NO. 24-38

In the
Supreme Court of the United States

BRADLEY LITTLE, GOVERNOR OF IDAHO, ET AL.,

Petitioners,

v.

LINDSAY HECOX, ET AL.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF *AMICI CURIAE* OF REP. BARBARA EHARDT OF IDAHO, 55 OTHER FEMALE STATE LEGISLATORS, AND 34 FAMILY POLICY ORGANIZATIONS IN SUPPORT OF PETITIONERS

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IDENTITY AND INTEREST OF *AMICI CURIAE*[1]

Amici curiae are fifty-six female state legislators and thirty-four family policy organizations, all of which have authored, sponsored, introduced, supported, or advocated legislation defining eligibility for women's sports based on biological criteria.

Amica Rep. Barbara Ehardt of Idaho was the author and principal sponsor in the Idaho House of Representatives of the statute that the Ninth Circuit held was likely unconstitutional in this case. Rep. Ehardt is also a former Division I NCAA basketball player and coach, and currently coaches clinics and travel teams for high-level high-school basketball prospects.

Additional *amicae* state legislators are: Rep. Susan DuBose (Alabama), Rep. Jamie Allard (Alaska), Rep. Selina Bliss (Arizona), Sen. Shawnna Bolick (Arizona), Rep. Gail Griffin (Arizona), Rep. Rachel Jones (Arizona), Rep. Barbara Parker (Arizona), Rep. Jacqueline Parker (Arizona), Rep. Michelle Pena (Arizona), Sen. Jenae Shamp (Arizona), former Sen. Mary Souza (Idaho), Rep. Michelle Davis (Indiana), Rep. Joanna King (Indiana), Sen. Renee Erickson (Kansas), Sen. Beverly Gossage (Kansas), Rep. Carrie Barth (Kansas), Rep. Rebecca Schmoe (Kansas), Rep. Barb

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[1] No counsel for any party to this case authored this brief in whole or in part. No party to this case and no counsel for any party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the *amici*, their members, and their counsel made such a monetary contribution. Counsel of record received timely notice of the intent to file this brief under this Court's Rule 37.2.

Wasinger (Kansas), Rep. Kristy Williams (Kansas), Rep. Mary Beth Imes (Kentucky), Rep. Savannah Maddox (Kentucky), Rep. Candy Massaroni (Kentucky), Rep. Marianne Proctor (Kentucky), Rep. Nancy Tate (Kentucky), Sen. Stacy Guerin (Maine), Sen. Lisa Keim (Maine), Rep. Katrina Smith (Maine), Delegate Lauren Arikan (Maryland), Delegate Kathy Szeliga (Maryland), Rep. Jaimie Greene (Michigan), Rep. Pam Altendorf (Minnesota), Rep. Mary Franson (Minnesota), Rep. Dawn Gillman (Minnesota), Rep. Krista Knudsen (Minnesota), Rep. Peggy Scott (Minnesota), Sen. Kathleen Kauth (Nebraska), Rep. Jennifer Balkcom (North Carolina), Rep. Kristen Baker (North Carolina), Rep. Erin Pare (North Carolina), Rep. Vicki Sawyer (North Carolina), Rep. Stephanie Borowicz (Pennsylvania), Rep. Valerie Gayos (Pennsylvania), Rep. Barbara Gleim (Pennsylvania), Rep. Dawn Keefer (Pennsylvania), Sen. Judy Ward (Pennsylvania), former Rep. Rhonda Milstead (South Dakota), Rep. Bethany Soye (South Dakota), Sen. Maggie Sutton (South Dakota), Rep. Caroline Harris-Davilla (Texas), Sen. Lois Kolkhorst (Texas), Rep. Candy Noble (Texas), Rep. Valoree Swanson (Texas), Rep. Ellen Troxclair (Texas), Rep. Kera Birkeland (Utah), and Rep. Cindi Duchow (Wisconsin).

Details about some of the individual *amicae* are provided in Section II, *infra*.

Amici family policy organizations are: Alabama Policy Institute, Alaska Family Council, California Family Council, Center for Arizona Policy, Christian Civic League of Maine, Delaware Family Policy Council, Family Policy Alliance, Florida Family Voice, Frontline Policy Action, Hawaii Family Forum, Idaho

Family Policy Center, Indiana Family Institute, Kansas Family Voice, Louisiana Family Foundation, Maryland Family Institute, Michigan Family Forum, Minnesota Family Council, Montana Family Foundation, Nebraska Family Alliance, North Carolina Family Policy Council, North Dakota Family Alliance, New Jersey Family Policy Center, New Mexico Family Alliance, Oklahoma Council of Public Affairs, Pennsylvania Family Council, Rhode Island Family Institute, Palmetto Family Council, South Dakota Family Voice, Texas Values, The Family Foundation Kentucky, The Family Leader Iowa, Wisconsin Family Action, and Wyoming Family Alliance.

SUMMARY OF ARGUMENT

One of our society's greatest recent triumphs is the cultural and legal consensus in favor of women's sports. For the most part, the long struggle for women's rights has been one for equality under the law: to ensure that all Americans can participate in all areas of public life, without regard to their sex. Women's sports have been a special case. In this limited area, our nationwide consensus has been that equal opportunity for women requires providing separate facilities and programs for them.

This has been a resounding success, opening countless life-changing opportunities to women who would never have experienced them otherwise. Many of the state legislators who are *amicae* here experienced this firsthand. They have been able to play in, coach, promote, and offer to their daughters sporting opportunities that had never existed for previous generations of women.

But this legal and cultural consensus in favor of women's sports has reached what is likely the most significant crossroads of its existence. Since its inception, that consensus has been predicated on biology. The need for women's sports arises from biological differences between women and men—and, consequently, who may participate in women's sports has always been determined by the biological characteristics that make a person female. But that axiom of women's sports is now being challenged.

In recent decades, there has been growing public awareness of a separate concept of "gender identity:" a person's interior sense of being a woman or man (or neither), which may or may not correspond with the person's biological sex characteristics. This has had major implications for the few areas, such as athletics, where separate women's programs are still recognized as necessary and desirable. Increasingly, the argument is being made that eligibility for such events should be determined *not* by the biological characteristics that make a person female—as has been the case until now—but instead by a person's interior sense of being a woman.

There are powerful justifications for retaining the longstanding biological criteria. The near-universal recognition of the importance of women's sports is predicated on the just-as-widespread recognition that, in almost every sport and at almost every level of competition, there are major differences between the average speed and strength of female and male athletes. Those are *biological* differences—they are physical characteristics that are strongly correlated with the biological features that make a person female or male.

By contrast, the very premise of "gender identity" is that one's internal sense of being a woman or man *does not* have any necessary correspondence to one's biological characteristics. Therefore, since the existence of separate women's sports programs is justified by biological differences between women and men, there are exceedingly persuasive reasons to determine eligibility for such programs using biological criteria rather than a person's sense of gender.

Based on this or very similar reasoning, a near-majority of States have enacted statutes affirming that participation in women's sports depends on biology. The *amici* here are legislators and policy organizations that have championed these laws. Some courts—including the Ninth Circuit here—have held that the federal Constitution or federal statutes prohibit this, and instead mandate a gender-identity criterion for participation in women's sports. If this fundamental change is allowed to occur, it is likely to have effects on women's sports—and on the nationwide consensus in favor of them—that are at best deeply uncertain, and at worst will fundamentally alter women's sports until they are unrecognizable. The Court should grant review.

ARGUMENT

I. Women's Sports Enjoy Widespread And Enduring Support.

Women's sports are a remarkable American success story.

For more than a century and a half, the nationwide struggle for women's rights has mostly focused on achieving equal treatment under the law, without regard for a person's sex. Since our country's founding, women have overcome and removed legal barriers to their voting or holding public office on the same terms as men, *see Frontiero v. Richardson*, 411 U.S. 677, 685 (1973); to their owning or managing their own property, *ibid.*; to their accepting paying work or entering a profession, *see Nevada Dep't of Hum. Res. v. Hibbs,* 538 U.S. 721, 729 (2003); and to their engaging in many other important activities. They have overcome countless additional social and cultural barriers to their equal participation in public life. Although room for improvement certainly remains, our nation has made great progress toward offering all Americans "equal opportunity to aspire, achieve, participate in and contribute to society based on their individual talents and capacities," without regard to their sex. *See United States v. Virginia*, 518 U.S. 515, 532 (1996).

Concurrently with this progress toward equal treatment regardless of sex, a cultural consensus also has emerged that, in a few areas, equality requires separate spaces or programs that are reserved for women alone. These fall primarily into two categories: private spaces such as restrooms and dormitories, and athletic competitions. In these unique contexts, society widely recognizes that equal access for women can

best be maintained through reserving separate facilities or events for women. When Congress mandated equal treatment for women and men in education through Title IX, for instance, it was careful to specify that schools still may "maintain[] separate living facilities for the different sexes." 20 U.S.C. 1686. And when the Department of Education promulgated regulations to implement that nondiscrimination mandate, it specified that schools generally "may operate or sponsor separate [athletic] teams for members of each sex." 34 C.F.R. 106.41(b).

Indeed, sporting events often implicate multiple justifications for reserving spaces and programs for women. In addition to involving athletic competition, they often require athletes to change clothes or shower in shared locker rooms, or to share overnight accommodations when traveling. All of these reasons justify reserving separate sports programs for women.

In that light, the past 50 years have seen the growth of a near-universal approval of women's sports. In a nation that is bitterly divided in many respects—including over issues of sex equality—vast numbers of Americans are united in their passion for sports. And increasingly that includes women's sports. Excellence in women's athletics is avidly supported by Americans from every State, religion, political party, and ideology. At the local level, that is reflected in the groundswell of support for and participation in girls' sports leagues of all kinds—with girls' sports participation having consistently climbed for nearly a

decade, and approaching the same level as boys'.[2] At the high-school level, it is reflected in the nearly thirty-fold increase in girls' athletics participation since the early 1970s.[3] At the highest levels of sporting competition, our growing nationwide love for women's sports is reflected in every region and social stratum: from the recent surge of interest in college and professional women's basketball, to record-setting crowds attending college women's volleyball matches,[4] to the striking successes of women's athletics at religious universities,[5] to the many millions of Americans who cheer on our women's teams' extraordinary successes in the Olympics and in other international competitions. At any level, one would be hard-pressed to find

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[2] Project Play, Aspen Institute, *State of Play 2023: Participation Trends* at § 2, https://projectplay.org/state-of-play-2023/participation

[3] Nat'l Fed. Of State High School Ass'ns, *High School Athletics Participation Survey* at 56, Athletics Participation Survey Totals, https://www.nfhs.org/media/7212351/2022-23_participation_survey.pdf

[4] Olson, Associated Press, *Nebraska volleyball stadium event draws 92.003 to set women's world attendance record* (August 30, 2023), https://apnews.com/article/nebraska-volleyball-attendance-record-38f103fe2100a368cddb19b75e1adb8d

[5] *E.g.,* Payne, Universe Sports, *Was this the greatest year in the history of BYU women's athletics?* (June 24, 2022), https://universe.byu.edu/2022/06/24/column-was-this-the-greatest-year-in-the-history-of-byu-womens-athletics/; Liberty University Athletics, *Lady Flames Soccer wins Conference USA title with 2-1 victory over New Mexico State* (Nov. 5, 2023), https://www.liberty.edu/news/2023/11/05/liberty-wins-conference-usa-womens-soccer-title-with-a-2-1-victory-over-new-mexico-state/.

any significant group of Americans who oppose the idea of women's sports.

II. Sports Offer Exceptional Opportunities To Millions Of Women, Including *Amicae*.

The emergence of this social and legal consensus for women's sports in the past 50 years has done tremendous good for millions of American girls and women—including many *amicae* here.

Amica Rep. Barbara Ehardt of Idaho has always been passionate about playing sports. She recalls being asked, as a young girl, what she wanted to do when she grew up—and responding unequivocally that she wanted to play sports. But she also recalls being constantly told that "girls don't do that." She was eight years old in 1972, when Congress enacted Title IX. As she often testifies, this changed her life.As women's athletic opportunities became increasingly available in the 1970s because of Title IX, young Ms. Ehardt thrived playing competitive basketball—first in junior high school, then in high school, next at North Idaho Junior College, and finally achieving her goal of playing Division I women's basketball on a scholarship at Idaho State University. After she graduated, she became Coach Ehardt—embarking on a 15-year Division I women's college basketball coaching career at UC Santa Barbara, Brigham Young University, Washington State University, and then as the head coach at Cal State-Fullerton. As Rep. Ehardt, she continues to coach basketball, teaching leadership and life lessons through her "Camps & Clinics" and "travel hoops" opportunities. Rep. Ehardt knows that playing sports can change lives. It changed hers.

Amica Sen. Renee Erickson of Kansas has a similar story. When she was a girl, no one in her family had ever gone to college. That changed when Ms. Erickson, a high-school basketball star, was offered scholarships to play for several different colleges and universities. She chose to attend Oklahoma Christian University where she became a prominent guard. This has led to a lifelong passion for sports that now-Senator Erickson is currently passing on to her three granddaughters.

Amica Rep. Peggy Scott attended high school in rural Iowa shortly after the passage of Title IX. Unlike some others, she did not aspire to become a professional athlete. The availability of junior-high and high-school girls' sports gave her the opportunity to play. Rep. Scott firmly believes that these experiences developed lifelong character traits such as leadership, fortitude, and self-confidence, that have carried her through both personal and professional challenges throughout her life.

Not every *amica* had these opportunities. Rep. Barb Wasinger of Kansas grew up just a few years before Rep. Ehardt, but her experience was very different. In her high-school years, Ms. Wasinger was passionate about swimming—but as a young woman at that time, her only opportunities for school sports were field hockey, pompom squad, and cheerleading. She could swim only in a "play league" during summer vacations. Although she yearned for more opportunities to advance in the sport she loved, those opportunities did not become available for women until it was a few years too late for her.

These are only representative illustrations. *Amicae* could share countless stories and experiences that led to them to be advocates in their respective States for women's sports. They share a firm belief that it is their responsibility and duty as legislators to protect and carry forward the hard-fought gains for girls' and women's opportunities in sports. *Amicae* know firsthand that this includes both lifelong memories made on the field, and leadership qualities that have brought many *amicae* to where they are today. They desire the same opportunities for future generations of female leaders.

III. The Consensus In Favor Of Women's Sports Has Always Been Premised On Biology—But That Is Now In Question.

Until recently, the consensus in favor of women's sports has been premised on the biological distinction between women and men. Even as this Court developed stronger protections for women's rights, a cornerstone of its jurisprudence has remained the recognition that "[p]hysical differences between men and women … are enduring". *United States v. Virginia*, 518 U.S. 515, 533 (1996). This basic reality is reflected in our national understanding that, with respect to private spaces and athletic competitions, equal opportunity for women means separate opportunities *reserved* for women. This, it has been understood, is necessary to account for the relevant physical differences between women and men.

Thus, eligibility for participating in women's sports has historically been determined by the physical characteristics that make a person female. As the

Ninth Circuit put it below, "[a] person's 'sex'" typically is determined "based on … external genitalia" present at birth, along with other characteristics such as "internal reproductive organs" and "chromosomes." (Pet.App. 13a (citation omitted).) This biological distinction between women and men has historically been the premise of women's sports.

In the last decade or two, however, some have voiced strong objections to this basic understanding. There has been an increasing awareness of the concept of "gender identity," which—as the Ninth Circuit explained—"is the term used to describe a person's sense of being male, female, neither, or some combination of both." (*Ibid.* (citation omitted).) The concept has gained currency due to an increasing awareness that a given "individual's gender identity" may or may not "correspond to their sex," with the result that the person is "transgender," or "experience[s] 'gender dysphoria,'" or both. (*Id.* at 13a-14a.)

In many areas of public life where sex distinctions are properly regarded as immaterial, there is no direct conflict between protecting rights of women (defined by biology) and protecting rights of transgender people (defined by gender identity). For instance, a transgender person's right to vote on the same terms as any other citizen—or to own property, or to make contracts, or to exercise various other rights—normally presents no direct conflict with any biological woman's right to do the same.

A conflict arises only in the few important areas where society still recognizes the need to reserve separate spaces and programs for women. In these areas, those advocating for transgender rights have

increasingly argued that gender identity should *replace* biological sex as the eligibility criterion. Women's restrooms, or dormitories, or sports teams, it is said, should be open to anyone who has (in the Ninth Circuit's terms) a "sense of being … female" (Pet.App. 13a), even if the person's biological characteristics are mostly or wholly male. In other words, the argument goes, those spaces and programs are *not* to be reserved for biological females anymore. They must also be open to people with biologically male characteristics who identify as female.

This presents what is likely the most significant inflection point that our national consensus in favor of women's sports has ever faced. It raises a host of important and hotly-debated questions. Having established an extensive and successful sporting infrastructure reserved for women, can we fairly, prudently, and feasibly abandon the physical criteria by which we have defined who is eligible to participate? If we can, what replacement criteria could or should we use? And if we do, how might it affect the revolutionary success of women's sports over the past half century? It is no exaggeration to say that the future of women's sports may hinge on the answers.

IV. There Are Extraordinarily Powerful Reasons To Continue Determining Eligibility For Women's Sports Based On Physical, Biological Criteria.

Faced with those questions, a near-majority of the States have enacted statutes that retain or establish physical, biological criteria for determining who may

participate in women's sports.[6] *Amica* Rep. Ehardt authored and sponsored the first enacted statute of this kind—Idaho's Fairness in Women's Sports Act, which is at issue in this case. The other *amici* here authored, sponsored, introduced, or supported similar statutes or bills in other States. There are exceedingly strong reasons for this approach.

In this regard, it bears stating in more detail just why there has been such a strong social consensus in favor of separate women's sports, even as our nation has otherwise become increasingly committed to equal access to benefits without regard to sex. As noted, our national community understands that in limited areas such as sports, women and men are physically different from each other in ways that recommend separate opportunities.

With respect to athletic events, it is important here to be specific about what these physical differences are. Boys and men tend to be significantly stronger and faster, physically, than girls and women. Biological men tend to be taller and heavier than biological women; their muscles and bones tend to be bigger and stronger; their lungs tend to take in more oxygen, and

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[6] In addition to the Idaho statute at issue here, *see* Ala. Code 16-1-52; Ariz. Code 15-120.02; Ark. Code 6-1-107; Fla. Stat. 1006.205; Ind. Code 20-33-13-4, Iowa Code Ch. 261I; Kan. Stat. 60-5601–5606; Ky. Stat. 164.2813; La. Stat. 4:444; Miss. Code 37-97-1, Mo. Stat. 163.048; Mont. Code 20-7-1306–1307; N.C. Gen. Stat. 116-400–403; N.D. Cent. Code Ch. 15.1-41-01; Ohio Code 3313.5320; 70 Okla. Stat. 27-106, S.C. Code 59-1-500; S.D. Code 13-67-1; Tenn. Code 49-7-180; Tex. Educ. Code 51.980; Utah Code 53G-6-901–904; W. Va. Code 18-2-25d; Wyo. Stat. 21-25-101–102.

their hearts to pump more blood.[7] For that reason, if sports programs were simply opened to all comers regardless of sex and women were forced to compete against men, their opportunities to excel and win would be sharply curtailed, and in many cases eliminated. As Justice Stevens put it, "[w]ithout a gender–based classification in competitive contact sports, there would be a substantial risk that boys would dominate the girls' programs and deny them an equal opportunity to compete in interscholastic events." *O'Connor v. Bd. of Ed. of Sch. Dist. 23*, 449 U.S. 1301, 1307 (1980) (Stevens, J., in chambers). Or, as the Ninth Circuit put it in the precedent that governed until this case, "due to average physiological differences, males would displace females to a substantial extent if they were allowed to compete" against each other, and "[t]hus, athletic opportunities for women would be diminished." *Clark ex rel. Clark v. Arizona Interscholastic Ass'n*, 695 F.2d 1126, 1131 (9th Cir. 1982).

To be sure, this distinction is based on *averages*. No one thinks that every man or boy is stronger or faster than every woman or girl. And with respect to certain other athletic characteristics—such as eye-hand coordination or flexibility—men likely do not

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[7] *E.g.,* Univ. of Utah, *Why males pack a powerful punch*, ScienceDaily (Feb. 5, 2020), https://www.sciencedaily.com/releases/2020/02/200205132404.htm (male upper bodies average 75% greater muscle mass and 90% greater strength than female). Even suppressing a male's testosterone levels may have little effect on this muscular advantage. See Hilton & Lundberg, *Transgender Women in the Female Category of Sport: Perspectives on Testosterone Suppression and Performance Advantage*, 2021 Sports Med. 51(2) at 199, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7846503/

have an overall advantage. But the average differences in speed and strength are large enough and important enough that, in almost every sport, equal competitive opportunities for women can be meaningfully achieved only through separate women's events. We will not belabor this point with a multitude of examples—although it could be done—but track-and-field records provide a vivid illustration. The holders of women's world records in track and field are superb athletes and exemplars of human excellence. Society's ability to celebrate these athletes—as it should—depends on the existence of separate women's competitions. If those world-record-holders were forced to compete against men, the record books show that the top U.S. high-school boys would regularly exceed them in every event. *See* Coleman & Shreve, *Comparing Athletic Performances: The Best Elite Women to Boys and Men*, https://law.duke.edu/sites/default/files/centers/sportslaw/comparingathleticperformances.pdf. Something similar is true in virtually every sport, at virtually every level of competition: proper recognition of women's athleticism and athletic achievements is made possible only by separate women's events.

Crucially, this distinction between women and men is also based on *biology*. Sports are inherently physical. There is no serious debate that excellence in sports depends heavily on the physical characteristics of one's body. Although training and mental preparation play major roles, raw physical ability also remains an indispensable ingredient in athletic success. Simply put, a person's athletic prowess depends, in significant part, on his or her native size, strength, speed, stamina, and numerous other factors. And in these respects, the differences between women and

men are matters of biology. They derive from the significant average physical differences between biological women's and biological men's muscles, bones, lungs, hearts, and other body parts. And as the discussion above shows, although these characteristics are not *perfectly* correlated with biological sex (as determined by reproductive organs and chromosomes), the correlation is so close and so strong that no other non-sex-based classification criteria have ever been developed that can adequately ensure both fair competition and equal opportunity for women.

It was in this context that *amici*, and other policymakers like them, were confronted with the question of whether to set aside the traditional biological eligibility criteria for women's sports in favor of "a person's sense of being … female." (*See* Pet.App. 13a.) The result of that change would be to allow some unknown number of people with male biological characteristics to participate in women's sports. And since gender identity by definition bears no necessary relationship to a person's physical characteristics, there was no reason to expect these potential new participants in women's sports to be physically comparable to biological women.

In short, the separate existence of women's sports is justified by the distinct biological characteristics of women. The question faced by *amici* was whether, correspondingly, to continue defining *eligibility* for women's sports with reference to the distinct biological characteristics of women. Some have argued for the use of non-biological criteria, in whole or in part—thus creating a mismatch between the justifications for reserving sports for women and the criteria for

determining who may participate. In that context, Rep. Ehardt and the other *amici* firmly believed that the only correct course was to continue reserving women's sports for biological women.

But of course, the decision for the courts is not whether their choice was correct as a matter of policy—it is merely whether it was *permitted* by the Constitution. On that score, there can be little doubt indeed. "[T]his Court has consistently upheld statutes where the gender classification is not invidious, but rather realistically reflects the fact that the sexes are not similarly situated in certain circumstances." *Michael M. v. Superior Ct. of Sonoma Cnty.*, 450 U.S. 464, 469 (1981). There is no serious dispute that, with respect to athletic competitions, women and men "are not similarly situated"—and that the relevant difference turns on biology, not on an individual's interior sense of gender. Therefore, there can be nothing invidious or untoward about defining eligibility for women's sports based on the former rather than the latter.

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The plaintiff and the Ninth Circuit in this case, of course, are not the only ones who wish to replace biological criteria for women's sports with internal gender-identity criteria. A vigorous public debate on that very topic is underway. *Amici* strongly believe and fear that this revolution, if it occurred, would risk an unprecedented disaster for women's sports. People of good will can disagree on the overall philosophy of sex and gender identity. But the very premise of women's sports reflects our shared understanding that, for biological reasons, they must be reserved for women—or else women will lose out. That was the common

understanding of the law and the sports world for decades, and it is the policy reflected in the Idaho Fairness in Women's Sports Act. By contrast, non-biological eligibility criteria for women's sports are a very recent innovation. This debate has real consequences that cannot be ignored.

In this debate, two important principles should be common ground. First, the debate presents an inescapable choice: whether to reserve women's sports for biological women or instead to reserve them for those who identify as women. Because those two groups are not the same, it is logically impossible to do both. And, second, it is entirely within legislative competence to choose the former, and to define eligibility for physical competitions with reference to competitors' physical criteria as biological women.

The decision below, and others nationwide, are increasingly calling those plain realities into question. The Court should grant review to correct matters.

CONCLUSION

The petition should be granted.

Respectfully submitted,

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