

Nos. 23-16026(L), 23-16030 (Con)

**United States Court of Appeals
for the Ninth Circuit**

HELEN DOE, parent and next friend of Jane Doe, et al.,
Plaintiffs-Appellees,

v.

THOMAS C. HORNE, in his official capacity as
State Superintendent of Public Instruction, et al.,
Defendants-Appellants,

-and-

WARREN PETERSEN, Senator, President of the Arizona State Senate;
BEN TOMA, Representative, Speaker of the Arizona House of Representatives,
Intervenor-Defendants-Appellants.

On Appeal from the United States District Court
for the District of Arizona

**BRIEF FOR STATES OF NEW YORK, HAWAII, CALIFORNIA,
COLORADO, DELAWARE, ILLINOIS, MAINE, MARYLAND,
MASSACHUSETTS, MICHIGAN, MINNESOTA, NEVADA, NEW JERSEY,
OREGON, PENNSYLVANIA, RHODE ISLAND, VERMONT, AND
WASHINGTON, AND THE DISTRICT OF COLUMBIA AS AMICI CURIAE
IN SUPPORT OF APPELLEES AND AFFIRMANCE**

ANNE E. LOPEZ
Attorney General of Hawai'i
KALIKO'ONĀLANI D. FERNANDES
Solicitor General
LAUREN K. CHUN
Deputy Solicitor General
425 Queen Street
Honolulu, Hawai'i 96813
(808) 586-1360

LETITIA JAMES
Attorney General of New York
BARBARA D. UNDERWOOD
Solicitor General
JUDITH N. VALE
Deputy Solicitor General
MARK S. GRUBE
Senior Assistant Solicitor General
28 Liberty Street
New York, New York 10005
(212) 416-8028

(Additional counsel listed on signature pages.) Dated: October 13, 2023

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTERESTS OF THE AMICI STATES.....	1
ARGUMENT	4
POINT I	
PROTECTING TRANSGENDER PEOPLE FROM DISCRIMINATION CONFERS WIDE SOCIETAL BENEFITS WITHOUT REDUCING OPPORTUNITIES FOR OTHERS	4
A. Transgender Youth Face Pervasive and Harmful Discrimination That Causes Them Serious Health and Academic Harms.....	7
B. The Amici States’ Experiences Confirm That Protecting Transgender People from Discrimination Yields Broad Benefits.....	12
POINT II	
FEDERAL LAW PROHIBITS THE GENDER-IDENTITY DISCRIMINATION IN THIS CASE	17
A. The Equal Protection Clause Prohibits the Gender- Identity Discrimination in This Case.....	18
B. Title IX Prohibits the Gender-Identity Discrimination in This Case.	26
CONCLUSION.....	30

TABLE OF AUTHORITIES

Cases	Page(s)
<i>A.C. ex rel. M.C. v. Metropolitan Sch. Dist.</i> , 75 F.4th 760 (7th Cir. 2023)	28
<i>Adams ex rel. Kasper v. School Bd. of St. Johns Cnty.</i> , 57 F.4th 791 (11th Cir. 2022) (en banc)	29
<i>Bostock v. Clayton Cnty.</i> , 140 S. Ct. 1731 (2020)	7, 27-28
<i>Brown v. Board of Educ.</i> , 347 U.S. 483 (1954)	13
<i>City of Cleburne v. Cleburne Living Ctr.</i> , 473 U.S. 432 (1985)	18-19
<i>Clark v. Arizona Interscholastic Ass’n</i> , 695 F.2d 1126 (9th Cir. 1982).....	19
<i>Dodds v. United States Dep’t of Educ.</i> , 845 F.3d 217 (6th Cir. 2016).....	28
<i>Doe ex rel. Doe v. Boyertown Area Sch. Dist.</i> , 897 F.3d 518 (3d Cir. 2018).....	28
<i>Doe v. Horne</i> , No. 23-cv-185, 2023 WL 4661831 (D. Ariz. July 20, 2023).....	18, 20, 23-26, 29
<i>Grabowski v. Arizona Bd. of Regents</i> , 69 F.4th 1110 (9th Cir. 2023).....	27, 29
<i>Grimm v. Gloucester Cnty. Sch. Bd.</i> , 972 F.3d 586 (4th Cir. 2020).....	21-23, 28-29
<i>Hecox v. Little</i> , 79 F.4th 1009 (9th Cir. 2023).....	18, 20, 24-25, 29

Cases	Page(s)
<i>Nguyen v. Immigration & Naturalization Serv.</i> , 533 U.S. 53 (2001)	18
<i>Parents for Privacy v. Barr</i> , 949 F.3d 1210 (9th Cir. 2020).....	28
<i>Whitaker ex rel. Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.</i> , 858 F.3d 1034 (7th Cir. 2017).....	28
 Laws & Regulations	
<i>Federal</i>	
20 U.S.C. § 1681.....	26
28 C.F.R. § 54.450.....	27
34 C.F.R. § 106.41.....	27
<i>States (alphabetical)</i>	
Ariz. Rev. Stat. § 15-120.02.....	1, 17
Cal. Civ. Code § 51.....	5
Cal. Educ. Code § 220.....	5
§ 221.5.....	5
§ 221.5 (2013)	14
Cal. Gov't Code § 12926.....	5
§ 12940.....	5
§ 12949.....	5
Cal. Penal Code § 422.55.....	5
§ 422.56(c).....	5

Laws & Regulations	Page(s)
<i>States (alphabetical)</i>	
Colo. Rev. Stat.	
§ 24-34-301	5
§ 24-34-402	5
§ 24-34-502	5
§ 24-34-601	5
Conn. Gen. Stat.	
§ 10-15c.....	5, 13
§ 46a-51	5
§ 46a-60	5
§ 46a-64	5
§ 46a-64c.....	5
Del. Code Ann.	
tit. 6, § 4501.....	5
tit. 6, § 4603.....	5
tit. 19, § 711.....	5
14 Del. Admin. Code § 1024	21
D.C. Code	
§ 2-1401.02.....	6
§ 2-1402.11	6
§ 2-1402.21	6
§ 2-1402.31.....	6
§ 2-1402.41.....	6, 13
§ 38-841.02.....	13
D.C. Mun. Regs. tit. 5-F, § 102.6.....	13
Haw. Rev. Stat.	
§ 302A-461	5
§ 368D-1.....	5
§ 489-2	5
§ 489-3	5
§ 515-2	5
§ 515-3	5

Laws & Regulations	Page(s)
<i>States (alphabetical)</i>	
775 Ill. Comp. Stat.	
5/1-102	5
5/1-103	5
Iowa Code	
§ 216.2.....	5
§ 216.6.....	5
§ 216.7.....	5
§ 216.8.....	5
§ 216.9.....	5
Me. Rev. Stat. Ann.	
tit. 5, § 4553.....	5
tit. 5, § 4571.....	5
tit. 5, § 4581.....	5
tit. 5, § 4591.....	5
tit. 5, § 4601.....	5
Md. Code Ann., Educ. § 26-704.....	5
Md. Code Ann., State Gov't	
§ 20-304	5
§ 20-606	5
§ 20-705	5
Mass. Gen. Laws	
ch. 4, § 7.....	5
ch. 76, § 5 (2011).....	5, 14
ch. 151B, § 4	5
ch. 272, § 92A	5
ch. 272, § 98.....	5
603 Mass. Code Regs. 26.06.....	14
Mich. Comp. Laws § 37.2102	5

Laws & Regulations	Page(s)
-------------------------------	----------------

States (alphabetical)

Minn. Stat.

§ 363A.03	5
§ 363A.08	5
§ 363A.09	5
§ 363A.11	6
§ 363A.13	6

Nev. Rev. Stat.

§ 118.075	6
§ 118.100	6
§ 613.310	6
§ 613.330	6
§ 651.050	6
§ 651.070	6

N.H. Rev. Stat. Ann.

§ 354-A:2	6
§ 354-A:6	6
§ 354-A:8	6
§ 354-A:16	6
§ 354-A:27	6

N.J. Stat. Ann.

§ 10:5-5	6
§ 10:5-12	6
§ 18A:36-41	6

N.M. Stat. Ann.

§ 28-1-2	6
§ 28-1-7	6

N.Y. Educ. Law

§ 11	14
§ 12	14

Laws & Regulations	Page(s)
<i>States (alphabetical)</i>	
N.Y. Exec. Law	
§ 291.....	6
§ 296.....	6
Or. Rev. Stat.	
§ 174.100.....	6
§ 659.850.....	6
§ 659A.006	6
R.I. Gen. Laws	
§ 11-24-2	6
§ 28-5-6.....	6
§ 28-5-7	6
§ 34-37-3	6
§ 34-37-4	6
Utah Code Ann.	
§ 34A-5-106.....	6
§ 57-21-5	6
Vt. Stat. Ann.	
tit. 1, § 144.....	6
tit. 9, § 4502.....	6
tit. 9, § 4503.....	6
tit. 21, § 495.....	6
Wash. Rev. Code Ann.	
§ 28A.642.010	6, 13
§ 49.60.030.....	6
§ 49.60.040.....	6
§ 49.60.180.....	6
§ 49.60.215.....	6
§ 49.60.222.....	6

Miscellaneous Authorities	Page(s)
Albuquerque Pub. Schs., <i>Non-Discrimination for Students: Gender Identity and Expression</i> (May 2016), https://tinyurl.com/y8hugxkt	22
American Psych. Ass’n (APA), <i>Answers to Your Questions About Transgender People, Gender Identity, and Gender Expression</i> (last updated June 2023), https://www.apa.org/topics/lgbtq/transgender-people-gender-identity-gender-expression	4
American Psych. Ass’n, <i>Guidelines for Psychological Practice with Transgender and Gender Nonconforming People</i> , 70 Am. Psych. 832 (2015), https://www.apa.org/practice/guidelines/transgender.pdf	4
Ancheta, April J., et al., <i>The Impact of Positive School Climate on Suicidality and Mental Health Among LGBTQ Adolescents: A Systematic Review</i> , 37 J. Sch. Nursing 75 (2021), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8142116/pdf/nihms-1699098.pdf	10-11
Bailey, Richard, <i>Physical Education and Sport in Schools: A Review of Benefits and Outcomes</i> , 76 J. Sch. Health 397 (2006), https://www.researchgate.net/publication/6816341_Physical_Education_and_Sport_in_Schools_A_Review_of_Benefits_and_Outcomes	16
Barrera, Ellis, et al., <i>The Medical Implications of Banning Transgender Youth from Sport Participation</i> , 176 JAMA Pediatrics 223 (2022), https://tinyurl.com/zxzjfkx9	16
Burns, Ryan D., et al., <i>Sports Participation Correlates With Academic Achievement: Results From a Large Adolescent Sample Within the 2017 U.S. National Youth Risk Behavior Survey</i> , 127 Perceptual & Motor Skills 448 (2020), https://tinyurl.com/mrh93s7n	14
California Interscholastic Fed’n, <i>Constitution & Bylaws 2023-24</i> (2023), https://cifstate.org/governance/constitution/Constitution_and_Bylaws.pdf	21

Miscellaneous Authorities	Page(s)
Chiasson, Judy, <i>Success and Opportunity for Transgender Students</i> , HuffPost (updated Feb. 2, 2016), https://www.huffpost.com/entry/success-and-opportunity-for-transgender-students_b_3744830	23
Clark, Caitlin, et al., GLSEN, <i>LGBTQ Students and School Sports Participation: Research Brief</i> (2021), https://tinyurl.com/yc2r7cac	16
Clark, Caitlin M., & Joseph G. Kosciw, <i>Engaged or Excluded: LGBTQ Youth's Participation in School Sports and Their Relationship to Psychological Well-Being</i> , 59 Psych. Schs. 95 (2022), https://onlinelibrary.wiley.com/doi/abs/10.1002/pits.22500	16
Colorado High Sch. Activities Ass'n, <i>Constitution of the Colorado High School Activities, 2023-2024</i> (2023), https://chsaanow.com/documents/2023/7/26//000_BylawBookFinalWebsite.pdf?id=1810	21
Division on C.R., N.J. Dep't of L. & Pub. Safety, <i>5 Things You Should Know About LGBTQ+ Student Rights in Schools</i> (June 15, 2022), https://www.njoag.gov/wp-content/uploads/2022/06/fact_LGBTQ-School-Students.pdf	13
Fresno Unified Sch. Dist., <i>Fresno Unified Admin. Regul. (AR) 5145.3: Nondiscrimination/Harassment</i> (Mar. 7, 2022), https://bp.fresnounified.org/wp-content/uploads/5145-3-AR-Nondiscrimination-Harassment-1.pdf	21
GLSEN, <i>Improving School Climate for Transgender and Nonbinary Youth: Research Brief</i> (2021), https://www.glsen.org/sites/default/files/2021-11/GLSEN_Trans%26Nonbinary_ResearchBrief.pdf	8
Greenspan, Scott B., et al., <i>LGBTQ+ Youth's Experiences and Engagement in Physical Activity: A Comprehensive Content Analysis</i> , 4 Adolescent Rsch. Rev. 169 (2019), https://shine.lab.uconn.edu/wp-content/uploads/sites/3321/2021/06/greenspan_et_al_2019.pdf	15
Greytak, Emily A. et al., GLSEN, <i>Harsh Realities: The Experiences of Transgender Youth in Our Nation's Schools</i> (2009), https://files.eric.ed.gov/fulltext/ED505687.pdf	8, 11

Miscellaneous Authorities	Page(s)
Herman, Jody L., et al., Williams Inst., <i>How Many Adults and Youth Identify as Transgender in the United States?</i> (2022), https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Pop-Update-Jun-2022.pdf	4
Hughes, Landon D., et al., <i>Pediatric Provider Perspectives on Laws and Policies Impacting Sports Participation for Transgender Youth</i> , 9 LGBT Health 247 (2022), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9271330/pdf/lgbt.2021.0392.pdf	16
Human Rts. Campaign Found., <i>2023 LGBTQ+ Youth Report</i> (Aug. 2023), https://reports.hrc.org/2023-lgbtq-youth-report	9
James, Sandy E., et al., Nat'l Ctr. for Transgender Equal., <i>The Report of the 2015 U.S. Transgender Survey</i> (2016), https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf	8, 10-11
Johns, Michelle M., et al., <i>Transgender Identity and Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High School Students - 19 States and Large Urban School Districts, 2017</i> , 68 Morbidity & Mortality Wkly. Rep. 67 (2019), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6348759/pdf/mm6803a3.pdf	8
Kansas Hum. Rts. Comm'n, <i>Kansas Human Rights Commission Concurs with the U.S. Supreme Court's Bostock Decision</i> (Aug. 21, 2020), https://tinyurl.com/y8hmwx54	5
Kosciw, Joseph G., et al., GLSEN, <i>The 2021 National School Climate Survey: The Experiences of LGBTQ+ Youth in Our Nation's Schools</i> (2022), https://files.eric.ed.gov/fulltext/ED574780.pdf	7, 9-12
Maryland Pub. Secondary Schs. Athletic Ass'n, <i>MPSSAA Guidance for Participation of Transgender Youth in Interscholastic Athletics</i> (Aug. 2016), https://www.mpssaa.org/assets/1/6/MPSSAA_Transgender_Guidance_revised_8.16.pdf	21

Miscellaneous Authorities	Page(s)
Massachusetts Interscholastic Athletic Ass’n, <i>MIAA Handbook July 1, 2023-June 30, 2025: Rules and Regulations Governing Athletics: A Handbook for Principals and Athletic Directors</i> (2023), https://miaa.net/wp-content/uploads/2023/07/MIAA-Handbook-23-25.pdf	21
McGreevy, Patrick, <i>California Transgender Students Given Access to Opposite-Sex Programs</i> , L.A. Times (Aug. 12, 2013), https://tinyurl.com/yd76s7n4	22
Minnesota Dep’t of Educ., <i>A Toolkit for Ensuring Safe and Supportive Schools for Transgender and Gender Nonconforming Students</i> (Sept. 25, 2017), https://education.mn.gov/MDE/dse/safe/	13
Minnesota State High Sch. League, <i>2023-2024 MSHSL Official Handbook, 300.00: Administration of Student Eligibility Bylaws</i> (2023), https://www.mshsl.org/sites/default/files/2023-08/MSHSL_Handbook_300_Series.pdf	21
Movement Advancement Project, <i>Local Nondiscrimination Ordinances</i> (current as of Oct. 11, 2023), https://www.lgbtmap.org/equality-maps/non_discrimination_ordinances	6
Nevada Interscholastic Activities Ass’n, <i>NIAA Transgender Participation Position Statement and Policy 1</i> (Apr. 6, 2016), https://tinyurl.com/ydfp4cyz	21
New Jersey Dep’t of Educ., <i>Transgender Student Guidance for School Districts</i> (Sept. 2018), https://www.nj.gov/education/safety/sandp/climate/docs/Guidance.pdf	13
New Jersey State Interscholastic Athletic Ass’n, <i>NJSIAA & NJSCA Coaches Handbook: 2020-2021</i> (2020), https://www.njsiaa.org/sites/default/files/documents/2020-10/coaches-handbook-2020-21.pdf	22

Miscellaneous Authorities	Page(s)
New York State Educ. Dep't, <i>Creating a Safe, Supportive, and Affirming School Environment for Transgender and Gender Expansive Students: 2023 Legal Update and Best Practices</i> (June 2023), https://tinyurl.com/mtj28v46	14
New York State Pub. High Sch. Athletic Ass'n, <i>NYSPHSAA Handbook</i> (Aug. 2023), https://nysphsaa.org/documents/2023/8/21/NYSPHSAA_Handbook_082123.pdf	21
Office of Elementary & Secondary Educ., U.S. Dep't of Educ., <i>Safe & Supportive Schools</i> (May 30, 2023), https://oese.ed.gov/offices/office-of-formula-grants/safe-supportive-schools/	12, 17
Olson, Kristina R., et al., <i>Mental Health of Transgender Children Who Are Supported in Their Identities</i> , 137 <i>Pediatrics</i> e20153223 (Mar. 2016), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4771131/pdf/PEDS_20153223.pdf	12
Oregon Sch. Activities Ass'n, <i>2023-2024 Oregon School Activities Association Handbook</i> (2023), https://www.osaa.org/docs/handbooks/osaahandbook.pdf	21
Pharr, Jennifer R., et al., <i>Serial Mediation Analysis of the Association of Familiarity with Transgender Sports Bans and Suicidality Among Sexual and Gender Minority Adults in the United States</i> , 19 <i>Int'l J. Env't Rsch. & Pub. Health</i> 10461 (Aug. 2022), https://www.mdpi.com/1660-4601/19/17/10641	16
Rhode Island Interscholastic League, <i>Rules and Regulations</i> (June 21, 2022), https://www.riil.org/page/3033	21
Snyder, Alison R., et al., <i>Health-Related Quality of Life Differs Between Adolescent Athletes and Adolescent Nonathletes</i> , 19 <i>J. Sport Rehab.</i> 237 (2010), https://tinyurl.com/5aje6hb2	14-16

Miscellaneous Authorities	Page(s)
Stanton, Cady, <i>As ‘Don’t Say Gay’ and Similar Bills Take Hold, LGBTQ Youths Feel They’re ‘Getting Crushed’</i> , USA Today (updated May 11, 2022), https://www.usatoday.com/story/news/education/2022/05/09/dont-say-gay-lgbtq-youth-reaction/7398468001/	11
State Bd. of Educ., Mich. Dep’t of Educ., <i>State Board of Education Statement and Guidance on Safe and Supportive Learning Environments for Lesbian, Gay, Bisexual, Transgender, and Questioning (LGBTQ) Students</i> (Sept. 14, 2016), https://www.michigan.gov/documents/mde/SBEStatementonLGBTQYouth_534576_7.pdf	13
The Trevor Project, <i>2023 U.S. National Survey on the Mental Health of LGBTQ Young People</i> (2023), https://www.thetrevorproject.org/survey-2023/assets/static/05_TREVOR05_2023survey.pdf	9, 11
Troutman, Kelly P., & Mikaela J. Dufur, <i>From High School Jocks to College Grads: Assessing the Long-Term Effects of High School Sport Participation on Females’ Educational Attainment</i> , 38 Youth & Soc’y 443 (2007), http://jvlone.com/sportsdocs/womenHighSchooltoCollege2007.pdf	15, 17
Truong, Nhan L., et al., GLSEN, <i>Erasure and Resilience: The Experiences of LGBTQ Students of Color</i> (2020), https://www.glsen.org/sites/default/files/2020-06/Erasure-and-Resilience-Black-2020.pdf	9
University of Minn., <i>Equity and Access: Gender Identity, Gender Expression, Names and Pronouns</i> (n.d.), https://policy.umn.edu/operations/genderequity	21
Washington Interscholastic Activities Ass’n, <i>WIAA Handbook 2023-24</i> , (Oct. 10, 2023), https://assets-rst7.rschooltoday.com/rst7files/uploads/sites/652/2023/10/10110434/2023-24-HANDBOOK-10-10-2023.pdf	22

Miscellaneous Authorities	Page(s)
Washington Off. of Superintendent of Pub. Instruction, <i>Gender-Inclusive Schools</i> (n.d.), https://tinyurl.com/2ucshp86	13
What We Know Project, Cornell Univ., <i>What Does the Scholarly Research Say About the Effects of Discrimination on the Health of LGBT People?</i> (2019), https://tinyurl.com/3jn7ymtb	10

INTERESTS OF THE AMICI STATES

In this case, plaintiffs-appellees Jane Doe and Megan Roe, eleven- and fifteen-year-old transgender girls, seek an injunction against enforcement of Arizona Revised Statutes § 15-120.02. The Act categorically bars transgender female students from participating in sex-separated sports consistent with their gender identity. The district court correctly granted a preliminary injunction barring enforcement of the Act against plaintiffs, concluding that the Act likely violates their rights under the Equal Protection Clause and Title IX of the Education Amendments of 1972. Pursuant to Federal Rule of Appellate Procedure 29(a)(2), the States of New York, Hawai'i, California, Colorado, Delaware, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington, and the District of Columbia, file this brief as amici curiae in support of plaintiffs Doe and Roe.

Plaintiffs simply want to participate on their school's girls' sports teams with their friends. They began expressing their gender identity and have lived as girls in all aspects of their lives since an early age: Jane at five, and Megan at seven. They have not experienced any of the

physiological changes associated with male puberty and have no ascertainable competitive advantage over their cisgender peers. But absent injunctive relief, their schools will not let them participate on girls' sports teams based on the Act, which singles out transgender females like plaintiffs for disfavored treatment based solely on their sex assigned at birth. The Act does not prohibit cisgender females, cisgender males, or transgender males from participating on single-sex teams consistent with their gender identity.

Amici file this brief to explain that in their experience, allowing transgender female students to participate in women's sports promotes inclusive school environments that benefit all, and does not compromise fairness or reduce opportunities for cisgender students.

Amici States strongly support the right of transgender people to live with dignity, be free from discrimination, and have equal access to education, government-sponsored opportunities, and other incidents of life, including student athletic programs. Discrimination and exclusion on the basis of one's transgender status cause tangible economic, educational, emotional, and health harms. To prevent these injuries, many of the amici States have adopted policies aimed at combatting discrimination against

transgender people and facilitating inclusive environments. Amici submit this brief to describe their experiences with administering such policies—including policies permitting transgender students to participate in sex-separated athletic programs on an equal basis with other students. As amici’s experiences show, allowing transgender female students to participate in women’s sports does not deprive cisgender female students of the benefits of participating in athletic activities.

The amici States also share a strong interest in seeing that federal law is properly applied to protect transgender people from discrimination. This appeal does not challenge the authority of schools to offer single-sex athletic teams. Rather, this case challenges a statute that categorically excludes transgender girls from participating on athletic teams consistent with their gender identity based solely on their sex assigned at birth. Because the sole function of the Act is to exclude and stigmatize transgender girls like plaintiffs, it violates equal protection under any level of scrutiny. Further, the Act violates Title IX by denying plaintiffs and transgender girls like them access to the same athletic opportunities that other boys and girls have.

ARGUMENT

POINT I

PROTECTING TRANSGENDER PEOPLE FROM DISCRIMINATION CONFERS WIDE SOCIETAL BENEFITS WITHOUT REDUCING OPPORTUNITIES FOR OTHERS

Over 1.6 million people in the United States—including approximately 300,000 youth between the ages of thirteen and seventeen—identify as transgender.¹ Transgender people have been part of cultures worldwide “from antiquity to the present day.”² They contribute to our communities in myriad ways, including as students, teachers, essential workers, firefighters, police officers, lawyers, nurses, and doctors.

Unfortunately, transgender people often experience discrimination that limits their ability to realize their potential. To combat such discrimination, States began providing civil rights protections for transgender

¹ Jody L. Herman et al., Williams Inst., *How Many Adults and Youth Identify as Transgender in the United States?* 1 (2022). (For authorities available online, full URLs appear in the table of authorities. All URLs were last visited on October 13, 2023.)

² American Psych. Ass’n (APA), *Answers to Your Questions About Transgender People, Gender Identity, and Gender Expression* (last updated June 2023); see also APA, *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People*, 70 Am. Psych. 832, 834 (2015).

people over a quarter century ago. Today, at least twenty-two States and the District of Columbia,³ and at least 374 municipalities,⁴ offer express

³ **California:** Cal. Civ. Code § 51(b), (e)(5) (public accommodations); Cal. Educ. Code §§ 220 (education), 221.5(f) (education and school athletic participation); Cal. Gov’t Code §§ 12926(o), (r)(2), 12940(a), 12949 (employment); *id.* § 12955 (housing); Cal. Penal Code §§ 422.55, 422.56(c) (hate crimes). **Colorado:** Colo. Rev. Stat. § 24-34-301(7) (definition); *id.* § 24-34-402 (employment); *id.* § 24-34-502 (housing); *id.* § 24-34-601 (public accommodations). **Connecticut:** Conn. Gen. Stat. § 10-15c (schools); *id.* § 46a-51(21) (definition); *id.* § 46a-60 (employment); *id.* § 46a-64 (public accommodations); *id.* § 46a-64c (housing). **Delaware:** Del. Code Ann. tit. 6, § 4501 (public accommodations); *id.* tit. 6, § 4603(b) (housing); *id.* tit. 19, § 711 (employment). **Hawai‘i:** Haw. Rev. Stat. § 368D-1 (education); *id.* § 302A-461 (school athletics); *id.* § 489-2 (definition); *id.* § 489-3 (public accommodations); *id.* § 515-2 (definition); *id.* § 515-3 (housing). **Illinois:** 775 Ill. Comp. Stat. 5/1-102(A) (housing, employment, access to financial credit, public accommodations); *id.* 5/1-103(O-1) (definition). **Iowa:** Iowa Code § 216.2(10) (definition); *id.* § 216.6 (employment); *id.* § 216.7 (public accommodations); *id.* § 216.8 (housing); *id.* § 216.9 (education). **Kansas:** Kansas Hum. Rts. Comm’n, *Kansas Human Rights Commission Concurs with the U.S. Supreme Court’s Bostock Decision* (Aug. 21, 2020) (advising that Kansas laws prohibiting discrimination based on “sex” in “employment, housing, and public accommodation” contexts “are inclusive of LGBTQ and all derivatives of ‘sex’”). **Maine:** Me. Rev. Stat. Ann. tit. 5, § 4553(9-C) (definition); *id.* § 4571 (employment); *id.* § 4581 (housing); *id.* § 4591 (public accommodations); *id.* § 4601 (education). **Maryland:** Md. Code Ann., State Gov’t § 20-304 (public accommodations); *id.* § 20-606 (employment); *id.* § 20-705 (housing); Md. Code Ann., Educ. § 26-704 (schools). **Massachusetts:** Mass. Gen. Laws ch. 4, § 7, fifty-ninth (definition); *id.* ch. 76, § 5 (education); *id.* ch. 151B, § 4 (employment, housing, credit); *id.* ch. 272, §§ 92A, 98 (public accommodations) (as amended by Ch. 134, 2016 Mass. Acts). **Michigan:** Mich. Comp. Laws § 37.2102(1). **Minnesota:** Minn. Stat. § 363A.03(44) (definition); *id.* § 363A.08 (employment); *id.* § 363A.09 (housing); *id.*

(continued on the next page)

§ 363A.11 (public accommodations); *id.* § 363A.13 (education). **Nevada:** Nev. Rev. Stat. §§ 118.075, 118.100 (housing); *id.* §§ 613.310(4), 613.330 (employment); *id.* §§ 651.050(2), 651.070 (public accommodations). **New Hampshire:** N.H. Rev. Stat. Ann. § 354-A:2(XIV-e) (definition); *id.* § 354-A:6 (employment); *id.* § 354-A:8 (housing); *id.* § 354-A:16 (public accommodations); *id.* § 354-A:27 (education). **New Jersey:** N.J. Stat. Ann. § 10:5-5(rr) (definition); *id.* § 10:5-12 (public accommodations, housing, employment); *id.* § 18A:36-41 (directing issuance of guidance to school districts permitting transgender students “to participate in gender-segregated school activities in accordance with the student’s gender identity”). **New Mexico:** N.M. Stat. Ann. § 28-1-2(Q) (definition); *id.* § 28-1-7(A) (employment); *id.* § 28-1-7(F) (public accommodations); *id.* § 28-1-7(G) (housing). **New York:** N.Y. Exec. Law §§ 291, 296 (education, employment, public accommodations, housing). **Oregon:** Or. Rev. Stat. § 174.100(4) (definition); *id.* § 659.850 (education); *id.* § 659A.006 (employment, housing, public accommodations). **Rhode Island:** 11 R.I. Gen. Laws § 11-24-2 (public accommodations); 28 R.I. Gen. Laws §§ 28-5-6(11), 28-5-7 (employment); 34 R.I. Gen. Laws §§ 34-37-3(9), 34-37-4 (housing). **Utah:** Utah Code Ann. § 34A-5-106 (employment); *id.* § 57-21-5 (housing). **Vermont:** Vt. Stat. Ann. tit. 1, § 144 (definition); *id.* tit. 9, § 4502 (public accommodations); *id.* tit. 9, § 4503 (housing); *id.* tit. 21, § 495 (employment). **Washington:** Wash. Rev. Code Ann. § 28A.642.010 (education); *id.* § 49.60.030(1)(a)-(e) (employment, public accommodations, real estate transactions, credit transactions, and insurance transactions); *id.* § 49.60.040(27) (definition); *id.* § 49.60.180 (employment); *id.* § 49.60.215 (public accommodations); *id.* § 49.60.222 (housing). **District of Columbia:** D.C. Code § 2-1401.02(12A-i) (definition); *id.* § 2-1402.11 (employment); *id.* § 2-1402.21 (housing); *id.* § 2-1402.31 (public accommodations); *id.* § 2-1402.41 (education).

⁴ Movement Advancement Project, *Local Nondiscrimination Ordinances* (current as of Oct. 11, 2023).

protections against discrimination based on gender identity in areas such as education, housing, public accommodations, and employment.⁵

The experiences of amici States and other jurisdictions show that policies and practices that facilitate participation of transgender people—including policies permitting young people to participate in the single-sex sports teams consistent with their gender identity—promote inclusive communities, workplaces, and school environments that benefit all.

A. Transgender Youth Face Pervasive and Harmful Discrimination That Causes Them Serious Health and Academic Harms.

Transgender youth experience levels of discrimination, violence, and harassment that exceed those experienced by their cisgender peers.⁶ The 2015 U.S. Transgender Survey (USTS), the largest survey of transgender people to date, found:

- Over three quarters (77%) of respondents who were known or perceived as transgender in grades K-12 reported

⁵ The U.S. Supreme Court has confirmed that longstanding federal law similarly prohibits employment discrimination based on gender identity. *See Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1742-43 (2020).

⁶ Joseph G. Kosciw et al., GLSEN, *The 2021 National School Climate Survey: The Experiences of LGBTQ+ Youth in Our Nation's Schools* xxvii, (continued on the next page)

negative experiences at school, including being harassed or attacked;

- More than half of transgender students (54%) reported verbal harassment;
- Almost a quarter (24%) reported suffering a physical attack; and
- Approximately one in eight (13%) reported being sexually assaulted.⁷

In a 2022 survey of LGBTQ teenagers, nearly two in three (62.6%) transgender and gender-expansive youth respondents reported being “teased, bullied, or treated badly” at school in the prior year, and more than half (55.6%) of such youth reported being victimized specifically due

84 (2022); *see also* GLSEN, *Improving School Climate for Transgender and Nonbinary Youth: Research Brief 1* (2021); Emily A. Greytak et al., GLSEN, *Harsh Realities: The Experiences of Transgender Youth in Our Nation’s Schools* xi (2009); Michelle M. Johns et al., *Transgender Identity and Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High School Students — 19 States and Large Urban School Districts, 2017*, 68 *Morbidity & Mortality Wkly. Rep.* 67, 67-70 (2019).

⁷ Sandy E. James et al., Nat’l Ctr. for Transgender Equal., *The Report of the 2015 U.S. Transgender Survey* 131-35 (2016).

to their sexual identity, gender identity, or gender expression.⁸ In the same survey, nearly six in ten (56.9%) of LGBTQ+ youth respondents reported being verbally or physically harassed at least once in the past thirty days.⁹ In another 2022 survey, nearly two in three (64%) transgender and nonbinary youth respondents similarly reported being discriminated against because of their gender identity.¹⁰ Students subject to such discrimination, violence, and harassment have reported feeling less connected to their schools, and less of a sense of belonging, than other students.¹¹ Transgender youth of color, in particular, face unique difficulties as a result of their intersecting marginalized identities.¹²

Discrimination against transgender youth—including denying them the opportunity to participate in extracurricular activities consistent with

⁸ [Human Rts. Campaign Found., 2023 LGBTQ+ Youth Report \(Aug. 2023\).](#)

⁹ *Id.*

¹⁰ [The Trevor Project, 2023 U.S. National Survey on the Mental Health of LGBTQ Young People 16 \(2023\).](#)

¹¹ Kosciw et al., *The 2021 National School Climate Survey*, *supra*, at 88.

¹² [Nhan L. Truong et al., GLSEN, Erasure and Resilience: The Experiences of LGBTQ Students of Color 3 \(2020\).](#)

their gender identity—can have serious health consequences. Research has demonstrated that discrimination against LGBTQ people—including discriminatory policies and the denial of opportunities—“increases the risks of poor mental and physical health” for LGBTQ people.¹³ For example, LGBTQ students who experienced discriminatory policies or practices in school were found to have lower self-esteem and higher levels of depression than students who had not encountered such discrimination.¹⁴ Respondents to the 2015 USTS who reported negative experiences in grades K-12 were more likely than other respondents to be under serious psychological distress, to have experienced homelessness, and to have attempted suicide.¹⁵ Transgender people attempt suicide at a rate nearly nine times that of the general population, and half of transgender and nonbinary youth in a 2022 mental health survey reported having seriously

¹³ [What We Know Project, Cornell Univ., *What Does the Scholarly Research Say About the Effects of Discrimination on the Health of LGBT People?* \(2019\).](#)

¹⁴ Kosciw et al., *The 2021 National School Climate Survey*, *supra*, at 43; see also [April J. Ancheta et al., *The Impact of Positive School Climate on Suicidality and Mental Health Among LGBTQ Adolescents: A Systematic Review*, 37 J. Sch. Nursing 75, 76 \(2021\).](#)

¹⁵ James et al., *2015 U.S. Transgender Survey*, *supra*, at 132.

considered attempting suicide in the past twelve months.¹⁶ Positive school climates, on the other hand, have been linked to lower suicidality in LGBTQ youth.¹⁷

Discrimination in school settings also negatively affects educational outcomes. A 2021 survey showed that LGBTQ students who had experienced discriminatory policies and practices had lower levels of educational achievement, lower grade point averages, and lower levels of educational aspiration than other students.¹⁸ Discriminatory school climates have also been found to exacerbate absenteeism. In the month before a 2021 survey, LGBTQ students who had experienced discrimination in their

¹⁶ See *id.* at 114; The Trevor Project, *2023 U.S. National Survey on the Mental Health of LGBTQ Young People*, *supra*, at 5.

¹⁷ Ancheta et al., *The Impact of Positive School Climate*, *supra*, at 80; see also Cady Stanton, [As ‘Don’t Say Gay’ and Similar Bills Take Hold, LGBTQ Youths Feel They’re ‘Getting Crushed’](#), USA Today (updated May 11, 2022) (noting that LGBTQ youths in affirming schools were nearly 40% less likely to attempt suicide than LGBTQ youths in non-affirming schools).

¹⁸ Kosciw et al., *The 2021 National School Climate Survey*, *supra*, at 36-37; see also Greytak et al., *Harsh Realities*, *supra*, at 25, 27 fig. 15 (showing that more-frequently harassed transgender students had significantly lower grade point averages than other transgender students).

schools were almost three times as likely (43.3% versus 16.4%) to have missed school because they felt unsafe or uncomfortable.¹⁹

B. The Amici States' Experiences Confirm That Protecting Transgender People from Discrimination Yields Broad Benefits.

Policies that allow transgender students to access facilities and activities consistent with their gender identity create school climates that enhance students' well-being and facilitate their ability to learn.²⁰ For example, transgender students permitted to live consistently with their gender identity have mental health outcomes comparable to their cisgender peers.²¹ These benefits redound to society as a whole because education advances not only the private interests of students, but also prepares

¹⁹ Kosciw et al., *The 2021 National School Climate Survey*, *supra*, at 36.

²⁰ See, e.g., Br. of Amici Curiae Sch. Adm'rs from Thirty-One States & D.C. in Supp. of Resp't (Br. of Amici Curiae Sch. Adm'rs) at 3-4, *Gloucester Cnty. Sch. Bd. v. G.G. ex rel. Grimm*, 137 S. Ct. 1239 (2017) (No. 16-273), 2017 WL 930055; [Office of Elementary & Secondary Educ., U.S. Dep't of Educ., *Safe & Supportive Schools* \(May 30, 2023\)](#).

²¹ See [Kristina R. Olson et al., *Mental Health of Transgender Children Who Are Supported in Their Identities*, 137 Pediatrics e20153223, at 5-7 \(Mar. 2016\)](#); Br. of Amici Curiae Sch. Adm'rs at 4, *Gloucester Cnty. Sch. Bd.*, 137 S. Ct. 1239 (No. 16-273), 2017 WL 930055.

them to contribute to society—socially, culturally, and economically. *See, e.g., Brown v. Board of Educ.*, 347 U.S. 483, 493 (1954).

Several of the amici States have enacted laws or issued guidance to ensure equal opportunities for transgender students—including with regard to school activities and sports programs.²² For example, both

²² **Connecticut:** Conn. Gen. Stat. § 10-15c (prohibiting discrimination on basis of gender identity in student access to public school activities and programs). **Michigan:** State Bd. of Educ., Mich. Dep’t of Educ., *State Board of Education Statement and Guidance on Safe and Supportive Learning Environments for Lesbian, Gay, Bisexual, Transgender, and Questioning (LGBTQ) Students* 5-6 (Sept. 14, 2016) (advising that K-12 students be permitted to participate in sports in accordance with their gender identity). **Minnesota:** Minnesota Dep’t of Educ., *A Toolkit for Ensuring Safe and Supportive Schools for Transgender and Gender Non-conforming Students* 8 (Sept. 25, 2017) (same). **New Jersey:** New Jersey Dep’t of Educ., *Transgender Student Guidance for School Districts* p. 6 (Sept. 2018) (same, as to “gender-segregated classes or athletic activities, including intramural and interscholastic athletics”); Division on C.R., N.J. Dep’t of L. & Pub. Safety, *5 Things You Should Know About LGBTQ+ Student Rights in Schools* (June 15, 2022) (under the New Jersey Law Against Discrimination “students are allowed to . . . participate in extracurricular activities, including intramural or interscholastic athletics and physical education, that best correspond to their gender identity and expression”). **Washington:** Wash. Rev. Code Ann. § 28A.642.010 (prohibiting discrimination based on gender identity in public schools); Washington Off. of Superintendent of Pub. Instruction, *Gender-Inclusive Schools* (n.d.) (transgender students in K-12 schools must be permitted to participate in “physical education and athletics” consistent with their gender identity). **District of Columbia:** D.C. Code §§ 2-1402.41, 38-841.02; D.C. Mun. Regs. tit. 5-F, § 102.6 (prohibiting

(continued on the next page)

California and Massachusetts have long mandated that transgender students in K-12 schools be permitted to participate in school programs and activities—including sports—consistent with their gender identity. See Cal. Educ. Code § 221.5(f) (2013); Mass. Gen. Laws ch. 76, § 5 (2011); 603 Mass. Code Regs. 26.06(5). Likewise, New York law expressly prohibits discrimination and harassment of students “on school property or at a school function” on the basis of gender identity in K-12 schools, N.Y. Educ. Law §§ 11(6), 12(1), and the New York State Education Department has made clear that transgender students in K-12 schools should be allowed to access school facilities and participate in activities, consistent with their gender identity.²³

Athletic participation has been linked to academic achievement and improved academic performance.²⁴ Participants in interscholastic sports

gender identity discrimination by educational institutions generally and in the context of school athletics).

²³ New York State Educ. Dep’t, *Creating a Safe, Supportive, and Affirming School Environment for Transgender and Gender Expansive Students: 2023 Legal Update and Best Practices* 21-26 (June 2023).

²⁴ Ryan D. Burns et al., *Sports Participation Correlates With Academic Achievement: Results From a Large Adolescent Sample Within the 2017 U.S. National Youth Risk Behavior Survey*, 127 *Perceptual & Motor Skills* 448, 459 (2020); Alison R. Snyder et al., *Health-Related*

(continued on the next page)

“have higher grades, spend more time on homework, have higher educational aspirations, and are more likely to attend college than are their counterparts.”²⁵ Young women who participate in high school athletics, in particular, are more likely on average to complete college.²⁶ Athletic participation has also been linked to “more successful outcomes in adulthood, such as employment.”²⁷

There are also many health benefits to sports participation. Regular physical activity “decreases the risk of developing diabetes, hypertension, cancer, and obesity, as well as cardiovascular and bone and joint diseases.”²⁸

Quality of Life Differs Between Adolescent Athletes and Adolescent Nonathletes, 19 J. Sport Rehab. 237, 238 (2010); Kelly P. Troutman & Mikaela J. Dufur, From High School Jocks to College Grads: Assessing the Long-Term Effects of High School Sport Participation on Females’ Educational Attainment, 38 Youth & Soc’y 443, 444 (2007).

²⁵ Troutman & Dufur, *From High School Jocks to College Grads*, *supra*, at 444.

²⁶ *Id.* at 454.

²⁷ Scott B. Greenspan et al., LGBTQ+ Youth’s Experiences and Engagement in Physical Activity: A Comprehensive Content Analysis, 4 Adolescent Rsch. Rev. 169, 170 (2019).

²⁸ Snyder et al., *Health-Related Quality of Life*, *supra*, at 237-38; see also Greenspan et al., *LGBTQ+ Youth’s Experiences and Engagement in Physical Activity*, *supra*, at 170; Troutman & Dufur, *From High School Jocks to College Grads*, *supra*, at 444.

For youth, “[p]articipation in physical activity during childhood and adolescence has a positive impact on physical health throughout the life span.”²⁹ Mental health benefits also result from sports participation,³⁰ including “improved emotion regulation, decreased hopelessness and suicidality, fewer depressive symptoms, and higher self-esteem.”³¹ For LGBTQ students in particular, sports participation has been linked to higher levels of self-esteem and lower levels of depression.³²

²⁹ Ellis Barrera et al., *The Medical Implications of Banning Transgender Youth from Sport Participation*, 176 JAMA Pediatrics 223, 223 (2022); see also Landon D. Hughes et al., *Pediatric Provider Perspectives on Laws and Policies Impacting Sports Participation for Transgender Youth*, 9 LGBT Health 247, 251 (2022).

³⁰ Richard Bailey, *Physical Education and Sport in Schools: A Review of Benefits and Outcomes*, 76 J. Sch. Health 397, 398 (2006); Snyder et al., *Health-Related Quality of Life*, *supra*, at 238, 244.

³¹ Caitlin M. Clark & Joseph G. Kosciw, *Engaged or Excluded: LGBTQ Youth’s Participation in School Sports and Their Relationship to Psychological Well-Being*, 59 Psych. Schs. 95, 96 (2022) (citations omitted); see also Jennifer R. Pharr et al., *Serial Mediation Analysis of the Association of Familiarity with Transgender Sports Bans and Suicidality Among Sexual and Gender Minority Adults in the United States*, 19 Int’l J. Env’t Rsch. & Pub. Health 10461, at 11-12 (Aug. 2022).

³² Caitlin M. Clark et al., GLSEN, *LGBTQ Students and School Sports Participation: Research Brief 8* (2021).

All students, moreover, stand to benefit from an inclusive, supportive environment.³³ This is especially true of sports, given the importance of teamwork and cooperation in athletic competition.³⁴

POINT II

FEDERAL LAW PROHIBITS THE GENDER-IDENTITY DISCRIMINATION IN THIS CASE

The Act operates as a blanket prohibition on female transgender students' participation in school athletics consistent with their gender identity. It requires schools to designate athletic teams or sports as either (1) a boys' team or sport; (2) a girls' team or sport; or (3) a coeducational or mixed team or sport. Ariz. Rev. Stat. § 15-120.02(A). It then prohibits "students of the male sex" from participating on an athletic team or sport designated as a girls' athletic team or sport. *Id.* § 15-120.02(B). The Act

³³ See Br. of Amici Curiae Sch. Adm'rs at 2, *Gloucester Cnty. Sch. Bd.*, 137 S. Ct. 1239 (No. 16-273), 2017 WL 930055 ("[I]nclusive policies not only fully support the reality of transgender students' circumstances, but also foster a safer and more welcoming learning environment for all students."); see also Office of Elementary & Secondary Educ., *Safe & Supportive Schools*, *supra* ("Safe and supportive schools are critical to the well-being of the whole school community . . .").

³⁴ See Troutman & Dufur, *From High School Jocks to College Grads*, *supra*, at 444-45.

has no effect on the ability of cisgender students or transgender male students to participate on sports teams consistent with their gender identity. Rather, the “text, structure, purpose, and effect all demonstrate that the Act categorically bans transgender women and girls”—and only transgender women and girls—“from public school sports teams that correspond with their gender identity.” *Hecox v. Little*, 79 F.4th 1009, 1022 (9th Cir. 2023) (interpreting analogous Idaho statute); *Doe v. Horne*, No. 23-cv-185, 2023 WL 4661831, at *8 (D. Ariz. July 20, 2023). Such a categorical ban violates the Equal Protection Clause and Title IX.

A. The Equal Protection Clause Prohibits the Gender-Identity Discrimination in This Case.

The Supreme Court has long made clear that equal protection prohibits government policies that serve only to express “negative attitudes” “or fear” toward people viewed as “different.” *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 448 (1985); *see also Nguyen v. Immigration & Naturalization Serv.*, 533 U.S. 53, 68 (2001) (Equal Protection Clause bars decisions built on stereotypes and “irrational or uncritical analysis”). “[V]ague, undifferentiated fears” about a class of persons further no legitimate state interest and cannot be used to “validate” a

policy of different treatment. *City of Cleburne*, 473 U.S. at 449. Classifications based on “archaic and overbroad generalizations” similarly do not pass constitutional muster. *See Clark v. Arizona Interscholastic Ass’n*, 695 F.2d 1126, 1131 (9th Cir. 1982) (quotation marks omitted).

The Act falls squarely into this category of impermissible legislation and is far too broad to conceivably further purported interests in promoting fairness in women’s sports. Based solely on their sex assigned at birth, the Act needlessly denies plaintiffs something that their cisgender female classmates take for granted: the ability to participate on an athletic team at school with their friends consistent with their lived identity. The Act singles out plaintiffs based on their sex assigned at birth, without any regard to whether they have any competitive advantage or the level of competition at which they seek to participate, and forces them either to forgo participation on single-sex sports teams or to participate on teams inconsistent with their gender identity. That sex-based discrimination contravenes a core aspect of transgender people’s identities, subjecting them to potential harassment, and violates medical treatment protocols.

As this Court recently explained, such categorical prohibitions—untethered from evidence and the legislation’s purported goals—“perpetuate[] historic discrimination” against transgender women and “serve[] to ratify and perpetuate invidious, archaic, and overbroad stereotypes.” *Hecox*, 79 F.4th at 1029, 1033 (quotation marks omitted). The Act’s blanket ban serves only to stigmatize and exclude transgender students, and furthers no legitimate governmental interests in promoting equity in sports. *See Horne*, 2023 WL 4661831, at *19. Moreover, the unequal treatment of transgender *females* alone is unequivocally discrimination on the basis of sex. *See id.* at *9.

The contentions of appellants (at 23, 69-70) and their amici (*see* Br. of Amici Curiae Alabama et al. in Supp. of Appellants (Alabama Br.) at 8-9) that, absent enforcement of the Act, “biological males” will displace “biological females” to a substantial extent in school sports finds no support in the experiences of amici States or the record of this case.

The experiences of the amici States with inclusive and equitable school athletics policies show that such policies do not compromise fairness or reduce opportunities for cisgender athletes and confirm that there is no evidence that any concrete harm will result from permitting

transgender students like plaintiffs to participate in female athletics. Interscholastic sports organizations and local school districts in the amici States have adopted policies to ensure that transgender students will have equal access to sports participation—and these policies have not resulted in fewer opportunities for cisgender students.³⁵ See *Grimm v.*

³⁵ See, e.g., **California:** California Interscholastic Fed’n, *Constitution & Bylaws 2023-24*, at 96 (2023) (transgender students must be afforded opportunity to participate in sports in manner consistent with their gender identity); Fresno Unified Sch. Dist., *Fresno Unified Admin. Regul. (AR) 5145.3: Nondiscrimination/Harassment* 6 (Mar. 7, 2022) (same). **Colorado:** Colorado High Sch. Activities Ass’n, *Constitution of the Colorado High School Activities, 2023-2024* § 300(3) (2023) (same). **Delaware:** 14 Del. Admin. Code § 1024(8.5.1). **Maryland:** Maryland Pub. Secondary Schs. Athletic Ass’n, *MPSSAA Guidance for Participation of Transgender Youth in Interscholastic Athletics* 1-2 (Aug. 2016) (same, for interscholastic sports); **Massachusetts:** Massachusetts Interscholastic Athletic Ass’n, *MIAA Handbook July 1, 2023-June 30, 2025: Rules and Regulations Governing Athletics: A Handbook for Principals and Athletic Directors* 30-31 (2023) (same). **Minnesota:** Minnesota State High Sch. League, *2023-2024 MSHSL Official Handbook, 300.00: Administration of Student Eligibility Bylaws* 61 (2023) (same); University of Minn., *Equity and Access: Gender Identity, Gender Expression, Names and Pronouns* (n.d.) (same, for all university programs and activities). **Nevada:** Nevada Interscholastic Activities Ass’n, *NIAA Transgender Participation Position Statement and Policy* 1 (Apr. 6, 2016) (same, for “gender specific sports team[s]”). **New York:** New York State Pub. High Sch. Athletic Ass’n, *NYSPHSAA Handbook* 51-52 (Aug. 2023) (equal participation by transgender students in all interscholastic sports activities consistent with their gender identity). **Oregon:** Oregon Sch. Activities Ass’n, *2023-2024 Oregon School Activities Association Handbook* 80-82 (2023) (same). **Rhode Island:** Rhode Island Interscholastic

(continued on the next page)

Gloucester Cnty. Sch. Bd., 972 F.3d 586, 614 (4th Cir. 2020) (noting relevance of school districts successfully implementing inclusive policies).

For example, since 2009, the New Jersey State Interscholastic Athletic Association, a voluntary organization that administers interscholastic athletics in the State, has permitted transgender students to participate in gender-separated competitive sports consistent with their gender identity.³⁶ The Albuquerque Public Schools—the largest school district in New Mexico—mandates that transgender students have equal access to recreational and competitive sports programs “in a manner consistent with their gender identity.”³⁷ And the Los Angeles Unified School District, one of the largest school districts in the country, has implemented a transgender-inclusive sports policy for many years “without problems.”³⁸ As a school district official in Los Angeles has reported, the

League, *Rules and Regulations*, art. 3, § 3 (June 21, 2022) (same).
Washington: Washington Interscholastic Activities Ass’n, *WIAA Handbook 2023-24*, at 37, 86-87 (Oct. 10, 2023) (same).

³⁶ New Jersey State Interscholastic Athletic Ass’n, *NJSIAA & NJSCA Coaches Handbook: 2020-2021*, at 28-30 (2020).

³⁷ See Albuquerque Pub. Schs., *Non-Discrimination for Students: Gender Identity and Expression* (May 2016).

³⁸ See Patrick McGreevy, *California Transgender Students Given Access to Opposite-Sex Programs*, L.A. Times (Aug. 12, 2013).

district's policy has led to a positive "transformation" in the district's schools: an experience that "stands in stark contrast" to "expressed concerns that students will abuse the policy."³⁹ Notwithstanding this lengthy history, amici States are not aware of evidence that transgender athletes have dominated any sport or competition, or have caused scholarship opportunities to be unfairly denied to cisgender competitors.

The record in this case also confirms that the Act is "based upon sheer conjecture" that transgender female students will displace cisgender female students in school athletics, unmoored from any actual evidence that such a problem existed in Arizona. *Grimm*, 972 F.3d at 614 (quotation marks omitted); see *Horne*, 2023 WL 4661831, at *9, 18. The district court found that seven transgender students participated on sex-separated athletic teams in Arizona in the past ten to twelve years, out of a total of roughly 170,000 student athletes.⁴⁰ See *Horne*, 2023 WL

³⁹ See [Judy Chiasson, *Success and Opportunity for Transgender Students*, HuffPost \(updated Feb. 2, 2016\).](#)

⁴⁰ Under preexisting rules set by the entity governing interscholastic sports in Arizona, a committee of medical and psychiatric experts reviewed requests by transgender students to play on teams consistent with their gender identity to assess, among other things, whether the request was motivated by an improper purpose. See *Horne*, 2023 WL 4661831, at *6.

4661831, at *6-7. Based on these numbers, transgender girls “have not and could not displace cisgender women in athletics to a substantial extent.” *Id.* at *18 (quotation marks omitted); see *Hecox*, 79 F.4th at 1030 (based on population statistics, “district court did not err in finding it unlikely that [transgender women] would displace cisgender women from women’s sports”). On the other hand, appellants present little evidence beyond limited anecdotal evidence that this Court considered in *Hecox* and found insufficient to show that transgender women are displacing cisgender women in athletics or scholarship opportunities. See *Hecox*, 79 F.4th at 1031-32.

Appellants’ conjecture of displacement is all the more inapposite for transgender girls like plaintiffs, who have not experienced the physiological changes associated with male puberty. The district court expressly found that “there are no significant differences in athletic performance between boys and girls” before puberty. *Horne*, 2023 WL 4661831, at *13. And this Court recently affirmed preliminary injunctive relief against the enforcement of a similar “sweeping prohibition” that indiscriminately bars all female transgender students from athletics “regardless of whether they have gone through puberty or hormone therapy, and without any

evidence of transgender athletes displacing female athletes.” *Hecox*, 79 F.4th at 1030. Similarly, the age range of students covered by the Act is far too broad to relate to appellants’ asserted interests. The Act’s “categorical ban includes transgender students who are young girls in elementary school or even kindergarten,” *id.* at 1031, “although the problems identified as being addressed by the Act—opportunity and safety—are limited to high school and college sports,” *Horne*, 2023 WL 4661831, at *8.

In contrast to the lack of harm shown by appellants, the evidentiary record here shows that the harm the Act causes to transgender students generally and to plaintiffs specifically is substantial. “As a practical matter, the Act bars transgender women and girls in [Arizona] from all participation in student athletics.” *Hecox*, 79 F.4th at 1029. Excluding plaintiffs from school athletics will cause “shame and humiliation” because they will be “unable to participate in a school activity simply because they are transgender—a personal characteristic over which they have no control.” *Horne*, 2023 WL 4661831, at *20.

Appellants’ claim (at 11) that plaintiffs may play on the boys’ team, but this would not mitigate the harms and instead would exacerbate them. *See Hecox*, 79 F.4th at 1029-30. Plaintiffs’ medical treatment for

gender dysphoria depends on their ability to fully live their lives as girls. Forcing them to play on the boys' team—when all of their classmates know them as girls—would not only be embarrassing and humiliating, but would also jeopardize their health by contradicting standards for medical treatment in a manner that “every major medical association has found to be dangerous and unethical.” *Horne*, 2023 WL 4661831, at *20; *see id.* at *3-4, 14.

Under well-established constitutional analysis, the Act's categorical ban discriminates against transgender girls in a manner that cannot withstand any level of equal protection scrutiny.

B. Title IX Prohibits the Gender-Identity Discrimination in This Case.

The Act's categorical ban also violates Title IX for many of the same reasons it violates equal protection. Title IX broadly prohibits sex discrimination in schools receiving federal funding. Under Title IX, “[n]o person in the United States shall, *on the basis of sex*, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” 20 U.S.C. § 1681(a) (emphasis added). Title IX's

implementing regulations confirm that the nondiscrimination mandate applies to school athletics as well, while expressly permitting “separate teams for members of each sex.” 34 C.F.R. § 106.41(a)-(b); *see* 28 C.F.R. § 54.450(a)-(b).

In *Bostock v. Clayton County*, the Supreme Court concluded that gender identity discrimination is necessarily sex discrimination under Title VII of the Civil Rights Act of 1964, *see* 140 S. Ct. at 1741-42, 1745-47, and this Court has held that *Bostock* applies in the Title IX context as well, *see Grabowski v. Arizona Bd. of Regents*, 69 F.4th 1110, 1116 (9th Cir. 2023). As the Supreme Court explained in *Bostock*, discriminating against a person for being transgender is sex discrimination because “it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.” 140 S. Ct. at 1741. For example, a female who is discriminated against because she was designated male at birth is necessarily being discriminated against based on sex—i.e., she would not be subject to discrimination if not for the fact that her designated sex at birth was male. *Id.* In reaching its conclusion, the Supreme Court acknowledged that “transgender status” is a distinct concept from “sex,” but observed

that sexual harassment and discrimination based on motherhood are also distinct concepts that, unquestionably, still qualify as sex discrimination. *Id.* at 1742, 1746-47.

Applying much the same reasoning as in *Bostock*, courts have repeatedly and correctly recognized that Title IX's bar against sex discrimination prohibits discrimination against transgender students. For example, appellate courts have largely concluded that policies barring transgender students from using the bathroom that aligns with their gender identity violate Title IX. As these courts have explained, the discriminator is necessarily relying on students' sex assigned at birth to deny access to a bathroom that aligns with their gender identity. *See A.C. ex rel. M.C. v. Metropolitan Sch. Dist.*, 75 F.4th 760, 767-68 (7th Cir. 2023); *Grimm*, 972 F.3d at 616; *Whitaker ex rel. Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1046-51 (7th Cir. 2017); *Dodds v. United States Dep't of Educ.*, 845 F.3d 217, 221-22 (6th Cir. 2016); *see also Parents for Privacy v. Barr*, 949 F.3d 1210, 1228-29 (9th Cir. 2020) (transgender students' use of sex-segregated spaces that align with their gender identity does not violate Title IX rights of cisgender students); *Doe ex rel. Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518,

534-35 (3d Cir. 2018). *But see Adams ex rel. Kasper v. School Bd. of St. Johns Cnty.*, 57 F.4th 791, 811-17 (11th Cir. 2022) (en banc).

For many of the same reasons that the Act violates equal protection by irrationally discriminating against plaintiffs on the basis of sex and transgender status (see *supra* at 18-26), the Act also violates Title IX. It categorically bars plaintiffs and other transgender girls—and no one else—from participating on school athletic teams consistent with their gender identity. As the district court found, Jane and Megan have lived as girls in all aspects of their lives since they were five and seven years old, respectively. Neither of them have experienced any of the physiological changes associated with male puberty. *See Horne*, 2023 WL 4661831, at *4-5. But the Act prohibits them from playing on sports teams that conform with their gender identity, treating them worse than others who are similarly situated. *See Grimm*, 972 F.3d at 618. Such “discrimination on the basis of transgender status is a form of sex-based discrimination,” *Hecox*, 79 F.4th at 1026, and impermissible under Title IX, *see Grabowski*, 69 F.4th at 1116.

CONCLUSION

This Court should affirm the decision below.

Dated: New York, New York
October 13, 2023

Respectfully submitted,

ANNE E. LOPEZ
Attorney General
State of Hawai'i

LETITIA JAMES
Attorney General
State of New York

By: /s/ Mark S. Grube
MARK S. GRUBE
Senior Assistant Solicitor General

KALIKO'ONĀLANI D. FERNANDES
Solicitor General
LAUREN K. CHUN
Deputy Solicitor General

BARBARA D. UNDERWOOD
Solicitor General
JUDITH N. VALE
Deputy Solicitor General
of Counsel

425 Queen Street
Honolulu, HI 96813
(808) 586-1360

28 Liberty Street
New York, NY 10005
(212) 416-8028

(Counsel listing continues on next page.)

ROB BONTA
Attorney General
State of California
1300 I Street
Sacramento, CA 95814

PHILIP J. WEISER
Attorney General
State of Colorado
1300 Broadway
Denver, CO 80203

KATHLEEN JENNINGS
Attorney General
State of Delaware
820 N. French Street
Wilmington, DE 19801

KWAME RAOUL
Attorney General
State of Illinois
100 West Randolph Street
Chicago, IL 60601

AARON M. FREY
Attorney General
State of Maine
6 State House Station
Augusta, ME 04333

ANTHONY G. BROWN
Attorney General
State of Maryland
200 Saint Paul Place, 20th Fl.
Baltimore, MD 21202

ANDREA JOY CAMPBELL
Attorney General
Commonwealth of
Massachusetts
One Ashburton Place
Boston, MA 02108

DANA NESSEL
Attorney General
State of Michigan
P.O. Box 30212
Lansing, MI 48909

KEITH ELLISON
Attorney General
State of Minnesota
102 State Capitol
75 Rev. Dr. Martin Luther
King Jr. Blvd.
St. Paul, MN 55155

AARON D. FORD
Attorney General
State of Nevada
100 North Carson Street
Carson City, NV 89701

MATTHEW J. PLATKIN
Attorney General
State of New Jersey
25 Market Street
Trenton, NJ 08625

ELLEN F. ROSENBLUM
Attorney General
State of Oregon
1162 Court Street N.E.
Salem, OR 97301

MICHELLE A. HENRY
Attorney General
Commonwealth of
Pennsylvania
Strawberry Square
Harrisburg, PA 17120

PETER F. NERONHA
Attorney General
State of Rhode Island
150 South Main Street
Providence, RI 02903

CHARITY R. CLARK
Attorney General
State of Vermont
109 State Street
Montpelier, VT 05609-1001

ROBERT W. FERGUSON
Attorney General
State of Washington
P.O. Box 40100
Olympia, WA 98504

BRIAN L. SCHWALB
Attorney General
District of Columbia
400 6th Street, NW, Suite 8100
Washington, D.C. 20001

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 8. Certificate of Compliance for Briefs

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form08instructions.pdf>

9th Cir. Case Number(s)

I am the attorney or self-represented party.

This brief contains words, including words

manually counted in any visual images, and excluding the items exempted by FRAP 32(f). The brief's type size and typeface comply with FRAP 32(a)(5) and (6).

I certify that this brief (*select only one*):

- ☐ complies with the word limit of Cir. R. 32-1.
- ☐ is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.
- ☒ is an **amicus** brief and complies with the word limit of FRAP 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).
- ☐ is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.
- ☐ complies with the longer length limit permitted by Cir. R. 32-2(b) because (*select only one*):
- ☐ it is a joint brief submitted by separately represented parties.
- ☐ a party or parties are filing a single brief in response to multiple briefs.
- ☐ a party or parties are filing a single brief in response to a longer joint brief.
- ☐ complies with the length limit designated by court order dated .
- ☐ is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature

Date

(use "s/[typed name]" to sign electronically-filed documents)

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 15. Certificate of Service for Electronic Filing

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form15instructions.pdf>

9th Cir. Case Number(s)

I hereby certify that I electronically filed the foregoing/attached document(s) on this date with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the Appellate Electronic Filing system.

Service on Case Participants Who Are Registered for Electronic Filing:

I certify that I served the foregoing/attached document(s) via email to all registered case participants on this date because it is a sealed filing or is
☐ submitted as an original petition or other original proceeding and therefore cannot be served via the Appellate Electronic Filing system.

Service on Case Participants Who Are NOT Registered for Electronic Filing:

I certify that I served the foregoing/attached document(s) on this date by hand delivery, mail, third party commercial carrier for delivery within 3 calendar days, or, having obtained prior consent, by email to the following unregistered case participants (*list each name and mailing/email address*):

Description of Document(s) (*required for all documents*):

Brief of Amici States in Support of Plaintiffs-Appellees

Signature

Date

(use "s/[typed name]" to sign electronically-filed documents)

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov