

IN THE
Supreme Court of the United States

BRADLEY LITTLE, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE STATE OF IDAHO, *et al.*,
Petitioners,

v.

LINDSAY HECOX; JANE DOE WITH HER NEXT FRIENDS
JEAN DOE AND JOHN DOE,
Respondents.

WEST VIRGINIA, *et al.*,
Petitioners,

v.

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

ON WRITS OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT AND
THE NINTH CIRCUIT

**BRIEF OF NATIONAL WOMEN'S LAW
CENTER AS AMICUS CURIAE IN SUPPORT
OF RESPONDENTS**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	iii
INTEREST OF AMICI CURIAE	1
INTRODUCTION.....	1
ARGUMENT.....	2
I. Congress Enacted Title IX With a Broad Mandate Aimed At Eradicating Sex Stereotyping In Education Programs And Activities.....	2
II. The Congressionally Overseen Title IX Regulations Worked to Remedy Historical Discrimination Based on Sex Stereotypes.....	5
A. Congress Retained Close Oversight Over the Title IX Regulations.....	6
B. Title IX Regulators Permitted Sex-Separated Teams in the Service of Remediating a Long History of Exclusion and Stereotyping in Sports.	8
C. HEW Continued to Emphasize Equal Opportunity, Not Sex-Based Physical Differences.....	14
III. Excluding Transgender Girls and Women Playing Women’s Sports Contravenes Title IX and Discriminates Against All Girls and Women.....	17
A. Excluding Transgender Girls and Women from Sport Perpetuates Racist and Sexist Myths about Female Inferiority and Harms Girls and Women Who Do Not Meet Those Expectations.	18
B. Restricting Transgender Girls and Women from Playing Sports Does Not Resolve Continuing Disparities in Women’s Sports.....	25

C. The Challenged Laws Undercut the Educational Benefits of Sports.	28
Conclusion.....	32

TABLE OF AUTHORITIES

Page(s)

CASES

<i>Bostock v. Clayton Cnty., Georgia</i> , 590 U.S. 644 (2020)	2, 5
<i>Craig v. Boren</i> , 429 U.S. 190 (1976)	14
<i>Dodson v. Arkansas Activities Ass’n</i> , 468 F. Supp. 394 (E.D. Ark. 1979)	9
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<i>Oncale v. Sundowner Offshore Servs., Inc.</i> , 523 U.S. 75 (1998)	5

STATUTES

20 U.S.C. § 1681(a)	2
General Education Provisions Act § 431 (d)(1), 20 U.S.C. 1231a (2021)	8
Idaho Code § 33-6203	24
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INTEREST OF AMICI CURIAE¹

Amicus curiae National Women’s Law Center (NWLC) is a nonprofit legal organization dedicated to advancing and protecting women’s legal rights and the right of all to be free from sex discrimination. Since 1972, NWLC has worked to secure equal opportunity in education for girls and women through full enforcement of the U.S. Constitution, Title IX of the Education Amendments of 1972 (“Title IX”), and other laws prohibiting sex discrimination. NWLC has participated as counsel or *amicus curiae* in cases before the Supreme Court and federal courts of appeal to secure equal treatment and opportunity based on sex, including in the context of Title IX’s protections in school athletics. NWLC seeks to ensure that all individuals, including transgender girls and women, enjoy strong legal protections against sex-based stereotypes and other sex discrimination.

INTRODUCTION

After decades of exclusion and discrimination against girls and women, Congress enacted a guarantee in Title IX that *no person* shall be excluded from participation in any education program receiving federal financial assistance on the basis of sex. Title IX’s sweep is “broad,” and its aim is to eliminate all types of sex discrimination in schools. *N. Haven Bd. of Educ. v. Bell*, 456 U.S. 512, 521 (1982). The statutory text is clear in its expanse, and as this Court observed in construing similar protections under Title VII of the Civil

¹ No counsel for any party has authored this brief in whole or in part, and no entity or person, aside from *amicus curiae* and its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

Rights Act of 1964, “all persons are entitled to its benefit.” *Bostock v. Clayton Cnty., Georgia*, 590 U.S. 644, 653 (2020).

That broad sweep applies to school athletics, which Title IX’s implementing regulations explicitly address. Those regulations do permit (though do not mandate) sex separation in school athletics under certain specific conditions and with limitations. But they do so to account for the decades of pervasive discrimination and sex stereotyping girls and women experienced in sports before Title IX’s passage—not for any inherent physical differences between sexes.

The state laws before the Court resuscitate stereotypes of girls and women as athletically inferior and weaponize them against transgender girls and women, ultimately resulting in the denial of the benefits of sports for these students and harming all girls and women. Excluding transgender girls and women from playing girls’ and women’s sports, as the challenged laws would do, contravenes Title IX and perpetuates the overbroad generalizations and stereotypes about girls and women that Title IX was designed to combat.

ARGUMENT

I. CONGRESS ENACTED TITLE IX WITH A BROAD MANDATE AIMED AT ERADICATING SEX STEREOTYPING IN EDUCATION PROGRAMS AND ACTIVITIES.

Title IX provides that “[n]o person in the United States 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). The law is crystal-clear: *no person* should be subject to sex discrimination in an education program or activity. Congress adopted expansive language with an eye to eradicating all forms of invidious sex discrimination in educational programs. As this Court concluded in 1982, there is “no doubt that ‘if we are to give [Title IX] the scope that its origins dictate, we must accord it a sweep as broad as its language.’” *N. Haven Bd. of Educ. v. Bell*, 456 U.S. 512, 521 (1982) (brackets in original); *see also* Katie Eyer, *Title IX in the Age of Textualism*, 86 Ohio St. L. J. 335 (2025).

This broad, protective language follows from Title IX’s legislative purpose. In introducing Title IX, Senator Birch Bayh, its principal sponsor, articulated that its “impact” was meant to be “far-reaching,” 118 Cong. Rec. 5111, 5808 (1972), as it was “designed to root out, as thoroughly as possible at the present time, the social evil of sex discrimination in education.” *Id.* at 5804. In sponsoring Title IX, Senator Bayh expressly recognized that sex discrimination in education is based on “stereotyped notions” like that of “women as pretty things who go to college to find a husband, go on to graduate school because they want a more interesting husband, and finally marry, have children, and never work again.” *Id.* (statement of Sen. Bayh). Title IX was therefore necessary to “change [these] operating assumptions” and combat the “vicious and reinforcing pattern of discrimination” based on these “myths.” *Id.* The recognition that stereotypes motivate sex discrimination in education also permeated the 1970 Hearings that led to Title IX’s adoption. Numerous individuals testified to the harmfulness of stereotypes—in particular, those impacting gender roles—in perpetuating inequality. *See, e.g., Discrimination Against Women: Hearings Before the H. Special*

Subcomm. On Educ. And Labor on Section 805 of H.R. 16098, 91st Cong., 2d Sess. 439, 7 (1970) (statement of Myra Ruth Harmon, President, Nat'l Fed'n of Bus. & Prof'l Women's Clubs, Inc.) (discussing "certain sex role concepts which continue to mold our society," including in "educational institutions"); *id.* at 135 (statement of Wilma Scott Heide, Comm'r, Pa. Human Rel. Comm'n) (discussing danger of sex role stereotyping); *id.* at 436 (statement of Daisy K. Shaw, Dir. of Educ. & Vocational Guidance of N.Y.C.) (discussing how "perceptions of sex roles develop" very early in life, and what is needed to end sex discrimination is "thoroughgoing reappraisal of the education and guidance of our youth to determine what factors in our own methods of child rearing and schooling are contributing to this tragic and senseless underutilization of American women"); *id.* at 662 (statement of Frankie M. Freeman, Comm'r, U.S. Comm'n on Civil Rights) ("Because of outmoded customs and attitudes, women are denied a genuinely equal opportunity to realize their full individual potential . . ."); *id.* at 364 (statement of Pauli Murray, Professor, Brandeis Univ.) (discussing importance of treating each person as an individual, and not according to stereotypes about groups to which they belong).

Petitioners' efforts to reimagine Title IX as a narrow statute enacted solely to protect cisgender girls and women fail. W. Va. Pet'rs Br. at 23. Title IX's protections are not limited to girls and women, let alone cisgender girls and women. The statute never defines sex as "biological sex," and nothing in the legislative history supports such a reading. To read Title IX the way Petitioners ask would be to completely disregard Title IX's text and congressional intent. And Title IX protects transgender students regardless of whether

Congress expressly addressed anti-transgender discrimination in debating or passing Title IX.² As this Court has observed on multiple occasions, it is “the provisions of our laws rather than the principal concerns of our legislators by which we are governed.” *Bostock*, 590 U.S. at 664 (quoting *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 80 (1998)).

Whether or not discrimination against transgender students was “the principal evil Congress was concerned with when it enacted” Title IX, *id.*, both the statutory text and the legislative history support Respondents’ arguments. Far from mandating sex separation in sports, the statute explicitly prohibits excluding, discriminating, or denying the benefits of an education program to any person on the basis of sex.

II. THE CONGRESSIONALLY OVERSEEN TITLE IX REGULATIONS WORKED TO REMEDY HISTORICAL DISCRIMINATION BASED ON SEX STEREOTYPES.

After Title IX’s passage, questions were raised about its impact on collegiate athletic programs. Despite the opposition by some to the broad application of Title IX to all intercollegiate sports, many Title IX supporters recognized that the promise of educational equality could not be achieved without extending that vision to athletic opportunity. Congress directed what was then the Department of Health, Education, and Welfare (HEW) to promulgate implementing regulations, including those that apply to collegiate athletics,

² The challenged laws also undoubtedly impact intersex girls and women. Their simplistic and incorrect treatment of “biological sex” thus leaves these athletes, too, with no secure place in sports.

while preserving congressional ability to veto such regulations for the first several years of the statute’s enactment. The resulting regulations, which Congress closely oversaw, remained focused on reversing a long history of sex discrimination and sex stereotyping, as Title IX intended.

A. Congress Retained Close Oversight Over the Title IX Regulations.

After Title IX’s passage, groups like the National Collegiate Athletic Association (NCAA) urged Congress to exempt athletics from the law. Preferring to fund men’s athletic programs, these groups argued against equal funding for women’s programs, and sought to ensure that any earnings from men’s programs would not be used to fund women’s programs. *See, e.g., Sex Discrimination Regulations: Hearings Before the House Subcomm. on Postsecondary Educ. of the House Comm. on Educ. & Labor, 94th Cong. 1, 46, 205 (1975) (hereinafter Sex Discrimination Regulations)* (statements of NCAA; American Football Coaches Ass’n). They expressed concerns that “applying the law to [collegiate] athletics could cut into the resources devoted to football and other major men’s sports.”³ Other stakeholders made dire warnings of “a dying process for all athletics — for both men and women,” should the government require that athletic resources be shared. *Id.* at 47 (statement of American Football Coaches Ass’n).

³ Deborah L. Brake, *Title IX’s Trans Panic*, 29 William Y Mary J. of Race, Gender, and Soc. Just. 41, 64 (2023) [hereinafter *Trans Panic*].

But many other stakeholders asserted that Title IX should be understood and enforced to promote women’s participation in athletics in the face of a long history of negligible opportunities for women. *See, e.g., id.* at 66, 123, 283 (statements from U.S. Nat’l Student Ass’n; Ass’n for Intercollegiate Athletics for Women (AIAW); Women’s Equity Action League (WEAL)). They argued that “[d]iscrimination is always profitable to some other group—that is why it continues—but it is not a reason for Congress or HEW to permit it to continue.” *Id.* at 125 (statement from AIAW). Title IX was intended to be about education, after all: “it does not matter whether women produce profits or men produce profits, the point is they are students and they should benefit from whatever is available in terms of profit.” *Id.* at 130 (statement from AIAW).

Ultimately, Congress rejected attempts to exempt intercollegiate and revenue-producing sports from Title IX. 120 Cong. Rec. 15,261, 15,322-23 (1974); S. Rep. No. 93-1026, at 4271 (1974) (Conf. Rep.); H.R. 8394, 94th Cong., 121 Cong. Rec. 21,685 (1975); S. 2106, 94th Cong., 121 Cong. Rec. 22,778 (1975); S. 2146, 94th Cong., 121 Cong. Rec. 23,845 (1975). Instead, Congress reiterated that Title IX *did* apply to college athletics and all sports, regardless of generated revenue.⁴ It passed the Javits amendment in 1974, which

⁴ Congress reaffirmed the broad reading of Title IX in the Civil Rights Restoration Act, Pub. L. No. 100-259, 102 Stat. 28 (1988). The Act was passed in response to the Court’s narrow reading of the statute in *Grove City College v. Bell*, 465 U.S. 555 (1984), which would have eviscerated Title IX’s coverage of athletics. Congress, in acting to “restore” the application of Title IX to programs that do not directly receive federal funds at education institutions, showed that it always intended for Title IX to apply to athletics.

directed HEW to develop regulations for implementing Title IX, specifically to “include with respect to intercollegiate athletic activities reasonable provisions considering the nature of particular sports.” Education Amendments of 1974 § 844, Pub. L. No. 93-380, 88 Stat. 484 (1974); *see also* S. Rep. No. 93-1026 (1974) (Conf. Rep.), *as reprinted in* 1974 U.S.C.C.A.N. 4206, 4271.

Congress expressly retained authority to reject these regulations once promulgated. The HEW regulations would go into effect “unless the Congress shall, by concurrent resolution, find that the standard, rule, regulation, or requirement is inconsistent with the act from which it derives its authority and disapprove such standard, rule, regulation, or requirement.” General Education Provisions Act § 431 (d)(1), 20 U.S.C. 1231a (2021). Congress took this step to ensure “the regulation writers have read [Title IX] and understood it the way the lawmakers intended it to be read and understood.” *Sex Discrimination Regulations* at 12 (statement of Rep. O’Hara, Chair of the Subcommittee).

B. Title IX Regulators Permitted Sex-Separated Teams in the Service of Remediating a Long History of Exclusion and Stereotyping in Sports.

HEW drafted regulations implementing Congress’s goal that “[n]o person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics.” 34 C.F.R. § 106.41(a). As discussed *infra*, though the 1975

HEW regulations ultimately permitted sex-segregated teams, under certain specified conditions, it did not mandate them. Moreover, the regulations do so to further Congress's goal of equal opportunity, not to reinstate stereotypical assumptions about physical differences that had long kept women out of sports.

HEW was tasked with drafting regulations in an athletic landscape that would be unrecognizable today. In 1971, only about 294,000 girls played high-school sports, compared with 3.7 million boys; girls made up a mere 7.4% of the high-school athletics population.⁵ Parts of the country had gone so far as to *ban* girls from playing certain sports. *Sex Discrimination Regulations* at 71 (describing the 1973 recission of a Tennessee ban on high school girls playing basketball). Even when sports were available, they were often restricted for girls and women based on stereotypes of female frailty. *E.g. Dodson v. Arkansas Activities Ass'n*, 468 F. Supp. 394 (E.D. Ark. 1979) (striking down an Arkansas rule restricting high school girls to playing half-court basketball). Thus, HEW focused on rectifying decades of exclusion based on sex stereotyping. Senator Bayh reiterated this goal as the regulations were being drafted, noting that athletic opportunity ought not be limited because of “discrimination based on ‘stereotyped characterizations of the sexes.’” *Sex Discrimination Regulations* at 176 (statement of Sen. Bayh). The regulatory history makes clear that HEW sought to address the long history of exclusion of women in sports—a result of the stereotypes levied against girls and women for decades.

⁵ Maria Cramer, *How Women's Sports Teams Got Their Start*, N.Y. Times (Apr. 28, 2022), <https://perma.cc/DMC7-ZXDX>.

Precisely how to rectify that long history was the subject of significant debate. Part of the debate focused on whether to create sports teams for women or girls versus integrating girls into boys' teams. Though many advocated for mixed-gender sports teams, it was impossible to ignore the pervasive discrimination in sports that had endured for decades prior. On the one hand, advocates for mixed-gender teams recognized the educational and social benefits of sports and saw mixed teams as best aligned with Congress's intent in passing Title IX. They argued that sports inclusion could have a broader societal impact; it was "important that boys and girls learn to cooperate on teams together and learn to accept leadership from each other if they are ever going to be able to work together in adult professional and occupational roles." *Id.* at 222 (statement of the National Organization of Women (NOW)). But they also recognized that girls and women had long faced a lack of opportunity in sports due to structural inequities caused by decades of sex stereotyping that cast them as unfit for sports. Senator Bayh admitted that "inasmuch as we are trying to compensate for generations of stereotype, [] it is going to take us some time before women really are going to be able to develop full potential of their skills." *Id.* at 179 (statement of Sen. Bayh); *see also id.* at 177 (Sen. Bayh further explaining that sex separation could benefit girls and women until they were "given the opportunity to test their skills, and then to develop them and not to be stereotyped as unable to compete."). Advocates therefore recognized that to attain a future in which girls and women thrived in athletics, sex-separated teams could serve as a helpful step towards such equality, with the goal of ultimately

closing that gap. *See, e.g., id.* at 168, 219 (statements of Sen. Bayh; NOW).

Thus, those advocating for sex separated teams did so to account for past discrimination, not because of generalized physical differences between sexes. *See* Erin Buzuvis, *Title IX: Separate but Equal for Girls and Women in Athletics*, *The Oxford Handbook of Feminism & L. in the U.S.*, ch. 22 at 11 (2021) (explaining that some advocates emphasized the structural inequalities that had inhibited girls and women from fully developing their athletic talents, such that lumping girls and women into competition with male athletes would exacerbate an already unequal playing field). They believed girls and women would benefit from their own spaces to develop their athletic talents because they might not be treated fairly in mixed-gender sports due to harassment and discrimination caused by sex-based stereotypes. *See, e.g., Sex Discrimination Regulations* at 179 (statement of Sen. Bayh). Opening try-outs to girls and women on formerly all-boys' and men's teams would not have been enough to create the meaningful opportunity Title IX promised. Men might hog the playing field, refuse to engage with women as teammates or opponents, or otherwise create negative sports experiences for women.⁶ Further, some argued that sex separation would help the growing world of women's athletics avoid the commodification and win-at-all-costs attitude that men's sports had faced, and re-orient school athletics towards an emphasis on educational opportunity. *See, e.g., Sex Discrimination Regulations* at

⁶ *See* Nicole Zarrett, Charyl Cooky, & Philip Veliz, *Coaching through a Gender Lens: Maximizing Girls' Play and Potential* 1, 7 (Women's Sports Found. 2019).

123 (statement of Ass’n for Intercollegiate Athletics for Women (AIAW)). As AIAW stated, “We believe in educational programs, and there are other bases to judge success than in merely winning.” *Id.* at 133.

Where generalized physical differences did come up in the regulatory debate, the discussions had little to do with protecting girls and women in sports from the presence of boys and men. Instead, stakeholders understood that specific sports had their own method of accounting for physical differences to ensure fair competition. *See id.* at 92, 294 (statements of Nat’l Ass’n of Students, detailing how in wrestling, weight and size classes naturally address these issues; WEAL, similarly discussing factors other than sex that could be used to divide individuals into teams). Other discussions warned that “[c]ultural attitudes and physiological factors [had] not yet been thoroughly separated,” *id.* at 287 (statement of WEAL)—that is, in a world where women had been subjected to sex stereotypes for so long, it would be difficult to disentwine those attitudes and the realities of any physical differences. “More than most areas of our educational system, athletes and physical education reflect the essence of our most stereotyped cultural expectations: men are ‘supposed’ to be strong and aggressive; women are ‘supposed’ to be weak and passive.” *Id.* at 390 (statement of Project of the Status and Education of Women, Ass’n of American Colleges). Sex separation was intended to *disengage* stereotyping, physical and otherwise, in athletic culture, not reinforce it.

Ultimately, HEW determined that the best way forward was to *permit*, but not require, sex separation under certain conditions and for select team sports. The regulations thus allow schools to create “separate

teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport.” 34 C.F.R. § 106.41(b).⁷ At the same time, they *prohibit* sex separation where it would undermine equal athletic opportunity. *See id.* (requiring that when a school has a team for members of one sex but no such team for members of the other sex, and “athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport”).

Petitioners are wrong to suggest that the purpose of permitting sex separation was to “protect” cisgender girls from participating and competing with cisgender boys. Importantly, the permissive framework *requires* mixed teams in some cases, such as requiring a non-contact-sport team to include the excluded sex where “athletic opportunities for members of that sex have previously been limited.” 34 C.F.R. § 106.41(b). The regulations were designed to focus on equal opportunity and the eradication of sex stereotyping—not on using sex separation to “protect” girls and women based on their purported innate athletic inferiority to men and boys.

The contact-sports exception stands alone as the only place where physical concerns have ever arguably appeared in the Title IX regulations. *See* 34 C.F.R. § 106.41(b). But invoking this isolated provision to

⁷ Notably, the challenged West Virginia and Idaho laws are so sweeping that they do not meet these requirements. They mandate separation for all ages, sports, and levels of competition, and they are not limited to contexts where selection is based on competitive skill or contact sports.

justify excluding transgender girls from all sports based on assumed physical superiority is contrary to Title IX’s promise of equality, which cannot be so limited by stereotypes that girls are inherently weak and fragile—even when such stereotypes are disguised as safety concerns.⁸ Moreover, Title IX’s exemption for contact sports was only ever about *permitting*, not compelling, sex-separated teams—it creates flexibility, not an exclusionary mandate. Reading it otherwise distorts both the text and purpose of Title IX.

Ultimately, Congress reviewed these regulations, and refused the express opportunity to strike down the regulations before they went into effect. In doing so, Congress thus implicitly acknowledged that regulators understood and honored the promise of Title IX by seeking to eradicate discrimination and sex stereotypes within school athletics.

C. HEW Continued to Emphasize Equal Opportunity, Not Sex-Based Physical Differences.

In 1979, HEW promulgated guidance to address ongoing compliance with the athletic requirements set forth in the regulations. After receiving more than 700 comments and visiting campuses to see how the proposed policy changes and suggested alternatives

⁸ Further, Title IX’s contact sports exception predates the Court’s adoption of intermediate scrutiny in *Craig v. Boren*, 429 U.S. 190 (1976), in 1976, and since then courts have found that the Equal Protection Clause requires public schools to permit girls to try out for boys’ teams, even in contact sports. See Deborah L. Brake, *Getting in the Game: Title IX and the Women’s Sports Revolution* 48–49 (N.Y.U. Press 2010) (discussing the devolution of the contact sport exception via Equal Protection Clause case law).

would apply in practice, HEW finalized a framework that continued to permit flexible programming to meet Title IX’s promise. It reemphasized that “the governing principle in this area is that athletic interests and abilities of male and female students must be equally effectively accommodated.” *A Policy Interpretation: Title IX and Intercollegiate Athletics*, 44 Fed. Reg. 71413, 71414–16 (Dec. 11, 1979) (codified at 45 C.F.R. pt. 86). The guidance makes clear that offering sex-separated teams is not the exclusive method of providing equal athletic opportunity. It also makes clear that the sole act of offering sex-separated teams, without doing more to ensure equality of opportunity, does not meet the regulations’ requirements.⁹

In those final guidelines, HEW offered many reasons why there might be justifiable disparities between sex-separated teams—not *one* of which cited physical differences based on sex. *See id.* Instead, HEW again acknowledged that the reasons for differences in treatment were wide-ranging, including: (1) “factors that are inherent to the basic operation of specific sports”; (2) “special circumstances of a temporary nature” like recruitment efforts for establishing a new sports team; (3) “activities directly associated with the operation of a competitive event in a single-sex sport,” like event management for a game that draws a larger crowd, so long as “any special demands associated

⁹ Whether a school offers sex-separated teams or not, it must demonstrate: how it provides participation opportunities for women and men, and girls and boys, proportionate to their enrollment; a history and continuing practice of expanding opportunities for the underrepresented sex; or otherwise how it is fully and effectively accommodating the interests and abilities of that sex. *Id.*

with the activities of sports involving participants of the other sex are met to an equivalent degree”; or (4) because of “voluntary affirmative actions to overcome effects of historical conditions that have limited participation in athletics by the members of one sex.” *Id.* HEW reiterated that “the primary problem confronting women athletes is the absence of a fair and adequate level of resources, services, and benefits,” *id.* at 71419—not a physical difference in inherent athletic ability.

With respect to sex-separated teams, HEW took pains to explain again why dedicated spaces for girls and women to develop their athletic abilities were permissible because they served to remedy past discrimination. “Participation in intercollegiate sports has historically been emphasized for men but not women,” HEW declared in the appendix attached to the 1979 guidance. *Id.* at 71419, App. A. HEW concluded that the “historic emphasis on men’s intercollegiate athletic programs” led to significantly lower participation rates among college women. *Id.* HEW emphasized the importance of continuing the growth in athletic opportunities for women that had occurred since Title IX’s enactment, which regulators attributed to the “growing interest of women in competitive athletics, as well as the efforts of colleges and universities to accommodate those interests.” *Id.* Part of the calculation in allowing exclusion of men and boys from girls’ and women’s sports was to increase opportunities for girls and women and grow their programs.¹⁰

¹⁰ This is fundamentally different for transgender girls—if they are excluded from girls and women’s sports, they are denied the

Time and again, as issues arose in effectuating Title IX's goals around athletics, the obstacles to gender equality were viewed as structural, not fundamentally biological. Indeed, contrary to Petitioners' assertions, the regulatory record on permitting sex-separated sports reflects that sex separation was incorporated as one way to ensure girls and women had equal opportunity to play sports, unrelated to notions of women's and girls' fragility and weakness. Its purpose was to remedy a history of purposeful exclusions and meager opportunity perpetuated by longstanding sex stereotypes.¹¹

III. EXCLUDING TRANSGENDER GIRLS AND WOMEN PLAYING WOMEN'S SPORTS CONTRAVENES TITLE IX AND DISCRIMINATES AGAINST ALL GIRLS AND WOMEN.

Laws that restrict transgender girls and women from playing on women's teams undercut Title IX and its efforts to eradicate sex stereotyping. Rather than supporting girls and women, trans-exclusionary laws perpetuate sex stereotypes and myths about women's athleticism, expounding the archaic, reductive, and false narrative that boys and men are inherently and unequivocally better athletes. Indeed, the very case upon which Petitioners rely to bolster their faulty argument (that the challenged laws do not classify

benefits of sports altogether. This would be contrary to the text of the statute, and the justifications for the allowance of sex-separated teams.

¹¹ See Cheryl Cooky & Shari L. Dworkin, *Policing the Boundaries of Sex: A Critical Examination of Gender Verification and the Caster Semenya Controversy*, 50 J. Sex Rsch. 103, 109 (2013) (collecting citations to scholars supporting this rationale).

students based on transgender status but on sex assigned at birth) acknowledges and discusses at length the harms of “gross, stereotyped distinctions between the sexes.” *Frontiero v. Richardson*, 411 U.S. 677, 685 (1973).

The challenged laws, and those like them, subject athletes to heightened scrutiny and gender policing: an inquiry that has already begun to harm all girls and women. And barring transgender girls and women from competing on women’s sports teams undercuts the benefits of sports for all girls and women. Fundamentally, the challenged laws act not to protect cisgender girls and women, but instead to deprive all girls and women of an equal playing field, turning Title IX’s purpose on its head.

A. Excluding Transgender Girls and Women from Sport Perpetuates Racist and Sexist Myths about Female Inferiority and Harms Girls and Women Who Do Not Meet Those Expectations.

Excluding transgender students from sports serves only to reinforce the harmful sex stereotypes Title IX was meant to eradicate. As explained above, sex-separated sports were meant to address the decades-long exclusion of girls and women based on stereotypes about their athletic abilities. Excluding transgender girls and women from sports is rooted in those same stereotypes, linking purported “maleness” to athletic superiority and being female to being smaller, weaker, and less athletic. W. Va. Pet’rs Br. at 10; Little Pet’rs Br. at 6. These stereotypes are both inaccurate and harmful to all girls and women. Even while fourteen states and Washington, D.C. have had inclusive

policies in place in recent years¹² and even as the NCAA and the U.S. Olympics Committee allowed transgender women to compete until recently, transgender women have not dominated women's sports.¹³ Regardless, the notion that a few transgender girls' participation threatens opportunities for cisgender girls rests on the same presumptions of female fragility that have long been used to label *all* girls as categorically athletically inferior and undeserving of equal opportunity.

All athletes—regardless of gender—come in different shapes, sizes and physical makeups that may be more or less advantageous depending on the athlete's sport. For some sports, the most dominant athletes might be both flexible and strong. In others, height, weight, hand-eye coordination, left-handedness, or quick reflexes might matter most. Gymnast Simone Biles is one example: at four feet, eight inches tall, she is significantly shorter than the average woman.¹⁴ Rather than being perceived as an unfair advantage, her stature is “seen as positive and as a factor in [her] athletic success.”¹⁵ A blanket statement that transgender girls and women are simply more athletic and

¹² *Trans and Nonbinary Athletic Inclusion Policies*, GLSEN (Dec. 13, 2024), <https://perma.cc/G9XA-HHPJ>.

¹³ Gillian R. Brassil and Jeré Longman, *Who Should Compete in Women's Sports? There Are 'Two Almost Irreconcilable Positions'*, N.Y. Times (Aug. 18, 2020), <https://perma.cc/GMB8-XF9D> (“Contrary to fears expressed by some, there has been no large-scale dominance of transgender athletes in women's sports.”).

¹⁴ NWLC, *Fulfilling Title IX's Promise: Let Transgender and Intersex Athletes Play* (June 2022), <https://perma.cc/55HN-N2UX>.

¹⁵ *Id.*

therefore dominate all sports oversimplifies a more nuanced reality.¹⁶

The state laws at issue do not actually tackle fairness in sports, leaving unaddressed significant advantages and disadvantages. For example, some athletes have financial advantages that provide access to extra coaching, camps, or training time, as well as better equipment or training facilities.¹⁷ Some, but not all, young athletes have an adult available to ensure they can attend all practices and games. And access to high-quality nutrition and other healthy lifestyle factors can be critical to an athlete’s development.

These laws also ignore the numerous examples of women and girl athletes prevailing over men and boys in sports competitions. In 2024, for example, at least two cisgender girls won high-school state wrestling titles, in Arizona and Maine. The Arizona champion defeated four cisgender boys on her way to the title,¹⁸ while the champion in Maine won her second straight

¹⁶ This Court has acknowledged that sex has no bearing on performance ability, writing that “what differentiates sex from such non-suspect statuses as intelligence or physical disability, and aligns it with the recognized suspect criteria, is that the sex characteristic frequently bears no relation to ability to perform or contribute to society.” *Frontiero*, 411 U.S. at 686.

¹⁷ *Trans Panic*, *supra* note 3, at 69; Kirsten Hextrum, et al., *Who plays, persists, and stands out in interscholastic athletics? Habitus, parenting, social class, and the institutionalized cultural capital of school sports*, J. Study Sports & Athletics in Educ. 34 (Feb. 2025) (finding higher socioeconomic status likely “enables school sports participation, varied sports participation, an ability to persist in playing, and more distinction in school sports”).

¹⁸ Richard Obert, *Sunnyside wrestler Audrey Jimenez’s historic win highlights high school championships*, Ariz. Republic (Feb. 17, 2024), <https://perma.cc/N2F2-7Y2L>.

title, beating three boys in a single day.¹⁹ All-girls teams have likewise defeated all-boys teams: an all-girls baseball team won a national tournament,²⁰ and later, an all-girls hockey team captured a championship,²¹ both defeating all-boys teams. If cisgender girls and women can prevail in mixed-sex competition at such highly competitive levels and in a contact sport like wrestling, surely they do not need blanket “protection” from transgender girls at all ages, in all sports, and at all levels of competition. By singling out sex assigned at birth as a singular threat to “fairness,” these laws ignore the reality of individual variation in ability and opportunity that has a much greater impact on athletic success. In doing so, they reveal their true concern: stigmatizing a vulnerable group of students, not equalizing unfair advantage.

Another harm from associating athleticism exclusively with masculinity is that it subjects all girls and women to increased gender policing, suspicion, and harassment. If a woman does not meet stereotyped ideals of femininity because she displays strong athletic performance or is especially tall or muscular, she is deemed “biologically suspect.” Girls who are athletically inclined and have short hair or wear baggy clothes have had their femininity called into question

¹⁹ Bill Hutchinson, *No fluke: Maine girl beats boys to win 2nd straight state wrestling title*, ABC News (Feb. 22, 2024), <https://perma.cc/8XVT-LDUT>.

²⁰ Aixa Diaz, *Girls Baseball Team Wins Championship at Boys Tournament*, WESH 2 News (May 29, 2014), <https://perma.cc/J7DB-4U7F>.

²¹ Amy Powell, *All-girls NorCal Hockey Team Beat Fresno Rivals Twice Despite Bullying on the Ice*, ABC 7 Eyewitness News (Apr. 7, 2018), <https://perma.cc/M2ZD-LFQD>.

in ways that range from being called “tomboys”²² to being targeted for harassment and intrusive investigations into their sex.

These pernicious stereotypes have racist origins, with Black and brown girls and women suffering disproportionately. What is perceived to be appropriately “feminine” has always had a racial valence: idealized *white* femininity has historically set the standard by which female gender conformity is measured.²³ Women of color are then especially likely to be seen as departing from this standard and to be penalized for it. To take only one example, Serena Williams has experienced this throughout her storied career. She has endured significant discrimination and scrutiny of her body, including claims that “[s]he is built like a man” and “[she] was born a guy, all because of [her] arms, or because [she’s] strong.”²⁴

Historically, questions about the gender of successful women athletes have resulted in reliance on invasive and dehumanizing sex-testing practices. These humiliating “tests”—including requiring documentation of reproductive or menstrual history, chromosomal or hormonal testing, and genital inspections—have been weaponized against girls and women who do not meet stereotyped ideals of femininity to force them to “prove” they are “truly” women. Starting in

²² *Trans Panic*, *supra* note 3, at 88.

²³ *Id.* at 89.

²⁴ Gina Vivinetto, *Serena Williams on How She Struggles With Cruel Remarks About Her Body*, *Today* (Sept. 7, 2017), <https://perma.cc/7GXE-S76E>; Jason Pham, *Serena Williams Shut Down Body Critics: ‘I Am Strong and Muscular - and Beautiful’*, *Bus. Insider* (May 31, 2018), <https://perma.cc/9QPD-GLTJ>.

the 1960s, for example, the International Olympic Committee required female athletes to walk naked in front of a panel of three female doctors to prove that they were women.²⁵ While this particular practice was rightfully ended, athletes have continued to be subject to gender testing.

Unsurprisingly, it is Black and brown elite athletes who have been particular targets for sex verification. Dutee Chand, a sprinter from India, was subjected to invasive testing because competitors and coaches saw her physique as “suspiciously masculine.”²⁶ Caster Semenya, a Black South African woman, likewise experienced years of invasive testing and harassment because of her muscular physique.²⁷ And during the 2024 Olympics, two boxers, Imane Khelif of Algeria and Lin Yu-ting of Taiwan, were subject to immense scrutiny and misinformation about their gender. Both Khelif and Yu-ting were suspended by a Russian boxing board after being singled out for unspecified tests that were performed because of complaints from other competitors.²⁸

Laws barring transgender athletes invite the imposition of such scrutiny and sex testing on all girls

²⁵ Vanessa Heggie, *Testing sex and gender in sports; reinventing, reimagining, and reconstructing histories*, 34 *Endeavour* 157, 159 (Dec. 2010), <https://perma.cc/HU3S-AU8U>.

²⁶ Ruth Padawer, *The Humiliating Practice of Sex-Testing Female Athletes*, N.Y. Times (June 28, 2016), <https://perma.cc/Q2ME-JRZ5>.

²⁷ *Id.*

²⁸ Greg Beachman, *Boxing group answers some questions but raises many more about tests on Imane Khelif and Lin Yu-ting*, AP News (Aug. 5, 2024), <https://perma.cc/JM6U-878R>.

and women who play sports. Take Idaho’s law in the present case. It includes a sex-testing provision that allows anyone to challenge the sex of a student, of any age, with the burden then shifting to the student to “prove” she is in fact a girl by providing a statement from a physician “verify[ing] the student’s biological sex” based on her “reproductive anatomy,” “normal endogenously produced levels of testosterone,” and her “genetic makeup.”²⁹ To continue playing sports, students must undergo invasive and expensive medical examination.³⁰

Even when state laws barring transgender students from sports do not specifically include sex-testing provisions, these laws by their nature invite gender policing and investigations, resulting in cisgender girls having their gender questioned because they did not conform to sex-based stereotypes. In Utah, a state commission secretly investigated a cisgender high-school girl’s gender after parents complained when she defeated two girls on another team. The commission acknowledged the complaint was part of an effort to

²⁹ Idaho Code § 33-6203.

³⁰ While the laws at issue here only address girls’ sports, the consequences may sweep into boys’ sports. Recently, a school in Arizona prohibited an eighth-grade cisgender boy from trying out for the school’s boys’ basketball team because of a clerical error on his birth certificate indicating he was born female. Despite a corrected birth certificate and a doctor’s note, the school forbade him from trying out. Instead, the school indicated that chromosome analysis—a far more invasive approach—could “help support” eligibility for him to try out for the team. Gloria Oladipo, *Arizona boy reportedly barred from team due to error on birth certificate*, The Guardian (Oct. 21, 2025), <https://perma.cc/7G2M-V556>.

investigate girls who “don’t look feminine enough.”³¹ Another cisgender female basketball player in Utah faced threats and doxxing requiring police protection after a school board member questioned her gender because of her body type.³² These incidents—reported to the press—likely are the tip of the iceberg, given that it is unlikely that students subject to such scrutiny want to publicize it.

Restricting transgender girls and women from playing sports consistent with their gender identity relies on and perpetuates outdated myths and stereotypes about athleticism. These laws are fundamentally incompatible with Title IX’s purpose of ensuring all girls and women can develop their interests and abilities in athletics unshackled by sex stereotypes.

B. Restricting Transgender Girls and Women from Playing Sports Does Not Resolve Continuing Disparities in Women’s Sports.

Petitioners both claim their trans-exclusionary laws are necessary because cisgender girls and women need to be protected from transgender girls and women to ensure access to athletics. W. Va. Pet’rs Br. at 10; Little Pet’rs Br. at 14–17. But continued structural disparities in sports and gender equity do far more to deprive girls and women of equal athletic

³¹ Rick Egan, *Utah parents complained a high school athlete might be transgender after she beat their daughters*, Salt Lake Tribune (Aug. 17, 2022), <https://perma.cc/D2KE-BWYC>.

³² Courtney Tanner, *Utah’s governor, lieutenant governor say school board member Natalie Cline has ‘embarrassed the state’*, Salt Lake Tribune (Feb. 8, 2024), <https://perma.cc/X39J-WYXF>.

opportunities than the participation of transgender athletes ever has or could.

Title IX has been a tremendous success in many ways, with girls' and women's participation in sports rising dramatically over the last fifty years. In 1972, only about 294,000 high-school girls played sports, compared to over 3.5 million by the 2024-25 school year.³³ Girls now account for 43% of the total high-school athletics population, compared to just 7% in the 1971-72 school year.³⁴ College sports have seen similar gains, with the number of women student athletes rising from 29,977 in 1972 to over 215,000 in 2021.³⁵ But while opportunities for girls and women have risen, inequities remain. High-school girls still have 1.3 million fewer opportunities to play sports than do high-school boys.³⁶ In Idaho, over 30,000 boys play high-school sports, compared to just 22,467 girls.³⁷ West Virginia likewise has more opportunities for boys, with 21,502 boys playing compared to 16,212 girls.³⁸ Women's sports remain underfunded, with significantly more

³³ Women's Sports Found., *50 Years of Title IX We're Not Done Yet* (May 2022), <https://perma.cc/5YX2-P2E5>; Nat'l Fed. of State High Sch. Ass'ns, *Participation in High School Sports Hits Record High with Sizable Increase in 2024-25* (Sept. 2025), <https://perma.cc/TR5Z-C2YT>.

³⁴ *Id.*

³⁵ *Id.*

³⁶ NWLC, *The Battle For Gender Equity In Athletics In Elementary And Secondary Schools* (June 2022), <https://perma.cc/3E3G-CDNR>.

³⁷ Nat'l Fed. of State High Sch. Ass'ns, *High School Athletics Participation Study* (2022), <https://perma.cc/92FB-SR22>.

³⁸ *Id.*

resources being funneled into men’s programs, including for athletic scholarships, recruiting, and coach compensation.³⁹ The NCAA’s average spending per student-athlete for Division I and national championships during the 2018-19 school year was “substantially higher” for men, by approximately \$1,697.⁴⁰

Petitioners’ laws and others like them do nothing to remedy the decades of gender inequity that produced these disparities. Instead, the challenged laws contravene the text and purpose of Title IX, harming all girls and women, including those who do not meet stereotyped ideals of womanhood and girlhood. *See supra* Part III.A. Petitioners’ professed concern for “protecting” opportunities for girls likewise rings hollow given that their efforts focus almost entirely on excluding and discriminating against transgender athletes—despite that transgender students make up a tiny

³⁹ *50 Years of Title IX We’re Not Done Yet*, *supra* note 33; see also Pam Bernard & Len Elmore, *Statement on NCAA Revenue Distribution and Gender Inequities*, Knight Comm’n on Intercollegiate Athletics (Apr. 3, 2024), <https://perma.cc/QW27-CSDJ> (noting that NCAA rewards schools and conferences for basketball tournament wins and participation for only men’s teams).

⁴⁰ Kaplan Hecker & Fink LLP, *NCAA External Gender Equity Review: Phase II* (Oct. 25, 2021) at 21, <https://perma.cc/K8ZL-7A5R> (these numbers exclude basketball).

fraction of athletic participants⁴¹ and have never come close to dominating any women's or girls' sport.⁴²

“Protecting” cisgender girls and women from competing alongside transgender athletes will do nothing to ensure that girls and women have access to equal athletic opportunity. More opportunities for *all* girls and women to play, greater access to resources, and better funding would help, but the challenged laws provide none of those. Instead, they scapegoat transgender girls and women, often pushing them out of sports entirely, which helps no one. These bans harm all girls and women by diverting attention from the real barriers to opportunities, reinforcing stereotypes about supposed fragility and inferiority, and subjecting them to scrutiny and harassment when they do not conform to gender stereotypes.

C. The Challenged Laws Undercut the Educational Benefits of Sports.

Forbidding transgender girls and women from playing on teams that align with their gender deprives them of the benefits of sports.⁴³ As explained *supra*,

⁴¹ Brooke Migdon, *NCAA president says there are 'less than 10' transgender athletes in college sports*, The Hill (Dec. 18, 2024), <https://perma.cc/5YG7-5X5A>. Petitioners' laws are harmful notwithstanding the small number of transgender girls and women playing sports, as discussed above.

⁴² Gillian R. Brassil and Jeré Longman, *Who Should Compete in Women's Sports? There Are 'Two Almost Irreconcilable Positions'*, N.Y. Times (Aug. 18, 2020), <https://perma.cc/GMB8-XF9D>.

⁴³ See *LGBTQ Students and School Sports Participation*, GLSEN (2021), <https://perma.cc/2XRR-Q9G4>. Laws banning transgender girls and women from playing sports consistent with their gender

Title IX's core purpose was to eradicate the barriers created by sex-based stereotypes to ensure that all students, and particularly girls and women, had equal access to educational opportunities.⁴⁴ And athletics are just that: a learning opportunity. Student athletes reap the benefits of playing long after they hang up their cleats. Athletes learn the value of teamwork, hard work, and dedication; how to balance competing priorities; and, hopefully, the joy of moving a healthy and strong body.

They also receive the social and cultural benefits of sports. Girls and women who play sports report higher confidence and self-esteem and lower levels of depression.⁴⁵ Playing sports is also correlated with higher educational attainment,⁴⁶ as well as increased labor force participation.⁴⁷ And the health benefits extend beyond student years: women who participated in high-school sports experience improved mental

identity are tantamount to full exclusion of transgender girls. In the vast majority of cases, transgender athletes will leave sports altogether rather than play on a team that is inconsistent with their gender identity. This would contravene both Title IX's text and its justifications for allowing sex-separated teams.

⁴⁴ *Trans Panic*, *supra* note 3, at 92.

⁴⁵ Women's Sports Found., *Benefits – Why Sports Participation for Girls and Women* (Aug. 30, 2016), <https://perma.cc/N6PY-838B>.

⁴⁶ Dara Shifrer, et. al., *College-Going Benefits of High School Sports Participation: Race and Gender Differences over Three Decades*, *Youth & Soc'y* (2012), <https://perma.cc/7ED9-Z8ZG>.

⁴⁷ Betsey Stevenson, *Beyond the Classroom: Using Title IX to Measure the Return to High School Sports*, Nat'l Bureau of Econ. Rsch., Working Paper No. 15728, 16–17 (2010), <https://perma.cc/6VC7-KQUH>.

health,⁴⁸ and women who engaged in sports and exercise during their childhood and adolescence have a reduced risk of breast cancer as adults.⁴⁹

The benefits of sports are particularly salient for transgender students. When transgender students are in supportive environments, they can succeed and thrive.⁵⁰ Because of the pervasive discrimination they face, transgender students experience mental-health challenges at a higher rate than their cisgender peers, which is exacerbated by exclusion from sports. A survey indicates that 98% of transgender individuals who have experienced multiple instances of discrimination or violence in the past year have considered suicide, with 51% attempting suicide; as more discriminatory experiences occurred, the prevalence of suicidal thoughts and attempts increased.⁵¹ Playing sports can combat those challenges, providing an important “respite” or “escape” from the stress and turmoil associated with” the discrimination and harassment transgender

⁴⁸ Kevin Callison & Aaron Lowen, *The long-run effects of adolescent athletic participation on women’s health*, 44 Econ. & Hum. Biology (2022), <https://perma.cc/ZE4J-PXKK>.

⁴⁹ Nicole M. Niehoff, et al., *Childhood and teenage physical activity and breast cancer risk*, 164 Breast Cancer Rsch. & Treat. (2017), <https://perma.cc/88BD-2A2W>.

⁵⁰ See, e.g., *The Trevor Project, The Trevor Project Research Brief: Accepting Adults Reduce Suicide Attempts Among LGBTQ Youth* (June 2019), <https://perma.cc/4E7N-U6BE> (presence of one supportive adult can reduce risk of suicide among LGBTQ youth).

⁵¹ Jody L. Herman, et al., *Suicide Thoughts and Attempts Among Transgender Adults*, Williams Inst. 27–28 (Sept. 2019), <https://perma.cc/H3BY-PTNA>.

students face.⁵² Inclusive policies are critical to addressing disparities transgender students experience.⁵³

The view Petitioners advance is not based on Title IX's vision of ensuring educational opportunities. Instead, they envision a zero-sum game predicated on winning being the only measure of the value of athletics. W. Va. Pet'rs' Br. at 6 (discussing lost championship bids and medal count); Little Pet'rs' Br. at 4-5. Under that misguided paradigm, transgender girls must be excluded from sports because sometimes they might win. W. Va. Pet'rs' Br. at 7-8; Little Pet'rs' Br. at 3. Not only does Petitioners' view of categorical transgender superiority rely on faulty biological assumptions and stereotypes, but it ignores the text of Title IX, which guarantees equal access to educational opportunities, including athletics, but nowhere creates a right to win.

For decades, Title IX has transformed the landscape of education and sports by rejecting the notion that opportunity must be rationed in favor of a view that it should be available for all. The exclusionary model Petitioners advance betrays that progress, reflecting the very attitudes that have historically

⁵² Erin E. Buzuvis, *Transgender Student-Athletes and Sex-Segregated Sport: Developing Policies of Inclusion for Intercollegiate and Interscholastic Athletics*, 21 Seton Hall J. Sports & Ent. L. 1 (2011), <https://perma.cc/EW25-HYF9>.

⁵³ Joseph G. Kosciw, et al., *The 2019 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Youth in our Nation's Schools*, GLSEN, xxi-xxv (2020), <https://perma.cc/7KPQ-FCD7> (students were less likely to experience harassment, violence, or hear anti-LGBTQ remarks at schools with trans-inclusive policies and educators).

privileged men's sports and perpetuated inequality based on harmful stereotypes about girls and women. Title IX's enduring success depends on rejecting that model and upholding athletics as an educational opportunity open to every student—a place where inclusion and equality are not competing values, but the foundation of the game itself.

CONCLUSION

The judgments of the courts of appeals should be affirmed.

Respectfully submitted.

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NOVEMBER 2025