

No. 24-43

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In the Supreme Court of the United States

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STATE OF WEST VIRGINIA, ET AL.,

*Petitioners,*

v.

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

*Respondent.*

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

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**BRIEF OF AMICI CURIAE FEMALE  
ATHLETES UNITED, SELINA SOULE,  
CHELSEA MITCHELL, AND ALANNA SMITH  
IN SUPPORT OF PETITIONERS**

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## INTEREST OF THE *AMICI CURIAE*<sup>1</sup>

Female Athletes United is an organization centered on the belief that biological females should have competitive opportunities in their own sports, to preserve integrity, safety, and fair competition in women's athletics. Female Athletes United has an interest in these cases because, in support of its mission, it advocates for women and girl athletes in cases involving males who identify as women competing in women's sports, violating the rights of women and girl athletes and denying them potential scholarship opportunities and recognition, collecting testimonies from its members and building legal arguments in support of its mission.

Selina Soule, Chelsea Mitchell, and Alanna Smith are women athletes who successfully competed in track-and-field in high school, only to see their success, opportunities, and safety diminished when males self-identifying as women began competing in their events. They are interested in this action because of their individual experiences and because they seek to remedy their harms through an action styled *Soule v. Conn. Assoc. of Schs., Inc.*, Case No. 20-cv-00291 in the United States District Court for the District of Connecticut.

## SUMMARY OF THE ARGUMENT

Title IX was designed and implemented fifty years ago to eliminate sex discrimination in educational opportunities, of which athletics are a critical part. It

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<sup>1</sup> Pursuant to Supreme Court Rule 37.6, no counsel for any party authored this brief in whole or in part, and no entity or person other than *amici*, its members, or its counsel made any monetary contribution intended to fund the preparation or submission of this brief.

has been wildly successful by any measure, increasing exponentially the numbers of women and girls in sports at high school and collegiate levels, their share of related economic opportunities like scholarships and sponsorships, and their share of benefits like corporate leadership roles after. It has spurred, as a natural consequence of the statute's basic requirements, the formation of women-only sports teams. Women may compete on an even playing field with their male counterparts, playing against athletes with the same sex-based athletic abilities and enjoying the safety and physical security of same-sex athletic association both on and off the field.

That the rationale of *Bostock v. Clayton Cnty.*, 590 U.S. 644 (2022), somehow requires upsetting that, undergirds much of the argument made by male athletes who, identifying as women, want to play in competitive sports reserved for women and girls. See *Hecox v. Little*, 104 F.4th 1061, 1080 (9th Cir. 2024); *B.P.J. v. W. Va. State Bd. of Educ.*, 98 F.4th 542, 562 (4th Cir. 2024). As the stories *amici* demonstrate, that is profoundly wrong and profoundly harmful for a simple reason: It pretends that sex never matters. It didn't in *Bostock* because, at least on the face of the complaint, the male employee's gender identity had nothing to do with their ability to perform the job.

But sex matters immensely in competitive athletics because innate biological and physiological difference between women and men make it matter—for reasons of safety, fair competition, and the safe and equal use of sex-specific places. The text and context of Title IX explicitly show that they do. So, too, does a regulatory structure undisturbed for five decades that authorizes and sometime requires female-only competitive sport

teams to ensure women and girls aren't denied the benefits of school sports.

Applying a misreading of *Bostock* to influence the analysis under either Title IX or the Equal Protection Clause severely undermines these important protections for female athletes. Allowing biological males self-identifying as females to enter women's sports, women's teams, and women's athletic spaces, threatens this successful legacy of Title IX. The consequences can already be seen, in the individual experiences of the *amici* women athletes. These athletes, at the pinnacle of their high school and collegiate athletic careers, have experienced integration into their sports and spaces of biological males identifying as women. Their consequent losses, not only at the podium, but by denial of competitive berths and roster slots—and also regarding personal privacy and physical safety—are significant.

A read of *Bostock* as requiring the participation of males self-identifying as women in same-sex sports flips Title IX on its head. Instead of eliminating sex-based discrimination from education, it restores it. It allows access to males self-identifying as women that is not afforded to females self-identifying as women. It threatens to return women to their pre-Title IX athletic status, as not only second-class athletes but absent nearly altogether. Respectfully, the Court should decline the invitation.

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## ARGUMENT

### I. Male participation in female athletics causes real-world harms to women athletes.

The harms to female athletes from male participation in female-only sports—losing competitive spots, facing safety risks, dealing with privacy breaches, and facing unequal access—may seem academic or abstract on paper. But *amici*'s experiences are real, and they illustrate the heavy toll on women who've poured years into their sports, only to see their opportunities shrink and personal costs pile up because of policies letting biological males compete in their categories. The tales of Selina Soule, Chelsea Mitchell, Sara Casebolt, and Aubrey Simpson make these points.

#### *Selina Soule*

Selina Soule, a high school track star from Connecticut, has personally felt the sting of being forced to compete against biological males, self-identifying as women, who compete in women's athletics. Selina trained hard to boost her race times, in hopes of notching personal wins, earning spots at state track meets, and attracting college recruitment.

But at the 2019 Indoor State Open Championship, Soule missed competing in the girls' 55-meter finals by just one spot and missed qualifying for the New England Regional Championships by only two spots: biological males had taken the top two spots. And so while she qualified for the New England Regional Championships for other events, she was unable to showcase her athletic ability in the 55-meter event to onlooking college scouts due only to the participation of biological males that year.

That blow went deeper for Soule, badly affecting her mental and emotional health. She felt deep distress, believing her effort and competitive strength as a female athlete were undercut by biologically male competitors with natural, physiological advantages, a feeling echoed by other female athletes in her shoes. Soule's hopes for recruitment as a college athlete likely took a hit as well. Not landing top spots, and gaining exposure at increasingly elite high school competitions, because of male competitors, almost certainly limited her visibility in front of college scouts, her opportunities for recruitment to college teams, and her ability to gain athletic scholarships that often follow.

### ***Chelsea Mitchell***

Chelsea Mitchell, another Connecticut high school track athlete, faced similar competitive setbacks when biological males started competing in women's track events. She ran in the 2019 Connecticut state open championships, where males self-identifying as women took first and second place in the 55-meter dash, dropping Chelsea to third, despite a personal best. This ended up being just *one* of *four* state championship titles the participation of biological males at her events would come to cost her.

### ***Sara Casebolt***

Sara Casebolt, a student-athlete at the University of Idaho, and a competitive athlete since the age of seven, has dealt with not only competitive hurdles but privacy concerns as a track and cross-country runner competing against biological males. She runs at a Title IX-bound public university and backs (and is a member of) Female Athletes United's push for equal opportunities. She recalls being forced to race against

(and coming in second place behind) ‘Washington’s first transgender high school track champion’ in the girls’ 1600-meter event. Not only did this cost her elite-level ranking, it woke her up to other issues she is now deeply concerned with.

She worries not just that biologically male athletes will continue outperforming biologically female athletes, she is also concerned with her safety and the safety of her teammates. More than that, she’s worried about the presence of biological males in her locker room and—should a biological male be among her teammates—what may come of travel and boarding arrangements given that she presently shares rooms and beds with her current teammates for away meets.

### ***Aubrey Simpson***

Aubrey Simpson, also a member for Female Athletes United, is a student-athlete at MidAmerica Nazarene University, where she competes on the volleyball and track-and-field teams. She is sincerely concerned with the prospect of being forced to share a locker room with a biologically male teammate or opponent. She is primarily concerned with the prevalence of communal showers in locker rooms and the prospect of having to share a communal shower with a biological male.

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**II. Applying *Bostock* to male participation in women’s sports jeopardizes the very women athletes whose equal treatment the Equal Protection Clause and Title IX are supposed to guarantee.**

The insertion of biological males self-identifying as women into women’s sports under an extended *Bostock v. Clayton County* framework threatens the foundation of Title IX, turning its shield against sex discrimination into a sword that disadvantages biological females. This policy shift also allows biological males self-identifying as women to compete on female teams while denying biological females the same type of access to male teams, creating a structural inequity rooted in sex-based eligibility rules.

**A. Male participation in competitive women’s athletics risks rolling back the lifechanging gains women have achieved since Title IX’s enactment, gravely harming them in the process.**

Without question, “[T]itle IX has changed the face of women’s sports ....” *Cohen v. Brown Univ.*, 101 F.3d 155, 188 (1st Cir. 1996); see also *Parker v. Franklin Cnty. Comm. Sch. Corp.*, 667 F.3d 910, 916 (7th Cir. 2012) (“Title IX has gone a long way in ... encouraging female participation and interest in sports.”). Before it was enacted in 1972, women who pursued excellence in athletics were ignored—if not outright opposed—by a culture that wrote their interest off as mannish, disruptive, or unworthy of effort. See Nat’l. Coal. For Women & Girls in Educ., *Title IX* at 45, (2017), <https://perma.cc/V7KM-PJ97>; U.S. Comm’n. on Civ. Rts., *More Hurdles to Clear: Women and Girls*

in *Competitive Athletics* at 1–2 (July 1980), <https://perma.cc/X3W3-T2YF>.

Considering where we are in 2025, it is easy to forget that female participation in competitive athletics was anemic five decades ago. But it was. In 1972, girls represented only 7.4% of high school athletes, with boys dominating at 92.6%—one girl athlete for every 12.5 boys. See Nat’l. Fed. of State H.S. Assocs., 2021–22 *High School Athletics Participation Survey* (2022), <http://bit.ly/4moXm46> at 56 (showing 294,015 girls and 3,666,917 boys). In college, there were fewer than 30,000 women athletes (and over 170,000 men), benefitting from only 2% of schools’ athletic budgets, and receiving zero athletic scholarships. See Nat’l. Coal. For Women & Girls in Educ., *Title IX*, supra, at 40; Nat’l. Coal. for Women and Girls in Educ., *Title IX at 40* at 9 (2012), <http://bit.ly/47KJNs5> (citing Nat’l. Coll. Athletic Ass’n, *Sports Sponsorship and Participation Rep’t.*, 1971-72–2010-11). Women were denied “opportunities for athletic competition and scholarships as a result.” 130 Cong. Rec. 18,536 (1984) (statement of Rep. Snowe).

The passage of Title IX in 1972 marked a pivotal shift. For the first time, federal law required that “[n]o person ... shall, on the basis of sex, be excluded from participation in, 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). Congress aimed that prohibition directly at the “pervasive discrimination *against women* with respect to educational opportunities” then prevalent in American schools, including discrimination in school athletics. *McCormick ex rel. McCormick v. Sch. Dist. of*



*Mamaroneck*, 370 F.3d 275, 286 (2d Cir. 2004) (emphasis added); see also *Williams v. Sch. Dist. of Bethlehem*, 998 F.2d 168, 175 (3d Cir. 1993).

In athletics, Title IX’s promise was realized when, two years later, Congress directed the Department of Education’s predecessor to issue regulations “with respect to intercollegiate athletic activities [that contain] reasonable provisions considering the nature of particular sports.” Pub. L. No. 93-380, § 844, 88 Stat. 484, 612 (1974). The resulting regulatory scheme barred sex discrimination in athletics, see 34 C.F.R. § 106.41(a), by authorizing sex-segregated teams “where selection [for participation] ... is based upon competitive skill or the activity involved is a contact sport.” *Ibid.* § 106.41(b). They also required “equal athletic opportunity for members of both sexes,” including “the selection of sports and levels of competition [that] effectively accommodate the interests and abilities of members of both sexes.” *Ibid.* § 106.41(c)(1).

In the decades that followed, female participation in school athletic programs exploded, transforming the landscape of high school and college sports. By 2024–25, over 3.4 million high school girls were competing in athletics, a more than tenfold increase from pre-Title IX levels, closing the gap to claim about 43% of high school athletic spots. See Nat’l Fed’n of State High School Ass’ns, *Participation in High School Sports Hits Record High in 2024–25* (Sept. 9, 2025), <http://bit.ly/46n7btm>. At the college level, women’s involvement surged to over 240,000 NCAA athletes, also representing roughly 43% of participants across divisions. See Nat’l Collegiate Athletic Ass’n, *2024–25 NCAA Sports Sponsorship and Participation Rates Report* 93–94 (Sept. 4, 2025), <http://bit.ly/4gwIsYj>.

(showing 242,927 female athletes and 323,468 men). This expansion has created opportunities for personal athletic and educational excellence, fostering a vibrant ecosystem of women's sports that extends from youth leagues to professional pathways.

Beyond participation numbers, Title IX's impact has yielded profound benefits for female athletes. It is no secret that participation in school athletics correlates with academic success, social integration, and personal satisfaction. See Doriane Lambelet Coleman, et al., *Re-Affirming the Value of the Sports Exception to Title IX's General Non-Discrimination Rule*, 27 Duke J. Gender L. & Policy 69, 104–05 (2020). Simply put:

Girls who play sports stay in school longer, suffer fewer health problems, enter the labor force at higher rates, and are more likely to land better jobs. They are also more likely to lead. Research shows stunningly that 94 percent of women C-suite executives today played sport, and over half played at a university level. Being engaged in sports inculcates the values of fitness and athleticism for lifelong health and wellness and imparts additional socially valuable traits, including teamwork, sportsmanship, and leadership, as well as individually valuable traits including goal setting, time management and grit.

*Adams by and through Kasper v. Sch. Bd. of St. John's Cnty.*, 57 F.4th 791, 820–21 (11th Cir. 2022) (Lagoa, J., specially concurring) (cleaned up & quoting

sources). For instance, Hewlett Packard and eBay CEO Meg Whitman, Sunoco CEO Lynn Elsenhans, General Motors CEO Mary Barra, Secretary of Homeland Security Kristi Noem, U.S. Senator Kelley Ayotte, U.S. Senator Kristin Gillibrand, and Massachusetts Governor Maura Healey were all college athletes.

As the experiences of the biological female *amici* athletes reflect, allowing biological males to participate in women-only sports introduces significant physiological and resulting competitive imbalances that severely undermine these gains. At bottom, “[b]iological sex is a primary determinant of athletic performance because of fundamental sex differences in anatomy and physiology dictated by sex chromosomes and sex hormones.” Sandra K. Hunter, et al., *The Biological Basis of Sex Differences in Athletic Performance, Consensus Statement for the American College of Sports Medicine*, Med. & Sci. in Sports & Exercise 55(12) 2328, 2328 (Dec. 2023). Biological males typically retain advantages from male puberty, including greater muscle mass and strength, increased bone density, and superior cardiovascular capacity, which translate to substantial performance advantages in strength and speed-related events of 10–30%. See *Adams*, 57 F.4th at 819–20 (Lagoa, J., specially concurring) (summarizing biological advantages and research). The male performance advantages conferred by biology “appear, on assessment of performance data, insurmountable.” Emma N. Hilton & Tommy R. Lundberg, *Transgender Women in the Female Category of Sport: Perspectives on Testosterone Suppression and Performance Advantage*, Sports Med. 51(10) 199, 200 (Dec. 2020). Those advantages exist “across the board, at both the elite and non-elite

levels of almost all standard sports and events,” Coleman, et al., *Re-Affirming the Value*, supra, at 87, such that when women athletes are forced to compete against biological males, they “have little chance of winning.” See Allison K. Heather, *Transwoman Elite Athletes: Their Extra Percentage Relative to Female Physiology*, Int. J. Environ. Res. Public Health 1, 1 (2022).

The playing field is not leveled by puberty blockers and cross-sex hormones. Puberty blockers, while halting further development, do not reverse existing male pubertal changes like increased skeletal structure or muscle memory. And hormone therapy—such as estrogen treatment—only partially reduces biological male athletic advantages, leaving gaps in strength and endurance. See Hilton, et al., *Transgender Women in the Female Category*, supra, at 205–07. A 2021 study of elite biological male athletes self-identifying as women showed that, even after two years of hormone therapy, their grip strength remained over 20% higher than female averages, the gap in running times narrowed only marginally. See *ibid.* The evidence in *B.P.J.* itself shows that the performance of a biological male athlete identifying as a woman exceeded female norms despite hormone treatment, illustrating how these interventions fail to eliminate competitive disparities. See *B.P.J. v. W. Va. State Bd. of Educ.*, 649 F. Supp. 3d 262, 268–69 (S.D. W. Va. 2023); see also *B.P.J.*, 98 F.4th at 567 (Agee, J., concurring in part and dissenting in part) (“[T]he majority recognizes that there is evidence that biological boys have a competitive advantage ... *even before puberty*.” (emphasis in original)).

Safety concerns during athletic competition escalate with male participation in women’s sports, as physical

disparities heighten injury risks for female athletes. The risk is especially acute in contact sports like rugby or wrestling, where male strength can overwhelm female opponents. Even in non-contact sports, the speed and power of male athletes can lead to accidental harm, undermining the safety assurances Title IX seeks to provide for women's athletic environments. See Fair Play for Women, *How 'Inclusion' in Sport is Harming Women and Girls*, <http://bit.ly/4nDg20X> (Jan. 2024) (compiling testimonies showcasing specific safety and privacy violations and accidental injuries).

Further compounding the harm, the presence of biological males in women-only spaces, such as locker rooms and training facilities, compromises privacy and comfort. This intrusion is an unavoidable consequence of male participation in women's sports teams—since athletes on a women's soccer team, for example, use the women's locker room, the participation of biological males in women's sports extends their presence into these private areas. See 34 C.F.R. § 106.33 (allowing for the provision of separate, comparable facilities “on the basis of sex”). Surveys indicate that female athletes feel unsafe or violated in mixed-sex locker rooms, with specific incidents highlighting the erosion of these protected spaces. See Fair Play for Women, *How 'Inclusion' in Sport is Harming Women*, *supra*. And in *Adams*, Judge Lagoa warned that “there simply is no limiting principle to cabin that definition of ‘sex’ to the regulatory carve-out for bathrooms ... as opposed to the regulatory carve-out for sports or ... living facilities, showers, and locker rooms,” linking the intrusion into these spaces directly to sports participation. *Adams*, 57 F.4th at 826 (Lagoa, J., concurring). This intrusion not only affects

psychological well-being of female athletes but also deters participation in women's sports, with dropout rates rising by up to 15% in regions adopting policies to include biological male athletes on women's teams, reversing the access Title IX was designed to achieve. See Nat'l Fed'n of State High School Ass'ns, 2024–25 High School Athletics Participation Survey, <http://bit.ly/4nEBAdt> at 15 (2025).

Long-term, these disruptions spill into the job market, where diminished athletic records reduce women's leverage for endorsements or coaching roles. The loss of scholarship opportunities—where female athletes now secure approximately \$1.65 billion annually (after a pre-Title IX environment with zero scholarships)—further jeopardizes access to higher education opportunities and career advancement, undoing decades of progress under Title IX. See Women's Sports Foundation Research Report, *50 Years of Title IX: We're Not Done Yet* 38 (2022).

**B. Misreading Bostock to apply to Title IX upends the carefully calibrated regulatory scheme protecting women's athletics.**

As the principal brief in *B.P.J* rightly explains, Title IX's text and context do not entitle biological males who self-identify as women to participate in women's sports. Rather, as well explained there, (1) the prohibition against discrimination “on the basis of sex” refers to different treatment solely with regard to biological sex, (2) the statutory context recognizes that some aspects of women's educational lives must be conducted separately from men, and (3) the Congress that adopted Title IX was concerned entirely with ensuring that women had equal access to the benefits of education. See Brief for Petitioner, *B.P.J. v. W. Va.*

*State Bd. of Educ.*, No. 23-1123, at 15–20 (filed Jan. 10, 2025). Any reading of *Bostock* that suggests that Title IX is violated when biological males are excluded from female sports teams is just inconsistent with the statutory text and context.

It is likewise inconsistent with Title IX’s explicit promise that women will not be “excluded from participation in” or “denied the benefits” of federally funded education programs, 20 U.S.C. § 1681(a), and the regulatory structure that immediately grew up around that promise. Because ensuring equal access logically required women-only teams for sports based on competitive skill or involving contact—where physiological differences between men and women matter immensely—Title IX’s implementing regulations, first adopted in 1975, promptly established a framework authorizing separate teams for women. See 34 C.F.R. § 106.41(b). Rooted in Title IX’s goal of non-discrimination, that authorization has existed virtually uninterrupted for five decades, reflecting a consistent recognition that providing equal opportunities sometimes requires providing dedicated spaces and activities for women to overcome sex-discrimination in competitive sports.<sup>2</sup> See

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<sup>2</sup> The Biden Administration promulgated a final rule that would have permitted biological males self-identifying as women to participate in women only teams, see 89 Fed. Reg. 33474 (April 29, 2024), which was swiftly vacated by a district court. See *Tennessee v. Cardona*, 762 F. Supp. 3d 615 (E.D. Ky. 2025). After a presidential election in which male participation in women’s athletics was a likely contributor to the outcome, the current Administration ordered the Secretary of Education to “comply with the vacatur,” “ensur[e] th[e] regulation does not have effect,” and “affirmatively protect all-female athletic opportunities and all-female locker rooms.” Executive Order 14201, 90 Fed. Reg. 9279 § 3(i)–(ii) (Feb. 5, 2025); see also

generally 40 Fed. Reg. 24,128 (allowing, for example, “separate teams when those teams are based on competitive skill or if they are in contact sports”). This enduring regulatory lineage directly correlates with the dramatic increase in women’s sports participation and the lifetime benefits that flow from it. See *supra* at 9–10.

The framework of the Title IX regulations further solidifies this commitment to protecting and enhancing women’s athletic opportunities. Under 34 C.F.R. § 106.41(c) (2023), also adopted in 1975, the provision of separate teams must ensure equal athletic opportunities for both sexes, directly aligning with the statute’s demand for equity by addressing competitive imbalances that would otherwise exclude women. This consistent regulatory structure, unchanged in its core principles since its adoption, has been instrumental in sustaining the growth of women’s sports—and its benefits—discussed above. See Coleman, et al., *Re-Affirming the Value*, *supra*, at 70–71 (explaining that this “hybrid approach” that “permit[s] schools to take sex into account to address imbalances in ... sport” has “yielded extraordinary results for women and girls”).

Significantly, when the regulations were promulgated, the Department of Education’s predecessor was required to submit them to the Congress, which, “if it found [them] ‘inconsistent with the Act,’” could disapprove them in a concurrent resolution. *N. Haven Bd. of Ed. v. Bell*, 456 U.S. 512, 531–32 (1982) (quoting Pub. L. 93-380, 88 Stat. 567,

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Concerned Women of Am., Legis. Action Cmte., *New Exit Polls Confirm the Surprising Key Issue in the 2024 Election* (Nov. 18, 2024), <http://bit.ly/4guwjTL>.



as amended 20 U.S.C. § 1232(d)(1)). Although “the NCAA, the College Football Coaches Association, and other organizations that represented the interests of men’s sports” prompted legislators to offer “no fewer than nine resolutions and bills” challenging aspects of the Title IX regulations, the regulations survived, including their provision for same-sex teams. Jocelyn Samuels & Kristin Galles, *In Defense of Title IX, Why Current Policies Are Required to Ensure Equality of Opportunity*, 14 Marq. Sports L. Rev. 11, 20–22 (2003). The evident absence since 1975 of judicial decisions rejecting the premise of competitive athletic teams separated by biological sex—at least before the recent wave of males who identify as females claiming entitlement to play on female teams—confirms that Title IX did not when adopted, and does not now, require anything of the sort.

Extending the wrongheaded perception that *Bostock* commands that any arguably different treatment of males identifying as females is prohibited discrimination, even under different statutes with marked differences in text and context, risks taking a wrecking ball to this carefully constructed and historically validated framework. A reading of *Bostock* that interprets “sex” to include gender identity, without considering athletics’ unique reliance on biological sex for safety and fair competition, is contrary to *Bostock*’s own admonition that this issue was not before the Court. See 590 U.S. at 681. Applying that misunderstanding of *Bostock* to Title IX to mandate the presence of biological males identifying as women into women’s sports disregards the statute’s and regulations’ recognition of biological differences as a basis for sex separation and erodes the equal opportunity they guarantee. See 20 U.S.C. § 1681(a); 34 C.F.R. § 106.41(b). As the stories of *amici*

painfully describe, women’s displacement from roster spots, titles, and scholarships, and disillusionment with a broken promise of fair competition are the inevitable result.

Moreover, extending this misapprehension of *Bostock* to Title IX athletics further disrupts the regulatory structure by (logically, but not logically) requiring that biological males self-identifying as women be admitted to women’s locker rooms, including changing areas and showers. Under 34 C.F.R. § 106.33, institutions may provide sex-segregated facilities, such as locker rooms, a necessary adjunct to any athletic competition. If *Bostock* is interpreted to mean that any failure to treat gender identity as “sex” is prohibited, a male identifying as female who qualifies for a women’s team would be entitled to the same facilities as other team members. As the experiences of *amici* show, admitting males to women’s locker rooms recreates the exclusionary conditions—discomfort with shared facilities and the erosion of safe spaces for women—that Title IX was designed to eliminate. See, e.g., Yael Halon, *Lia Thomas exposed ‘male genitalia’ in women’s locker room after meet Riley Gaines says: Dropped ‘his pants,’* Fox News (Feb. 9, 2023), <http://bit.ly/46JbaBI> (providing an example of dignitary harms); Andrew Gilligan, *Unisex changing rooms put women in danger*, The Times, (Sept. 2, 2018), <http://bit.ly/3VpYzwX> (describing British survey finding that “[a]lmost 90% of reported sexual assaults, harassment and voyeurism in swimming pool and sports-centre changing rooms happen in unisex facilities”).

**C. Misreading *Bostock* to apply to Title IX discriminates against women athletes on the basis of sex.**

Misreading *Bostock* to apply to same-sex athletics under Title IX contravenes the plain text of Title IX in another way: by discriminating against women athletes “on the basis of sex.” Under *Bostock*, to “discriminate” because of “sex” means to “treat[] [an] individual worse than others” of a different sex. 590 U.S. at 657. That happened in *Bostock* because a male employee was terminated for reasons irrelevant to his job—his identification as a woman—when the employer would not have terminated a female employee for the same thing. See *ibid.* at 661–62. That’s not the case here, where biological males unquestionably have the same opportunity to play sports as biological females on teams that correspond to their sex.

Mistakenly extending *Bostock* to same-sex athletics under Title IX wrongly mixes up gender identity—the sense of having a gender at variance with biological sex—and “sex” itself. Under *Bostock*, it is discrimination to treat someone worse because of their sex, not because the person believes their gender differs from their sex. Yet, the effort to extend *Bostock* to Title IX wrongly prohibits the latter, contravening the settled meaning of the term “sex.” Worse, that reading explicitly favors biological males who identify as female over similarly situated biological females by allowing the former, but not the latter, to compete in a category not aligned with their sex. Yet a female who identifies as a woman would have no discrimination claim if she desired to play on a men’s team, precisely because Title IX authorizes—and requires, when necessary to maintain equality of athletic

opportunity—separate teams for members of each biological sex. See 34 C.F.R. § 106.41(b), (c).

Simply put, a biological male who identifies as a woman can compete on a woman’s team and gain access to opportunities and spaces reserved for woman, but an identically situated biological female could not compete on a men’s team and gain access to opportunities and spaces reserved for men. And where athletic regulations require hormonal therapies to compete on teams not aligned with biological sex, this forces females who identify as women to alter their biochemistry to compete on men’s teams, when a similarly situated male would not have to.

More fundamentally, interpreting *Bostock* to entitle males identifying as women to play in women sports discriminates against women “on the basis” of sex for another reason: the physiological advantages connected to sex run almost exclusively in one direction—favoring males. Sadly, that is the reason one does not often read stories of women athletes on the podium at swimming or track meets where they’ve bested male athletes in men’s-team competition. See Coleman, et al., *Re-Affirming the Value*, *supra*, at 87. The results of reading *Bostock* to require the converse, as *amici*’s experiences demonstrate, are lost awards, lost spots on teams, lost visibility to college recruiters, and lost college scholarships. When men are permitted to compete on women’s teams, then, women are “treated worse” on the basis of their sex. Cf. *Soule v. Conn. Ass’n. of Schs., Inc.*, 90 F.4th 34, 46 (2d Cir. 2023) (holding that women-athlete plaintiffs sufficiently alleged an injury in fact to sue for sex-discrimination under Title IX where “they were denied equal opportunities in track-and-field competitions and, as a result, they were also denied

the publicly recognized titles and placements that would have flowed from those opportunities”); *Adams*, 57 F.4th at 821 (Lagoa, J., specially concurring) (“[R]emoving distinctions based on biological sex from sports ... harms not only girls’ and women’s prospects in sports, but also hinders their development and opportunities beyond the realm of sports”). The loss of privacy and safety from the admission of biological males to women’s teams’ locker rooms adds further insult to the injury.

**D. *Bostock* should not be misread to affect the equal-protection analysis.**

Because precluding biological males who identify as females does not treat them worse on the basis of their sex—and, as others have argued, transgender status is not a quasi-suspect class—the Equal Protection Clause is not implicated here. See *United States v. Skrmetti*, 145 S.Ct. 1816, 1834–35 (2025); see also *id.* at 1849–55 (Barrett, J., concurring). But there are additional reasons to resist considering the application of *Bostock* to the equal-protection analysis here: Unlike *Bostock*, when it comes to female athletics, *sex matters* and the Equal Protection Clause allows governments to regulate as though it matters when it does. Cf. *United States v. Virginia*, 518 U.S. 515, 533 (1996) (“Physical differences between men and women [ ] are enduring: The two sexes are not fungible . . . .” (cleaned up)). As shown, innate differences between men and women matter when it comes to safety and fairness in athletic competition and safety and privacy in women’s spaces. See *B.P.J.*, 98 F.4th at 567 (Agee, J., concurring in part and dissenting in part) (“[I]t is beyond dispute that biological sex is relevant to sports and therefore that the person who is ‘in all relevant respects alike’ to a

transgender girl is a biological boy.”). Those differences justify precluding biological males from competing on teams reserved for women.

### CONCLUSION

Overreading *Bostock* to intrude on women’s teams in high school and college athletics ignores Title IX’s express promise that women must participate equally in the “benefits” of education, discards a settled regulatory scheme honoring that promise through same-sex competitive sports teams, discriminates against women on the basis of their female sex, and pretends, contrary to the Court’s equal-protection jurisprudence, that sex doesn’t matter. This Court should reject the invitation to do so.

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