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 DO NO HARM AS *AMICUS CURIAE* IN SUPPORT OF APPLICANTS

DAVID H. THOMPSON
Counsel of Record
ADAM P. LAXALT
JOHN D. RAMER
COOPER & KIRK, PLLC
1523 New Hampshire Avenue, N.W.
Washington, D.C. 20036
(202) 220-9600
dthompson@cooperkirk.com

Counsel for Amicus Curiae *Do No Harm*

October 9, 2026

TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

INTEREST OF *AMICUS CURIAE* 1

SUMMARY OF ARGUMENT 1

ARGUMENT 3

I. Sex Matters In Sports, And Gender Identity Does Not 3

A. Sex Is A Fact Tied To Safety And Fairness In Sports 4

B. Gender Identity Is A Psychological Concept Distinct From Sex 8

C. Medical Interventions Do Not Make Identity Relevant To Sports 10

1. Systematic reviews are gold standard medical evidence 11

2. Sex-denying procedures lack evidentiary support 13

3. Sex-denying procedures are dangerous 17

II. Sports Programs That Prioritize Identity Over Sex Violate Title IX 21

A. *B.P.J.*'s Interpretation Of Title IX's Text Controls 21

B. Identity-Based Exceptions Lack Any Biological Justification 22

C. Identity-Based Separation Denies Females Equal Opportunity 23

CONCLUSION 25

TABLE OF AUTHORITIES

Page(s)

Cases:

Clark v. Martinez,
543 U.S. 371 (2005) 21

Daggett v. Comm'n on Governmental Ethics & Election Pracs.,
172 F.3d 104 (1st Cir. 1999) 3

FCC v. Consumers' Rsch.,
145 S. Ct. 2482 (2025) 24, 25

Jackson v. Birmingham Bd. of Educ.,
544 U.S. 167 (2005) 22

Loper Bright Enters. v. Raimondo,
144 S. Ct. 2244 (2024) 23

O'Connor v. Bd. of Educ. of Sch. Dist. 23,
449 U.S. 1301 (1980) 24

Roper v. Simmons
543 U.S. 551 (2005) 3

Trump v. CASA, Inc.,
145 S. Ct. 2540 (2025) 21, 22

United States v. Skrmetti,
145 S. Ct. 1816 (2025) 9, 10

United States v. Virginia,
518 U.S. 515 (1996) 6

West Virginia v. B.P.J.,
146 S. Ct. 2356 (2026) 2, 4, 6, 7, 10, 21, 22, 23, 24

Wiesmueller v. Kosobucki,
547 F.3d 740 (7th Cir. 2008) 3

Statutes and Regulations:

20 U.S.C. § 1681(a) 21, 22

34 C.F.R.
§ 106.41(a) 22, 23
§ 106.41(b) 22, 23
§ 106.41(c) 23

FED. R. EVID. 201 3

Other Authorities:

Aditi Bhargava et al., *Considering Sex as a Biological Variable in Basic and Clinical Studies: An Endocrine Society Scientific Statement*, 42 ENDOCRINE REVS. 219 (2021), https://perma.cc/7U6B-HB6U 4, 5, 8

AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (5th ed. 2013) 10

Editorial Board, *Finland's Lessons on Transgender Children*, WALL ST. J. (Apr. 16, 2026), https://perma.cc/3TR4-EMMZ 17

Eli Coleman et al., *Standards of Care for the Health of Transgender and Gender Diverse People*, 23 INT'L J. TRANSGENDER HEALTH S1 (2022), https://perma.cc/58A7-BRN6 ..... 18, 19, 20

Evidence Review: Gender-Affirming Hormones for Children and Adolescents with Gender Dysphoria, NAT'L INST. FOR HEALTH & CARE EXCELLENCE (Oct. 2020), https://perma.cc/U49T-JLGJ 14, 15

Evidence Review: Gonadotrophin Releasing Hormone Analogues for Children and Adolescents with Gender Dysphoria, NAT'L INST. FOR HEALTH & CARE EXCELLENCE (Oct. 2020), https://perma.cc/F9FF-ZPFR 14

Gender Census 2020: Identity Words, GENDER CENSUS, https://perma.cc/U636-V2MB 8, 9

Gordon Guyatt et al., *Users' Guides to the Medical Literature: Essentials of Evidence-Based Clinical Practice*, JAMAEVIDENCE (3d ed. 2015) 11, 12, 13

Guide to Sexual Orientation and Gender Identity and the Washington State Law Against Discrimination, WASH. STATE HUM. RTS. COMM'N (Nov. 19, 2024), https://perma.cc/464D-7QUX 8, 9

Hilary Cass, *Independent Review of Gender Identity Services for Children and Young People: Final Report*, THE CASS REV. (2024), https://perma.cc/V9HV-MFJA 11, 19, 20

How SEX and GENDER Influence Health and Disease, NAT'L INSTS. OF HEALTH, OFF. OF RSCH. ON WOMEN'S HEALTH, https://perma.cc/LK2H-8935 ..... 4, 5

Howard Balshem et al., *GRADE Guidelines: 3. Rating the Quality of Evidence*, 64 J. CLINICAL EPIDEMIOLOGY 401 (2011) 12, 13

Other Authorities—Continued:

Jack Turban, *I'm a Psychiatrist. Here's How I Talk to Transgender Youth and Their Families About Gender Identity*, N.Y. TIMES (July 8, 2024), https://perma.cc/4AQE-3F9Y 8

Jay Greene & Ian Kingsbury, *The Effect of State Bans on Gender Interventions for Minors on Teen Suicide Rates*, DO NO HARM, https://perma.cc/SVK7-PMA3 ..... 20, 21

Jo Taylor et al., *Interventions To Suppress Puberty in Adolescents Experiencing Gender Dysphoria or Incongruence: A Systematic Review*, ARCHIVES DISEASE CHILDHOOD 1 (2024), https://perma.cc/UFL5-7RPB 16

Jo Taylor et al., *Masculinising and Feminising Hormone Interventions for Adolescents Experiencing Gender Dysphoria or Incongruence: A Systematic Review*, ARCHIVES DISEASE CHILDHOOD 1 (2024), https://perma.cc/YCP9-WWSG 16

Jonas F. Ludvigsson et al., *A Systematic Review of Hormone Treatment for Children with Gender Dysphoria and Recommendations for Research*, 112 ACTA PAEDIATRICA 2279 (2023), https://perma.cc/E7S9-7CLB 15

Marco A. Hidalgo et al., *The Gender Affirmative Model: What We Know and What We Aim to Learn*, 56 HUM. DEV. 285 (2013),), https://perma.cc/43E8-XFJR 9

Martin Beckford, *Transgender Footballer Who Broke Knee of Female Opponent and Scored Five Goals in One Match – As FA Bans Trans Players from Women's Game*, DAILY MAIL (May 2, 2025), https://perma.cc/GAM4-MK22 7

Massachusetts School Calls for Change After Female Field Hockey Player Hurt by Boy's Shot, CBS NEWS (Nov. 6, 2023), https://perma.cc/9GGC-TVTF 7

Michael Biggs, *The Dutch Protocol for Juvenile Transsexuals: Origins and Evidence*, 49 J. SEX & MARITAL THERAPY 348 (2023), https://perma.cc/XDP7-XYGQ 20

NICE Evidence Reviews, THE CASS REV., https://perma.cc/APZ2-W8MS 14

Peter A. Lee et al., *Global Disorders of Sex Development Update Since 2006: Perceptions, Approach and Care*, 85 HORMONE RSCH. PAEDIATRICS 158 (2016), https://perma.cc/CP72-X8TC 5

Other Authorities—Continued:

Policy on the Protection of the Female (Women's) Category in Olympic Sport and Guiding Considerations for International Federations and Sports Governing Bodies, INT'L OLYMPIC COMM. (Mar. 26, 2026), https://perma.cc/J6Y3-S5NY 6, 7

Recommendation of the Council for Choices in Health Care in Finland (PALKO/COHERE Finland): Medical Treatment Methods for Dysphoria Related to Gender Variance in Minors, PALVELUVALIKOIMA (Nov. 6, 2020), https://perma.cc/PF72-H654 ..... 13, 14

Romina Brignardello-Petersen & Wojtek Wiercioch, *Effects of Gender Affirming Therapies in People with Gender Dysphoria: Evaluation of the Best Available Evidence* (May 16, 2022), https://perma.cc/S4A3-NKDY 15

Sami-Matti Ruuska et al., *Psychiatric Morbidity Among Adolescents and Young Adults Who Contacted Specialised Gender Identity Services in Finland in 1996-2019: A Register Study*, ACTA PAEDIATRICA (2026), https://perma.cc/86EP-YAQB 17

Senay Boztas, *'Trans Rugby Player's Tackle Wrecked My Knee—Why Was She Allowed to Play?'*, THE TIMES (May 3, 2025), https://perma.cc/JQX8-NWSH 7

THE FEDERALIST NO. 78 (Alexander Hamilton) (George W. Carey & James McClellan eds., 2001) 22

Treatment for Pediatric Gender Dysphoria: Review of Evidence and Best Practices, U.S. DEP'T OF HEALTH & HUM. SERVS., OFF. OF POPULATION AFFS. (Nov. 19, 2025), https://perma.cc/3W5Q-TQC6 ..... 9, 10, 16, 17

Unfair Play: Keeping Men Out of Women's Sports: Hearing Before the H. Comm. on Oversight, Subcomm. on Gov't Efficiency, 119th Cong. (2025) 7

Vera L. Negenborn et al., *Lethal Necrotizing Cellulitis Caused by ESBL-Producing E. Coli after Laparoscopic Intestinal Vaginoplasty*, 30 J. PEDIATRIC & ADOLESCENT GYNECOLOGY e19 (2017) 20

Wylie C. Hembree et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline*, 102 J. CLINICAL ENDOCRINOLOGY & METABOLISM 3869 (2017), https://perma.cc/3FEZ-JX95 ..... 18, 19, 20

INTEREST OF *AMICUS CURIAE*[1]

Do No Harm is a nonprofit membership organization that includes over 54,000 physicians, nurses, medical students, patients, and policymakers. Do No Harm is committed to ensuring that the practice of medicine is driven by scientific evidence rather than ideology. In recent years, the practice of sex-denying interventions, euphemistically known as "gender-affirming care," has become more common despite the serious harm caused by those interventions and the complete lack of reliable evidence for any benefit resulting from them. Part of Do No Harm's mission is to ensure that courts have a proper understanding of the lack of evidence for these procedures. Do No Harm submits this brief to explain that sex is a scientific reality whereas gender identity is a self-reported perception, which means that sports organized around identity undercut Title IX's sex-based guarantees—even if the athletes involved have been subjected to sex-denying interventions.

SUMMARY OF ARGUMENT

Washington scorns law and science in favor of a feeling. Its choice to initially separate sports by sex and then carve out an exception based on an athlete's self-described gender identity ignores biology and thus violates Title IX.

I. Scientific facts do not change with the shifting winds of cultural ideology. Human beings, like every mammal, are divided into two sexes—male and female.

A. An individual's sex is determined by his or her body's role in reproduction

[1] Do No Harm certifies that no counsel for any party authored this brief in whole or in part, no party or party's counsel made a monetary contribution to fund its preparation or submission, and no person other than *amicus* or its counsel made such a monetary contribution.

as evidenced by his or her chromosomes, gonads, and anatomy. And as *West Virginia v. B.P.J.* teaches, an athlete's biology contributes to the safety and fairness of the sports in which he or she participates. *See* 146 S. Ct. 2356, 2367 (2026).

B. Gender identity, in contrast, is a *psychological* concept. It refers to an individual's perception of himself or herself. And it can be determined only by asking an individual about it. Crucially, gender identity is different from sex. Thus, focusing on identity often undercuts safety and fairness.

C. Some individuals report distress from a perceived discordance between their sex and gender identity. Often, practitioners promote drugs and surgeries to "treat" that distress. No reliable evidence supports the claim that subjecting a male to interventions purporting to affirm his identity removes his athletic advantage over females. That is no surprise. These procedures for minors are experimental—even the evidence for their safety and efficacy is weak.

II. Under *B.P.J.*'s interpretation, Title IX's prohibition against sex discrimination excludes identity-based sports.

A. Title IX's bar on sex discrimination remains unchanged since *B.P.J.* Though *B.P.J.* did not pronounce judgment on this case's facts—for the simple reason that these facts were not before the Court—the statute's words mean the same here as there. And *B.P.J.*'s interpretation of Title IX condemns identity-based sports.

B. For one, *B.P.J.* taught that funding recipients may separate the sexes for reasons grounded in biology. Yet programs like Washington's make an exception for boys who identify as girls. Because of that exception, a funding recipient like

Washington cannot claim that biology justifies its separation of the sexes.

C. Alternatively, Title IX prevents a funding recipient from separating sports by gender identity instead of sex. *B.P.J.* makes plain that equal opportunity often requires separate male and female teams. Two gender identity-based teams do not suffice. This Court should grant the application.

ARGUMENT

Do No Harm's brief makes two points.[2] First, an athlete's sex informs the safety and fairness of an athletic competition. By contrast, an athlete's gender identity reveals nothing about safety and fairness, even if that athlete has been subjected to various experimental medical procedures. Second, *B.P.J.* confirms that Title IX protects individuals based on their sex. When funding recipients ignore sex and prioritize gender identity, they institute sports programs that violate Title IX.

I. Sex Matters In Sports, And Gender Identity Does Not.

Too many federal funding recipients adhere to the cultural myth that feelings matter more than biology in competitive sports. The scientific poverty of that idea can be shown in three steps. First, an athlete's sex is a verifiable reality that can be used to ensure safety and fairness for other athletes. Second, and in contrast to sex, an

[2] The Court may take judicial notice of the scientific evidence in this brief. These materials are offered as legislative facts—"those which have relevance to legal reasoning and the lawmaking process." FED. R. EVID. 201(a), advisory committee's note. Legislative facts contrast with adjudicative facts—"simply the facts of the particular case." *Id.* Crucially, "the ordinary limits on judicial notice hav[e] no application to legislative facts." *Daggett v. Comm'n on Governmental Ethics & Election Pracs.*, 172 F.3d 104, 112 (1st Cir. 1999); *see also Wiesmueller v. Kosobucki*, 547 F.3d 740, 742 (7th Cir. 2008) (Posner, J., in chambers) ("[T]here are background facts (sometimes called 'legislative' facts) that lie outside the domain of rules of evidence yet are often essential to the decision of a case."). Accordingly, this Court has previously considered scientific evidence from *amici*. For example, in *Roper v. Simmons*, the Court referenced "scientific and sociological studies [presented by] respondent and his *amici*" to demonstrate juveniles lack maturity and responsibility. 543 U.S. 551, 569 (2005). Thus, the studies and reports in this brief are like legislative facts on which the Court has relied before.

athlete's gender identity is an unfalsifiable psychological state that, if prioritized over sex, can undo the safety and fairness achieved by Title IX. Third, no evidence verifies the claim that subjecting an athlete to various medical interventions makes gender identity more relevant to safety and fairness than sex.

A. Sex Is A Fact Tied To Safety And Fairness In Sports.

Sex is a biological classification that is "encoded in our DNA." *See How SEX and GENDER Influence Health and Disease*, NAT'L INSTS. OF HEALTH, OFF. OF RSCH. ON WOMEN'S HEALTH, https://perma.cc/LK2H-8935. That means that an athlete's sex can be objectively determined. And sex is binary—that is, it can be either male or female. In turn, sex relates to whether an athletic competition is safe and fair. "Men and boys with gender dysphoria are not women or girls, even if they believe that they are. Sex is an immutable 'biological' characteristic; it is binary; and 'man' and 'woman,' 'boy' and 'girl,' are the terms that correspond to adults and children of each sex." *B.P.J.*, 146 S. Ct. at 2382 (Thomas, J., concurring) (internal citation omitted).

Objective. Sexual traits are "controlled by the presence of XX or XY chromosomes," which determine the "type of gonads" a person possesses. Aditi Bhargava et al., *Considering Sex as a Biological Variable in Basic and Clinical Studies: An Endocrine Society Scientific Statement*, 42 ENDOCRINE REVS. 219, 221 (2021), https://perma.cc/7U6B-HB6U. An individual's gonads, in turn, generate particular "secretions" that "regulate formation of female or male reproductive tissues." *Id.* Specifically, gonadal secretions determine such characteristics as "external genitalia," the presence of a "uterus and oviducts" or "sperm ducts," and even "facial hair and pitch of voice." *Id.* Given the nature of the human body, "sex

differences exist at molecular and cellular levels." *Id.* at 245; NAT'L INSTS. OF HEALTH, *supra* ("Every cell in your body has a sex—making up tissues and organs, like your skin, brain, heart, and stomach."). An individual's sex is thus a biological reality.

Binary. Sex "is dichotomous because of the different roles of each sex in reproduction." Bhargava, *supra*, at 221. Specifically, the "classical biological definition of the 2 sexes is that females have ovaries and make larger female gametes (eggs), whereas males have testes and make smaller male gametes (sperm)." *Id.* These "2 gametes fertilize to form the zygote, which has the potential to become a new individual." *Id.* "Each cell" in an individual's body "is either male or female depending on whether" that person is "a man or a woman." NAT'L INSTS. OF HEALTH, *supra*. Thus, sex is "dichotomous." Bhargava, *supra*, at 220. True, some people experience "atypical" sexual development. Peter A. Lee et al., *Global Disorders of Sex Development Update Since 2006: Perceptions, Approach and Care*, 85 HORMONE RSCH. PAEDIATRICS 158, 159 (2016), https://perma.cc/CP72-X8TC. Some variations are serious enough to be "termed disorders of sexual development (DSD)." Bhargava, *supra*, at 225 (emphasis omitted). But DSD prevalence is low, with estimates varying according to the definitions used. For example, cases of ambiguous genitalia at birth are incredibly rare—though calculation is difficult, the number has been estimated at roughly 0.02% of the population. *See* Lee, *supra*, at 159. And "only a small fraction of those with DSDs" require detailed assessment to determine the individual's sex. *Id.* This fraction does not—indeed, could not—change the reality that "sex is dichotomous." Bhargava, *supra*, at 221.

Safety. Given that sex is an objective, binary, biological fact, a male athlete's participation in a sport can make competition unsafe for female athletes. As *B.P.J.* explained, there are "inherent physical differences between biological women and biological men." 146 S. Ct. at 2371. Indeed, Justice Ginsburg, writing for the Court, once described the "[p]hysical differences between men and women" as "enduring." *United States v. Virginia*, 518 U.S. 515, 533 (1996). "The differences include, among other things, height, weight, strength, speed, endurance, and jumping ability." *B.P.J.*, 146 S. Ct. at 2367. So "in contact sports, forcing female athletes to compete against males can create significant safety risks." *Id.* "And safety concerns also exist in ostensibly non-contact sports, such as volleyball, where spiked balls can cause serious injuries, and softball, where line drives can similarly cause significant harm." *Id.* at 2375. The *B.P.J.* Court is not alone in concluding that co-ed sports threaten women. As *B.P.J.* reported, "the International Olympic Committee [IOC], the United States Olympic and Paralympic Committee, and the NCAA—have banned all biological males from competing in women's and girls' sports." *Id.* at 2367.

Fairness. As with safety, a male athlete's competing against female athletes can be unfair to females. *B.P.J.* explained that "in virtually all competitive sports, forcing female athletes to compete against males can undermine competitive fairness." *Id.* The IOC's restrictions on males' participation in females' sports explain how. As *B.P.J.* reported, males have "a '20+ per cent' advantage in 'most throwing and jumping events,' a '10-12 per cent' advantage in 'most running and swimming events,' and a 'greater than 100 per cent' advantage in 'events that involve explosive

power.'" *Id.* at 2369 (quoting *Policy on the Protection of the Female (Women's) Category in Olympic Sport and Guiding Considerations for International Federations and Sports Governing Bodies* at 2–3, INT'L OLYMPIC COMM. (Mar. 26, 2026), https://perma.cc/J6Y3-S5NY ("IOC Policy")). Given those differences, *B.P.J.* correctly recognized that "allowing biological males to play on women's and girls' sports teams can put female athletes at a serious disadvantage." *Id.* at 2372. And it does not matter if just one male athlete joins the females' league: "[a]llowing a biological male athlete to compete on a girls' team *necessarily* displaces or disadvantages a female athlete." *Id.*

Women pay the price when biology's relation to safety and fairness is ignored. Consider the growing number of stories about women being injured by men competing in women's sports. *See, e.g.*, *Unfair Play: Keeping Men Out of Women's Sports: Hearing Before the H. Comm. on Oversight, Subcomm. on Gov't Efficiency*, 119th Cong. 9–11 (2025) (statement of Payton McNabb); Martin Beckford, *Transgender Footballer Who Broke Knee of Female Opponent and Scored Five Goals in One Match – As FA Bans Trans Players from Women's Game*, DAILY MAIL (May 2, 2025), https://perma.cc/GAM4-MK22; Senay Boztas, *'Trans Rugby Player's Tackle Wrecked My Knee—Why Was She Allowed to Play?'*, THE TIMES (May 3, 2025), https://perma.cc/JQX8-NWSH; *Massachusetts School Calls for Change After Female Field Hockey Player Hurt by Boy's Shot*, CBS NEWS (Nov. 6, 2023), https://perma.cc/9GGC-TVTF. Washington may deny biology, but it will not be able to deny the harm caused by gender ideology as women's injuries continue to pile up.

B. Gender Identity Is A Psychological Concept Distinct From Sex.

In contrast to sex, an athlete's gender identity need not match the athlete's sex and thus bears no relation to biological safety and fairness concerns. Instead, prioritizing gender identity over sex may undermine any safety and fairness in women's sports. This negative impact on safety and fairness results from three features of gender identity: it is subjective, nonbinary, and mutable.

Subjective. Unlike the verifiable reality of sex, a male athlete announces his gender identity, which no one can second-guess. While sex is a biological characteristic, identity "is a psychological concept that refers to an individual's self-perception." Bhargava, *supra*, at 226. As one proponent of gender ideology has written, "gender identity" is a "feeling." Jack Turban, *I'm a Psychiatrist. Here's How I Talk to Transgender Youth and Their Families About Gender Identity*, N.Y. TIMES (July 8, 2024), https://perma.cc/4AQE-3F9Y. Because identity lacks objectivity, sports organized around identity can lead to different classifications of two identical males based solely on their feelings. But the difference in the feelings of two identical males does not make one's participation in females' sports any safer or fairer than the other's participation. Instead, honoring the one male's identity over his sex would negate the safety and fairness resulting from separating sports in the first place.

Nonbinary. Whereas only two sexes exist, a male athlete may claim many different identities. Washington's Human Rights Commission lists at least four other identities—"genderfluid, genderqueer, or agender," and even the term "nonbinary" itself "can be a distinct gender identity." *Guide to Sexual Orientation and Gender Identity and the Washington State Law Against Discrimination* at 2, WASH. STATE

HUM. RTS. COMM'N (Nov. 19, 2024), https://perma.cc/464D-7QUX; *Gender Census 2020: Identity Words*, GENDER CENSUS, https://perma.cc/U636-V2MB (discussing online survey where participants wrote in over 3,500 unique gender identity terms). Thus, a male athlete could identify as both a boy and a girl. Or as neither a boy nor a girl. But no matter which label (or labels) the male claims, his biology remains the same. So, his participation in athletics poses the same safety and fairness concerns as if he identified as a boy.

Mutable. Sex lasts a lifetime, but a male athlete's identity can change—even during the middle of a competition. *See United States v. Skrmetti*, 145 S. Ct. 1816, 1851 (2025) (Barrett, J., concurring) ("[T]ransgender status does not turn on an 'immutable . . . characteristi[c].' " (second alteration in original)). While proponents of gender ideology have been inconsistent in their claims about the extent to which a person's gender identity is fixed, *see Treatment for Pediatric Gender Dysphoria: Review of Evidence and Best Practices*, at 37 & n.28, U.S. DEP'T OF HEALTH & HUM. SERVS., OFF. OF POPULATION AFFS. (Nov. 19, 2025), https://perma.cc/3W5Q-TQC6 ("HHS Review"), some prominent supporters have rejected the "[m]yth" that "gender identity and gender expression are immutable," noting instead that "children should be comfortable to freely explore a range of gender identities." Marco A. Hidalgo et al., *The Gender Affirmative Model: What We Know and What We Aim to Learn*, 56 HUM. DEV. 285, 288 (2013), https://perma.cc/43E8-XFJR. And Washington's embrace of "genderfluid" as a gender identity appears to express its view that a person's identity is not static. WASH. STATE HUM. RTS. COMM'N, *supra*, at 2. Thus, on

Washington's view, a male wrestler's takedown of a female wrestler could be an acceptable risk at the start of a wrestling match but then unacceptable thirty seconds later if the male's gender identity has changed. Of course, the biological reality is that the first takedown is just as unsafe and unfair as the second.

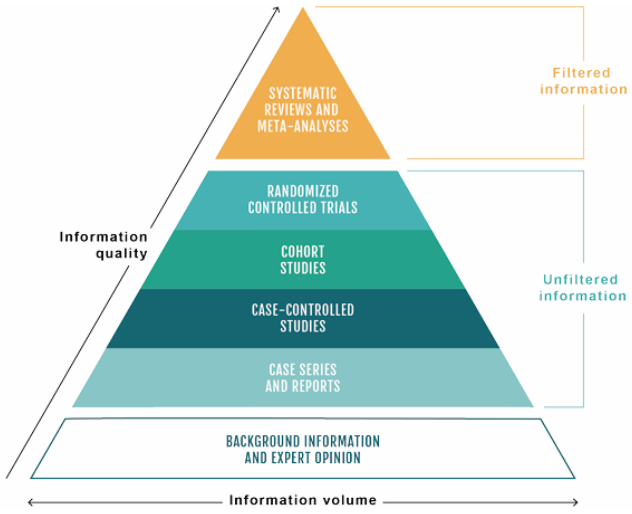
C. Medical Interventions Do Not Make Identity Relevant To Sports.

Some individuals report an inconsistency between their sex and their gender identity. This perceived inconsistency can lead to psychological distress, resulting in a diagnosis of "gender dysphoria." AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 451–52 (5th ed. 2013). Some medical practitioners support a range of experimental physical interventions to treat this psychological condition. These sex-denying interventions include drugs to stop puberty (puberty blockers) and induce traits associated with the opposite sex (cross-sex hormones), as well as surgeries that range from removing healthy organs to replacing them with approximations of body parts belonging to the opposite sex. *See* HHS Review, *supra*, at 9–11, 91, 116, 125, 128–29. As *B.P.J.* reported, there "is no current evidence that testosterone suppression or gender-affirming hormone treatment eliminates" the "Male performance advantage" in sports. 146 S. Ct. at 2379 (quoting IOC Policy, *supra*, at 2–3). As explained below, that lack of proof is unsurprising because the evidence supporting sex-denying interventions is startlingly inadequate. Given the medical community's poor understanding of sex-denying procedures—and the risk of severe medical consequences from such procedures—children and adolescents should not be subjected to them. *See generally Skrmetti*, 145 S. Ct. 1816. And no one should conclude that a male's participation in

females' sports is safer or fairer simply because he has been subjected to these interventions.

1. Systematic reviews are gold standard medical evidence.

Although the proper practice of medicine is driven by evidence, not all evidence is created equal. Researchers have thus spent decades refining the process that clinicians use to assess the medical evidence supporting a particular medical intervention. That process—often referred to as the practice of "evidence-based medicine"—outlines a hierarchy of evidence based on the confidence a clinician can place in a particular source of evidence. *See* Gordon Guyatt et al., *Users' Guides to the Medical Literature: Essentials of Evidence-Based Clinical Practice* 15 fig. 2-3, JAMAEVIDENCE (3d ed. 2015) ("Evidence-Based Medicine User Guide"). The "pyramid of standards of evidence" reflects the hierarchy of reliability for evidence in medicine:



See Hilary Cass, *Independent Review of Gender Identity Services for Children and Young People: Final Report* at 55, THE CASS REV. (2024), https://perma.cc/V9HV-MFJA ("Cass Review"). As the pyramid shows, "systematic reviews" are at the top of

the hierarchy of evidence. At the bottom is clinical experience—*i.e.*, "the unsystematic observations of individual clinicians." Evidence-Based Medicine User Guide at 15.

Well-conducted systematic reviews provide the greatest insight into the medical evidence underpinning a particular intervention because they seek to account for all relevant studies, assess those individual studies for areas of potential scientific bias, and then assess the *reliability* of the *entire* evidence base. *See id.* at 274–76. To determine the certainty of the evidence, researchers frequently use tools such as the Grading of Recommendations Assessment, Development, and Evaluation (GRADE) method. *See id.* at 16–17. In the GRADE system, researchers rate the evidence using specified criteria. "In the context of a systematic review, the ratings of the quality of evidence reflect the extent of our confidence that the estimates of the effect are correct." Howard Balshem et al., *GRADE Guidelines: 3. Rating the Quality of Evidence*, 64 J. CLINICAL EPIDEMIOLOGY 401, 403 (2011). This resulting rating of the evidence is either "high, moderate, low, or very low." Evidence-Based Medicine User Guide at 16. The following definitions explain what the various levels mean:

> High Quality Evidence: "We are *very confident* that the true effect lies close to that of the estimate of the effect."
>
> Moderate Quality Evidence: "We are *moderately confident* in the effect estimate: The true effect is likely to be close to the estimate of the effect, but there is a possibility that it is substantially different."
>
> Low Quality Evidence: "Our *confidence* in the effect estimate *is limited*: The true effect may be *substantially different* from the estimate of the effect."

> Very Low Quality Evidence: "We have *very little confidence* in the effect estimate: The true effect *is likely to be substantially different* from the estimate of effect."

Balshem, *supra*, at 404 tbl.2 (emphasis added). Thus, when evidence is deemed "low" or "very low" quality, that means researchers have "limited" or "very little confidence" that the results of studies reflect the truth; indeed, the truth may or likely will turn out "to be substantially different" from what such studies say.

Finally, after analyzing all relevant studies, the researchers will "summarize the results." Evidence-Based Medicine User Guide at 275. This process can include a quantitative synthesis or "meta-analysis" of data that provides an overview to clinicians. *See id.* at 275–76. The result is a study of studies—a comprehensive look at the evidence that accounts for the reliability of the studies forming the evidence base. In short, systematic reviews are the most reliable form of medical evidence.

2. Sex-denying procedures lack evidentiary support.

Several entities have conducted well-designed systematic reviews to assess the evidence underlying the use of puberty blockers and cross-sex hormones on minors with gender dysphoria. All have concluded that the evidence underlying medical interventions for gender dysphoria in minors is weak; zero have come out the other way.

1. *Finland.* The first national health authority to conduct a systematic review was Finland's Council for Choices in Health Care, which completed its review in 2019. Finland's healthcare authority concluded that "gender reassignment of minors is an experimental practice." *Recommendation of the Council for Choices in Health Care in Finland (PALKO/COHERE Finland): Medical Treatment Methods for*

Dysphoria Related to Gender Variance in Minors at 8, PALVELUVALIKOIMA (Nov. 6, 2020), https://perma.cc/PF72-H654 (unofficial translation by the Society for Evidence Based Gender Medicine). This conclusion was because "[t]he reliability of the existing studies" is "highly uncertain." *Id.* at 7.

2. *The Cass Review Interim Report*. Next, in 2020, the United Kingdom's National Institute for Health and Care Excellence (NICE) completed its review of the evidence for using puberty blockers and cross-sex hormones on minors with gender dysphoria, which informed the Cass Review, an independent review commissioned by the United Kingdom's National Health Service. *See NICE Evidence Reviews*, THE CASS REV., https://perma.cc/APZ2-W8MS. The result was two separate systematic reviews—one for puberty blockers and one for cross-sex hormones. *Evidence Review: Gonadotrophin Releasing Hormone Analogues for Children and Adolescents with Gender Dysphoria*, NAT'L INST. FOR HEALTH & CARE EXCELLENCE (Oct. 2020), https://perma.cc/F9FF-ZPFR ("NICE – Review of Puberty Blockers"); *Evidence Review: Gender-Affirming Hormones for Children and Adolescents with Gender Dysphoria*, NAT'L INST. FOR HEALTH & CARE EXCELLENCE (Oct. 2020), https://perma.cc/U49T-JLGJ ("NICE – Review of Cross-Sex Hormones"). The review of puberty blockers concluded that the relevant studies were "all small, uncontrolled observational studies, which are subject to bias and confounding, and all the results are of very low certainty using [a] modified GRADE" methodology. NICE – Review of Puberty Blockers at 13. Similarly, in the review of cross-sex hormones, NICE concluded that the relevant studies were "uncontrolled observational studies, which

are subject to bias and confounding and were of very low certainty using [a] modified GRADE" methodology. NICE – Review of Cross-Sex Hormones at 13.

3. *The State of Florida.* In 2022, researchers at Canada's McMaster University—a world-renowned institution in evidence-based medicine—completed a systematic review at the request of the Florida Agency for Health Care Administration. *See* Romina Brignardello-Petersen & Wojtek Wiercioch, *Effects of Gender Affirming Therapies in People with Gender Dysphoria: Evaluation of the Best Available Evidence* 5 (May 16, 2022), https://perma.cc/S4A3-NKDY. They too found that the evidence for these interventions was weak. "Due to the important limitations in the body of evidence," they concluded, "there is great uncertainty about the effects of puberty blockers, cross-sex hormones, and surgeries in young people with gender dysphoria." *Id.*

4. *Sweden.* In 2023, Swedish researchers published a systematic review that was commissioned by Sweden's Agency for Health Technology Assessment and Assessment of Social Services. *See* Jonas F. Ludvigsson et al., *A Systematic Review of Hormone Treatment for Children with Gender Dysphoria and Recommendations for Research*, 112 ACTA PAEDIATRICA 2279 (2023), https://perma.cc/E7S9-7CLB. The review concluded that the "[e]vidence to assess the effects of hormone treatment" on (among other things) mental health in minors "with gender dysphoria is insufficient." *Id.* at 2280. Specifically, it noted that "[l]ong-term effects of hormone therapy on psychosocial health are unknown," and using puberty blockers to treat gender dysphoria "should be considered experimental treatment." *Id.*

5. *The Cass Review Final Report*. More recently, researchers from the University of York published a series of systematic reviews as part of the Cass Review. The researchers conducted systematic reviews for both puberty blockers and cross-sex hormones. *See* Jo Taylor et al., *Interventions To Suppress Puberty in Adolescents Experiencing Gender Dysphoria or Incongruence: A Systematic Review*, ARCHIVES DISEASE CHILDHOOD 1 (2024), https://perma.cc/UFL5-7RPB ("Taylor – Puberty Blockers"); Jo Taylor et al., *Masculinising and Feminising Hormone Interventions for Adolescents Experiencing Gender Dysphoria or Incongruence: A Systematic Review*, ARCHIVES DISEASE CHILDHOOD 1 (2024), https://perma.cc/YCP9-WWSG ("Taylor – Cross-Sex Hormones"). In puberty blockers review, researchers determined that their "findings add to other systematic reviews in concluding there is insufficient and/or inconsistent evidence about the effects of puberty suppression on gender dysphoria, body satisfaction, psychological and psychosocial health, cognitive development, cardiometabolic risk and fertility." Taylor – Puberty Blockers at 12. Similarly, in the review for cross-sex hormones, researchers concluded that their "findings add to other systematic reviews in concluding there is insufficient and/or inconsistent evidence about the risks and benefits of hormone interventions in this population." Taylor – Cross-Sex Hormones at 6.

6. *U.S. Department of Health and Human Services.* At the end of last year, HHS published an overview of systematic reviews (an "umbrella review") that "found the overall quality of evidence concerning the effects of" pediatric sex-denying interventions "on psychological outcomes, quality of life, regret, or long-term health,

is very low." HHS Review, *supra*, at 13. And "there is increasing recognition of the risks and harms associated with" sex-denying interventions, as evidenced "by clinical research or grounded in established biological theory." *Id.* at 227. The review concluded that "there is considerable uncertainty regarding" the "psychological and long-term health outcomes" of those who are subjected to sex-denying interventions. *Id.* at 100.

* * *

To summarize, all these reviews concluded the same thing: there is no reliable evidence to justify the use of sex-denying interventions as a treatment for gender dysphoria in minors. And a critical study issued just months ago underscores this conclusion. *See* Sami-Matti Ruuska et al., *Psychiatric Morbidity Among Adolescents and Young Adults Who Contacted Specialised Gender Identity Services in Finland in 1996-2019: A Register Study*, ACTA PAEDIATRICA (2026), https://perma.cc/86EP-YAQB. In a massive study of over 2,000 individuals under the age of 23, who were referred to Finland's gender clinics, researchers found that, "[a]mong adolescents who underwent medical gender reassignment, psychiatric morbidity *increased markedly*" and that "[p]sychiatric needs do not subside after medical gender reassignment." *Id.* at 1 (emphasis added). "The results are a rebuke to those who call for irreversible interventions for children." Editorial Board, *Finland's Lessons on Transgender Children*, WALL ST. J. (Apr. 16, 2026), https://perma.cc/3TR4-EMMZ.

3. Sex-denying procedures are dangerous.

Not only do sex-denying interventions like puberty blockers, cross-sex hormones, and surgeries lack evidentiary support, but experts and even proponents

of these procedures agree that they can lead to long-term health consequences. These include adverse effects on fertility, brain development, bone health, and more.

1. *Fertility*. To start, the combination of puberty blockers, cross-sex hormones, and surgeries sterilizes minors. This harm underlies the Cass Review's official recommendation that all "children should be offered fertility counselling and preservation prior to going onto a medical pathway." Cass Review, *supra*, at 35.

The Endocrine Society—a medical society whose members specialize in the study of hormones and treatment of hormone-related conditions—explains in its treatment guidelines for gender dysphoria that "if puberty is suppressed at an early stage and the individual completes phenotypic transition with the use of sex hormones," such an individual "may want to preserve fertility, which may be otherwise compromised." Wylie C. Hembree et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline*, 102 J. CLINICAL ENDOCRINOLOGY & METABOLISM 3869, 3882–83 (2017), https://perma.cc/3FEZ-JX95 ("Endocrine Society Guidelines").

The World Professional Association for Transgender Health (WPATH)—a group that advocates for sex-denying interventions—offers the same warning. WPATH's guidelines stress that the loss of fertility is something that must be discussed with minors who seek sex-denying procedures. *See* Eli Coleman et al., *Standards of Care for the Health of Transgender and Gender Diverse People*, 23 INT'L J. TRANSGENDER HEALTH S1, S57 (2022), https://perma.cc/58A7-BRN6 ("WPATH Standards of Care 8").

2. *Brain Development*. Next, the effect of pubertal suppression on an individual's brain development is entirely unknown. As England's experts explained in the Cass Review, "brain maturation may be temporarily or permanently disrupted by the use of puberty blockers, which could have [a] significant impact on the young person's ability to make complex risk-laden decisions, as well as having possible longer-term neuropsychological consequences." Cass Review, *supra*, at 178. The neurological harms that potentially result from pubertal suppression may also complicate subsequent decision-making regarding further interventions, like cross-sex hormones, becuase minor patients who are "already on puberty blockers" will need to consider that decision "when their psychosexual development has been paused, and possibly with little experience of their biological puberty." *Id.* at 196.

3. *Physical Harms*. Sex-denying interventions also lead to known physical harms for those subjected to them. Start with puberty blockers. The Cass Review highlights the risk of "detrimental impact to bone density," *id.* at 170, referencing studies that "found that bone density is compromised during puberty suppression, and height gain may lag behind that seen in other adolescents," *id.* at 178. England's experts also note possible effects "on metabolic health and weight." *Id.* at 179.

Cross-sex hormones likewise cause serious physical harm. For males, the use of cross-sex hormones is associated with numerous health risks, such as thromboembolic disease (blood clots); cholelithiasis (gallstones); coronary artery disease, including heart attacks; macroprolactinoma, which is a tumor of the pituitary gland; cerebrovascular disease, including strokes; hypertriglyceridemia,

which is an elevated level of triglycerides in the blood; infertility; and breast cancer. *See* Endocrine Society Guidelines, *supra*, at 3886–87 & tbl.10; WPATH Standards of Care 8, *supra*, at S119–23, S254.

Finally, sex-denying surgeries also carry serious physical risks. For males, complications include hair growth inside a surgically constructed "neo-vagina." *See* WPATH Standards of Care 8, *supra*, at S87, S132, S134, S232. Also, most seriously, complications associated with this surgery have led to death. *See* Michael Biggs, *The Dutch Protocol for Juvenile Transsexuals: Origins and Evidence*, 49 J. SEX & MARITAL THERAPY 348, 355 (2023), https://perma.cc/XDP7-XYGQ; Vera L. Negenborn et al., *Lethal Necrotizing Cellulitis Caused by ESBL-Producing E. Coli after Laparoscopic Intestinal Vaginoplasty*, 30 J. PEDIATRIC & ADOLESCENT GYNECOLOGY e19 (2017).

Crucially, the sequential nature of sex-denying interventions—puberty blockers to cross-sex hormones to surgery—means that the harms and risks of surgeries cannot be dissociated from the earlier interventions (like puberty blockers). This is because, as England's experts state in the Cass Review, "given that the vast majority of young people" who take puberty blockers "proceed from puberty blockers to masculinising/feminising hormones," there is a concern that puberty blockers "may change the trajectory of psychosexual and gender identity development"—meaning that, rather than "buy time to think," puberty blockers may instead alter a minor's perception of himself or herself. Cass Review, *supra*, at 32.

* * *

Nothing justifies these risks to America's young athletes. Suggesting otherwise, proponents of sex-denying interventions often seek to scare parents into

consenting to these interventions for their children by suggesting that without them, a young person with gender dysphoria will commit suicide. *See* Jay Greene & Ian Kingsbury, *The Effect of State Bans on Gender Interventions for Minors on Teen Suicide Rates* at 4–15, DO NO HARM, https://perma.cc/SVK7-PMA3. But the suicide claim lacks any basis in truth. *Id.* at 15–21. As already discussed, so too does the suggestion that these interventions support separating sports by gender identity. That unsupported assertion incentivizes young athletes to undergo dangerous and unproven treatments. And—as explained next—doing so contradicts Title IX's text.

II. Sports Programs That Prioritize Identity Over Sex Violate Title IX.

As interpreted in *B.P.J.*, Title IX constrains federal funding recipients by prohibiting "discrimination" "on the basis of sex"—and the word "sex" "cannot plausibly be interpreted to refer to anything other than biological sex." 146 S. Ct. at 2371; *see also* 20 U.S.C. § 1681(a). Yet because gender identity is unmoored from biology and may work against it, *see* Part I, *supra*, organizing sports around identity contravenes Title IX's protections. That conclusion holds regardless of whether a funding recipient describes its identity-based program as providing *exceptions* for gender identity or engaging in *wholesale* gender identity separation.

A. *B.P.J.*'s Interpretation Of Title IX's Text Controls.

When this Court says that statutory language means something, the words of that statute carry the same meaning in other cases—to do otherwise "would be to invent a statute rather than interpret one." *Clark v. Martinez*, 543 U.S. 371, 378 (2005). Of course, *B.P.J.* did not formally decide this case because *B.P.J.* did "not present" the "distinct question" here at issue. *B.P.J.*, 146 S. Ct. at 2367 n.1. The *B.P.J.*

Court's restraint reflects the longstanding principle that in this Republic, the judiciary does not pronounce judgment on issues "not before" it. *See Trump v. CASA, Inc.*, 145 S. Ct. 2540, 2561–62 (2025); THE FEDERALIST NO. 78, at 383 (Alexander Hamilton) (George W. Carey & James McClellan eds., 2001) ("[T]he judiciary . . . may truly be said to have neither FORCE nor WILL, but merely judgment."). Unlike in *B.P.J.*, the issue in this case is whether preventing sex discrimination is incompatible with organizing sports around identity. Though the question may have changed, Title IX has not. And under *B.P.J.*'s authoritative interpretation of Title IX's text, the answer is yes—identity-based sports violate Title IX's prohibition on sex discrimination.

B. Identity-Based Exceptions Lack Any Biological Justification.

If a funding recipient initially separates sports teams by sex and then makes exceptions based on identity, the resulting sports program loses the biological justification that sanctioned sex-separated sports in the first place.

The rule is straightforward: Title IX's sex discrimination bar prohibits treating the sexes differently without sufficient reason. In many aspects of life, separating men and women is "differential treatment," *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 174 (2005), which could be "discrimination" "on the basis of sex," as Title IX's plain language prohibits, 20 U.S.C. § 1681(a). But "separate sports teams" are commonly permissible "precisely because of the biological differences between the sexes—namely, the inherent physical differences between biological women and biological men." *B.P.J.*, 146 S. Ct. at 2371 (citing the Title IX regulations, 34 C.F.R. § 106.41(b)). So, while the baseline bar on differential treatment may often require

keeping the sexes together, *see* 34 C.F.R. § 106.41(a), separation is permissible for biological reasons, *see id.* § 106.41(b); *see also B.P.J.*, 146 S. Ct. at 2371 (explaining that the Title IX regulations are "especially useful in determining the statute's meaning" under *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024)).

Violating this rule, identity-based sports programs separate the sexes without a biological justification. Initially, such programs establish male and female teams. And in sports "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), that separation is biologically justified to address "the safety and competitive fairness concerns that would arise if males were allowed to compete in female sports," *B.P.J.*, 146 S. Ct. at 2371. But then identity-based programs make an exception—males *are* allowed to compete in female sports so long as they identify as girls. Because such programs let boys play on the girls' team, a funding recipient cannot claim that its separation of the sexes serves biological safety and fairness goals. Indeed, allowing just one male onto the females' team puts "female athletes at a serious disadvantage" "because sports are generally zero sum," so just the presence of just one male athlete "*necessarily* displaces or disadvantages a female athlete." *Id.* at 2372.

In short, sex-separated sports programs that embed exceptions for gender identity lack the biological justification for separating the sexes.

C. Identity-Based Separation Denies Females Equal Opportunity.

Alternatively, even if a funding recipient separates sports teams by identity alone—that is, without a facial separation of the sexes—the resulting program denies females equal opportunity in many sports. *See* 34 C.F.R. § 106.41(c).

That conclusion follows from the premise that Title IX often requires separation of the sexes, not co-ed teams. As *B.P.J.* explained, to "provide equal opportunity for female athletes, schools do not merely maintain, for example, one soccer team, one basketball team, one ice hockey team, and one lacrosse team that are equally open to female and male athletes. That approach would deny equal opportunity to female athletes." *B.P.J.*, 146 S. Ct at 2367. Instead, to "ensure equal opportunity for female athletes, schools therefore typically maintain separate women's and men's sports teams." *Id.* Otherwise, as Justice Stevens said just a few years after Congress passed Title IX, in contact sports "there would be a substantial risk that boys would dominate the girls' programs and deny them an equal opportunity to compete." *O'Connor v. Bd. of Educ. of Sch. Dist. 23*, 449 U.S. 1301, 1307 (1980) (in chambers).

Thus, sports teams that are based solely on gender identity deny females equal opportunity in violation of Title IX. Two teams separated by identity are effectively two co-ed teams: a team with boys and girls who see themselves as boys, and a team with boys and girls who see themselves as girls. But *B.P.J.* said that one co-ed team "can create significant safety risks" and "undermine competitive fairness," which is why schools "ensure equal opportunity" with "separate women's and men's sports teams." 146 S. Ct. at 2367. Having two unfair and unsafe teams does not solve the Title IX problem. "It is universally accepted that providing for a Female Category is necessary to allow equal access to elite sport to both Males and Females." IOC Policy, *supra*, at 5. "Two wrong [teams] do not make one that is right." *FCC v. Consumers'*

Rsch., 145 S. Ct. 2482, 2511 (2025) (internal quotation omitted).

* * *

If Washington is correct that Title IX allows it to organize sports around identity, then Title IX's protections for women's and girls' sports are second-string guarantees. Under Washington's principles, the statute does not actually impose a robust duty to protect females from discrimination. Instead, Washington may avoid that responsibility by prioritizing males who think of themselves as girls. If accepted by this Court, Washington's reasoning would bore a massive loophole into Title IX. And this case provides a sobering example of the consequences. The girls' wrestling program in which K.M.K. participated existed so that K.M.K. and girls like her had a chance to compete in a league that was safe and fair for them. Washington decided it was more important to let males into that league. Now, males have two wrestling programs that are safe and beyond fair for them. K.M.K. has none.

CONCLUSION

This Court should grant the emergency application for an injunction.

Dated: October 9, 2026

Respectfully submitted,

DAVID H. THOMPSON
Counsel of Record
ADAM P. LAXALT
JOHN D. RAMER
COOPER & KIRK, PLLC
1523 New Hampshire Avenue, N.W.
Washington, D.C. 20036
(202) 220-9600
dthompson@cooperkirk.com

Counsel for Amicus Curiae *Do No Harm*