

APP NO. 26A458

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

**BRIEF OF *AMICI CURIAE* INDEPENDENT COUNCIL ON WOMEN'S
SPORTS AND THEIR MEMBERS IN SUPPORT OF APPLICANTS'
EMERGENCY APPLICATION FOR AN INJUNCTION PENDING APPEAL**

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INTEREST OF AMICUS CURIAE¹

Amici are the Independent Council on Women's Sport (ICONS) and its members. ICONS is a network, advocacy, and support group comprised of current and former high school, collegiate and professional women athletes, their families and supporters who agree with former Justice Ginsberg that "[p]hysical differences between men and women . . . are enduring [that] the two sexes are not fungible [and that] [i]nherent differences between men and women . . . remain cause for celebration[.]" *United States v. Virginia*, 518 U.S. 515, 533, 116 S. Ct. 2264, 2276, 135 L. Ed. 2d 735 (1996) ("VMI") (cleaned up; citations omitted). ICONS believes that the next generation of women and girls deserve the chance to be women's sports champions and to be celebrated and protected on their athletic journeys.

ICONS was founded in 2022 after the National Collegiate Athletic Association (NCAA), the Ivy League, and the University of Pennsylvania allowed a male athlete formerly named William Thomas, who had previously competed for the University of Pennsylvania's men's swimming team, to compete on the school's women's swim team on the ground that Thomas identified as female. Because he was allowed to compete in women's college swimming, Thomas defeated numerous female Olympians in women's races, stealing five Ivy League women's championships, three women's All-American awards and a women's national championship title.

Thomas was not the first man to take a NCAA women's title. For example, a man who competed on the men's track team during his first three years of college was

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

awarded the NCAA Division II women's 400-meter hurdle championships in 2019.²

In high school sports, the phenomenon of males standing on the podium and receiving accolades in girls' competitions is endemic. For example, this year, boys have stood atop women's podiums from California³ to West Virginia⁴ and places in between.⁵

Sadly, this year was not unusual.⁶ Research by Concerned Women of America

² See Robert Johnson, *What No One Is Telling You: An Athlete Who Ran NCAA Track As A Man For 3 Years Just Won An NCAA Women's Title*, LETSRUN.COM (May 28, 2019), <https://www.letsrun.com/news/2019/05/what-no-one-is-telling-you-an-athlete-who-ran-ncaa-track-as-a-man-for-3-years-just-won-an-ncaa-womens-title/>.

³ In California a male won two medals at the high school track and field championships. See Kate Rix, *Trans Athlete Wins State Track Titles, Draws Mixed Response from Gubernatorial Candidates*, EDSOURCE (June 1, 2026), <https://edsource.org/updates/trans-athlete-wins-ca-state-track-titles-draws-mixed-response-from-gubernatorial-candidates>.

⁴ In West Virginia a male who calls himself Becky Pepper-Jackson received the gold medal in women's shot put at the West Virginia state track and field meet. See Matthew Young, *Transgender Bridgeport High School Sophomore Wins W. Va. Girls' Shot Put Title*, W. VA. GAZETTE-MAIL (May 28, 2026), https://www.wvgazettemail.com/news/transgender-bridgeport-high-school-sophomore-wins-wv-girls-shot-put-title/article_db9efeae-cbcc-4786-957d-a8f5361b2e83.html.

⁵ See, e.g., Howard Thompson, *DOJ Sues Minnesota for Allowing Transgender Girls to Compete in Girls Sports*, FOX 9 MINNEAPOLIS-ST. PAUL (Mar. 30, 2026), <https://www.fox9.com/news/doj-sues-minnesota-over-athletes-born-boys-girls-sports>. ("investigation found Minnesota had allowed trans athletes to compete in several girls' sports, including Alpine skiing, Nordic skiing, lacrosse, track and field, volleyball, and fastpitch softball"); Amber Harding, *Trans Athlete Wins New York State Girls Shot Put Title, Beating Second Place by 2 Feet*, OUTKICK (June 15, 2026), <https://www.foxnews.com/outkick-sports/trans-athlete-wins-new-york-state-girls-shot-put-title-beating-second-place-2-feet>. (boy wins state girls' shot put title in New York, beating second place by more than two feet); Matt Calkins, *Women Who Faced Biological Males in Girls' Sports and Locker Rooms Speak Out Ahead of Washington State Vote*, OUTKICK (Oct. 6, 2026), <https://www.foxnews.com/outkick-sports/women-faced-biological-males-girls-sports-locker-rooms-speak-ahead-washington-state-vote>. ("Last year, trans track athlete Veronica Garcia, representing East Valley High in Spokane Valley, won the Washington state title in the 400 meters. This year, a boy for Camas High in WA switched to the girls cross-country team midseason and is currently dominating.").

⁶ See, e.g., Emergency App. for Inj. Pending App. at 9 ("A male athlete won WIAA track-and-field state titles in 2024 and 2025."); *Soule v. Connecticut Ass'n of Schs., Inc.*, 90 F.4th 34, 42 (2d Cir. 2023); Thomas F. Harrison, *Trans Athletes Face Tough Referees in Second Circuit*, COURTHOUSE NEWS SERV. (June 6, 2023), <https://www.courthousenews.com/trans-athletes-face-tough-referees-in-second-circuit/>. ("Between 2017 and 2019, transgender sprinters Miller and Andraya Yearwood combined to win 15 championship races[.]"); ("Chelsea Mitchell led the complaint and with three other girls against the Connecticut Interscholastic Athletic Conference. Mitchell claimed that she lost out on four state titles because she had to compete against two biological males, and asked for the records to be changed to give her the victories because it would improve her employment prospects. When one of her competitors, Terry Miller, ran with the boy's team, she never placed better than 325th in a track event. After coming out as trans, however, Miller won first prize in a girl's 100-meter event by a large margin.").

found that male athletes have bumped biological women out of 2,293 championship spots since the mid-1980s.⁷ The website HeCheated.org documents 1,524 male athletes obtaining 6,889 first place finishes in women's sports.⁸

This brief provides a perspective shared by thousands of girls and young women competing in scholastic sports who dream that one day they, like their mothers and grandmothers before them, will once again be able to compete freely and fairly in school sports unhindered by boys seeking to steal their victories.

SUMMARY OF ARGUMENT

Amici submit this brief for three reasons:

1. Participation in girls' sports is critical for the healthy development of girls and young women, making the harm caused by boys competing in girls' sports irreparable and an important issue of public concern;
2. If the equal opportunities and safety of girls are to be protected in school sports, biological sex cannot be considered private information; and
3. Under Title IX it is the responsibility of school administrators, not merely young girls or their parents, to protect girls' sports from male intrusion.

The Washington Interscholastic Activities Association (WIAA) and Washington school administrators—like many other Title IX-covered schools, athletic governing bodies and administrators—are willfully ignoring their statutory duties to protect girls' equal opportunities and safety in scholastic sports. Title IX requires that

⁷ See Matt Calkins, *Transgender Athletes Have Taken 2,293 Championship Spots from Biological Women, New Research Finds*, **OUTKICK** (Sept. 29, 2026), <https://www.foxnews.com/outkick-sports/transgender-athletes-taken-2293-championship-spots-biological-women-new-research-finds>.

⁸ See *HeCheated.org*, **HECHEATED.ORG**, <https://hecheated.org/index.html> (last visited Oct. 8, 2026).

girls' safety and equal opportunities be protected by administrators at institutions covered by Title IX. This requires administrators to act proactively to protect girls and not passively allow boys to compete and then claim they are powerless to protect girls' equal opportunities. Title IX, which provides the power to protect girls, also requires administrators to exercise that authority.

Here, school administrators should have protected girls by:

1. Acting promptly to prevent girls from losing athletic opportunities to males;
2. Protecting girls on the basis of biological sex by ascertaining the sex of competitors in girls' sports and employing sex-based eligibility rules to prevent girls from facing the risk of injury posed by bigger and stronger male athletes;⁹ and
3. Not passively requiring girls and parents to self-police participation in contact sports and guess whether competitors may be male.

ARGUMENT

There are three key reasons this case is important to girls and young women:

1. Participation in girls' sports is critical to the healthy development of girls and young women, and the harm caused by boys competing in girls' sports is therefore irreparable and a matter of important public concern;
2. If the equal opportunities and safety of girls and women are to be protected in sports, biological sex cannot be considered private information; and

⁹ This includes a foreseeable risk of intimate and unwelcome contact from a boy in the sport of wrestling.

3. Under Title IX, it must be the responsibility of school administrators, not merely young girls or their parents acting on incomplete information, to protect girls' sports from the foreseeable harms of male participation.

I. Irreparable and Lifelong Harm Arises from the Loss of High School Athletic Opportunities

A. Sports Participation Improves Girls' Educational Achievement and Lifelong Health

The enactment of Title IX in 1972 changed the landscape of women's sports in America. It led to women's participation increasing in high school sports by over 1,000% and in college sports by over 600%. In 1972, just 7% of high-school athletes were girls, but by 2018 that number had risen to almost 43%. *See* Elle Rogers, *The Two Sexes are Not Fungible: The Constitutional Case Against Transgender-Inclusive Sports*, 28 TEX. REV. L. & POL. 243, 246 (2024) (citing sources).

Courts have recognized both the importance of scholastic sports and Title IX's key role in helping secure for America's youth the salutary benefits of scholastic sport. Starting with *Brenden v. Indep. Sch. Dist.* 742, 477 F.2d 1292, 1298 (8th Cir. 1973), the first case to refer to Title IX, "courts have repeatedly found that athletics is a vital and important part of the educational experience for high school and college students." Paul M. Anderson, *Title IX at Forty: An Introduction and Historical Review of Forty Legal Developments That Shaped Gender Equity Law*, 22 MARQ. SPORTS L. REV. 325, 327 (2012).

Girls derive dramatic education benefits from sports participation. Girls who play high school sports are 20% more likely to graduate from high school and 20% more likely to attend college. Sports participation itself yields these academic

benefits; it is not just that girls who were always going to do well academically choose to play sports. Angela Lumpkin & James Favor, *Comparing the Academic Performance of High School Athletes and Non-Athletes in Kansas*, 4J. SPORT ADMIN. & SUPERVISION 41, 41–62 (2012). There is a positive link between sport participation and academic performance for high school girls. *Id.*

In high schools, female student-athletes graduate at rates higher than their non-athlete counterparts in the student-body. Herbert W. Marsh & Sabrina Kleitman *School Athletic Participation: Mostly Gain with Little Pain*, 25(2) J. SPORT & EXERC. PSYCHOL. 205, 205–28 (2003).

The educational, maturational, and developmental benefits to girls of sport participation also translates into post-graduation economic success. Data shows a link between sport participation and economic attainment later in life. Increased sports participation by girls after the passage of Title IX is said to explain about 20% of the increase in women’s educational attainment and about 40% of the rise in employment for 25-to-34-year-old women, including a 12% spike in the number of women working in traditionally male-dominated occupations such as law, accounting, and veterinary medicine. Betsey Stevenson, *Beyond the Classroom: Using Title IX to Measure the Return to High School Sports*, 92REV. OF ECON. & STAT. 284, 284–301 (2010).

Increases in female sports participation spurred by Title IX are also good for the American economy. A study found that more than four out of five executive businesswomen (81%) played sports growing up—and the vast majority of these

women reported that the lessons they learned on the playing field contributed to their business success. OppenheimerFunds, Inc., *Oppenheimer Funds Survey on Women in Business and Sports Participation* (2002), https://www.ey.com/en_us. Not surprisingly, a background in competitive sport is a common gateway to future employment in the sports industry itself. The business of sports, including athletic administration, coaching, sports management, sports medicine, marketing, and manufacturing, is a nearly \$260 billion per-year industry. Sports & Fitness Industry Association, *Economic Impact of the Sports Industry in the United States* (2024), <https://www.sfia.org/reports/2024-economic-impact>.

Lifelong health benefits are also correlated with participation in scholastic sports. High school sports participation leads to more physical activity throughout a woman's lifetime. Women who participate in regular physical exercise reduce their risk of breast cancer between 20 and 40%. American Cancer Society, *Physical Activity and Cancer Risk*, (2023), <https://www.cancer.org/cancer/risk-prevention/diet-physical-activity/physical-activity-and-cancer.html>. Osteoporosis afflicts 10 million Americans, 80% of whom are women. But regular physical activity and sports participation in the school-age years increases life-time bone density. National Osteoporosis Foundation, *Osteoporosis Statistics and Prevention* (2024), <https://www.bonehealthandosteoporosis.org/patients/osteoporosis/>. Alzheimer's disease disproportionately afflicts older women, but rates can be lowered with physical activity earlier in life. Alzheimer's Association, *Physical Activity and Alzheimer's Risk* (2025), [7](https://www.alz.org/help-</p></div><div data-bbox=)

[support/brain health/physical activity](#).

High school sports participation also helps prevent adult obesity. A 20% increase in girls' sport participation in high school was associated with a 24% increase in the probability of engaging in "much" physical activity during recreational activities, a 4% decline in body mass index, and a lessened probability of being overweight or obese. Robert Kaestner & Xin Xu, *Effects of Title IX and Sports Participation on Girls' Physical Activity and Weight*, 17 ADVANCES IN HEALTH ECON. & HEALTH SERVS. RSCH. 79, 79–111 (2006). When physically active in high school, girls are more likely to maintain a normal weight into their twenties, which increases their life expectancy by as much as eight years. National Institutes of Health, *Obesity and Mortality: Longitudinal Studies*, (2023), <https://www.nih.gov/news-events/nih-research-matters/obesity-mortality>.

High school sports participation also changes lifestyle choices affecting health. For example, female athletes are less likely to smoke or use illicit drugs than non-athletes. They are less likely to become pregnant as teenagers and more likely to report never having had sexual intercourse. They are also more likely to have their first sexual intercourse experience later in adolescence than female non-athletes. Russell R. Pate et al., Sports Participation and Health-Related Behaviors Among U.S. Youth, 154 ARCHIVES PEDIATRICS & ADOLESCENT MED. 904, 904–911 (2000).

Athletic participation also has mental health benefits. Female high school athletes suffer lower rates of depression and show markedly lower incidences of considering or attempting suicide. Rachel Jewett et al., *School Sport Participation*

During Adolescence and Mental Health in Early Adulthood, 55 J. ADOLESCENT HEALTH 640, 640–644 (2014).

There can be little question that securing equal opportunities for women in scholastic sport is vital to the Nation and is a key goal of Title IX. Girls are irreparably harmed when pushed out of high school sports by male competitors.

B. Males Competing in Girls' Sports Deprive Girls of Equal Opportunities and Can Push Them Out of Sport

Given the enormous size, strength, power and other sport performance advantages enjoyed by boys over girls described in Applicants' Brief,¹⁰ it follows that continuing participation of boys in girls' scholastic sports will cause a decrease in girls' sports participation in high school and college. First, the performance advantages of being male will cause women to lose roster spots and playing time, resulting in these girls losing some of the intrinsic joys of sport and life lessons that can be learned through sport.

Second, as described by Applicants' expert witnesses, participation by males in women's contact sports increases the likelihood of physical injuries to women. Further, many women experience depression and a profound sense of unfairness when deprived of sports opportunities by men who, because of extreme physical

¹⁰ Numerous illustrations of boys' advantages over girls can, of course, be given. For example, in 2017 the U.S. Women's soccer team that went on to win the Olympics and the FIFA World Cup was beaten by an under-15 boys academy team. See Chantz Martin, *Former USWNT Star Carli Lloyd Admits Losing to Under-15 Boys Team: 'Yes, it's True'*, FOX NEWS (Nov. 9, 2023) <https://www.foxnews.com/sports/former-uswnt-star-carli-lloyd-admits-losing-to-under-15-boys-team-yes-its-true>. Every year more than 100 U.S. high school boys run faster than the women's world records in sprinting events. See *How Many High School Boys Beat Women's World Records? The Full Data*, WOMEN'S WORLD RECORDS, <https://womensworldrecords.com/articles/how-many-high-school-boys-beat-womens-world-records> (last visited Oct. 8, 2026).

superiority, have competitive advantages women are unable to overcome through dedication and hard work.

Unfair and unsafe competition naturally leads to suppressed participation in sport. This is one of the lessons learned from organized doping in sports like cycling and track and field, where many athletes report that doping at the elite levels of their sport diminishes their motivation to continue and ultimately drives them out of top-level competitions. *See, e.g.,* Tom Mallows, *Enhanced Games could 'Turn Away Future Athletes,'* BBC SPORT (Sept. 16, 2025), <https://www.bbc.com/sport/articles/cp3qn6xd91ro>; Scott Mercier, *The Cyclist Who Refused To Dope, Now Champions Clean Racing*, COLO. PUB. RADIO (Apr. 26, 2017), <https://www.cpr.org/show-segment/scott-mercier-the-cyclist-who-refused-to-dope-now-champions-clean-racing/>; Tom Goldman, *Athlete's 'Nope To Dope' Became 'No To Sports,'* NPR (Aug. 30, 2010), <https://www.npr.org/2010/08/30/129533093/athletes-nope-to-dope-became-no-to-sports#:~:text=Katherine%20Hamilton%20during%20a%201981,to%20lying%20about%20drug%20use.>

Like doping, men's participation in women's sports raises both fairness and safety concerns that are driving women out of sport. Female attrition due to men participating on women's sports teams is regrettably on the rise. For example, former high school volleyball player Payton McNabb never played another volleyball game after she suffered a debilitating brain injury when struck in the head by a spike from a trans-identifying male athlete in a women's high school volleyball match. *See* Rikki

Schlott, *Volleyball Player ‘Fights for Truth’ After Being Severely Injured by Trans Opponent: ‘If Only My Rights Had Been More Important Than a Man’s Feelings,’* N.Y. POST (Dec. 17, 2024), <https://nypost.com/2024/12/17/us-news/female-athlete-permanently-hurt-by-trans-athlete-speaks-out/>.

Seven times during the 2024 season entire college women’s volleyball teams in the Mountain West Conference (MWC) protested a male volleyball player on the San Jose State University Women’s Volleyball Team and the girls on these teams lost the opportunity to compete. Adding insult to injury, their teams were assigned forfeits by the MWC for protesting. *See San Jose State’s Opponent Boycotts Game Over Transgender Player. Again.*, N.Y. TIMES (Nov. 28, 2024), <https://www.nytimes.com/2024/11/28/us/transgender-san-jose-boise-volleyball.html>.

Last year, three girls on the Santa Rosa Junior College Women’s Volleyball Team lost an entire year of college eligibility due to a trans-identifying male on their team who concussed one of their teammates during practice. *See Jackson Thompson, Santa Rosa Women’s Volleyball Players Open Up on Trans Teammate’s Alleged Spikes to the Head*, FOX NEWS (Sept. 9, 2025) <https://www.foxnews.com/sports/santa-rosa-womens-volleyball-players-open-up-trans-teammates-alleged-spikes-head>.

The above examples only scratch the surface of what is happening to women in scholastic sports across the country. This Court has already recognized that “forcing women and girls to play against biological males can deter some women and girls who would otherwise participate in sports from doing so[.]” *West Virginia v. B.P.J. by Jackson*, 609 U.S. ___, 146 S.Ct. 2356, 2375 (2026). This same story of

women losing opportunities to men in women's scholastic sports is playing out repeatedly from coast to coast, all to the detriment of girls who should be protected by Title IX but instead are losing irreplaceable competitive opportunities to boys and suffering lifelong harm.

C. High School Sports Participation is Essential to Obtaining College Athletic Scholarships

K.M.K. is in her junior year and has already lost her sophomore wrestling season due to discrimination against her. Missing her junior wrestling season would cause her to lose any realistic possibility of being recruited to win an athletic scholarship and compete for a collegiate wrestling program. *See NCAA Wrestling Scholarships 2025–26: What Every Family Needs to Know, NCAA Scholarship Guide*, <https://www.ncaascholarshipguide.com/blog-categories/wrestling>. Typically, communication with college wrestling coaches would begin during the sophomore year of high school. *Id.* Losing the ability to achieve competitive high school wrestling results this year would likely end any realistic opportunity for K.M.K. to pursue her college wrestling dreams.

II. For Women to be Protected in Sport, Biological Sex Cannot Be Kept Secret

A. This Case Presents an Excellent Opportunity to Dispel the Erroneous Conclusion Adopted by the District and Circuit Courts Below that Biological Sex is Deserving of Privacy Protection

Today, women at all levels of scholastic sport (elementary school, junior high, high school, junior college and college) are regularly confronted by boys and men seeking to compete on women's teams. Many male competitors in girls' sport are

trans-identifying males, meaning that these males claim a feminine gender identity and typically seek to present themselves as feminine in every way, including using a traditionally feminine name and pronouns, seeking surgical and hormonal interventions to help them present as feminine, and seeking to pass themselves off as female, consistent with their self-professed gender identity.

Experience has shown that many of the boys who seek to compete in girls' sports were "transitioned" by their parents at very young ages and taught to live as girls. *See, e.g., Tirrell v. Edelblut*, No. 24-CV-251-LM-TSM, 2024 WL 3898544, at *2 (D.N.H. Aug. 22, 2024) ("When a transgender girl and her parents seek treatment for gender dysphoria prior to the onset of puberty, providers may prescribe puberty-blocking medication to prevent the development of physical characteristics that conflict with the child's gender identity.") (emphasis added); *Doe v. Hanover Cnty. Sch. Bd.*, No. 3:24CV493, 2024 WL 3850810, at *2 (E.D. Va. Aug. 16, 2024) ("when Janie was nine years old, she received a histrelin implant.") (emphasis added); *Doe v. Horne*, 683 F. Supp. 3d 950, 960 (D. Ariz. 2023), *aff'd*, 115 F.4th 1083 (9th Cir. 2024) ("Megan has been taking puberty blockers since she was 11 years old as part of her medical treatment for gender dysphoria.") (emphasis added); *A.M. by E.M. v. Indianapolis Pub. Sch.*, 617 F. Supp. 3d 950, 954–55 (S.D. Ind. 2022), *appeal dismissed sub nom. A.M. by E.M. v. Indianapolis Pub. Sch. & Superintendent*, No. 22-2332, 2023 WL 371646 (7th Cir. Jan. 19, 2023), and vacated, No. 1:22-CV-01075-JMS-MKK, 2023 WL 11852464 (S.D. Ind. Jan. 19, 2023) ("Plaintiff A.M. is a ten-year-old . . . whose birth-assigned sex was male. . . . and is currently taking a puberty

blocker.”); *B. P. J. v. W. Virginia State Bd. of Educ.*, 550 F. Supp. 3d 347, 355 (S.D.W. Va. 2021) (“As part of treating her gender dysphoria, B.P.J. has been on puberty delaying drugs for over a year.”) (emphasis added).

As a result of efforts by males to present as female it is frequently not apparent to female athletes that certain of their competitors, or even teammates, are men. *See, e.g., Slusser v. Mountain W. Conf.*, No. 1:24-CV-03155-SKC-MDB, 2024 WL 4876221, at *3 (D. Colo. Nov. 25, 2024), *appeal dismissed sub nom. Van Kirk v. Mountain W. Conf.*, No. 24-1461, 2025 WL 1489927 (10th Cir. May 19, 2025) (noting that a “trans teammate played [on the San Jose State University women’s volleyball team] although apparently her alleged status as a trans woman was not widely suspected or assumed at the time”); *Slusser*, ECF No. 78 at 75 ¶ 364 (alleging that initially a trans-identifying male athlete’s own assistant coach was unaware of his male sex); pp. 75-77, ¶¶ 365-76 (alleging that female athlete for months shared a residence with, and was roomed on road trips with, a trans-identifying male without knowing the teammate was male).

Title IX’s equal opportunity mandate, requiring women to have equal opportunities to men, cannot be achieved, monitored, or enforced in scholastic sports without reliable information about the sex of participants on women’s teams. Further, women cannot protect their safety in contact sports or their privacy in locker rooms where there is no substantial effort to verify that there is sex separation on supposedly sex-separated teams. The effective implementation of Title IX in scholastic sports requires the capacity to effectively differentiate between the

members of each sex and allow only females on girls' and women's teams.

Confirming an athlete's sex has not traditionally been considered difficult. Until recently, birth certificates were a reliable means of ascertaining sex. However, the utility of birth certificates to accurately identify biological sex has declined as increasingly some states have permitted birth markers on birth certificates to be modified based on gender preferences and amended certificates frequently do not state that they have been amended.¹¹

At the same time, some scholastic sport governing bodies, such as the WIAA in this case, oppose verifying the sex of athletes competing in women's sports. These developments, including acceptance of the legally unsubstantiated position that there is allegedly a right to privacy regarding one's biological sex, put many girls and women in situations where they cannot protect themselves against exposure to men on the playing field or in the locker room. To protect girls and women, it is important for this Court to clarify that there is no constitutional right to privacy regarding one's biological sex. Indeed, for Title IX's guarantee of equal opportunities for women to be achieved, the biological sex of all scholastic sports competitors *must* be identified.

B. Sex is Increasingly and Misleadingly Mischaracterized as Private Medical or Educational Information

In this case, both the District Court and the Ninth Circuit Court of Appeals erred by holding that biological sex is confidential information protected by federal

¹¹ Notably on February 12, 2025, Washington's Governor, Bob Ferguson, posted on X: "Very proud to announce the Department of Health will now process all requests to change gender designation on birth certificates within three business days. Previously, there was as much as a 10 month wait." See Bob Ferguson (@govbobferguson), Post on X (Feb. 12, 2025), <https://x.com/govbobferguson/status/1889796848870891782?s=10>

law. *See* Dist. Ct. Order on Mot. for Prelim. Inj. at 13a, 28a, 239a, n. 7, 62a; Ninth Cir. Order Denying Inj. Pending Appeal at 76a–77a. This critical error, made by both courts below, is being repeated by courts and scholastic sports administrators to justify the failure to protect girls and women from male competitors.

Increasingly, just as in this case, proponents of trans-identifying males participating in women’s scholastic sports seek to characterize an athlete’s sex or transgender status as medical information or “education records” under the Family Educational Rights and Privacy Act (FERPA). *See, e.g., Slusser*, ECF No. 58-1 (transcript of pre-hearing conference) at p. 25 (transcript p. 24), lines 14–25 (statement of counsel for San Jose State University) (“I do want to make sure that we’re mindful of the privacy rights of the student-athletes on this SJSU state team. And I would hate for there to be testimony or argument in—or offers of proof in open court about the gender identity or medical information or anything along those lines of any of the student-athletes on our team.”); *see also Slusser*, ECF No. 67 (CSU Defendants’ Rule 12(b) Motion to Dismiss) (repeatedly referring to trans-identifying male volleyball player on the school’s women’s volleyball team as “the allegedly transgender player”).

In this way, FERPA has been erroneously relied upon as an excuse for schools not to enforce Title IX’s standards, particularly in women’s sports, where faithful implementation of the Title IX athletics regulation depends upon the ability to identify individuals by their “sex.” *See, e.g., Independent Council on Women’s Sports, Title IX Complaint Against Sonoma County Junior College District d/b/a Santa Rosa*

Junior College ¶¶ 73, 77 n. 16 (Sept. 2025), <https://iconswomen.com/wp-content/uploads/2025/09/Title-IX-Complaint-to-Department-of-Education-Office-of-Civil-Rights.pdf> (noting that junior college was attempting to rely on FERPA to characterize sex and/or gender identity as confidential and not disclosable information).

This approach is sometimes based on a misguided reading of a U.S. Department of Education Office of Civil Rights (OCR) “Dear Colleague Letter on Transgender Students” issued in May 2016. The OCR’s May 2016 Dear Colleague Letter was the first attempt by President Obama’s administration to redefine “sex” in Title IX to mean “gender identity.” Buried in the fine print of that Dear Colleague Letter, the OCR addressed FERPA and opined upon whether a student’s “sex” was “directory information” that did not need to be protected by the school as an “education record.” The Dear Colleague letter stated as follows:

Disclosure of Directory Information. Under FERPA’s implementing regulations, a school may disclose appropriately designated directory information from a student’s education record if disclosure would not generally be considered harmful or an invasion of privacy. Directory information may include a student’s name, address, telephone number, date and place of birth, honors and awards, and dates of attendance. *School officials may not designate students’ sex, including transgender status, as directory information because doing so could be harmful or an invasion of privacy.* A school also must allow eligible students (i.e., students who have reached 18 years of age or are attending a postsecondary institution) or parents, as appropriate, a reasonable amount of time to request that the school not disclose a student’s directory information.

U.S. Dep’t. of Justice & U.S. Dep’t. of Educ., *Dear Colleague Letter on Transgender Students* (May 13, 2026),

https://www.justice.gov/d9/dear_colleague_letter_on_transgender_students_0.pdf

(emphasis added).

There is, however, no support in the statutory language for the foregoing conclusion that biological sex is entitled to privacy protection. In fact, the relevant statute states that directory information is disclosable and does not prevent sex from being regarded as directory information, particularly for athletes, who can be required to disclose biological information in order to participate in scholastic sports.

The relevant section states:

For the purposes of this section the term “directory information” relating to a student includes the following: the student’s name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

20 U.S.C. § 1232g(5)(A). Thus, this statute, although it does not refer to “sex,” does authorize disclosure of “participation in officially recognized activities and sports” and of biological information relevant to such participation, including “weight and height of members of athletic teams.” Furthermore, it makes little sense in the context of students who affirmatively seek to participate in scholastic sport to characterize as “directory information” that information which is necessary to place the student in an appropriate biological sports eligibility category. By seeking to participate in women’s sports and use women’s facilities, a student-athlete should be presumed to have consented to disclosure of not just height and weight but all biological information necessary to ascertain their eligibility to compete in sex-separated sports and use sex-separated facilities.

The first Trump administration withdrew the 2016 Dear Colleague letter on February 22, 2017, and it was not at any point reissued. *See* U.S. Dep’t of Educ. & U.S. Dep’t of Justice, *Dear Colleague Letter* (Feb. 22, 2017) <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/letters/colleague-201702-title-ix.pdf>. Therefore, the 2016 Letter should not be relied upon to withhold information from female athletes or to prevent information from being used that will protect women’s rights under Title IX.

Regarding a male’s biological sex as private information would render it impossible to protect girls and women against discrimination and physical harm and to protect women’s equal opportunities under Title IX. It would deny women the very information that this Court recently recognized in *B.P.J.* the states may use “to provide separate women’s and men’s sports defined by biological sex.” *B.P.J.*, 146 S.Ct. at 2373. To find that biological sex is constitutionally protected private information, as the lower courts did here, would effectively gut this Court’s holding in *B.P.J.*, as school administrators could avoid state laws protecting girls’ sports by claiming they are not allowed to inquire into the sex of sports participants as a condition of eligibility.

C. Sport Participation Has Traditionally Required Submission of Objective Health Information

Furthermore, the idea that requiring sex verification is overly intrusive in the context of competitive sports is untenable. Although some college and high school athletic associations and some colleges and high schools, like the defendants in this case, claim that biological sex is private information that they cannot ask for and use

for sport eligibility purposes, these same organizations typically demand that student-athletes provide much more sensitive and detailed data about their health and other physical characteristics.

1. Pre-participation Physicals and Required Medical Disclosures

“An annual [Preparticipation Physical or “PPE”] is required by most state high school athletic associations for participation in school-based sports[.]” Jason McDonald et al., *The Preparticipation Physical Evaluation*, 103 Am. Fam. Physician 539, 539–46 (2021). This is likewise true in the State of Washington. See ProCare Occupational Health, *Sports Physicals*, <https://www.procareforyou.com/sports-physicals>.

The published guideline of the American Academy of Pediatrics, recommends that the PPE “include a structured physical examination that focuses on the cardiovascular, musculoskeletal, and neurologic systems. Screening for depression, anxiety disorders, and attention-deficit/hyperactivity disorder is also recommended.” *Id.*

2. Weight Limit Sports

Of course, weight-limited high school and college sports, such as wrestling, require weigh-ins that record an athlete’s weight prior to every competition. See, e.g., Nat’l Collegiate Athletic Ass’n, *2024–25 NCAA Division I Men’s Wrestling Pre-Championships Manual* § 1.5, Rule 9.1.1 (2024), https://ncaaorg.s3.amazonaws.com/championships/sports/wrestling/d1/men/2024-25D1MWR_PreChampsManual.pdf. The WIAA requires the same. See Washington

Interscholastic Activities Ass’n, *Wrestling* *Resources*,
<https://www.mywiaa.wiaa.com/wrestling-resources/> (last visited Oct. 8, 2026).

As these examples reflect, it has long been recognized that schools may require students to provide biological information needed for safe and fair participation in school sports. There is no compelling reason for scholastic sports organizations to resist basing eligibility decision on biological sex or refuse to make public the sex of students who voluntarily choose to participate in scholastic sports. Doing so prevents protection of women’s equal opportunities, and compromises their physical safety and right to their own privacy in locker rooms, contrary to Title IX. Given the same scholastic sports organizations regularly compel student athletes to provide health information and biological data for eligibility screening, there is no excuse for not ascertaining biological sex to protect women and uphold Title IX in school sports.

III. School Administrators Not Just School Girls and Their Parents Have a Duty to Protect Girls from Males in Sex-Separated Sports

Title IX requires school administrators to act to protect equal opportunities for girls and women; there is no option for a school to refuse to protect girls’ opportunities and complain that a student or parent is trying to “control” the school when the parent asks the school to fulfill its Title IX duty to protect the parent’s child. Yet it is unfortunately a frequent response of school and sport administrators to sit on their hands and do nothing to protect girls’ opportunities and safety in sports.

For example, beginning in August 2022, the Mountain West Conference (a NCAA member conference) authorized the San Jose State University Women’s

Volleyball Team (“SJSU Team”) to roster Blaire Fleming, a male who claims a female gender identity. *Slusser*, ECF No. 78 ¶¶ 319, 326. Fleming had leaping ability and hitting power far exceeding any female player in the Conference, especially in spiking and blocking on the front row. *Id.* Due to his hitting power Fleming’s spikes significantly increased the risk of teammates and opponents being concussed. *Id.* ¶¶ 415, 417. Fleming hit women in the face with spikes because those players could not react to the speed of his spikes in time. *Id.* ¶¶ 419, 428.

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

There are endless examples of administrators doing just what the administrators did here – turning a blind eye to the plight of female athletes and forcing girls to fend for themselves or simply leave sport out of frustration over not being protected. For example, Stephanie Turner, who is supported by ICONS, started fencing on the University of Maryland college club team twelve years ago and became competitive within the United States Fencing Association. Stephanie dedicated a significant portion of her life to this sport because she loves it. Fencing is a combat

sport, requiring elements of speed, power, reaction time, distance control, footwork and bladework – all attributes affected by sex development.

In April 2025, Stephanie took a knee to protest a man competing in the women's category, Division 1A Women's Foil. This was not the first time Stephanie had faced a male competitor in a women's fencing competition. To avoid competing against a male in previous instances, she would wait until the last minute to register for a tournament to see if any known men would register. If they did, Stephanie would not sign up. She missed out on numerous regional and national tournaments and important opportunities to advance in fencing due to this equivalent of "self-censorship," and of course, this approach did not improve her circumstances or those of other women. When she finally decided to take a knee to a male competitor in a fencing match, Stephanie had already spent the money on competition fees and new equipment, spent hours training and refurbishing her equipment, and had traveled in preparation for the tournament. So, that morning when she found herself on the piste against a male fencer, Stephanie decided to stand down. Doing so, however, created its own hardships.

Stephanie experienced harassment, violence, and social exclusion after speaking out on the issue of a male competing in women's sports. Similar treatment may be experienced by K.M.K. and other girls when administrators shift the burden to girls to protect themselves against male competitors in sport. It is not fair for women, or protective of their opportunities, to put the onus on girls rather than administrators to ascertain whether their opponent is a male. Title IX does not

endorse passivity in scholastic sports administrators or permit them to defer to female competitors the administrators' duties to protect the safety of women's competitions.

Nor can scholastic sports administrators legitimately require parents to assume the duty to make school sport fair and safe. Russell Belden is the father of a high school cross-country and track athlete in Washington state. His daughter had to compete against two male athletes in 2023. One athlete had initially competed as a male during his freshman year in high school, but switched to the girls' team after performing poorly. After changing to the girls' team, this boy was named League MVP and helped his school qualify to attend the state competition, which prevented Mr. Belden's daughter's school from qualifying.

Mr. Belden observed that many parents and school officials in the State of Washington are afraid to speak out about boys competing in girls' high school sports. He reports that his daughter's school repeatedly stated that the WIAA would take away all sports if Mr. Belden and his daughter spoke up publicly about the daughter having to face boys in competitions. When they did speak up anyway, Mr. Belden and his daughter were called names for advocating for fairness, and Mr. Belden was threatened by police (South Whidbey) and removed from high school events. The public shaming that can result when girls are required to speak up in their own defense is another reason that parents should not be required to identify male competitors or be expected to withdraw their daughters from competitions when they believe they will be facing a male.

It is unreasonable for school administrators to attempt to shift the burden of protecting girls in school sports to parents and children. Yet that is exactly what the defendants have done in this case. Title IX requires more to protect women's safety and equal opportunities.

CONCLUSION

For the foregoing reasons, *Amici* request the Court grant review and grant the relief requested by the Applicants.

Respectfully submitted,

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