball

Beginning in August 2022, the Mountain West Conference (a NCAA member conference) authorized the San Jose State University Women's Volleyball Team ("SJSU Team") to roster Blaire Fleming, a male who claims a female gender identity. *Slusser, et al. v. Mountain W. Conf., et al.*, No. 1:24-cv-03155-SKC-MDB (D. Colo.), ECF No. 78 (Amended Complaint) ¶¶ 319, 326. Fleming had leaping ability and hitting power far exceeding any female player in the Conference, especially in spiking and blocking on the front row. *Id.* Due to his hitting power Fleming's spikes significantly increased the risk of teammates and opponents being concussed. *Id.* ¶¶ 415, 417. Fleming hit women in the face with spikes because those players could not react to the speed of his spikes in time. *Id.* ¶¶ 419, 428.

The SJSU coaches did not inform their women volleyball players that Fleming was a trans-

identifying male athlete. *Id.* ¶¶ 321-22, 328, 333, 353, 366-70. Consequently, several of Fleming’s teammates were unaware that Fleming was a trans-identifying male while they were practicing and competing with Fleming, sharing a locker room with him, and even being roomed with him on team road trips. Consequently, some of these women disrobed in front of Fleming, which they would not have done had they known he was male, *id.* ¶¶ 334-36, 349-50, 366-72, depriving these women of their right to bodily privacy and sex-separated spaces without their consent. *Id.*

D. Current Transgender Eligibility Policies in College Sports Harm Women

The NCAA adopted a new transgender eligibility policy on February 5, 2025, one day after President Trump issued Executive Order No. 14201 titled *Keeping Men Out of Women’s Sports*. The new NCAA policy abandoned the NCAA’s prior testosterone-based standard for trans-identifying male eligibility as well as certification and testing requirements and simplified the path for trans-identifying men to participate on NCAA women’s teams and continue to use women’s locker rooms, showers, and restrooms. The new NCAA policy fails to define “women” or “men” based on biological facts, opening the door to numerous administrability problems. Instead, the new policy uses the meaningless and inaccurate term “sex-assigned at birth,” defined as “[t]he male or female designation doctors assign to infants at birth, which is marked on their birth records.”

<https://www.ncaa.org/sports/2022/1/27/transgender-participation-policy.aspx>.

The new policy has no effective method of defining and administrating eligibility for women's teams that will ensure compliance with Title IX. Instead, the policy relies on amendable birth records rather than immutable biology and science. Unlike the NCAA's drug testing policies, which subject student-athletes to "year-round testing," see *NCAA Drug Testing Manual*, https://ncaaorg.s3.amazonaws.com/ssi/substance/SSI_DrugTestingManual.pdf at 5, the new policy omits any reliable process for ascertaining student-athlete sex. By defining "sex assigned at birth" as the designation "marked on their birth records," by failing to define "woman," "female," "man," or "male" on the basis of biology, and by failing to apply any reliable, objective, and biologically-based standard for determining sex – such as sex screening⁴ – the new NCAA policy will allow men to compete on women's teams in college sports if men simply amend their birth certificate to reflect a female gender identity rather than their sex.

The new NCAA transgender policy expressly permits athletes "assigned male at birth" to take opportunities from women by allowing them to participate on women's teams and "receive all other

⁴ Sex-screening relying on the SRY gene is highly reliable, non-invasive, relatively inexpensive and used by sport governing bodies such as World Athletics. See World Athletics Eligibility Rule 3.5 and Regulation C3.5A, available at: <https://worldathletics.org/about-iaaf/documents/book-of-rules>.

benefits applicable to student-athletes who are otherwise eligible to practice.” This means trans-identifying men are expressly authorized to access women’s locker rooms and safe spaces under the new NCAA policy.
<https://www.ncaa.org/sports/2022/1/27/transgender-participation-policy.aspx>.

This defect is not theoretical. Just this Spring, the NCAA’s new policy allowed male athlete Sadie Schreiner to access the women’s locker room and practice as a member of the women’s college track team at Rochester Institute of Technology (RIT), depriving women of privacy without their consent and taking coaching time away from *amici* Caroline Hill, a member of the RIT’s women’s NCAA Division III track team. *Gaines, et al. v. NCAA, et al.* No. 1:24-cv-01109-TRJ (N.D. Ga.), ECF No. 131 (Declaration of Caroline Hill) at 4-5, ¶¶ 19-28.

Moreover, other college sports governing bodies, like the California Community College Athletic Association (“3C2A”), which covers all 112 California junior colleges with varsity sports programs, have mandatory transgender eligibility policies, allowing men who self-identify as transgender to compete in women’s sports and access their locker rooms. See https://3c2asports.org/Constitution/2025-26/Bylaw_1.pdf (Bylaw 11.1). *Amici* Madison Shaw, Gracie Shaw and Brielle Galli are all currently missing their college volleyball seasons and losing a year of collegiate eligibility due to injury risks arising from a trans-identifying man playing on their women’s volleyball team. <https://readlion.com/santa-rosa->

[womens-volleyball-players-file-title-ix-complaint-over-transgender-athlete/](#)

Under the *current* policies of the NCAA and the 3C2A female student athletes are still being deprived of equal opportunities and experiencing a loss of locker room privacy at colleges and universities from coast to coast. And because of the shortness of a scholastic athlete's career, only two years at a junior college and four years at the NCAA level, physical, emotional, and dignitary injuries to athletes arising under Title IX are the epitome of injuries that are capable of repetition yet evade review.

* * *

These are just some of the reasons *amici* join Judge Agee in “hop[ing] that the Supreme Court will take the opportunity with all deliberate speed to resolve these questions of national importance.” *B.P.J.*, 98 F.4th at 580. *Amici* believe the safety and equal opportunities of not just female athletes but of all women across the Country depends upon it.

II. The NCAA Enforces Transgender Eligibility Rules in College Sport

As the Ninth Circuit observed, the NCAA “sets policies for member colleges and universities in Idaho and elsewhere.” *Hecox*, 104 F.4th at 1070. The NCAA's transgender eligibility policies are rigidly enforced by the NCAA Board of Governors via threats that member schools not in compliance with NCAA policies will not host NCAA events.

For example, on June 11, 2020, the NCAA Board of Governors criticized the Idaho Legislature for passing its Fairness in Women’s Sports Act, saying the “resulting law is harmful to transgender student-athletes and conflicts with the NCAA’s core values of inclusivity, respect and the equitable treatment of all individuals.” The NCAA threatened not to host championship events in Idaho due to the law. *NCAA statement regarding Idaho transgender law, June 11, 2020*, available at <https://www.ncaa.org/news/2020/6/11/ncaa-statement-regarding-idaho-transgender-law.aspx>.

Again, on April 12, 2021, the NCAA Board of Governors threatened to withdraw NCAA Championships from states where “Saving Women’s Sports” legislation passed. The NCAA stated that consistent with its “long-standing policy,” “only locations where hosts can commit to providing an environment that is safe, healthy and free of discrimination” would be selected for NCAA championships. *NCAA Board of Governors Statement on Transgender Participation*, April 12, 2021, available at <https://www.ncaa.org/news/2021/4/12/ncaa-board-of-governors-statement-on-transgender-participation.aspx>. The reference to “long-standing policy” was hyper-linked to the NCAA’s transgender eligibility policy. *Id.*

On August 3, 2021, the NCAA Board of Governors adopted a resolution reaffirming the NCAA’s transgender eligibility policy and its commitment to make “NCAA Championships . . . open to transgender athletes who have earned the right to

compete for a national title.” *Report of the NCAA Board of Governors August 3, 2021, Videoconference, available at https://ncaaorg.s3.amazonaws.com/committees/ncaa/exec_boardgov/AUG2021BOG_REPORT.pdf*. The Board of Governors further resolved “to require all hosts of previously awarded championship sites to reaffirm their commitment to ensure a nondiscriminatory environment for all college athletes,” and if they could not, to “inform the NCAA immediately.” *Id.*

Just this summer, UPenn’s President explained, UPenn “*must comply with ... NCAA eligibility rules*, so our teams and student-athletes may engage in competitive intercollegiate sports,” and admitted UPenn’s compliance with policies “in accordance with NCAA eligibility rules” in 2022 which authorized Lia Thomas to compete in college swimming caused injuries to women, including “competitive disadvantage” and “anxiety.” <https://penntoday.upenn.edu/announcements/penns-title-ix-resolution-us-department-education-office-civil-rights>. (Emphasis added.)

III. College Sports Governing Bodies Violate Title IX by Adopting and Enforcing Transgender Eligibility Rules

Title IX applies to “any education program or activity” that “receives federal financial assistance.” 20 U.S.C. § 1681. Title IX’s “inclusive terminology” “encompass[es] *all* forms of federal aid to education, direct or indirect.” *Grove City Coll. v. Bell*, 465 U.S. 555, 564 (1984) (cleaned up) (emphasis original).

Recognizing the “need to accord Title IX a sweep as broad as its language,” the Court has been “reluctant to read into [Title IX] a limitation not apparent on its face.” *Id.*

The Fourth Circuit observed that “Title IX’s prohibitions are not limited to organizations that directly receive federal funds; the statute also covers organizations that control and manage direct funding recipients.” *B.P.J.*, 98 F.4th at 554 (cleaned up) (citing *Horner v. Kentucky High Sch. Athletic Ass’n*, 43 F.3d 265, 272 (6th Cir. 1994); *Williams v. Board of Regents of Univ. Sys. of Ga.*, 477 F.3d 1282, 1294 (11th Cir. 2007)). Thereby, the Fourth Circuit became the third federal Court of Appeals to endorse the “controlling authority” test for Title IX liability, joining the Sixth and Eleventh Circuits. *Id.*

The Fourth Circuit held that the West Virginia Secondary School Activities Commission (“WVSSAC” or “Commission”) “exercises sufficient control over direct funding recipients to make it a Title IX defendant” based on “essentially the same reasons [the court had] conclude[d] the Commission is a state actor.” *B.P.J.*, 98 F.4th at 554. These reasons were that the Commission was “pervasively entwined enough with public institutions to be subject to suit,” *id.* (cleaned up), as evidenced by three factors:

(1) **overlap between the Commission’s board and school officials** – *i.e.*, the Commission’s board consisted of the “principals of every public secondary school in West Virginia,”

(2) **control over sport eligibility criteria** –

i.e., supervision and control of member schools' athletics programs "including by determining eligibility criteria for all interscholastic athletics," and

(3) **authority to regulate athletic events** – *i.e.*, "a West Virginia statute authoriz[ed] schools to delegate 'control, supervision, and regulation of interscholastic athletic events' to the Commission and designating dues paid to the Commission by county boards of education as 'quasi-public funds.'" *Id.*

Importantly, the same three factors that led the Fourth Circuit to find "pervasive entanglement" under the state actor test *and* sufficient controlling authority over federally funded schools for Title IX to cover the WVSSAC exist in the case of college sports governing bodies such as the NCAA, 3C2A, and college athletic conferences. This is important because it is the rules of these college sports governing bodies coupled with their ability to require adherence to their rules that is driving continuing discrimination against women and depriving women of equal opportunities and bodily privacy in college sports.

First, college sport governing bodies always have extensive overlap between their governing board and officials at the governing body's member institutions. For instance, college conferences such as the Ivy League and Mountain West Conference have 100% governance overlap, with every school member's President serving on the Conference's governing body and/or the bodies that determine eligibility policy for the Conference. *Mountain West Conference Bylaws*, Article 2.03 ("each Member Institution shall be entitled to appoint one (1) representative to the Board

of Directors. The representative appointed must be the Chief Executive Officer (President, Superintendent, Chancellor or similar position) of the Member Institution.”) *available at* <https://storage.googleapis.com/themw-com/2024/09/9e6b0e71-conference-bylaws.pdf> ; *Estabrook, et al. v. Ivy League Council of Presidents, et al.*, No. 1:25-cv-10281-WGY (D. Mass.), ECF No. 74-1 at 31 (Ivy Manual, 2023–2024, Appendix A (Ivy Group Agreement of 1954), Section V.C) (“The Presidents’ Policy Committee shall consist of the eight Presidents of the subscribing institutions. This Committee shall have full and final responsibility for the determination of all agreed policies of the Group and with respect to the organization and operation of the Committees on Administration and Eligibility.”). Likewise, there is extensive college and university representation at every level of NCAA governance. *See generally How the NCAA Works*, *available at* https://ncaaorg.s3.amazonaws.com/champion-magazine/HowNCAAWorks/AW_HowNCAAWorks.pdf f. Similarly, 3C2A governance consists of California community college officials. *3C2A Constitution and Bylaws - 2024–25*, Article 2.4.1 (noting nominees for 3C2A CEO and Board members shall be individuals who are a “CEO, chancellor, or superintendent or president” of a California community college) *available at* [https://3c2asports.org/Constitution/2024-25/Article 2.pdf](https://3c2asports.org/Constitution/2024-25/Article%202.pdf).

Second, as explained above, college sport governing bodies like the NCAA and 3C2A control and enforce sport eligibility rules for their members.

Third, the NCAA, 3C2A, and athletic conferences regulate athletic events, including by controlling national and conference championships.

Each of these factors point to Title IX coverage for college sports governing bodies just as they have for the WVSSAC and other state high school athletic associations. *See, e.g., Horner*, 43 F.3d at 272 (Kentucky); *Communities for Equity v. Michigan High Sch. Athletic Ass’n*, 80 F. Supp. 2d 729, 733-35 (W.D. Mich. 2000) (Michigan); *A.B. v. Haw. State Dep’t Educ.*, 386 F. Supp. 3d 1352, 1354-58 (D. Haw. 2019) (Hawaii).

A. Controlling Authority Test

In 1999, the Supreme Court issued its only opinion regarding the applicability of Title IX to the NCAA in *Smith I*. There the Court said, “if any part of the NCAA received federal financial assistance, all NCAA operations would be subject to Title IX.” *Smith I*, 525 U.S. at 469.

However, the Plaintiff in *Smith I* did not contend below that the NCAA directly received any federal funding. Rather, the only theory of Title IX coverage advanced by Smith was that the NCAA received “dues” from federally funded members. The Court held this was insufficient because the student-athlete had not alleged that “NCAA members paid their dues with federal funds earmarked for that purpose,” therefore proof of the NCAA’s “receipt of dues” merely “demonstrates that it indirectly benefits from the federal assistance afforded its members.” *Id* at 468. “[T]his showing, without more, [was]

insufficient to trigger Title IX coverage.” *Id.*

One theory of coverage that the Court could not address in *Smith I*, because it had not been advanced below, is the theory ultimately adopted by the Fourth Circuit in *B.P.J.* and by the Sixth and Eleventh Circuits and numerous district courts, that “when a recipient cedes controlling authority over a federally funded program to another entity, the controlling entity is covered by Title IX regardless of whether it is itself a recipient.” *Smith I*, 525 U.S. at 469-70. With respect to the NCAA specifically, the Court observed in *Smith I* that the NCAA is “created by and comprised of schools that receive federal funds, and ... governs its members ‘with respect to athletic rules.’” *Id.* at 469 (cleaned up). The Court said this argument was a potential basis to distinguish the NCAA from an entity addressed in *United States DOT v. Paralyzed Veterans of America*, 477 U.S. 597 (1986), which held that merely benefiting from a federal funding recipient does not trigger Title IX coverage. Ultimately, the Court said “[e]vident as these distinctions may be, they do not bear on the narrow question we decide today-whether an entity that receives dues from recipients of federal funds is for that reason a recipient itself.” *Id.*

Bottom line, this Court’s holding regarding potential Title IX coverage over the NCAA in *Smith I* was extremely narrow. It was presumably not this Court’s last word on the potential Title IX liability of the NCAA or other scholastic sport governing bodies, only the first.

Since *Smith I* both the Fourth Circuit in *B.P.J.*, 98 F.4th at 554, and the Eleventh Circuit in *Williams*, 477 F.3d at 1294, have held that Title IX applies to athletic associations that exercise “controlling authority” over funding recipients. The Eleventh Circuit adopted the “controlling Authority” test because “if [it] allowed funding recipients to cede control over their programs to indirect funding recipients but did not hold indirect funding recipients liable for Title IX violations” that would leave a large loophole in Title IX coverage. *Williams*, 477 F.3d at 1294. *See also Barrs v. S. Conf.*, 734 F. Supp. 2d 1229, 1230 (N.D. Ala. 2010) (holding an NCAA member college athletic conference satisfied the “controlling authority” test).

In *Williams*, the Eleventh Circuit relied upon the Western District of Michigan’s analysis in *Communities for Equity*, 80 F. Supp. 2d at 733-35 following the Supreme Court’s decision in *Cannon v. Univ. of Chicago*, 441 U.S. 677, 691-92 (1979), which held that Title IX “was enacted for the benefit of ... those discriminated against on the basis of sex” as opposed to simply being a “ban on discriminatory conduct by recipients of federal funds” or “a prohibition against the disbursement of public funds to educational institutions engaged in discriminatory practices.” Accordingly, the district court held that, “any entity which has controlling authority over a ‘program or activity receiving Federal financial assistance’ is subject to Title IX’s antidiscrimination rule, even if that entity does not itself receive the federal funds which finance the program or activity.” *Communities for Equity*, 80 F. Supp. 2d at 733

(quoting 20 U.S.C. § 1681(a)).

One commentator has pointed to the following factors suggesting the NCAA could be accountable under the controlling authority test:

The NCAA operates with federally funded member schools to create intercollegiate athletics. . . the NCAA is the governing ‘agency’ for intercollegiate athletics . . . the NCAA enforces rules governing intercollegiate athletics [and] manages and controls the most profitable assets of the Association—the NCAA Championships. . . . Based on this degree of control and management, a court could find that the NCAA is an indirect “recipient” of federal aid through its members and covered by Title IX.

Friestadt, L.E., *Title IX vs. NCAA: A Gameplan for Championship Equity*, 25 VAND. J. OF ENTER. & TECH. LAW 307, 350-51 (2023). Indeed, this commentator concluded the NCAA “*should* be subject to Title IX.” *Id.* at 350 (emphasis added). *But see Smith v. NCAA*, 266 F .3d 152, 161 (3d Cir. 2001) (*Smith II*) and *Cureton v. NCAA*, 198 F .3d 107 (3d Cir. 1999) (holding that the controlling authority test did not extend coverage to the NCAA on the facts of those cases).

The WVSSAC unsuccessfully relied upon the Third Circuit’s decision in *Smith II* to try to avoid Title IX coverage. However, as neither the NCAA nor a college conference was a party in *B.P.J.*, the Fourth Circuit did not consider how the NCAA fares under the

controlling authority standard. Instead, the Fourth Circuit distinguished *Smith II* by noting “key differences,” between the NCAA and state athletic associations which are more relevant to the state actor analysis than the Title IX controlling authority analysis, including that “the NCAA spans every state,” no state had delegated authority to the NCAA to take action against state employees, and the NCAA did not have *statutory authority* like the WVSSAC to control the athletic programs of its member schools. However, none of these “key differences” *for state actor analysis* goes directly to the factors of: (1) governance overlap, (2) control over sport eligibility criteria, and (3) regulation of athletic events, which underlie the Title IX controlling authority test, and each of which the NCAA satisfies.

Moreover, as explained above, with respect to transgender eligibility rules and the administration of national championships the NCAA plainly does exert controlling authority making *Cureton* and *Smith II* distinguishable and unpersuasive regarding whether Title IX constrains the NCAA in the context of issuing and enforcing nationwide college sport transgender eligibility rules or when the NCAA applies those rules in national championships that it conducts for its members.

* * *

Because future cases may present circumstances in which college sports governing bodies can be appropriately held responsible under Title IX for transgender eligibility policies that deprive women of equal opportunities, *amici* request that the

Court not take any action in the course of deciding this case that could foreclose further development of the controlling authority test for Title IX coverage.

B. Civil Rights Restoration Act (CRRA)

Another potential ground for Title IX coverage over the NCAA and other scholastic sport governing bodies, and one that does not rely upon direct or indirect federal funding to the NCAA or other such governing bodies, is the Civil Rights Restoration Act (CRRA).

Congress passed the CRRA to expand the definition of “program or activity” of a Title IX covered entity to include “all of the operations of ... (4) any other entity which is established by two or more [colleges or universities] ... any part of which is extended Federal financial assistance” 20 U.S.C. § 1687(4) (emphasis added), Pub. L. No. 100-259, § 2(1), 102 Stat. 28, 28 (1988). “The purpose of the [CRRA] is to reaffirm broad coverage of [Title IX’s] anti-discrimination provisions.” S. Rep. No. 100-64, at 4 (1987). *Grove City* limited Title IX to “only the specific program receiving federal funding,” and not the entire entity. *Smith I*, 525 U.S. at 466 n.4. The CCRA restored Title IX to its full breadth and under it the NCAA falls squarely within the definition of a “program or activity.”

The NCAA is such a “program or activity” subject to Title IX because of its unique structure as an entity created by “two or more” colleges and universities whose constituent “part[s]” include federal funding recipients. The NCAA is an

unincorporated association comprised of more than 1,100 member colleges and universities. NCAA members are primarily (more than 90%) institutions which receive federal funds and are subject to Title IX. Thus, most of the NCAA's "part[s]" consist of federal funding recipients. Unincorporated associations are not separate "legal entities" but are no more than the sum of their individual parts. *Underwriters at Lloyd's, London v. Osting-Schwinn*, 613 F.3d 1079, 1091 (11th Cir. 2010) ("An association has no legal existence as an entity separate from its members") (quoting *Calagaz v. Calhoon*, 309 F.2d 248, 251–52 (5th Cir. 1962) (internal alterations omitted)).

The NCAA or conferences organized as unincorporated associations and made up mostly (or like the Ivy League, exclusively) of federally funded institutions cannot avoid Title IX coverage by arguing the CRRA's definition of "part" refers solely to administrative operations and governance arms of the association. The phrase "any part of which is extended Federal financial assistance" is key. The term "part" in this phrase does not refer only to administrative operations of the enumerated entities in subparagraphs (1) to (4), but to the entire entity itself. Thus, "part of which" means part of the entire entity, which includes every member of an unincorporated association. Unincorporated associations are by definition the sum of their member institutions, *Underwriters*, 613 F.3d at 1091, regardless of whether they also have administrative operations run by executives and staff. Both the operations and the member institutions are "parts" of the unincorporated association within the plain meaning of Section 1687.

Because many of the NCAA’s “parts” receive federal funding, Title IX applies to the NCAA via the CRRA.

CONCLUSION

The challenged state laws in Idaho and West Virginia were appropriate to protect women’s privacy rights which have been undermined by the rules of high school and college athletic associations. The judgments of the Court of Appeals should be reversed.

For the reasons discussed above, the Court should leave for explication and analysis in future cases the extent to which college athletic associations and conferences are covered by Title IX.

Respectfully submitted,

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Counsel for *Amicus Curiae*

September 19, 2025

APPENDIX

APPENDIX TABLE OF CONTENTS

List of <i>Amici Curiae</i>	A-1
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Riley Gaines*¹

12-time All-American, Swimming, tied Lia Thomas in the 200 free at the 2022 NCAA Swimming & Diving Championships – University of Kentucky

Kylee Alons*

31-time All-American, 5-time ACC Champion, Olympic Trials Semi-Finalist, and 2-time NCAA Champion, Swimming – North Carolina State University

Katie Blankinship*

NCAA Swimming Athlete – Roanoke College

Macey Boggs*

NCAA Volleyball Athlete – University of Wyoming

Nicanora (Nicos) Clarke*

NCAA Volleyball Athlete – University of Nevada, Reno

Grace Countie*

22-time All-American, Swimming – University of North Carolina

Ellie Eades

NCAA Tennis Athlete – University of Kentucky

Ainsley Erzen

NCAA Soccer and Track & Field Athlete – NCAA Team Champion, Indoor Track 2024 – University of

* An asterisk by a name indicates that the athlete knows that she has personally faced a male in sports competition and/or played or swum on the same team as a trans-identifying male.

Arkansas

Grace Estabrook*

NCAA Swimming Athlete - University of Pennsylvania

Ellis Fox

NCAA Swimming Athlete – Texas A&M University

Brielle Galli*

*California Community College Athletic Association
Volleyball Athlete – Santa Rosa Junior College*

Sierra Grizzle*

*NCAA Volleyball Athlete – University of Wyoming and
Texas Tech University*

Reka Gyorgy*

*Olympian Hungary (Rio 2016), competed in European
Championships – two-time ACC Champion and a two-
time NCAA Division I All-American, missed finals by
one placement at NCAA Swim Championships in the
500 free where Lia Thomas won first place, Swimming
– Virginia Tech University*

Ellen Holmquist*

NCAA Swimming Athlete - University of Pennsylvania

Caroline Hill*

*NCAA Track & Field Athlete – Rochester Institute of
Technology*

Margot Kaczorowski*

NCAA Swimming Athlete - University of Pennsylvania

Aleah (Sia) Liilii*

NCAA Volleyball Athlete - University of Nevada, Reno

Nanea Merryman*

NCAA Volleyball Athlete – Cedarville University

Julianna Morrow*

NCAA Swimming Athlete – Roanoke College

Lily Mullens*

*2-time Old Dominion Athletic Conference Champion,
Swimming – Roanoke College*

Elle Patterson*

*NCAA Volleyball Athlete – San Jose State University
and IU Indianapolis*

Kate Pearson*

NCAA Swimming Athlete – Roanoke College

Susanna Price*

NCAA Swimming Athlete – Roanoke College

Kaylie Ray*

NCAA Volleyball Athlete – Utah State University

Jordan Sandy*

NCAA Volleyball Athlete – University of Wyoming

Carter Satterfield*

NCAA Swimming Athlete – Roanoke College

Halle Schart*

NCAA Swimming Athlete – Roanoke College

Gracie Shaw*

*California Community College Athletic Association
Volleyball Athlete – Santa Rosa Junior College*

Madison Shaw*

*California Community College Athletic Association
Volleyball Athlete – Santa Rosa Junior College*

Brooke Slusser*

*2-time Honorable Mention All-Mountain West (2023,
2024), Volleyball – San Jose State University and
University of Alabama*

Katelyn Van Kirk*

*NCAA Volleyball Athlete – Boise State University and
South Dakota State University*

Kiersten Van Kirk*

*3-time Academic All-Mountain West (2022, 2023,
2024), Mountain West Scholar-Athlete (2023),
Volleyball – Boise State University*

Kaitlynn Wheeler*

*3-time All-American, Swimming – University of
Kentucky*