Nos. 24-38 and 24-43

IN THE

Supreme Court of the United States

BRADLEY LITTLE, GOVERNOR OF IDAHO, *et al.*,
Petitioners,

v.

LINDSAY HECOX, *et al.*,
Respondents.

WEST VIRGINIA, *et al.*,
Petitioners,

v.

B. P. J., BY HER NEXT FRIEND AND MOTHER, HEATHER JACKSON,
Respondent.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS FOR THE FOURTH AND NINTH CIRCUITS

BRIEF OF *AMICI CURIAE* AMERICAN ASSOCIATION OF CHRISTIAN SCHOOLS, CARDINAL NEWMAN SOCIETY, ASSOCIATION FOR BIBLICAL HIGHER EDUCATION, INTERNATIONAL ALLIANCE FOR CHRISTIAN EDUCATION, AND ASSOCIATION OF CLASSICAL CHRISTIAN SCHOOLS IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICI CURIAE*[1]

Amici are religious organizations whose member schools operate according to statements of religious belief and codes of personal conduct. They seek to uphold the highest standards of academic excellence and integrate the Christian faith with academic study. *Amici* rely on administrators, faculty, coaches, and staff who will not just impart information about Christianity, but who will also model the practice of the faith and mentor students as they develop their own faith and incorporate Christian beliefs and morality into their own lives. In this way, they strive to lead their students toward maturity, reason, virtue, and a right understanding of God and relationship to others.

The American Association of Christian Schools ("AACS"), founded in 1972, is a nonprofit federation of 38 state and regional Christian school organizations and two international Christian school organizations, representing nearly 700 primary and secondary schools, which enroll nearly 100,000 students. AACS seeks to provide high-quality educational programs and services to member schools nationwide. AACS provides teacher certification, school improvement, and accreditation, all of which are designed to integrate the Christian faith and life with learning and educate young people to live as good citizens according to the principles of their faith. AACS accreditation is widely recognized by state approving agencies and the U.S. Department of Homeland Security for the Student Exchange Visitor Program.

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1. No counsel for a party authored this brief in whole or in part, and no person other than *Amici* and their counsel made any monetary contribution intended to fund the preparation or submission of this brief.

Association for Biblical Higher Education in Canada and the United States ("ABHE"), founded in 1947, is a nonprofit network of more than 160 institutions of higher education, throughout North America, which enroll more than 75,000 students. ABHE supports academically rigorous education that challenges students to develop critical thinking skills, a biblically grounded Christian worldview, and a manner of living consistent with that worldview. ABHE also provides accreditation of undergraduate and graduate educational programs and has been recognized by the U.S. Department of Education as a postsecondary accrediting agency since 1952. ABHE seeks to promote, advance, and protect the essence and ethos of biblical higher education through its member institutions.

Association of Classical Christian Schools ("ACCS"), founded in 1994, is a nonprofit organization of over 400 classical Christian schools located throughout the United States. ACCS assists its member schools in providing a classical education in light of a Christian worldview that cultivates a Christian way of life. ACCS also accredits member schools that meet its educational requirements.

The Cardinal Newman Society, through The Newman Guide, promotes and defends faithful Catholic education by recognizing schools, colleges, and graduate programs that meet high standards of fidelity to Catholic teaching and formation of students in the light of the Catholic faith, without compromise to Catholic beliefs or morals. The Society's Newman Guide Network brings together leaders of recognized institutions and programs for collaboration and defense of their religious freedom.

International Alliance for Christian Education (IACE) is a global education network encompassing a variety of educational institutions and organizations in the evangelical tradition. IACE considers Christian education as of vital kingdom importance and seeks to unite Christian educators in affirming their mutual commitments to Christ-centeredness and confessional solidarity.

Amici all have an interest in their freedom, as religious organizations, to not only practice their religious beliefs, but also to proclaim and promote the values entrusted to them by the parents who send their children to member schools, and to educate and train member students accordingly. They also have an interest in protecting the safety, dignity, and religious freedom of students at member schools. The court rulings below and the positions advanced by the Respondents adversely affect those interests as explained below.

INTRODUCTION AND SUMMARY OF ARGUMENT

From time immemorial, people of all nations and cultures have recognized a distinction between male and female. *Amici*, as religious organizations, consist of people who are persuaded by the available documentary, testimonial, and experiential evidence of divine creation and affirm that the distinction between male and female is of divine origin. Although often mocked as superstitious, Christians are in fact possessed of a deep sense of reality of both heavenly and earthly domains. Their relationship to God, study, and life experiences lead them to uphold teachings and traditions that many are abandoning.

It was widely understood at the founding of this country that upholding religious freedom here is of vital importance because it is unavailable elsewhere. In fact, many who came here (but by no means all) sought primarily to practice their beliefs and to worship of God in peace without persecution and governmental interference. *Amici* are concerned that the courts in this country are adopting and enforcing the beliefs and practices of activist groups who insist that all must observe distinctions that not only contradict longstanding religious teachings, but that are also contrary to nature and common sense.

Amici support the position that the traditional immutable biological distinction between the sexes must be sustained. Furthermore, "gender" should maintain its traditional consistency with biological sex; that is, sex at birth. "Sex" is not a synonym for and does not include the concept of "gender identity."

Amici are associations whose members are private schools. Many member schools are subject to Title IX. Many participate in government programs that include federal funding. Many member schools participate in sports leagues with schools that are subject to Title IX. Thus, any change in the interpretation of Title IX that affects the operations of those leagues and programs directly affects the *Amici* member schools.

Title IX is a Spending Clause provision. As such, it must clearly and unambiguously set forth the terms of the agreement between the federal government and the States. Although Title IX prohibits discrimination based on sex, it does not clearly and unambiguously prohibit discrimination based on gender identity. Any expansion of Title IX would require legislation.

Respondents' contention that they are entitled to participate on female sports teams fails because, based upon their own experts and proposed definitions, they are not females. Gender identity is not equivalent to sex, and the term should not be reinterpreted as such. Furthermore, this case does not involve stereotyping or mixed motives. Therefore, Respondents fails as a matter of law.

The Equal Protection Clause does not apply here because Respondents are not similarly situated with biological females. There is no need to consider which level of scrutiny applies.

The change in law Respondents seek not only improperly makes courts arbiters of acceptable science and medicine, it contradicts longstanding traditional and religious beliefs. The First Amendment calls for governmental neutrality toward religion and toleration of religious freedom. Re-defining sex and gender is inconsistent with those constitutional requirements.

ARGUMENT

Amici are invested in the education of children within their communities. That education should represent the core teachings of their church or denominations. Member schools' policies should be consistent with their faith. Changes in secular law that coerce actions that are contrary to church teachings prevent *Amici* and their members from accomplishing their core missions. Forcing member schools to accept and practice teachings that contradict their beliefs at such a foundational level—the distinction between male and female—would be fatal to those schools' survival because parents send their children

to the schools to be trained in their faith and they do not want their students exposed to the very real dangers of implementation of transgender ideology.

Athletics are integral to the mission of *Amici* member schools. Coaches and staff, just like teachers, contribute to the education of students at their schools. Athletics and competition aid in the development of virtue—moral habits of behavior, and Christian values such as honesty, humility, self-acceptance, respect for others, submission to spiritual and lawful authority, and fairness.

Through women's sports, *Amici* and their schools train women to be successful as women. They celebrate the success of their female students and help them work through their failures. These are merely some of the many reasons why *Amici* firmly and steadfastly support the position of the petitioners in this appeal.

I. Title IX does not clearly and unambiguously provide that gender identity is a protected class.

The Constitution and laws of this country generally protect the right of religious organizations to carry out their missions as they see fit. However, acceptance of federal funding extends the reach of federal laws such as Title IX. Receipt of federal funding is conditioned upon acceptance of what amounts to a contract between the federal government and the recipient. *Tennessee v. Becerra*, 739 F. Supp. 3d 467, 480 (S.D. Miss. 2024). Title IX was enacted pursuant to Congress' Spending Clause authorization. *Id.* It requires schools accepting federal funding to refrain from discrimination on certain grounds, including sex.

Private rights of action seeking to enforce Spending Clause legislation under 42 U.S.C. § 1983 are allowed only in atypical situations. *Medina v. Planned Parenthood S. Atlantic*, 606 U.S. ___, 145 S. Ct. 2319, 2239 (2025). Specifically, the provision in question must "clearly and unambiguously confer[] an individual right." *Id.* Title IX does not contain a clear statement that gender identity is a protected class in its non-discrimination provision. *Becerra*, 739 F. Supp. 4d at 480.

The requirement of a clear statement is especially important when religious rights and organizations will be impacted. This Court's interpretation of Title IX will affect religious schools that accept federal funding. As a practical matter, the ruling will also affect purely private religious schools that compete against teams from schools subject to Title IX because they will be pressured to follow standardized rules and guidelines that will be drafted to comply with this Court's ruling. Therefore, the decision in this case will have repercussions for both public and private schools. This Court should exercise caution in interpreting Title IX in a manner that effectively changes existing law.

But that is precisely what the lower courts have done. Their ruling was that schools subject to Title IX must accept biological males onto female sports teams. The courts below adopted Title VII precedent in reaching their conclusions. Because Title IX is a Spending Clause statute rather than a civil rights statute, the expansion of Title IX's reach sought by Respondents should be denied.

II. "Gender identity" is not included within the statutory term "sex."

Much of the debate in this case centers around the meaning of "sex" and "gender." These are, of course, matters of religious concern. (*See e.g.*, Gen. 1:27 ("And God created man in his own image, in the image of God created he him; male and female created he them.") (KJV). Re-defining religious terms affects religious rights by alienating secular society from traditional religious understanding.

Title IX provides that "No person . . . shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal Financial assistance . . . ." 20 U.S.C. § 1681(a). The protected class is "sex."

The Fourth and Ninth Circuit courts both held that this Court's jurisprudence supports a conclusion that transgender discrimination is sex discrimination. Because the statute expressly lists sex as a protected category but not gender identity, this is tantamount to re-defining the meaning of "sex."

The Fourth Circuit held that excluding transgender girls from the definition of "female" constituted facial discrimination based on sex. *B.P.J. by Jackson v. W. Va. State Bd. of Educ.*, 98 F.4th 542, 556 (4th Cir. 2024). This holding directly followed from a prior Fourth Circuit decision that excluding transgender students from their gender-identified bathrooms discriminated "on the basis of sex" within the meaning of Title IX. *Grimm v.*

Gloucester County Sch. Bd., 972 F.3d 586, 616 (4th Cir. 2020). Under *Grimm* and similar cases in other circuits, females have no right to complain when biological males are allowed in female restrooms.

The Fourth and Ninth Circuits both cited this Court's holding regarding the applicability of Title VII to transgender discrimination in support of their conclusions. *Grimm*, 972 F.3d at 616 (citing *Bostock v. Clayton County*, 590 U.S. 644, 651-52 (2020)); *Hecox v. Little*, 104 F.4th 1061, 1079-80 (9th Cir. 2024) (same). Both also invoked a theory of sex stereotyping as a form of sex discrimination. *Grimm*, 972 F.3d 617 n. 15 (citing *Price Waterhouse v. Hopkins*, 490 U.S. 228, 250 (1989)); *Grabowski v. Ariz. Bd. of Regents*, 69 F.4th 1110, 1117 (9th Cir. 2023) (same). The courts below erred in so doing.

In the first place, *Price* does not equate sex stereotyping with gender. It held that, in prohibiting discrimination based on sex, "Congress intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes." 490 U.S. at 251. The *Price* court used the terms "sex" and "gender" interchangeably. *Id.* at 240 ("We take [the words "because of such individual's . . . sex"] to mean that gender must be irrelevant to employment decisions.") Under *Price*, stereotyping is a form of sex discrimination.

In *Bostock*, this Court held that Title VII applies to discrimination based on "being transgender." 590 U.S. 644, 651-52 (2020). The implications of *Bostock* outside the Title VII context are not yet clear because this Court declined to apply it in a recent case upholding a Tennessee law restricting sex transition treatments for minors. *U.S. v. Skrmetti*, 605 U.S. ___, 145 S. Ct. 1816, 1834 (2025).

Complicating the uncertainty is the fact that *Bostock*'s logic was deeply flawed. Title VII prohibits employment discrimination against an individual "because of such individual's . . . sex." *Bostock*, 590 U.S. at 655 (quoting 42 U.S.C. § 20000e-2(a)(1)). This Court held that the words "because of" incorporate but-for causation. *Id.* at 656. The word "sex" was interpreted to refer "only to biological distinctions between male and female." *Id.* at 655. From there, this Court proceeded to its core holding:

> An individual's homosexuality or transgender status is not relevant to employment decisions. That's because it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual because of sex.

Bostock, 590 U.S. at 660.

An impossibility is a difficult thing to prove. The *Bostock* majority did not do so because the dissent falsified the leading example the majority provided to support its conclusion. *Compare Bostock*, 590 U.S. at 660 *with id.* at 698 (Alito, J., dissenting). Because the "impossibility" standard is not met, the but-for causation rationale cannot support *Bostock*'s holding. *Bostock* thus provides no guidance other than the seemingly arbitrary expansion of Title VII protection to homosexuals and transgenders.

The Fourth Circuit interpreted *Bostock* to mean that but-for causation always exists "because the discriminator is necessarily referring to the individual's sex to determine incongruence between sex and gender." *Grimm*, 972 F.3d at 616. The Ninth Circuit also relied heavily on this rationale in *Grabowski*, 69 F.4th at 1117-18.

But that is a misreading of the applicable statutes and this Court's precedent. The "but-for causation" called for in Title VII concerns its applicability in "mixed-motive" cases. *Price Waterhouse*, 490 U.S. at 240-41. In other words, the statutory prohibition applies when sex discrimination was a motivating factor in the adverse employment decision, even when the decision was also partly based on other, non-prohibited factors. *Id.* at 241.

The statutory language does not support the use of but-for causation to expand the protected classes. This is so because "the other important aspect of the statute" is the preservation of freedom of choice. *Price Waterhouse*, 490 U.S. 242. *Price Waterhouse* does not support the sea change ascribed to it—it simply reiterated prior law regarding stereotyping. The issue was not overtly disputed by the parties to that case. *Id.* at 250-51.

The extension of "sex" to transgender rights burdens religious liberties, thereby raising First Amendment concerns. Respondents seek to prohibit, not merely employers, but schools and fellow athletes and students, from recognizing long-held, traditional, well-established, and easily recognizable religious and biological distinctions between the sexes.

This is evident from a cursory reading of the opinions below. The Ninth Circuit began by holding that "seemingly familiar terms as 'sex' and 'gender' can be misleading." *Hecox*, 104 F.4th at 1068 (quoting *Doe ex rel. Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 522 (3d Cir. 2018)). The Fourth Circuit held similarly in the precedent upon which its ruling in this case relied:

> To be sure, many of us carry heavy baggage into any discussion of gender and sex. With the help of our amici and Grimm's expert, we start by unloading that baggage and developing a fact-based understanding of what it means to be transgender . . . .

Grimm, 972 F.3d at 594. These courts seemingly considered it their duty to re-educate rather than sticking to their assigned task of impartially deciding cases and controversies under existing law. No support exists in the Constitution for this attitude toward religion.

The *Boyertown* line of cases cite various medical experts who support transgender interests in adopting the terminology of the transgender parties. The following definitions are relevant:

The district court in *Hecox* defined "*sex*" as "the anatomical and physiological processes that lead to or denote male or female." *Hecox v. Little*, 479 F. Supp. 3d 930, 945 (D. Idaho 2020) (quoting *Boyertown*, 897 F.3d at 522). "A person's 'sex' is typically assigned at birth based on an infant's external genitalia." *Hecox*, 104 F.4th at 1068.

The courts below did not define "*gender*" in this case. However, the Third Circuit defined "gender" as "a broader social construct that encompasses how a society defines what male or female is within a certain cultural context." *Boyertown*, 897 F.3d at 522.

"*Gender identity*" is defined as a person's "subjective, deep-core sense of self as being a particular gender." *Boyertown*, 897 F.3d at 522; *Hecox*, 479 F. Supp. 3d at

945. The Ninth Circuit defined it as "a person's sense of being male, female, neither, or some combination of both." *Hecox*, 104 F.4th at 1068. The Fourth Circuit described gender as a person's "deeply felt, inherent sense" of that person's gender. *Grimm*, 972 F. 3d at 594.

The term "*cisgender*" is used to mean "a person who identifies with the sex that person was determined to have at birth." *Boyertown*, 897 F.3d at 522; *Hecox*, 479 F. Supp. 3d at 945. As the Ninth Circuit put it, "cisgender" means an "individual's gender identity corresponds with the sex assigned at birth." *Hecox*, 104 F.4th at 1069.

In contrast, "*transgender*" is defined to mean "a person whose gender identity does not align with the sex that person was determined to have at birth." *Boyertown*, 897 F.3d at 522; *Hecox*, 479 F. Supp. 3d at 945. The Ninth Circuit changed this slightly to mean an "individual's gender identity does not correspond to their sex assigned at birth." *Hecox*, 104 F.4th at 1068-69. The Fourth Circuit cited an amicus brief for the proposition that "being transgender is natural and is not a choice." *Grimm*, 972 F. 3d at 594.

Finally, "*gender dysphoria*" is described as a medical condition resulting from a person's birth-determined sex being different from their gender identity." *Boyertown*, 897 F.3d at 522; *Hecox*, 479 F. Supp. 3d at 945. The Fourth and Ninth Circuits described gender dysphoria as resulting from an "incongruence" between one's gender identity and birth-assigned sex. *Hecox*, 104 F.4th at 1068-69; *Grimm*, 972 F. 3d at 594. Experts for transgender students have testified that an important treatment for gender dysphoria is to allow the student to be treated as

the sex with which they identify and to be allowed to use the bathrooms consistent with that sex. *Grimm*, 972 F.3d at 596-97; *A.C. by M.C. v. Metro. Sch. Dist. of Martinsville*, 75 F.4th 760, 764 (7th Cir. 2023).

The above definitions do not necessarily represent the consensus understanding of the meaning of these words.[2] They are terms of art within the transgender community. They certainly do not reflect the understanding of *Amici*, their members, and their students.

Nevertheless, suppose these definitions are accepted as the views of Respondents and for purpose of argument. Where does that lead?

Under their own definitions, Respondents' "sex" is not in dispute. Lindsay Hecox is a transgender woman. *Hecox*, 479 F. Supp. 3d at 946. B.P.J. is a transgender girl. *B.P.J.*, 649 F. Supp. 3d 220, 223 (S.D. W.Va. 2023). "This means that although B.P.J.'s biological sex is male, she now identifies and lives as a girl." *Id.*

The alleged discrimination does not implicate the language of Title IX. The respondents do not challenge the separation of the sexes in separate teams. *B.P.J.*, 98 F.4th at 564. They seek to participate on teams reserved for the opposite sex—an undisputedly protected class.

Respondents' challenges in these cases are based on gender identity. But "gender identity," according to

2. For example, the phrase "sex assigned at birth" has been criticized because it implies that the determination of a baby's sex at birth is arbitrary. (*See* Br. Amicus Curiae Women's Declaration Int'l USA filed Aug. 14, 2024 at p. 21.)

their own definitions, is not "sex." Under transgender terminology, "sex" is objective and based upon an anatomical inspection at birth. "Gender identity," for them, is a subjective, inner "sense" or "identification" as to their sex.

Being a transgender, under the definitions offered by the transgender community, does not make a person a member of the opposite sex. It only means that person subjectively identifies with the opposite sex. In other words, these cases do not involve a dispute about "sex," but merely "gender identity."

What Respondents are attempting to do is to shoehorn "gender identity" into the statute as a protected class under the guise of "sex." But they have disconnected "gender" from "sex" by defining "gender" solely in psychosocial terms. Thus, "gender identity" is not "sex." They cannot have it both ways.

The challenged legislation does not seek to prohibit Respondents' participation in teams of their own sex. What the legislation bans is males seeking to participate on all-female teams based on their subjective self-assessment.

Nor are the challenged statutes engaged in stereotyping. A stereotype has been described as "a belief that a person is not acting as their sex should act." *Grabowski*, 69 F. 4th at 1117. Because the transgender community recognizes that "sex" is based upon objective, biological facts, the laws in question do not involve stereotyping. Respondents are biological males. The challenged statutes do not prohibit Respondents from playing on male teams if they exhibit stereotypical female

traits or mannerisms. The laws simply bar them from participating in opposite-sex sports based upon their subjective "gender identity."

Respondents might argue that subjective "gender identity" prevails over objective "sex." But that is not what Title IX says.

The existing interpretation of Title IX should not be changed. Sports (particularly track) are uniquely objective. It is simple physics: whoever gets to the finish line first wins (assuming compliance with applicable rules). This is about as objective as it can get. Subjective experience may play a role, such as in how hard an athlete trains or as to her "will to win." But an athlete's self-assessment as to her sex can hardly be said to affect performance on the track.

Sports are often differentiated into classes, even within sexes, by other factors such as weight, age, level of experience, and the like. The reason is obvious: these class divisions level the playing field as much as possible to promote fair competition. Without them, only the top competitors would ever have a chance to win.

Classifications based on sex are necessary for this reason. Abundant evidence supports the traditional understanding that males have physical advantages over women. *See e.g.*, J. Brad Reich, *"Can" Versus "Should": Title IX, Transgender, and Athletic Opportunities*, Marquette Sports L. Rev. 229, 267-68 (Fall 2022).

Curiously, the courts below found that "gender-affirming" medical care could eliminate male biological

advantages. But this is merely forcing sports teams to bend their rules. Most sports ban the use of medications that *enhance* athletic performance because it gives athletes that use them unfair advantages. So why should biological males be allowed on women's sports teams merely because they undergo performance-*inhibiting* medical treatments? Is it the function of courts to decide if or how much "gender-affirming care" sufficiently inhibits male capabilities?

Moreover, allowing self-assessment to prevail over objective criteria would have pernicious effects. The intervenors in these cases, those derisively labeled "cisgender," have expressed subjective dissatisfaction with having to compete against biological males. *Hecox*, 104 F.4th at 1072. Given sufficient clinical symptoms, this could lead to depression or other mental conditions. The cause of the "dysphoria" is easily identifiable—their inner "sense" or "identification" of self as winners is incongruent with the results of competitions when transgenders participate. Their treatment protocol could be to remove the cognitive dissonance by having the "cisgender" females declared the winners. Where would this end?

This is not to belittle Respondents' condition or their need for necessary medical treatment. But a doctor's prescription only goes so far. Prescriptions allow patients to access certain medical treatments and medications. It goes without saying that those who provide the prescribed treatments and medications are paid for their products and services. What prescriptions do not do is to commandeer the entire world—everyone with whom the patient comes into contact—into acting as props, without pay, in an elaborate production to align the patient's subjective sense

of self with objective reality. Nor should federal law be invoked for that purpose—that is tyranny.

Amici, their members schools, and their female students are not medical providers. The ready acceptance of Respondents' subjective self-identification in the courts below and the minimization of others' rights is troubling and constitutionally suspect. If a man "identifies" as Jesus Christ, should courts command the world to worship him?

These cases do not involve sex discrimination. Respondents are biological males, and they are permitted to try out for and participate on teams with other biological males. Stereotyping is not in play here because Respondents may participate on male teams regardless of their gender ideology. But-for causation does not apply because the alleged discrimination is not made on the basis of a protected class.

III. Equal Protection does not apply.

The Equal Protection analysis reaches the same result based upon the above. Respondents are not similarly situated with females because they are not females. They are biological males whose subjective gender identity does not match their biological sex.

This Court did not extend intermediate scrutiny to all "genders," as Respondents define it, merely by using that term in *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127 (1994). That case concerned sex discrimination against women. *Id.* at 131-34. Justice Scalia noted in dissent that the word "gender" has recently acquired new connotations, but that case involved "sex discrimination plain and simple." *Id.*

at 157 n. 1 (Scalia, J., dissenting). Because these cases involve gender identity discrimination rather than sex discrimination, heightened scrutiny does not apply here.

IV. Respondents' proposed interpretation of Title IX contravenes First Amendment religious protections.

Statutory construction aside, *Amici* object to Respondents' attempt to redefine terms. Words matter, and requiring persons to adopt a meaning of a word that is inconsistent with general use is a form of discrimination. It is a power play in which special interest groups impose their wishes upon others. Christen Price, *Women's Spaces, Women's Rights: Feminism and the Transgender Rights Movement*, 103 Marq. L. Rev. 1509, 1557-58 (Summer 2020). Because the re-definition at issue here involves religious terms, these cases implicate constitutional considerations.

This dispute hinges upon interpretation of the word "gender." Respondents claim that gender is "a broader social construct." As Justice Scalia pointed out, "[t]he word 'gender' has acquired the new and useful connotation of cultural or attitudinal characteristics (as opposed to physical characteristics) distinctive to the sexes. That is to say, gender is to sex as feminine and masculine to male." *J.E.B.*, 511 U.S. at 157 n.15.

However, that is not the original meaning of the word. "Gender" derives from a Latin word meaning "to beget, or to be born." Webster's American Dictionary of the English Language 90 (1828). Other words from the same root include "generate," "generation," and "begin." *Id.* at 90-91. The related verb "engender" means "to beget,

procreate" or "to cause to exist." "Engender." Merriam-Webster.com Dictionary, Merriam-Webster, https://www.merriam-webster.com/dictionary/engender. Accessed 12 Sep. 2025. "Gender" has to do with procreation, and it was originally a synonym for "sex."

The socio-cultural overlay is fairly recent. Gayle Rubin is often credited with the idea of distinguishing between "sex" and "gender." Andrew Gilden, *Toward a More Transformative Approach: the Limits of Transgender Formal Equality*, 23 Berkeley J. Gender L. & Just. 83, 85 n.4 (2008). In a 1975 article, Rubin posited that "gender is a socially imposed division of the sexes." Dorianne Lambelet Coleman and Kimberly D. Drawiec, *Women's Sports and the Forgotten Gender*, 80 Law & Contemp. Probs. 7, 15 (2017). This approach views gender in terms of what had previously been called "gender roles." *Id.* Before long, "gender" was being defined as "a psychosocial construct." Kristine W. Holt, *Reevaluating Holloway: Title VII, Equal Protection, and the Evolution of Transgender Jurisprudence*, 70 Temp. L. Rev. 283, 297 (Spring 1997).

But this is not necessarily the view of society as a whole. It was a proposal geared toward supporting activism by certain communities. Rubin, for instance, has been described as "an influential American queer theorist" who "decried prejudice against 'boy-lovers' and contended that stigma around 'cross-generational' sex is no different than intolerance of homosexuality, transsexuality, or sadomasochism." Rosemary Ardman, *Child Rape and the Death Penalty*, 61 ILDR 159, 183 (2025). Ultimately, transgender activists seek to "put[] an end to the gender system." Melina Constantine Bell, *Gender Essentialism and American Law: Why and How*

to Sever the Connection, Duke J. Gender L. & Pol'y 163, 206 (Spring 2016). Many Americans never accepted any of this.

Despite the terminology, this case is case is not about "sex," "gender," or men becoming women. What is at issue is whether "gender identity" falls within the statutory term "sex."

Transgender activists are keenly aware of the importance of controlling the interpretation of language. They have "tried to control their representation by calling for specific designations that they themselves choose" and consider this a "central concern." Kris Franklin, Sarah E. Chinn, *Transsexual, Transgender, Trans: Reading Judicial Nomenclature in Title VII Cases*, Berkeley J. Gender L. & Just. 1, 2 (Summer 2017). In order to accomplish that, the Gay and Lesbian Alliance against Defamation (GLAAD) posted a detailed guide in May 2010. *Id.* at p. 4.

The Fourth and Ninth Circuit courts adopted definitions that are substantially similar to the GLAAD terminology in their opinions below and in prior opinions addressing transgender issues. *Grimm*, 972 F.3d at 594; *B.P.J.*, 649 F. Supp. 3d at 225 n.1; *B.P.J.*, 98 F.4th at 556 (citing *Grimm* as "binding precedent"); *Hecox*, 479 F. Supp. 3d at 945; *Hecox*, 104 F.4th at 1068-69. These opinions followed in the tracks of the Third Circuit. *Boyertown*, 897 F.3d at 522. This capitulation to the vocabulary of a litigant is a form of anti-religious bias.

Courts' uncritical adoption of transgender terminology affects their reasoning. Respondents are described as

"transgender females." This is a misleading term because the GLAAD terminology acknowledges that "sex" is a biological, anatomical distinction. A "transgender female" is not a female *per se*, but rather a male who subjectively identifies as a female. Yet multiple circuit courts took the bait and analyzed their cases as if transgender females are similarly situated to biological females.

Had the courts below impartially bypassed Respondents' invitation to redefine terms, a much different analysis would have resulted. Respondents have not alleged sex discrimination because they do not allege they have been prohibited from participating on teams reserved for their sex. Respondents are not similarly situated with females because they are not of the same sex. Stereotyping is not a factor here.

Furthermore, allowing biological males to play on women's teams discriminates against females because it deprives them of opportunities and renders them second-class citizens on their own teams. Reich, *"Can" versus "Should"*, 33 Marq. Sports L. Rev. at 268. Some feminists are now arguing that the changes transgenders seek adversely affect women. Price, *Women's Spaces, Women's Rights*, 103 Marq. L. Rev. 1509, 1522-23. Price argued that the transgender movement and insistence on redefining terms has the effect of "erasing" women and renders female biology irrelevant. *Id.* at 1561.

Women's sports teams and sporting events were created to protect and honor the athleticism, skill, competitive drive, endurance, and hard work accomplished within the bounds of female anatomy. Separate teams for women recognizes and celebrates their distinct abilities

and physique, and encourages female athletes to push themselves to their limits.

Amici wholeheartedly support the equality of women and decry unfair treatment of them at the hands of the law. God took Eve from Adam's side and placed her beside him to be loved, cherished, and celebrated. (Gen. 2:21-23.)

CONCLUSION

Respondents' position represents an unwarranted extension of the text of Title IX. It is unfair to women and likely unconstitutional because it seeks to replace a core religious teaching with a new, government-mandated dogma. The rulings of the courts below should be reversed.

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