

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

**REPLY IN SUPPORT OF EMERGENCY APPLICATION FOR AN
INJUNCTION PENDING APPEAL**

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INTRODUCTION

The public record is replete with evidence that females in Washington State are being forced to face bigger and stronger males, while males get to compete against their physiological counterparts. Appl.28–29. Defendants-Respondents are silent about this harm, yet it continues unabated. The day after the Application’s filing, it was reported that a male runner in Washington State who finished 76th in this fall’s first boys’ cross-country meet changed his gender identity—no hormones or medical intervention required—and medaled his first time competing against females, achieving a top-10-in-the-State time in the girls’ division.¹ Surprising no one, that male athlete has repeatedly medaled in girls’ cross-country races since; as a result, half the girls in a recent meet walked off the course rather than compete against a much taller and stronger male opponent.² That’s a race they’ll never get back.

Like those girls, K.M.K. has also been pushed to the sidelines. All she and her mother want is the equal opportunity Title IX guarantees: assurance that K.M.K. won’t have to face a male athlete on the mat when the girls’ wrestling season begins November 16. She understandably doesn’t want to be assaulted by a male again, but her concerns about fairness and safety reach further. Yet the District would force her to forfeit—even while refusing to tell her when she’ll face a male opponent, District.Opp.12; OSPI mocks her irreparable harm as “manufactured,” OSPI.Opp.35; and WIAA disparages her claims as mere “disagreement with an inclusive policy,” WIAA.Opp.20.

Defendants’ briefs mostly point the finger at each other, trying to pass the buck for the harm inflicted. WIAA says it controls neither eligibility nor who wrestles whom. The District says it cannot alter WIAA’s forfeit rules or the brackets. OSPI

¹ Ari Hoffman, *WA boys’ high school runner goes from 76th to 1st after switching to girls’ cross-country*, American News (Oct. 7, 2026), perma.cc/6W8C-7KPC; HeCheated.org (@hecheated.org), X (Oct. 2, 2026), perma.cc/YY27-D7EK.

² Jennifer Sey, *Last Night in Camas Washington 13 Girls Refused to Race Against a Boy on Their Own Cross Country Team*, Substack: Sey Everything (Oct. 14, 2026), perma.cc/A4XK-3EZ8.

says the remedy lies against WIAA. Together, they describe a system in which a teenage girl must either wrestle whoever is put across from her or give up her season. No Defendant takes responsibility to stop that harm, though each plays a role in causing it.

When they do address the merits, Defendants' briefs are lacking. *First*, Defendants concede that Plaintiffs-Applicants did not need to press below an injunction-standard argument "foreclosed by [Ninth Circuit] *en banc* precedent." District.Opp.26. They acknowledge the circuits are badly divided over the standard to apply to mandatory versus prohibitory injunctions. OSPI.Opp.13–15. And they fail to recognize that it likely made a difference when the Ninth Circuit applied below the most stringent injunction standard known to federal circuits.

Second, Defendants do not dispute that, because of Defendants' policy, K.M.K. was required to wrestle a stronger male opponent, while males have their own fair forum. Defendants respond that *West Virginia v. B.P.J.* reserved whether schools "may allow" males who identify as females to compete on girls' teams. 146 S. Ct. 2356, 2367 n.1 (2026). But a reservation leaves a question open; it does not make optional the reasoning that accompanies it. *B.P.J.* acknowledged that allowing males on girls' teams "*necessarily* displaces or disadvantages a female athlete," especially in contact sports, *id.* at 2372, 2375, which is precisely what Title IX prohibits.

No Defendant engages that reasoning. Instead, Defendants object that the statute isn't clear, noting that it does not explicitly address transgender participation. OSPI.Opp.17–18. But *B.P.J.* confirms that Title IX plainly forbids treating females worse than males. 146 S. Ct. at 2371–72. Defendants also assert that they lacked intent and were not deliberately indifferent. OSPI.Opp.18–29. But they do not dispute the evidence that shows both. And Defendants ignore the state statute that explicitly allows sex-separated teams, proving pretext by undermining their alternative explanation that state law requires the gender-identity participation policy.

Third, Brown invokes a settled parental right. And the relief she requests is narrow: an opt-out from matches against male opponents when K.M.K. wrestles, with notice only where necessary to protect that right. That remedy is fair and administrable—and it is essential for Brown even to exercise her right.

Fourth, Defendants don't contest that K.M.K. missing part or all of a sports season and Brown losing her constitutional rights constitute irreparable harm. They instead say there's no emergency here, even though Ninth Circuit proceedings won't end until well after the wrestling season begins. On the equities, Defendants emphasize state nondiscrimination requirements, OSPI.Opp.37–38, disregarding that—in accepting Title IX funds—they agreed to abide by Congress's no-sex-discrimination condition.

The Court should grant a narrow injunction pending appeal so that K.M.K. can wrestle this season without being matched against a male opponent. On K.M.K.'s Title IX claim, the Court should enjoin Defendants from enforcing WIAA's Rule 18.16.0 and any other state law or District policy that authorizes males to compete in girls' wrestling with or against K.M.K. On Brown's parental-rights claim, the Court should enjoin Defendants from matching K.M.K. against a male in girls' wrestling based on Brown's stated objection. If the format of a particular tournament would otherwise result in such a matchup, Defendants should be prohibited from continuing with the match without either withdrawing K.M.K. themselves based on her mother's prior opt-out or giving Brown notice and the opportunity to withdraw K.M.K. herself. Defendants should be further prohibited from imposing on K.M.K. any consequences different from those that would be imposed for the most favored form of forfeiture permitted by the applicable rules (*e.g.*, a medical forfeiture).

In addition, or in the alternative, the Court should grant certiorari before judgment on the questions presented so that other females in Washington State—and around the country—can compete fairly and safely in their own sports.

ARGUMENT

I. The Ninth Circuit applied the wrong standard in denying the injunction.

This Court has repeatedly set forth the three-part test for obtaining an injunction pending appeal. Applicants must show that (1) they are likely to prevail on the merits, (2) denying relief would lead to irreparable injury, and (3) granting relief is in the public interest. *E.g.*, *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 16 (2020) (per curiam); see *Tandon v. Newsom*, 593 U.S. 61, 64 (2021) (per curiam); cf. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). This Court has never suggested that the standard differs for mandatory versus prohibitory relief, and Defendants’ contrary arguments fail.

1. Plaintiffs did not waive this issue. Contra WIAA.Opp.16; District.Opp.25–26. As Defendants concede, Plaintiffs had no duty “to press an argument [below] foreclosed by *en banc* precedent.” District.Opp.26. Plaintiffs took the Ninth Circuit’s case law as they found it and argued that an injunction prohibiting Defendants from enforcing the gender-identity participation policy is prohibitory, not mandatory. Emergency Mot. Reply 12, No. 26-5488, ECF 42.1. The Ninth Circuit disagreed, said Plaintiffs were seeking “a mandatory injunction,” and applied its “‘doubly demanding’ standard for such relief.” App.77a–78a (citation omitted). Plaintiffs now appeal that holding.

2. The circuit split on this issue is neither “semantic” nor “superficial.” Contra OSPI.Opp.12. To be sure, the circuits’ application of their own differing tests varies widely. *E.g.*, OSPI.Opp.12–16. That’s even more reason for this Court to resolve those differences and restore uniformity. And a wide gulf exists between the Sixth Circuit asking, for example, whether a movant is “likely to succeed on the merits” or will “suffer irreparable harm” and the Ninth Circuit asking whether the “law and facts *clearly favor*” the movant or the movant will suffer “extreme or very serious damage.” Compare *United Food & Com. Workers Union, Loc. 1099 v. Southwest Ohio Reg’l*

Transit Auth., 163 F.3d 341, 363 (6th Cir. 1998), with *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (en banc), and *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879 (9th Cir. 2009) (citation modified).

That difference mattered here. Contra OSPI.Opp.12; District.Opp.26–28. To begin, the Ninth Circuit panel declared there was no “genuine emergency” because the girls’ wrestling season does not begin until November 16. App.73a. But Plaintiffs requested a ruling from the Ninth Circuit by late September to allow time for this Court’s review. WIAA echoes that misguided argument, noting that merits briefing in the Ninth Circuit “is already under way.” WIAA.Opp.18. WIAA does not mention that the District requested—and received, over Plaintiffs’ objection—an extension, such that Defendants’ briefs are not due until November 19, *after* the wrestling season begins. The Ninth Circuit apparently does not believe that forcing K.M.K. to miss part of an athletic season causes her “extreme” harm. But that harm is certainly “irreparable.” After all, a practice or meet lost can never be restored.

The standard also likely mattered when the Ninth Circuit considered administrative difficulties in the balancing of harms. App.75a–78a. The panel didn’t even discuss the equities as they relate to K.M.K.’s Title IX claim. The panel let hypothetical concerns about *other* students’ desires to keep their sex a secret from a single student’s mother outweigh a parent’s constitutional right. *Id.* at 76a–77a. That balance shifts under a standard half as onerous.

Finally, the standard likely mattered when the Ninth Circuit considered the merits. There is no question that male athletes have inherent advantages that necessarily create safety risks and competitive disadvantages for females. *B.P.J.*, 146 S. Ct. at 2372. But the Ninth Circuit, applying its “doubly demanding” standard, demanded favorable district-court fact-findings of otherwise obvious legislative facts. *E.g.*, App.75a. Those findings were lacking because the district court felt free to reject the legislative facts in *B.P.J.* This Court’s correction is necessary.

II. This Court should grant an injunction pending appeal.

A. Plaintiffs are likely to succeed on the merits.

1. K.M.K. is likely to succeed on her Title IX claim.

1. Defendants' gender-identity participation policy discriminates based on sex. Appl.18–25. OSPI and the District do not dispute that Title IX unambiguously forbids treating females worse than males. And no one disputes that, under that policy, K.M.K. must wrestle “stronger and more powerful” male opponents, 5-ER-809, while males get to compete against their physiological counterparts on fair footing. WIAA curiously argues that “binding [Ninth Circuit] law holds that discrimination based on gender identity is itself sex discrimination under Title IX,” WIAA.Opp.11, despite *B.P.J.*'s holding that Title IX unambiguously bars discrimination based on “biological sex and *not* gender identity,” 146 S. Ct. at 2371 (emphasis added).

Next, Defendants double down on the lower courts' rejection of *B.P.J.*'s findings that males have athletic advantages over females. (Defendants offer no response to K.M.K.'s argument that the district court's findings were clearly erroneous even apart from *B.P.J.* Appl.23–25.) Defendants assert that this Court's reasoning *supports* their position because *B.P.J.* noted that “[n]ot *every* biological male athlete is bigger, stronger, faster, or otherwise more athletically able than *every* biological female athlete.” OSPI.Opp.20 (quoting *B.P.J.*, 146 S. Ct. at 2376); see WIAA.Opp.13. But the district court's factual findings in this case were not about the particular male athlete whom K.M.K. already had to wrestle—there is no dispute he was “stronger and more powerful” than K.M.K. 5-ER-809. The findings were about male athletic advantage in general. 1-ER-042–44. On that point, *B.P.J.* is abundantly clear: “biological males generally possess inherent physical advantages in sports,” such that allowing males to participate on a girls' team “*necessarily* displaces or disadvantages a female athlete” and poses “particularly severe” “safety risks” in “contact sports” like wrestling. 146 S. Ct. at 2372, 2374.

The District casts that reasoning aside because *B.P.J.* did not address a policy like Defendants'. District.Opp.24–25. But the “reasoning underlying the holding” in *B.P.J.* binds lower courts even if the ultimate issue differs. *Trump v. Barbara*, 146 S. Ct. 2438, 2457 (2026) (citation modified). And Defendants don’t suggest otherwise.

Defendants also say *B.P.J.* recognized an “ongoing medical and scientific debate’ regarding transgender girls’ physical attributes that ‘is not settled.” OSPI.Opp.20 (quoting *B.P.J.*, 146 S. Ct. at 2379). But any debate that exists relates only to the effects of “puberty blockers or hormones.” *B.P.J.*, 146 S. Ct. at 2379. Defendants’ policy does not require males to use puberty blockers or hormones, 4-ER-765, nor is there any evidence that K.M.K.’s male opponent has.

Defendants’ further deference-to-legislatures appeals fall flat. OSPI.Opp.21; WIAA.Opp.12–13. A legislature *did* make a policy judgment here: In Title IX, Congress determined that federal funding cannot support sex discrimination in education programs. Defendants accepted—and are violating—that condition.

In defense of their policy on the merits, Defendants resort to arguments about the regulations and agency guidance. In addition to ignoring Title IX’s text, those arguments fail on their own terms. OSPI argues that Washington sports teams are separated by gender identity, not sex, and thus comply with the regulations. OSPI.Opp.29. But the WIAA Handbook is clear that—apart from the policy—teams are divided between boys and girls based on “sex” “to provide students of both sexes an equal opportunity to engage in a sport.” 4-ER-764. Layering the gender-identity policy onto that system does not change the underlying sex-based classification. The result for each sport—including wrestling—is one effectively male-only team and one mixed-sex team. Contra 34 C.F.R. 106.41(a)–(b).

Regardless of the classification’s label, the policy does not provide “equal athletic opportunity” for females like K.M.K.—it “treat[s]” her “differently” (worse) than males by placing her at a safety risk and a competitive disadvantage. *Id.* 106.41(a),

(c); see *B.P.J.*, 146 S. Ct. at 2371–72 (absent sex-separate teams, “there would be a substantial risk that boys would dominate the girls’ programs and deny them an equal opportunity”) (citation omitted).

Defendants next ditch the regulatory *text* for agency guidance. OSPI argues that K.M.K.’s equal-opportunity argument is governed by a three-part test drawn from the 1979 Policy Interpretation. OSPI.Opp.30–31. But the text of the statute and regulation controls. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024); *Niblock v. University of Ky.*, 165 F.4th 460, 471–74 (6th Cir. 2026) (Sutton, C.J., and Murphy, J., concurring). And the three-part test is not exclusive anyway. *Berndsen v. North Dakota Univ. Sys.*, 7 F.4th 782, 787 (8th Cir. 2021) (“the agency expressly gives institutions *different* ways to comply with the *different* obligations”). Still, a proper application of that agency guidance requires sex-separated wrestling teams here in any event. See Appl.21 (discussing selection-of-sports provision).

WIAA likewise draws from the guidance, arguing that Title IX “guarantees opportunity, not outcomes” and that opportunity is measured on a program-wide basis. WIAA.Opp.14. On the first point, K.M.K. agrees—all she seeks is a fair shot to compete and win, but Defendants have denied her that. Appl.25. On the second, WIAA is wrong that K.M.K. needs to show a programmatic failure. The statute and regulation focus on individuals, ensuring that “[n]o person” is subject to sex discrimination. 20 U.S.C. 1681(a); 34 C.F.R. 106.41(a). This Court has recognized that Congress, in Title IX, “wanted to provide individual citizens effective protection against [discriminatory] practices.” *Cannon v. University of Chicago*, 441 U.S. 677, 704–05 (1979). An individual suit, rather than a “complete cut-off of federal funding,” might better serve the statute’s goals “if merely an isolated violation has occurred.” *Ibid.* And “specific individual female athletes” suffer “significant competitive disadvantage” when even “one or a few males” play on a girls’ team. *B.P.J.*, 146 S. Ct. at 2375. Anyway, there *is* a programmatic failure given that the policy applies to all sports.

In short, Defendants' policy discriminates on the basis of sex by requiring K.M.K. to wrestle against males with inherent physical advantages while providing males their own level playing field. That's the natural result of Title IX's unambiguous language and *B.P.J.*'s findings about male athletic advantage.

2. Defendants intended to treat females worse than males. Appl.25–29. Defendants argue that they cannot have had intent because the policy is facially neutral. OSPI.Opp.19. But a nominally sex-neutral policy can be intentionally discriminatory in multiple ways, Appl.25–29, particularly within a sex-separated sports system.

Defendants say the policy can be explained neutrally as preventing gender-identity discrimination. OSPI.Opp.21–22. But in the sports context, the policy favors *only* males and harms *only* females, leaving no neutral explanation. Contra *Personnel Adm'r of Mass. v. Feeney*, 442 U.S. 256, 275 (1979). Defendants next say that doesn't matter because this Court has blessed policies that affect only women (pregnancy-related conditions in *Geduldig v. Aiello*, 417 U.S. 484 (1974)), or only transgender-identifying children (treatment for gender dysphoria in *United States v. Skrametti*, 605 U.S. 495 (2025)). OSPI.Opp.21–22. But *Skrametti* explained that those policies did not discriminate against women or transgender-identifying persons generally—each just addressed “one set of diagnoses” that *some* women or transgender-identifying children experience. 605 U.S. at 518. In contrast here, males as a class have inherent athletic advantages over females as a class; those advantages necessarily lead to harms for *all* females forced to compete against males. *B.P.J.*, 146 S. Ct. at 2372. Defendants cannot escape that “reality.” *Ibid.*

The record also shows that discriminatory intent was a motivating factor for Defendants. Appl.26–29. Defendants first argue that K.M.K. forfeited this argument. OSPI.Opp.24–25. But she pressed it in the district court, Mot. for Prelim. Inj. 17, No. 3:26-cv-05616, ECF 36 (pointing to history and sequence of events to argue that

Defendants “intended to treat women differently”), and the Ninth Circuit, Emergency Mot. for Inj. 19–21, No. 26-5488, ECF 17.1.

OSPI attempts to duck the question, arguing that it is enforcing state law, not WIAA’s gender-identity participation policy. OSPI.Opp.25 & n.4. WIAA and the District likewise blame state law for the policy. WIAA.Opp.12; District.Opp.19. But all Defendants ignore the Washington statute that *allows* schools to “provide separate teams for each sex.” RCW 28A.640.020(1)(c). OSPI and WIAA instead argue that other general statutory prohibitions on gender-identity discrimination “clear[ly]” require the opposite. OSPI.Opp.25 n.4 (citing RCW 49.60.030(1)(b)); WIAA.Opp.26 (citing RCW 28A.642.010). But in Washington, as elsewhere, a “general statutory provision must yield to a more specific statutory provision.” *Association of Wash. Spirits & Wine Distribs. v. Washington State Liquor Control Bd.*, 340 P.3d 849, 856 (Wash. 2015); see *NLRB v. SW General, Inc.*, 580 U.S. 288, 305 (2017). Defendants can’t hide behind state law. And Title IX’s mandate makes future state ballot measures beside the point.

With no other out, Defendants flyspeck the evidence of intent, OSPI.Opp.25–27, or (like the district court) blindly assert there is “no evidence” of intent, WIAA.Opp.13. But a “sensitive” analysis of all the evidence together shows discriminatory intent played a role, *Village of Arlington Heights v. Metropolitan Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977), especially given that the “adverse consequences” of the policy “are as inevitable as” those here, *Feeney*, 442 U.S. at 279 n.25. Simply put, Defendants “regarded girls’ sports as less worthy of consideration and support than boys’ sports.” *Soule v. Connecticut Ass’n of Schs.*, 755 F. Supp. 3d 172, 199 (D. Conn. 2024).

3. Defendants have also been deliberately indifferent to the sex discrimination the policy is causing K.M.K. and others. Appl.30–32. Defendants dispute the deliberate-indifference standard. OSPI.Opp.27. But this Court is clear that a

defendant “intentionally violates Title IX” when it “is deliberately indifferent to known acts of ... discrimination,” *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 643 (1999); see *A.J.T. ex rel. A.T. v. Osseo Area Schs.*, 605 U.S. 335, 344–45 (2025).

On the merits, OSPI engages in a sleight of hand. It implicitly acknowledges awareness of “media coverage about transgender girls participating in girls’ sports, complaints that the policy impacts girls’ ability to compete successfully in sports, and allegations that the policy violates Title IX.” OSPI.Opp.28. Yet according to OSPI, that establishes, “at most, that some people *believe* that Washington’s laws violate Title IX due to the *disparate impact* that the laws have. But they do not establish deliberate indifference to sex discrimination.” *Ibid.* That’s wrong. Those were reports and complaints of sex discrimination, plain and simple—factual complaints that athletic officials were intentionally treating females worse than males by allowing males to take roster and podium spots that otherwise would have gone to females. Defendants disregarded all those complaints and punished dissenters. That’s the definition of deliberate indifference. (OSPI is wrong to say this claim is forfeited. OSPI.Opp.27. K.M.K. made this argument from the beginning of this case and on appeal. Mot. for Prelim. Inj. 18–21, No. 3:26-cv-05616, ECF 36; Emergency Mot. for Inj. 22–23, No. 26-5488, ECF 17.1.)

4. Defendants had clear notice that Title IX bars treating females worse than males. Appl.32–34. In fact, Defendants do not dispute that point. See OSPI.Opp.17 (the statute and regulations “require equal athletic opportunity”). They instead shift the focus, arguing that neither the statute nor the regulations “mention[] transgender athletes,” much less prohibit them from competing “on teams aligned with their gender identity.” OSPI.Opp.17–18; WIAA.Opp.11. But Title IX need not explicitly address transgender-athlete participation for its sex-discrimination prohibition to apply in a particular situation—just as with harassment and retaliation. *Davis*,

526 U.S. at 650; *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 174–75, 182–83 (2005).

Defendants also make the same mistake as the lower courts, treating K.M.K.’s request as “categorical.” WIAA.Opp.11; see Appl.33–34. K.M.K. seeks only the chance to compete herself on a level playing field in a contact sport—precisely what Defendants offer to all male athletes. And Title IX clearly proscribes treating females worse than males in contact sports like wrestling, as *B.P.J.* confirms. 146 S. Ct. at 2371. The Court should reiterate that simple truth.

5. Each Defendant points the finger at others, arguing that an injunction would not be proper against it. But all Defendants are proper parties and should be enjoined.

OSPI continues to insist (erroneously) that State law *requires* a gender-identity participation policy and does not dispute that it has threatened and brought enforcement actions against schools that seek to protect females by deviating from that policy. OSPI.Opp.25 & n.4; 5-ER-846–49.

The District has its own policy requiring compliance with WIAA’s eligibility rules. 4-ER-777; see 4-ER-781. And its member schools certify students—including K.M.K.’s male opponent—as eligible to compete. 4-ER-706.

WIAA sets the rules for athletic eligibility for participating schools, including the girls’ wrestling league in which K.M.K. competes. 4-ER-706–19. WIAA Rule 18.16.0 authorizes males to play on girls’ teams based on gender identity. 4-ER-715. WIAA thus controls eligibility for all high-school girls’ wrestling matches, including K.M.K.’s match against her male opponent in December 2025. Contra WIAA.Opp.14–15. And WIAA has chosen to incorporate the NFHS rules that it says require treating a forfeit as a loss. 4-ER-745.

Despite all this, WIAA insists it is not subject to suit under Title IX because WIAA does not receive Title IX funds. WIAA.Opp.9–10. But WIAA exercises “control” over athletic programs in Washington ceded to it by school districts pursuant to a

state statute, establishing binding “rules” and “impos[ing] penalties” on school districts. RCW 28A.600.200. And WIAA sets the eligibility rules for high-school sports at issue here, under OSPI’s direction. 4-ER-715. As every circuit to address the issue has held, that makes entities like WIAA subject to Title IX’s sex-discrimination prohibition. See *B.P.J. v. West Virginia State Bd. of Educ.*, 98 F.4th 542, 554 (4th Cir. 2024), *rev’d on other grounds*, *B.P.J.*, 146 S. Ct. 2356; *Williams v. Board of Regents of Univ. Sys. of Ga.*, 477 F.3d 1282, 1294 (11th Cir. 2007); *Horner v. Kentucky High Sch. Athletic Ass’n*, 43 F.3d 265, 272 (6th Cir. 1994). Were the rule otherwise, school districts could take Title IX funds but “avoid Title IX liability” for athletics programs by “ced[ing] control over their programs to” entities like WIAA. *Williams*, 477 F.3d at 1294. WIAA ignores this precedent, relying instead on a case in which this Court decided a different question and reserved this one. WIAA.Opp.9 (citing *NCAA v. Smith*, 525 U.S. 459, 469–70 (1999)).³

In sum, K.M.K. is likely to succeed on her Title IX claim.

2. Brown is likely to succeed on her parental-rights claim.

Defendants never contest that Brown has a parental right to decide whether K.M.K. wrestles a male. Instead, they say honoring her decision would be overbroad, infeasible, or intrusive. Those are tailoring objections that ask whether Defendants must respect Brown’s right, not whether she holds it. And on tailoring, the burden is Defendants’. But they do not prove that overriding Brown’s parental right is justified.

1. To be clear, Brown invokes a settled right. A parent’s right to direct her child’s upbringing includes the right “not to be shut out of participation in decisions” about the child’s health. *Mirabelli v. Bonta*, 607 U.S. 492, 497 (2026) (per curiam). Children, “even in adolescence,” struggle to understand when their bodies need protecting, so “[p]arents can and must make those judgments.” *Parham v. J.R.*, 442

³ Strangely, WIAA makes several arguments regarding K.M.K.’s eligibility, hardship waivers, and athletic records that Plaintiffs do not raise in their application. WIAA.Opp.20–23, 30.

U.S. 584, 603 (1979). Whether a minor daughter wrestles a male is one such decision. As the District’s own rules acknowledge: no student may join the team without a “[p]arent[’s] permission.” 4-ER-791.

Defendants build a straw man. They say no parent may “direct which classmates or opponents a child will encounter in a school activity” or “keep a child apart from particular students on the basis of their protected status.” District.Opp.21; accord OSPI.Opp.31–32; WIAA.Opp.23–24. That’s never been Brown’s claim. She doesn’t ask to pick K.M.K.’s classmates or to disassociate K.M.K. from anyone. She asks to decide whether her daughter wrestles males. That decision is hers to make.

Relatedly, Defendants say no case recognizes the parental right in this particular setting. California said the same in *Mirabelli*. Opp. to Emergency Appl. to Vacate Interlocutory Stay Order 29–30, *Mirabelli v. Bonta*, No. 25A810, 2026 WL 174335 (U.S. Jan. 21, 2026). But this Court in *Mirabelli* framed the right by the kind of decision at stake—one about a child’s health—not by the setting in which it arose. 607 U.S. at 497. No decision of this Court had addressed social gender transitions at school, either. Yet the result in *Mirabelli* was “dictated by existing law.” *Id.* at 499 (Barrett, J., concurring). So too here.

2. Defendants’ tailoring objections also fail. The relief Brown seeks is narrow. The proposed order would require three things: (1) Defendants may not match K.M.K. against an opponent whom they know or have reason to know is male, based on Brown’s stated objection; (2) if a tournament’s format would still produce such a match, then before the match starts, Defendants may either withdraw K.M.K. on their own or give Brown notice and the chance to withdraw K.M.K. herself; and (3) Defendants may not treat K.M.K.’s forfeit worse than the rules treat the most favorably treated forfeit.

Scope. Defendants call Brown’s request a “sword” that dictates school conduct. District.Opp.22; WIAA.Opp.24. But every opt-out requires a school to do something.

In *Mahmoud v. Taylor*, the parents’ request “to have their children opt out” required teachers’ cooperation but did not “micromanage” the public-school program. 606 U.S. 522, 568–69 (2025). Just so here. Defendants concede that Brown may “choose to remove her child from certain scenarios she deems inappropriate.” District.Opp.22 (citation modified); see WIAA.Opp.24. That’s what she is trying to do. The requested order operationalizes that removal. Indeed, Brown cannot exercise her parental right without it.

Feasibility. WIAA and the District then say the opt-out is infeasible because they lack the information necessary to comply, District.Opp.15–16; WIAA.Opp.25–26, cannot control match assignments, District.Opp.16; WIAA.Opp.26, and cannot withdraw K.M.K. from matches without penalty, District.Opp.16–17. Not so.

First, WIAA and the District say they cannot obtain information about a student’s sex. But Brown asks only that Defendants act on the information they know or have reason to know: that K.M.K. will be matched against a male; then, they must withdraw her or notify Brown. Regardless, if Defendants know less than they could, that’s a gap they created, and they can’t hide behind it. WIAA instructs schools not to ask for “proof of gender.” 5-ER-835; WIAA Gender Diverse Toolkit 3, No. 3:26-cv-05616, ECF 36-7. It then invokes that same guidance to say it can’t comply. WIAA.Opp.26. But a government can’t plead a burden that is “a product of its own design.” *Mahmoud*, 606 U.S. at 567.

Second, the order would require no control Defendants lack. It covers only whether Defendants *send K.M.K. to wrestle*—a choice her coach already makes. 5-ER-808–09. Indeed, K.M.K.’s coach conceded “she would not have” sent K.M.K. to wrestle a male had she known the competitor’s sex. 5-ER-813.

Third, a penalty-free withdrawal would mean K.M.K. may not be treated worse than the most favorably treated withdrawal the rules allow. In a dual meet, the matchup can be avoided. No match is set until a wrestler reports. NFHS, 2026-27

Wrestling Case Book 1.4.6, Situation A (“NFHS Case”). And schools exchange weight-in forms with “opposing coaches” before every dual. 4-ER-774. So if Defendants know or have reason to know that a male may wrestle at K.M.K.’s weight, her coach could withhold her. K.M.K. would never enter the match, and she would not have to forfeit. See NFHS Case 5.13, Situation B; NFHS Case 6.2.2, Situation C. In a tournament, where a matchup may arise mid-event, K.M.K. may not be treated worse than a medical forfeit. Her opponent advances, and she stays in the tournament. NFHS, *2026-27 Wrestling Rules Book* R. 10-2-5 (“NFHS R.”); see NFHS Case 10.2.4, Situation A (forfeiting wrestler moves to “consolation bracket”).

Nor is that treatment novel. WIAA’s rules excuse postseason withdrawals for “injury, illness, religious observance or unforeseen events,” and they leave “unforeseen events” open-ended. 4-ER-735. This “robust ‘system of exceptions’” defeats any claim that one more would be “infeasible or unworkable.” *Mahmoud*, 606 U.S. at 567 (citation omitted). And if WIAA can excuse a postseason withdrawal, it can excuse one at a regular-season tournament. Brown’s parental right deserves no less.

WIAA has the power to implement that limited opt-out. The NFHS rules it invokes, WIAA.Opp.26, allow state associations to “authorize exceptions to NFHS playing rules to provide reasonable accommodations to ... those individuals with unique and extenuating circumstances,” as long as the accommodation doesn’t “fundamentally alter the sport, heighten risk to the athlete/others or place opponents at a disadvantage.” NFHS R. 1-1-2. This accommodation would alter nothing, besides lowering risk for the female wrestler, and it would hand the male opponent a win if the match cannot be avoided. Giving male athletes automatic wins over female wrestlers in tournaments would still violate Title IX, but it would at least protect K.M.K. while honoring Brown’s parental rights.

Illustrating the finger-pointing problem here, the District concedes Brown may decline any match for K.M.K. “without any penalty” from the “District.”

District.Opp.2. The rest, it says, is “a question for the WIAA.” *Id.* at 17. Yet WIAA says the relief is “not the WIAA’s to give.” WIAA.Opp.30. Defendants each disclaim full power, but in so doing, they ignore that together they hold it all.

Privacy. Defendants’ last objection is privacy. They say notice would “out” other students, and that even withholding K.M.K. “conveys the same information.” WIAA.Opp.26; District.Opp.17. But Brown seeks no other student’s identity, and Defendants can withdraw K.M.K. without disclosing a protected fact. Appl.36.

Take notice at its broadest—direct disclosure of another’s sex. Defendants do not—indeed, cannot—argue that a person’s sex is constitutionally protected information. Nor does FERPA prevent its disclosure. While that statute restricts the release of “education records” and the information in them, 20 U.S.C. 1232g(b), it authorizes disclosure to comply with a court order. *Id.* 1232g(b)(2)(B). Tellingly, the District itself no longer calls FERPA a bar; it says only that FERPA “bear[s] on feasibility and the public interest.” District.Opp.17–18.

That leaves what spectators might infer from an empty mat. But an inference drawn by onlookers isn’t a disclosure made by officials. And wrestlers fail to appear for innumerable reasons: injury, illness, a missed weight, or a coach’s choice. NFHS R. 5-13. So a no-show says nothing on its face. And Defendants already accept the same inference: the District offers to let K.M.K. forfeit against the two wrestlers Brown already knows are male. District.Opp.2, 12. That forfeit would be just as visible as a withdrawal under the order.

On closer examination, each objection fails. Withdrawing K.M.K. consistent with the proposed order is the less restrictive means Defendants say Brown never identified. And state law can’t stand in its way. U.S. Const. art. VI, cl. 2. Defendants offer no real alternative. Their forfeit offer reaches only opponents Brown already knows are male, because Defendants won’t withdraw K.M.K. themselves or tell Brown when K.M.K. faces an athlete Brown does not know is male. District.Opp.2,

12; 4-ER-781–82. Otherwise, Brown’s only choice is to pull K.M.K. from wrestling altogether. *Mahmoud* rejects that. The government may not condition a public benefit’s “availability” on a parent’s willingness to accept a burden on her rights. 606 U.S. at 561. Exit isn’t accommodation. It’s the injury, and Brown and K.M.K. are suffering it now.

B. The remaining factors favor an injunction pending appeal.

1. Absent an injunction, Plaintiffs face irreparable harm.

Absent this Court’s swift intervention, Plaintiffs will suffer irreparable harm. No Defendant disputes that K.M.K. would suffer irreparable harm from missing part or all of the girls’ wrestling season or that Brown would suffer irreparable harm from a violation of her constitutionally protected parental rights. Appl.37–39.

Instead, Defendants argue primarily that this case is not an emergency, asserting that Plaintiffs filed both too early *and* too late. All Defendants say that this Court need not weigh in because Plaintiffs’ appeal is proceeding in the Ninth Circuit. OSPI.Opp.11; WIAA.Opp.2, 18; District.Opp.11. But because the District secured an extension for all Defendants’ answering briefs—over Plaintiffs’ strenuous objections—those briefs are not due until November 19. That means briefing in the Ninth Circuit won’t be complete, let alone oral argument and a decision, until well after wrestling season has begun. Only this Court’s intervention would avert that certain harm.

OSPI alone contends that Plaintiffs waited too long before filing suit or moving for a preliminary injunction. OSPI.Opp.35–36. But Plaintiffs had to gather evidence and arguments before filing the complaint last school year. And they moved for a preliminary injunction less than a month later, close to two months before the next school year began, and more than four months before wrestling season. That Plaintiffs initially brought multiple claims with different irreparable-harm timelines in no way diminishes the claims they press here.

Next, Defendants argue that any harm to K.M.K. is “speculative.” OSPI.Opp.36; WIAA.Opp.18–19; District.Opp.11–12. But K.M.K. has already had to wrestle a “stronger and more powerful” male opponent. 5-ER-809. And K.M.K. could face that same male this season—which would deprive her of a fair playing field by requiring her to wrestle someone with inherent biological advantages *and* place her at an increased risk of injury or second assault. There is nothing unclear or uncertain about that harmful “reality.” *B.P.J.*, 146 S. Ct. at 2372; 3-ER-384–97; 4-ER-648. The District notes the male decided not to compete in the season’s final tournament once the criminal investigation into the assault began. District.Opp.12. But that investigation concluded with no charge against the male, who remains enrolled and eligible to compete in girls’ wrestling this season. There is every reason to believe he will.

Defendants suggest K.M.K. could forfeit matches against the two known male wrestlers in the District. OSPI.Opp.36; WIAA.Opp.18–19; District.Opp.12. But as mentioned, that does not protect K.M.K. or Brown’s parental rights when unknown males are the opponents. And Title IX is supposed to safeguard K.M.K.’s athletic opportunities, not give them over to male athletes.

OSPI also argues that another sexual assault is unlikely. OSPI.Opp.36. Yet as K.M.K. explained, that is not the only harm she seeks to avoid—she also wants to be free from discrimination and avoid the safety and competitive disadvantages that come from wrestling a male. Appl.39; *B.P.J.*, 146 S. Ct. at 2372. Yet even as to parental rights, Defendants insist that the rules *require* K.M.K. be penalized for choosing not to wrestle a male athlete. WIAA.Opp.26; District.Opp.13, 16.

2. The equities weigh in favor of granting an injunction.

The public interest also favors Plaintiffs. Appl.39–40. OSPI argues that Washington State would be irreparably harmed if this Court prohibited the State from forcing female athletes to compete against male athletes. OSPI.Opp.37–38. OSPI argues that Plaintiffs “seek to substitute their policy preferences for the judgment of

Washington’s Legislature.” *Id.* at 37. That’s doubly wrong. First, as noted above and in the Application, Washington law *allows* sex-separated teams; Defendants have deliberately chosen not to exercise that option. Second, Defendants have chosen to accept Title IX funds. That money came with conditions, including Congress’s non-discrimination requirement. *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 286 (1998). K.M.K. seeks to enforce that.

OSPI also says an injunction pending appeal is “inappropriate” because an initiative to protect women and girls in sports will be on the ballot this November. OSPI.Opp.37–38. But even if passed, the earliest that initiative will be effective is 30 days after the election, which is after the wrestling season begins. Wash. Const. art. II, § 1(d) (“Such measures shall be in operation on and after the thirtieth day after the election at which it is approved.”). Moreover, the Washington State Legislature—which declined the opportunity to pass the measure itself or even to hold public hearings after receiving more than 440,000 signatures—is free to amend an enacted initiative with a two-thirds vote of each chamber. Wash. Const. art. II, § 1(c). Even under the rosiest scenario, K.M.K. will miss part of the girls’ wrestling season.

WIAA and the District, like the Ninth Circuit, also invoke purported administrative difficulties. First, they argue that the requested injunction would require them to know students’ sex, but that they don’t know and can’t easily obtain that information. WIAA.Opp.25–26; District.Opp.15–16. That isn’t realistic—to comply with Title IX’s bar on sex discrimination generally, recipients *must* know their students’ sex. And as noted, Plaintiffs expect Defendants to act based only on the knowledge they have, and any lack of knowledge is due to the WIAA’s own policy. WIAA and the District do not dispute that they knew K.M.K.’s previous opponent was male *and* that physicians document student-athletes’ “Sex assigned at birth” on WIAA’s preparticipation-evaluation history form, Appl.40, which the District could require be submitted before participation is allowed.

WIAA says it would be “uniquely” prejudiced because an injunction would “disrupt eligibility expectations for hundreds of member schools and thousands of student-athletes.” WIAA.Opp.27, 31. But an injunction would only bar WIAA (and the other Defendants) from enforcing the gender-identity participation policy against K.M.K. *Trump v. CASA, Inc.*, 606 U.S. 831, 837 (2025). Defendants could easily return to a sex-separated scheme for K.M.K. like they operated for decades.

The remaining equitable arguments—centered on third parties’ privacy interests, WIAA.Opp.26, 27–28; District.Opp.17–18—relate only to the parental-rights claim, not the Title IX claim. No students’ sex or gender identity would be disclosed as a result of an injunction prohibiting enforcement of the gender-identity participation policy as to matches with or against K.M.K.

Even as to the parental-rights claim, WIAA and the District overstate that concern—leaving aside the lack of any constitutional privacy right to one’s sex. Brown has already expressed her desire to opt K.M.K. out of such matches. Under *Mahmoud*, all that remains is for Defendants to operationalize that opt-out. WIAA and the District suggest that might prove difficult because of tournament design, but they “cannot escape [their] obligation” to honor parental rights by setting up a system that makes “parental opt outs more cumbersome.” *Mahmoud*, 606 U.S. at 567.

III. The Court should grant certiorari before judgment.

The harm caused by gender-identity participation policies writ large is not limited to K.M.K. or even all females forced to compete against male athletes in Washington State—like the female cross-country runners mentioned in the Introduction. Such policies cause irreparable harm to *all* female athletes—anywhere in the country—who are subjected to unfair and unsafe competition, see *IndepCouncilWomen’sSports.AmicusBr.5–12*; *DoNoHarm.AmicusBr.6–7, 23–25*; *Jessica&SoleilHoefer.AmicusBr.5–19*; *Iowa&22States.AmicusBr.7–10*, in violation of Title IX’s clear command. Those harms establish the “imperative public importance”

of this dispute that Respondents deny. District.Opp.28; WIAA.Opp.28; OSPI.Opp.38. Fairness doesn't stop at state lines.

Respondents' objections to certiorari before judgment are misplaced. There is no discovery necessary to determine that male athletes have inherent athletic advantages that necessarily create safety risks and competitive disadvantages for females. *B.P.J.*, 146 S. Ct. at 2372; contra WIAA.Opp.28; District.Opp.29. There is no right to privacy in one's male sex when government officials allow male athletes to compete against female athletes—particularly in a contact sport like wrestling. There is no need for further percolation on the Title IX issue when the result is dictated by the statutory text and this Court's reasoning in *B.P.J.* Contra OSPI.Opp.39–40. And though the merits of the preliminary-injunction appeal remain pending in the Ninth Circuit, that court chose to extend the briefing schedule over Plaintiffs' opposition, ensuring there will be no decision until well after the start of the girls' wrestling season. Contra WIAA.Opp.28–29. And when paired with the time needed for this Court's review of any eventual Ninth Circuit decision, any merits ruling in the normal course from this Court in K.M.K.'s favor could very well come long after K.M.K.'s senior wrestling season next year. Sports seasons pass in the blink of an eye. This Court should not wait.

Conversely, delaying merits review guarantees that women and girls will continue to be physically injured and routinely displaced from teams, competitions, and winners' podia because of policies like Washington's. *E.g.*, Br. for Pet'rs 6–8, *West Virginia v. B.P.J.*, No. 24-43 (U.S. Sept. 12, 2025); Br. for Pet'rs 4–6, *Little v. Hecox*, No. 24-38 (U.S. Sept. 12, 2025); *HeCheated*, perma.cc/P5PZ-SL5R (cataloguing more than 1,500 male athletes who have broken more than 700 girls' records while taking nearly 7,000 first-place finishes in girls' divisions). Delay will also result in continued violations of the rights of parents who simply want to protect their daughters from harm. Certiorari before judgment is warranted.

CONCLUSION

The Court should grant Plaintiffs the requested injunction pending appeal. In the alternative, the Court should both issue the injunction and grant certiorari before judgment.

Respectfully submitted,

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