

IN THE

Supreme Court of the United States

KEVIN STITT, IN HIS OFFICIAL CAPACITY
AS GOVERNOR OF THE STATE OF OKLAHOMA, ET AL.,
Petitioners,

v.

ROWAN FOWLER, ET AL.,
Respondents.

**On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Tenth Circuit**

**BRIEF OF *AMICI CURIAE* THE STATES OF
KANSAS, ALABAMA, ALASKA, ARKANSAS,
FLORIDA, GEORGIA, IDAHO, INDIANA, IOWA,
LOUISIANA, MISSISSIPPI, MISSOURI, MONTANA,
NEBRASKA, NORTH DAKOTA, SOUTH CAROLINA,
SOUTH DAKOTA, TEXAS, AND WEST VIRGINIA
IN SUPPORT OF PETITIONERS**

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INTEREST OF *AMICI CURIAE*¹

Amici curiae the States of Kansas, Alabama, Alaska, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Dakota, South Carolina, South Dakota, Texas, and West Virginia are tasked with ensuring the accurate recording of births that occur within their boundaries.

To do so, the States require certain limited information about an individual's birth be collected, which is then used to create and issue a birth certificate. Because the States control and create these records, they may—and do—establish processes for changing or otherwise amending birth certificates. Accordingly, they balance competing policy priorities, ultimately striving to ensure an accurate and consistent system of records that furthers their (and their citizens') legitimate interests. Some changes are allowed, some are not. But what matters is that the States—the recordkeepers—make that decision.

The United States Court of Appeals for the Tenth Circuit cast aside the States' role in determining the process for creating and amending these records. Specifically, it gave short shrift to the notion that the States have any legitimate interest in prohibiting changes to the sex designation on birth certificates. *See* App. 43a–49a. But such a restriction (like others a State may adopt) furthers accuracy, and

¹ Pursuant to Rule 37.2, the author of this brief provided timely notice to counsel of record for the parties of intent to file this brief pursuant to Rule 37.2.

it is certainly legitimate for the government to ensure its own records are accurate. Again, accuracy in recordkeeping *is a legitimate government interest*, and it directly supports other interests, like community planning, deterring fraud, and complying with federal and state laws that implicate a person’s biological sex.

Amici States maintain that the State of Oklahoma (like its sister States) has legitimate interests in restricting changes to birth certificates.

SUMMARY OF THE ARGUMENT

Good recordkeeping is a pillar of good government. Records foreshadow trends, influence decisions, and offer critical reference points. As sovereigns within a federal system, the States are on the frontline of recording facts, including the facts of an individual’s birth. Though a humble task, maintaining and preserving “an accurate system of recording births . . . in each of the States is of vital importance to all of the citizens of the entire nation.” *In re DiFabio Birth Rec.*, 8 Pa. D. & C.2d 577, 582 (Pa. Orphans’ Ct. 1957).

As recordkeepers, the States, directly or through arms and subdivisions, both record the facts of birth (*e.g.*, location, eye color, sex) and create and maintain the resulting record—the birth certificate. Accordingly, they control which information to record and which recorded information, if any, can be *changed*. See *Gore v. Lee*, 107 F.4th 548, 565 (6th Cir. 2024). The States permit or prohibit certain amendments to birth certificates to serve a variety of policies, including ensuring accuracy, deterring fraud,

and promoting familial harmony. They also determine which aspects of recordkeeping deserve the focus of state employees and resources, an important consideration given limited public funds.

The underlying suit spotlights Oklahoma's process for recording births through birth certificates. Instead of recognizing Oklahoma's legitimate interests for restricting changes to the information on birth certificates—interests shared by *Amici* States—the Tenth Circuit picked them apart. The court impermissibly engaged in a heightened standard of review, searching for an interest that met its own novel standard.

By contrast, the Sixth Circuit recently analyzed these interests under the properly deferential standard. *See Gore*, 107 F.4th at 560–61. In a case challenging Tennessee's law regulating changes to birth certificates, the court recognized that “[a]mple legitimate explanations support Tennessee’s amendment policy,” including accurate recordkeeping and public health. *Id.* Had the Tenth Circuit viewed Oklahoma's law under the same lens, it would have reached the same conclusion. Indeed, the Sixth Circuit rightly concluded the Tenth Circuit's “approach misunderstands rational basis review.” *Id.* at 561.

Amici States, like Oklahoma, have legitimate reasons for limiting amendments to birth certificates, namely, ensuring accuracy and thereby avoiding mistakes when it matters most. Because Oklahoma's law triggers only rational basis review, these reasons are enough. Accordingly, this Court should grant the

petition for a writ of certiorari, apply rational basis review, and recognize the many legitimate interests the States have in prohibiting changes to the sex designation on birth certificates.

ARGUMENT

Amici States seek to provide the Court a fulsome analysis on the States' legitimate interests in limiting amendments to birth certificates, particularly as they concern changes to the sex designation.

The Fourteenth Amendment's Equal Protection Clause prevents discrimination, with its strength turning on the allegedly impacted group. *See* U.S. Const. amend XIV, § 1; *Plyler v. Doe*, 457 U.S. 202, 216–18 (1982). When the government discriminates based on a suspect or quasi-suspect classification, the Clause requires careful, heightened judicial scrutiny of the policy behind the discrimination. *See City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440–41 (1985).

But when the government discriminates based on any other classification, the Clause generally yields, because it “is not a license for courts to judge the wisdom, fairness, or logic of legislative choices.” *F.C.C. v. Beach Commc'ns, Inc.*, 508 U.S. 307, 313 (1993). As explained in the petition, Oklahoma's law does not target or otherwise discriminate against a suspect or quasi-suspect class. Pet. at 25–38. To the extent Equal Protection analysis even applies, Oklahoma's law must only satisfy rational basis

review, meaning it must be rationally related to a legitimate government interest. *Heller v. Doe by Doe*, 509 U.S. 312, 319–20 (1993). This is a low bar.

Rational basis review requires courts to engage in the “paradigm of judicial restraint,” considering only whether any plausible rationale for the law exists. *Beach Commc’ns, Inc.*, 508 U.S. at 313–14. The inquiry tilts strongly in favor of the challenged law—which is presumed constitutional—and the law’s opponents must negate every conceivable supporting basis for it. *Id.* at 314–15. If one legitimate interest exists, it is game over, regardless of whether that reason actually motivated the law’s enactment. *Id.* at 315.

Oklahoma’s law easily surpasses this threshold. The law—which is fundamentally a State setting its recordkeeping policy—further legitimate government interests. The district court recognized this reality. *See* App. 121a–125a. But the Tenth Circuit impermissibly passed over deferential review, turning judicial restraint into a policy testing ground. *See* App. 43a–49a.

Under the correct standard, Oklahoma’s law satisfies the Equal Protection Clause.

I. Prohibiting amendments to the sex designation on birth certificates furthers accurate recordkeeping

The States—like all recordkeepers—have an interest in making and maintaining accurate records, including records of the facts of a person’s birth. The

sex with which a person is born is a fact of birth. *See, e.g., Littleton v. Prange*, 9 S.W.3d 223, 231 (Tex. App. 1999) (noting that “[t]he facts contained in the original birth certificate were true and accurate” when the person was born “a male, both anatomically and genetically”), *cert. denied*, 531 U.S. 872 (2000).

The purpose of a birth certificate is not to affirm a person’s gender identity; birth certificates are state records, collected and recorded by the States, primarily for state purposes. When the States record a birth and subsequently issue a birth certificate, they conduct the most consequential recordkeeping possible. A permanent, accurate system of births serves many “good government” interests by allowing the States and their arms and subdivisions to plan for and provide schools, social services, public health guidance and services, and other community-based programs. It also ensures accuracy in administering estates, and it helps combat fraud. *See generally State v. Norvell*, 191 S.W. 536, 538 (Tenn. 1917) (extolling the many values of state birth records); *In re Seung*, 272 P. 968, 969–70 (Wash. 1928) (recognizing same). And it minimizes the risk of mistakes when a person’s biological sex is relevant.

It is, if nothing else, legitimate for a State to want to ensure its records convey only accurate information about a person’s birth. Indeed, the whole country benefits from it. *See DiFabio Birth Rec.*, 8 Pa. D. & C.2d at 582.

a. Limiting changes to birth certificates ensures accuracy

State laws that prohibit changing the sex designation on birth certificates are rationally related to ensuring accurate records. Because Oklahoma’s law serves this interest, it passes rational basis review.

Birth certificates record the facts of a person’s birth, including that person’s sex. *See, e.g., Littleton*, 9 S.W.3d at 231; *Pastime Cafe, Inc. v. Dep’t of Alcoholic Beverage Control*, 323 P.2d 551, 552 (Cal. Dist. Ct. App. 1958) (recognizing that “[a] birth certificate basically contains genealogical data” with “descriptive information . . . such as the sex, height, weight, color of eyes and hair of the newborn infant”). Any change to the resulting certificate that is not strictly error correcting (*i.e.*, an actual mistake was made at the time of birth), undermines accurate recordkeeping. *See MH v. First Jud. Dist. Ct. of Laramie Cnty.*, 465 P.3d 405, 412 (Wyo. 2020) (Kautz, J., specially concurring) (“[C]hanges to a birth certificate which seek to alter the facts of the birth undermine the integrity and the accuracy of the birth certificate.” (internal quotation marks omitted)); *cf. Gore*, 107 F.4th at 561 (“A policy requiring an error before changing that record rationally correlates with the State’s interest in consistency and historical accuracy.”). Indeed, as the Sixth Circuit recently recognized, “Allowing changes to reflect gender identity would mean that some birth certificates would show biological sex, others gender identity.”

Gore, 107 F.4th at 561. It is legitimate for the States to want to prohibit (or at least limit) inaccurate recordkeeping in the maintenance of birth records by limiting or prohibiting changes to the sex designation. *See id.*

It is well accepted that governments have a legitimate interest in maintaining accurate records. *See, e.g., Barrett v. Virginia*, 689 F.2d 498, 503 (4th Cir. 1982) (“[T]he mere fact that correctional authorities maintain a prisoner’s records in the name he used when convicted implicates no constitutional right. How prison officials choose to organize their records is quintessentially an administrative matter in which the courts should not intervene.”); *Gilbert v. Fox*, No. 16-CV-00354-GPG, 2016 WL 931287, at *4 (D. Colo. Mar. 11, 2016) (recognizing that “an inmate cannot compel a prison to reorganize its filing system to reflect [his] new name” and collecting cases). Accordingly, courts rightly defer to policymakers on recordkeeping decisions. *See, e.g., Anonymous v. Weiner*, 270 N.Y.S.2d 319, 323 (Sup. Ct. 1966) (recognizing that courts cannot displace the “body charged by law with the authority and responsibility of maintaining the records of births”).

As the Sixth Circuit affirmed, the States have a legitimate interest in ensuring birth records are accurate and consistent, and prohibiting changes to the sex designation on birth certificates furthers that interest. *See Gore*, 107 F.4th at 560–61. Accordingly, Oklahoma’s law passes rational basis review.

**b. Ensuring accurate records
minimizes the risk of mistakes
when the information matters
most**

Accurate recordkeeping is a legitimate interest, and prohibiting non-error-correcting changes to birth certificates furthers that interest. Prohibiting changes to the sex designation on birth certificates minimizes opportunities for mistakes when biological sex is relevant. *See id.* at 561.

The Tenth Circuit impermissibly tried to poke holes in the States' legitimate interests. Its approach was incorrect, and it compounded this error because the alleged "flaws" are no flaws at all. There is a plethora of areas where biological sex matters. And restricting changes to the sex designation on birth certificates ensures that when it is relevant, every effort is made to avoid a mistake.

For example, a birth certificate may be required to participate in organized athletics, where biological sex is particularly important. *See Adams ex rel. Kasper v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791, 820 (11th Cir. 2022) (*en banc*) (Lagoa, J., specially concurring) ("[S]cientific studies indicate that transgender females, even those who have undergone testosterone suppression to lower their testosterone levels to within that of an average biological female, retain most of the puberty-related advantages of muscle mass and strength seen in biological males."). As the district court properly recognized, legislatures "might readily conclude that birth certificates provide

a ready, reliable, non-invasive means of verifying the biological sex of participants in women’s athletics should they choose to enact statutes that restrict participation by biological men.” App. 124a. Prohibiting changes to the sex designation helps ensure fair play for young athletes. And it is vital to ensuring continued federal funding.

Intertwined with the role of birth certificates in athletics is the role of birth certificates in Title IX compliance. *See id.*; 20 U.S.C. § 1681; *see generally Kansas v. U.S. Dep’t of Educ.*, 739 F. Supp. 3d 902 (D. Kan. 2024). Title IX ensures that male and female students have equal resources and that they may learn (and participate in extracurricular activities) without fear of sex-based harassment. *See Kansas*, 739 F. Supp. 3d at 910–11, 919–23. A recent executive order on Title IX enforcement has heightened the need for States to ensure that biological men do not compete in women’s sports. *See generally* Keeping Men Out of Women’s Sports, Exec. Order No. 14,201, 90 Fed. Reg. 2,513 (Feb. 5, 2025).

A birth certificate that accurately reflects an individual’s biological sex is *the* critical tool for federally-funded educational institutions to comply with Title IX.² If the sex designation on a birth

² It is also the *least intrusive* tool. When the House recently passed the bipartisan Protection of Women and Girls in Sports Act, a few lawmakers expressed concern that the Act could require women and girls to “prove their gender.” Arthur Jones II & Lauren Peller, ‘Men Have No Place in Women’s Sports’: House GOP Votes to Roll Back Title IX Changes, ABC News (Jan 14, 2025, 2:22 P.M.), <https://perma.cc/4CZY-YKTH> (internal

certificate is changed, an institution may inadvertently facilitate a Title IX violation. And even if the institution is not found liable, any alleged violation may require it to undergo the burdens of conducting an internal investigation, being subject to a federal investigation, and having to defend against a civil suit. If the institution is public, the State may ultimately have to pay for this defense, and even if not, it is legitimate for the State to want to minimize the likelihood of its citizens paying for a legal defense through their tax or tuition dollars.

Beyond Title IX, other federal laws and directives may also emphasize the importance of a person's biological sex, thereby increasing the need for the States to ensure their records are accurate lest they lose out on funding or incur a federal investigation. *See, e.g.,* Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government, Exec. Order No. 14,168, 90 Fed. Reg. 8,615, 8,617 (Jan. 20, 2025) (“The Attorney General shall issue guidance to ensure the freedom to express the binary nature of sex and the right to single-sex spaces in workplaces and federally funded entities covered by the Civil Rights Act of 1964.”). Indeed, under another recent executive order, allowing the sex designation on a birth certificate to be amended to align with gender identity could

quotation marks omitted); *see also* Matt Galka, *House Blocks Transgender Girls from Women's Sports*, WWMT (Jan. 17, 2025, 2:51 P.M.), <https://perma.cc/9JC9-UJMP> (similar). These privacy concerns are alleviated if schools and athletic organizers have access to accurate, reliable birth certificates.

potentially result in state agencies losing federal grant money. *See id.* at 8,616 (“Federal funds shall not be used to promote gender ideology. Each agency shall assess grant conditions and grantee preferences and ensure grant funds do not promote gender ideology.”).

Beyond education, there are other times when biological sex matters. For example, certain social services (like women’s shelters) may only be directed to one sex. And accurate birth certificates minimize the risk of fraud for public benefits and in the administration of estates. *See Norvell*, 191 S.W. at 538. That this fraud may be uncertain or even unlikely to occur is *irrelevant*. What matters is whether the law serves a legitimate interest, and deterring (or attempting to deter) fraud is plainly a legitimate interest for the government. Similarly, ensuring accurate birth certificates may support the timely administration of estates, which, again, is a legitimate government interest.

When biological sex matters, the States want to minimize the risk of confusion and mistakes. Accordingly, it is immaterial that a birth certificate whose sex designation has been changed contains an “amended” notation or that the State retains the original under seal. Any material change (like that of sex) risks confusion, meaning that prohibiting or restricting these changes minimizes risk. The States do not have to perfectly draw lines if their actions further a legitimate interest.³ *See Vance v. Bradley*,

³ This is also why it is immaterial that the States may allow other changes to birth certificates. *E.g.*, Kan. Stat. Ann. § 65-2422a

440 U.S. 93, 108–09 (1979). And limiting changes to birth certificates minimizes the risk of confusion and mistakes.

Importantly, a birth certificate with an “amended” or similar designation may not specify which piece of information was amended. So, someone reviewing the birth certificate may not be aware that the sex was changed to align with gender identity, as opposed to some other innocuous modification. And even if a birth certificate notes that the sex was changed, a quick glance may miss it, causing mistakes as if there was no notation at all. If the State retains the original birth certificate, issues can still arise. The original may be under seal, and state employees, or employees of municipalities and school districts, may not have easy (or any) access to it. A court order may be necessary to view it, which requires time, legal

(authorizing issuance of a new birth certificate for a valid change of name). Again, rational basis review does not require perfect line drawing or consistency. *See Vance v. Bradley*, 440 U.S. 93, 108–09 (1979). That certain changes support different legitimate interests (e.g., family harmony, confidentiality in the adoption process) does not invalidate other interests in prohibiting changes to the sex designation. And, regardless, there are legitimate reasons for allowing some changes but not others. For example, amending a birth certificate to list a person’s adoptive parents, which may promote familial harmony, is irrelevant to Title IX compliance, where biological sex matters. Relatedly, changing records (even if only the sex designation on a birth certificate) requires staff time, meaning it costs money that the States may not fully recover through any requisite fees. The States have finite funds, and it is legitimate for them to align their spending with their policy priorities. *See id.* at 109.

counsel (*i.e.*, more money), and convincing a judge that viewing the original is necessary.

If the sex designation on a birth certificate cannot be changed (outside strict error correction), then there is no heightened risk of mistake or misunderstanding, and there is no delay in (or outright denial of) seeing the original birth certificate. It is legitimate for the States to want to ensure accuracy when biological sex matters.

The States record the facts of birth and create the resulting birth certificate. Birth certificates serve important purposes in the public and private sectors. The States have a legitimate, if not strong, interest in making and maintaining accurate records of births, which they facilitate by setting their own standards for amendments to birth certificates. They also have a legitimate interest in minimizing mistakes when these records matter most. Oklahoma's law—by promoting accuracy—furtheres legitimate interests, and it satisfies the Equal Protection Clause.

CONCLUSION

The Court should grant the petition, reverse the Tenth Circuit, and affirm that the States have a legitimate interest in accurate recordkeeping that they may further through restricting changes to birth certificates.

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