
**In The
Supreme Court of the United States**

K.M.K., by and through her mother and next friend, Stephanie Lynne Brown, and
STEPHANIE LYNNE BROWN,

Applicants,

v.

WASHINGTON INTERSCHOLASTIC ACTIVITIES ASSOCIATION, et al.,

Respondents.

*To the Honorable Elena Kagan,
Associate Justice of the United States Supreme Court and
Circuit Justice for the Ninth Circuit*

**AMICUS BRIEF OF IOWA, IDAHO, AND 22 STATES IN SUPPORT OF
EMERGENCY APPLICATION FOR AN INJUNCTION PENDING APPEAL**

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INTEREST OF THE *AMICUS CURIAE*

More than half the states around the country have enacted laws that protect women's sports and limit participation in those sports to biological women. *See, e.g.,* Iowa Code §§ 261I.1–.2. Indeed, two states with such laws were vindicated by this Court just last term. *See W. Virginia v. B.P.J.*, 146 S. Ct. 2356, 2370 (2026). But Washington has taken the opposite tack and mandated that women's sports accommodate biological men. That approach flouts Title IX's protections for women athletes.

“[W]omen and girls should be allowed to compete for th[e] life-changing opportunities” provided by athletics “on an equal playing field, without fear of physical injury from biological males or being forced to compete against biological males.” *B.P.J.*, 146 S. Ct. at 2381. And Title IX is clear: “No 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). Title IX protects biological sex—and thus, biological women are entitled to Title IX's protections and obligations of equal treatment, benefits, and opportunities that their biological male counterparts experience. The law ensures that female athletes receive the benefits of athletic competition and the corollary opportunities—like team building, comradery, and avenues to higher education. *See B.P.J.*, 146 S. Ct. at 2381.

Amici States have an interest in ensuring that other states do not violate Title IX because such violations compromise the consistent enforcement of federal protections. Amici States also administer Title IX-funded programs and must know

what the statute requires of them. A rule that Title IX simultaneously permits Amici States' laws and permits Washington's opposite command leaves recipients in every state guessing at the terms of the same federal conditions. The undersigned 24 state Attorneys General thus support granting the application.

SUMMARY OF ARGUMENT

Allowing biological males to participate in female sports denies girls Title IX's protections. There are physiological differences between biological males and females that are obvious in sports and sports performance. Those differences have been long understood to justify separate-sex teams to ensure fair and safe competition for females. Across the United States, states have enacted laws that protect women, rather than put young women at risk. And that approach is consistent now with what the Supreme Court has required. *See B.P.J.*, 146 S. Ct. at 2381.

Washington's Legislature amended its laws in 2019 to develop a "model transgender student policy" and to "eliminate discrimination in Washington public schools on the basis of gender identity and expression." App. 4a (quoting Wash. Rev. Code § 28A.642.080(3)). Along similar lines, the Washington Interscholastic Activities Association adopted Rule 18.16.0 "Gender Identity Participation," which requires that all students be allowed to participate in its athletics programming "in a manner that is consistent with their gender identity." App. 5a (quoting WIAA Rule 18.16.0). That bylaw follows Washington law but ignores biological sex. And it violates Title IX's protections of equal treatment, benefits, and opportunities for female athletes.

Yet the district court and Ninth Circuit refused to enjoin enforcement of the challenged bylaw. App. 62a, 72a. Absent a preliminary injunction, female athletes will be stripped of Title IX’s protections and forced to compete against biological men. For K.M.K., that harm has already materialized as an alleged sexual assault. App. 1a.

And failing to enjoin enforcement of the challenged policies, laws, and bylaws also risks causing ongoing irreparable harm to the student-athletes. Some students will be unable to participate in sports in high school going forward. And some will face physical and psychological repercussions like those alleged here. Only an injunction can ensure accolades are allocated as Title IX requires—and that other female athletes are not injured by men when competing. That irreparable harm—not to mention Appellant’s likelihood of success on the merits—necessitates reversal here.

ARGUMENT

I. Title IX Prohibits Discrimination Based on Biological Sex and Requires Equal Opportunities for Both Sexes.

Congress enacted Title IX to guarantee that women would no longer be denied educational opportunities because of their biological sex. *See* 118 Cong. Rec. 5,803 (1972) (Senator Bayh stating that “[t]he only antidote” to the “corrosive and unjustified discrimination against women,” “is a comprehensive amendment such as the one now before the Senate”).

Title IX’s plain text forbids discrimination “on the basis of sex.” 20 U.S.C. § 1681(a). Congress’s aim in 1972 was unequivocal: to ensure that female students could learn, compete, and thrive on equal footing with their male peers. *See id.*; 118

Cong. Rec. 5,803 (1972). The statute’s protections thus hinge on the biological distinction between men and women. Reading Title IX to erase or blur that line would defeat the statute’s purpose, stripping women of the very protections the statute was designed to secure.

The district court nominally recognized that the Supreme Court “appear[ed] to endorse the position that ‘sex’ in the Title IX context should be understood to mean biological sex.” App. 54a (quoting *B.P.J.*, 146 S. Ct. at 2371). Yet despite that, the district court went on to make findings undermining that understanding.

That was error. While *B.P.J.* reserved the ultimate question whether Title IX forbids policies that put men on women’s teams, 146 S. Ct. at 2367 n.1, its holding regarding the meaning of “sex” was unambiguous. “The term ‘sex’ in the 1972 Title IX statute, the 1974 Javits Amendment, and the 1975 Title IX regulations cannot plausibly be interpreted to refer to anything other than biological sex.” *Id.* at 2371. Congress “allowed separate sports teams precisely because of the biological differences between the sexes.” *Id.* And *Bostock* is “not relevant in this very different statutory and factual context.” *Id.* at 2373 (citing *Bostock v. Clayton Cnty.*, 590 U.S. 644 (2020)).

A reserved question is not a blank slate. Once “sex” means biology and separate teams exist because of biology, a rule that opens a girls’ team to males on grounds “unrelated to sex,” App. 33a, cannot be squared with the statute Congress wrote.

1. Title IX’s scope turns in part on the meaning of “sex.” Indeed, the scope of Title IX is understood by examining its “text in light of context, structure, and related

statutory provisions.” *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 558 (2005). And “it’s a fundamental canon of statutory construction that words generally should be interpreted as taking their ordinary, contemporary, common meaning at the time Congress enacted the statute.” *Wis. Cent. Ltd. v. United States*, 585 U.S. 274, 284 (2018) (cleaned up).

In 1972, when Congress enacted Title IX, the ordinary meaning of “sex” meant the biological distinction between males and females. *See Frontiero v. Richardson*, 411 U.S. 677, 686 (1973) (plurality op.) (“[S]ex, like race and national origin, is an immutable characteristic determined solely by the accident of birth.”). Dictionary definitions from the time of Title IX’s enactment show that “when Congress prohibited discrimination on the basis of ‘sex’ in education, it meant biological sex.” *Adams v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791, 812 (11th Cir. 2022) (en banc); *see also Bostock*, 590 U.S. at 686 (Alito, J., dissenting) (examining dictionary definitions of “sex” prior to Title IX and concluding that the “primary definition in every one of them refers to the division of living things into two groups, male and female, based on biology”).

Congress’s use of “sex” throughout Title IX confirms that binary understanding based on biology. Indeed, binary distinctions are made many times throughout that section. *See* 20 U.S.C. § 1681(a)(8) (discussing “father-son or mother-daughter activities at an educational institution” and “if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided for students of the other sex”); 20 U.S.C. § 1681(a)(5) (discussing admitting

“only students of one sex” at public universities); 20 U.S.C. § 1681(a)(6)(B) (discussing youth service organizations that have in the past “limited to persons of one sex”); 20 U.S.C. § 1681(a)(7) (applying to “Boy or Girl conferences”); 20 U.S.C. § 1681(b) (referencing “disparate treatment to the members of one sex”). Those references to “one sex” can only be understood as acknowledging the binary nature of biological sex as female or male.

Read in context, every part of Title IX and the meaning of the words in the statute at the time of enactment confirms that “sex” unambiguously refers to biological distinctions between males and females—the very basis on which Congress sought to secure equal opportunities for women. 20 U.S.C. § 1681(a); *see also* Press Release, U.S. Department of Education and U.S. Department of Health and Human Services Find that Minnesota Violated Title IX, U.S. Dep’t of Educ., (Sept. 30, 2025), <https://perma.cc/G8UZ-EFSH>.

2. The history and purpose of the adoption of Title IX also support that “sex” means biological sex. Again, Congress created Title IX to protect women from discrimination in the realm of education. *See* 118 Cong. Rec. 5,803 (1972). Congress wanted to “guarantee that women, too, enjoy the educational opportunity every American deserves.” 117 Cong. Rec. 32,476 (1971) (statement of Sen. Bayh concerning related Senate Bill with identical language); *see also Frontiero*, 411 U.S. at 684 (“There can be no doubt that our Nation has had a long and unfortunate history of sex discrimination”). And Title IX intended to put women on an equal playing field as their male counterparts. *See* 117 Cong. Rec. 39,259 (1971) (Rep. Green stating,

“[a]ll that this title does is to ask that a woman be considered . . . in the same fashion as those of a male applicant”).

The word “sex” understood in Title IX’s historical context must mean biological sex as the purpose of Title IX was to rectify the disparate treatment of women compared to men. *See Clark v. Ariz. Interscholastic Ass’n*, 695 F.2d 1126, 1131 (9th Cir. 1982) (“[T]here is clearly a substantial relationship between the exclusion of males from [a sports] team and [Title IX’s] goal of redressing past discrimination and providing equal opportunities for women.”).

II. Allowing Boys to Participate in Girls’ Sports Denies Girls Title IX’s Protections.

Laws and bylaws like those in Washington challenged here undermine what Title IX was intended to do—provide individuals equal opportunities in education and activities and forbid differential treatment that causes harm by treating one sex better than the other.

Allowing biological men to participate in athletics “consistent with their gender identity” but opposite their biological sex denies the benefits of sports to young women. WIAA Rule 18.16.0. By opening female athletic competitions to biological males, such bylaws erase the very distinction Congress recognized as essential to preserving fair and equal opportunities for women in athletics, depriving female athletes of the level playing field Title IX guarantees.

In the sport contexts, courts have long recognized that “Title IX requires that schools provide equal athletic opportunity to boys and girls.” *McCormick v. Sch. Dist. of Mamaroneck*, 370 F.3d 275, 296 (2d Cir. 2004). Title IX “is widely recognized as the

source of a vast expansion of athletic opportunities for women in the nation's schools and universities.” *Mansourian v. Regents of the Univ. of Cal.*, 602 F.3d 957, 961 (9th Cir. 2010). And courts understand that ensuring equal opportunity will sometimes require maintaining female-only athletic teams. *See, e.g., O'Connor v. Bd. of Ed. of Sch. Dist. 23*, 449 U.S. 1301, 1307 (1980) (Stevens, J., in chambers); *Soule v. Conn. Ass'n of Schs., Inc.*, 90 F.4th 34, 63 (2d Cir. 2023) (en banc) (Menashi, J., concurring) (“[T]he Title IX framework effectively requires a recipient to maintain separate sports teams”) (collecting cases).

Title IX gives women the opportunity to compete in sports and experience the benefits that come with being part of a team. “Male athletes had been given an enormous head start in the race against their female counterparts for athletic resources, and Title IX would prompt universities to level the proverbial playing field.” *Neal v. Bd. of Trs.*, 198 F.3d 763, 767 (9th Cir. 1999). But rules and laws like Washington's, which allows biological males to compete against women because they “identify” as female, put that hard-won opportunity at risk.

There are physiological differences between the sexes, specifically physiological advantages that males have over females. One study found,

there is a clear sex difference in both muscle mass and strength even adjusting for sex differences in height and weight. On average, women have 50% to 60% of men's upper arm muscle cross-sectional area and 65% to 70% of men's thigh muscle cross-sectional area, and women have 50% to 60% of men's upper limb strength and 60% to 80% of men's leg strength.

David J. Handelsman et al., *Circulating Testosterone as the Hormonal Basis of Sex Differences in Athletic Performance*, 39(5) *Endocrine Reviews* 803, 812 (2018). Data

shows that “biological males as a group outperform biological females in athletic events dependent on strength, speed, power, and endurance.” Michael J. Joyner et al., *Evidence on Sex Differences in Sports Performance*, 138 J. Applied Physiology 274, 275 (2024) (cleaned up). And prepubescent boys also have physiological differences that lead them to perform better than their female counterparts. *See id.* at 275–76. It therefore “takes little imagination to realize that were play and competition not separated by sex, the great bulk of the females would quickly be eliminated from participation and denied any meaningful opportunity for athletic involvement.” *Cape v. Tenn. Secondary Sch. Athletic Ass’n*, 563 F.2d 793, 795 (6th Cir. 1977), *overruled on other grounds*.

Beyond mere prowess, placing boys and girls in close, combat-like quarters—as some contact sports require—raises the further danger of disguising or facilitating sexual assault. One need only look at the facts of this case. The female wrestler here was “ranked first for her weight class on the junior varsity girls’ wrestling team” when she competed against the biological male. App. 6a. During the second period, the biological male “reached between” the female wrestler’s legs and “digitally penetrated her vagina for several seconds causing great pain”—and, unsurprisingly, the female athlete was “horrified and shocked and felt deeply violated.” App. 6a. Allowing males to wrestle females exposes girls to the risk of similar violation by the opposite sex in a sports competition and forces the choice of participating despite that risk or foregoing the chance to “compete for those life-changing opportunities” that Title IX is meant to secure. *B.P.J.*, 146 S. Ct. at 2381.

The Ninth Circuit deferred to the district court’s assessment that there were “factual disputes” regarding males’ physiological advantages and the repercussions on females’ safety and ability to compete, which the district court felt were open questions because *B.P.J.* allegedly did “not identify what evidence supported” its holding. App. 38a n.10, 75a. But the district court is not free to treat the Court’s examination of legislative facts, such as the differences between men and women, as an evidentiary matter subject to relitigation. *Frank v. Walker*, 768 F.3d 744, 750 (7th Cir. 2014). The Court resolved how to read Title IX as a matter of law, and its conclusion that “allowing biological males to play on women’s and girls’ sports teams can put female athletes at a serious disadvantage” and create “severe” “safety risks . . . in contact sports” was essential to its holding. *B.P.J.*, 146 S. Ct. at 2372; see 34 C.F.R. § 106.41(b) (1975) (wrestling was enumerated by the earliest round of rulemaking under Title IX as a contact sport for which sex-segregated teams were needed).

By maintaining sex-specific sports, women can compete on a level playing field, reap the rewards of athletic participation, and avoid the safety risks inherent in competing against physiologically distinct opponents. What Washington and the WIAA have done here, interpreting Title IX to require that schools permit male athletes to compete based on their self-proclaimed gender identity, puts girls at a disadvantage and undermines the entire purpose of Title IX.

CONCLUSION

The Court should grant an injunction pending appeal.

Respectfully submitted,

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