NO. 24-449

In the
Supreme Court of the United States

WARREN PETERSON, President of the Arizona Senate, *et al.*,

Petitioners,

v.

JANE DOE, by next friends and parents Helen Doe and James Doe, *et al.*,

Respondents.

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

BRIEF *AMICI CURIAE* OF SEN. NANCY BARTO, REP. BARBARA EHARDT, 49 OTHER FEMALE LEGISLATORS, AND 34 FAMILY POLICY ORGANIZATIONS IN SUPPORT OF PETITIONERS

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IDENTITY AND INTEREST OF *AMICI CURIAE*[1]

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

Amica Nancy Barto was a Member of the Arizona legislature until 2023. She was the sponsor of Arizona Senate Bill 1165, which became the Save Women's Sports Act that the courts below held was likely unconstitutional in this case. As is true nationwide, in Arizona, sports divisions based on age and sex were commonplace and common-sense until very recently, so Sen. Barto was initially surprised that such legislation was even necessary. But she heard from Arizonans across the State who expressed strong concern that their daughters could lose out on sports opportunities unless they were protected by legislation like the Save Women's Sports Act. Responding to this growing concern, and after assessing numerous scientific studies, Sen. Barto assessed that allowing male-bodied athletes in women's sports created both a

[1] No counsel for any party to this case authored this brief in whole or in part. No party to this case and no counsel for any party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the *amici*, their members, and their counsel made such a monetary contribution. Counsel of record received timely notice of the intent to file this brief under this Court's Rule 37.

competitive imbalance and a safety concern, so she sponsored the Act.

As a state legislator, Sen. Barto felt a duty to protect Arizonans in all respects, and she was unwilling to sit on the sidelines while women's hard-fought gains for equal sporting opportunities came into question. As Sen. Barto often expressed in testimony and public remarks about her decision to sponsor the Act, preserving opportunities for girls and women is worth fighting for—no matter how much vitriolic pushback or how many accusatory labels it engenders.

Amica Rep. Barbara Ehardt was the author and principal sponsor in the Idaho House of Representatives of a similar bill. Rep. Ehardt is a former Division I NCAA basketball player and coach, and currently coaches clinics and travel teazms for high-level high-school basketball prospects.

Additional *amicae* state legislators are: Rep. Susan DuBose (Alabama), Rep. Jamie Allard (Alaska), Rep. Selina Bliss (Arizona), Sen. Shawnna Bolick (Arizona), Rep. Gail Griffin (Arizona), Rep. Rachel Jones (Arizona), Rep. Barbara Parker (Arizona), Rep. Jacqueline Parker (Arizona), former Sen. Mary Souza (Idaho), Rep. Michelle Davis (Indiana), Rep. Joanna King (Indiana), Sen. Renee Erickson (Kansas), Sen. Beverly Gossage (Kansas), Rep. Carrie Barth (Kansas), Rep. Rebecca Schmoe (Kansas), Rep. Barb Wasinger (Kansas), Rep. Kristy Williams (Kansas), Rep. Mary Beth Imes (Kentucky), Rep. Savannah Maddox (Kentucky), Rep. Candy Massaroni (Kentucky), Rep. Marianne Proctor (Kentucky), Rep.

Nancy Tate (Kentucky), Sen. Tichenor (Kentucky), Sen. Stacy Guerin (Maine), Sen. Lisa Keim (Maine), Rep. Katrina Smith (Maine), Rep. Jaimie Greene (Michigan), Rep. Pam Altendorf (Minnesota), Rep. Mary Franson (Minnesota), Rep. Dawn Gillman (Minnesota), Rep. Krista Knudsen (Minnesota), Rep. Bernie Perryman (Minnesota), Rep. Kristin Robbins (Minnesota), Rep. Peggy Scott (Minnesota), Rep. Natalie Zeleznikar (Minnesota), Rep. Stephanie Borowicz (Pennsylvania), Rep. Barbara Gleim (Pennsylvania), Rep. Dawn Keefer (Pennsylvania), Sen. Judy Ward (Pennsylvania), Rep. Melissa Oremus (South Carolina), Representative April Cromer (South Carolina), former Rep. Rhonda Milstead (South Dakota), Rep. Bethany Soye (South Dakota), Sen. Maggie Sutton (South Dakota), Rep. Caroline Harris-Davilla (Texas), Rep. Candy Noble (Texas), Rep. Valoree Swanson (Texas), Rep. Ellen Troxclair (Texas), and Rep. Kera Birkeland (Utah).

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

Amici family policy organizations are: Alabama Policy Institute, Alaska Family Council, California Family Council, Center for Arizona Policy, Christian Civic League of Maine, Delaware Family Policy Council, Family Policy Alliance, Florida Family Voice, Frontline Policy Action, Hawaii Family Forum, Idaho Family Policy Center, Indiana Family Institute, Kansas Family Voice, Louisiana Family Foundation, Maryland Family Institute, Michigan Family Forum, Minnesota Family Council, Montana Family Foundation, Nebraska Family Alliance, North Carolina Family Policy Council, North Dakota Family Alliance,

New Jersey Family Policy Center, New Mexico Family Alliance, Oklahoma Council of Public Affairs, Pennsylvania Family Council, Rhode Island Family Institute, Palmetto Family Council, South Dakota Family Voice, Texas Values, The Family Foundation Kentucky, The Family Leader Iowa, The Family Foundation of Virginia, Wisconsin Family Action, and Wyoming Family Alliance.

SUMMARY OF ARGUMENT

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

Sex, of course, is an immutable biological characteristic. It is determined by a person's chromosomes, and as the Ninth Circuit noted below, it normally is identified based on the person's "observable anatomy" at birth. (*See* App. 11A.) These physical criteria have long been the foundation of women's sports. Both our culture and our courts have long recognized that the need for women's sports is predicated on the major physical and biological differences between males and females. Correspondingly, who may participate in women's sports has always been determined by the

physical and biological characteristics that make a person female.

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

But this legal and cultural consensus in favor of women's sports is being challenged. In recent decades, there has been growing public awareness of a separate concept of "gender identity:" a person's interior sense of being a woman or man, or a girl or boy (or neither), which may or may not correspond with the person's biological sex characteristics. In many contexts, a person's legal rights should not and do not depend on *either* sex or gender identity. But in the few areas where separate spaces or programs for women remain desirable and necessary, the concept of gender identity has had major implications. Increasingly, the argument is being made that eligibility for these spaces and programs should be determined *not* by biological sex—as has been the case until now—but instead should be determined, in whole or in part, by a person's interior sense of being a woman or girl.

This argument seeks to upend this Court's settled jurisprudence regarding the remaining permissible sex-based classifications. The argument contends that the courts have been wrong in finding that equal protection permits distinctions based on biological sex in these few areas, including women's sports. Instead,

the argument goes, distinctions must be based on non-sex criteria that supposedly are more precise.

This case illustrates. The panel below held, in essence, that the Constitution no longer permits women's sports events (as defined by biological sex), but instead requires that eligibility for sports events be determined based on a person's testosterone levels, perhaps combined with other factors. The panel even acknowledged that these substitute criteria are recent innovations and may be subject to change in the near future.

This approach would profoundly destabilize this Court's equal protection jurisprudence. It would replace the settled permissibility of sex-based distinctions in certain limited contexts with an improvised set of eligibility criteria based on evidence that, at the very best, remains markedly incomplete and tentative. The Court should grant review to clarify that a debate like this one belongs in the political process, not in the courts.

ARGUMENT

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

Women's sports are a remarkable American success story.

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

Concurrently with this progress toward equal treatment regardless of sex, a cultural consensus also has emerged that, in a few areas, equality requires separate spaces or programs that are reserved for women alone. These areas include private spaces like restrooms and dormitories—and, as relevant here, they also include sporting events. In contexts like these, society widely recognizes that equal access for

women can best be maintained through reserving separate facilities or events for women. Thus, when the Department of Education promulgated regulations to implement Title IX's nondiscrimination mandates, it specified that schools generally "may operate or sponsor separate [athletic] teams for members of each sex." 34 C.F.R. 106.41(b).

The result is that the past 50 years have seen the growth of a near-universal approval of women's sports. In a nation that is bitterly divided in many respects—including over issues of sex equality—vast numbers of Americans are united in their passion for sports. And increasingly that includes women's sports. Excellence in women's athletics is avidly supported by Americans from every State, religion, political party, and ideology. At the local level, that is reflected in the groundswell of support for and participation in girls' sports leagues of all kinds—with girls' sports participation having consistently climbed for nearly a decade, and approaching the same level as boys'.[2] At the high-school level, it is reflected in the nearly thirty-fold increase in girls' athletics participation since the early 1970s.[3] At the highest levels of sporting competition, our growing nationwide love for women's sports is reflected in every region and social stratum: from the recent surge of interest in college and professional women's basketball, to record-setting crowds

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

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

attending college women's volleyball matches,[4] to the striking successes of women's athletics at religious universities,[5] to the many millions of Americans who cheer on our women's teams' extraordinary successes in the Olympics and in other international competitions. At any level, one would be hard-pressed to find any significant group of Americans who oppose the idea of women's sports.

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

The emergence of this social and legal consensus for women's sports in the past 50 years has done tremendous good for millions of American girls and women—including many *amicae* here. We described above the experience that led Sen. Barto to sponsor Arizona's Save Women's Sports Act. Other *amicae* also have authored, sponsored, or advocated similar legislation in their States based on a lifelong love of sports.

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[4] Olson, Associated Press, *Nebraska volleyball stadium event draws 92,003 to set women's world attendance record* (August 30, 2023), https://apnews.com/article/nebraska-volleyball-attendance-record-38f103fe2100a368cddb19b75e1adb8d

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

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

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

sports that now-Senator Erickson is currently passing on to her three granddaughters.

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

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

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

that have brought many *amicae* to where they are today. They desire the same opportunities for future generations of female leaders.

III. The Consensus In Favor Of Women's Sports Has Always Been Premised On Biology.

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

This, it has been understood, is necessary to account for the relevant physical differences between women and men. Boys and men tend to be significantly stronger and faster, physically, than girls and women.[6] For that reason, if sports programs were simply opened to all comers regardless of sex and women were forced to compete against men (or girls against boys), their opportunities to excel and win would be sharply curtailed, and in many cases eliminated. As Justice Stevens put it, "[w]ithout a gender–

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[6] *E.g.,* Univ. of Utah, *Why males pack a powerful punch*, ScienceDaily (Feb. 5, 2020), https://www.sciencedaily.com/releases/2020/02/200205132404.htm (male upper bodies average 75% greater muscle mass and 90% greater strength than female).

based classification in competitive contact sports, there would be a substantial risk that boys would dominate the girls' programs and deny them an equal opportunity to compete in interscholastic events." *O'Connor v. Bd. of Ed. of Sch. Dist. 23*, 449 U.S. 1301, 1307 (1980) (Stevens, J., in chambers). Or, as the Ninth Circuit put it in the precedent that governed until recently, "due to average physiological differences, males would displace females to a substantial extent if they were allowed to compete" against each other, and "[t]hus, athletic opportunities for women would be diminished." *Clark ex rel. Clark v. Arizona Interscholastic Ass'n*, 695 F.2d 1126, 1131 (9th Cir. 1982).

To be sure, this distinction is indeed based on averages. No one thinks that every man or boy is stronger or faster than every woman or girl. But the average differences in speed and strength are large enough and important enough that, in almost every sport, equal competitive opportunities for women can be meaningfully achieved only through separate women's events. We will not belabor this point with a multitude of examples—although it could be done—but track-and-field records provide a vivid illustration. The holders of women's world records in track and field are superb athletes and exemplars of human excellence. Society's ability to celebrate these athletes—as it should—depends on the existence of separate women's competitions. If those world-record-holders were forced to compete against men, the record books show that the top U.S. high-school boys would regularly exceed them in every event. *See* Coleman & Shreve, *Comparing Athletic Performances: The Best Elite Women to Boys and Men*,

https://law.duke.edu/sites/default/files/centers/sportslaw/comparingathleticperformances.pdf. Something similar is true in virtually every sport, at virtually every level of competition: proper recognition of women's athleticism and athletic achievements is made possible only by separate women's events.

Thus, although the marked athletic differences between the sexes are not absolute, that has not impaired our strong national consensus in favor of separate women's sporting events. It always has been true—and it always will be true—that some biological males are below the average in strength, speed, or athletic ability. Considered alone, these males may not pose the same risk of dominating female athletics or displacing female competitors. But it is not in our traditions—and it obviously would be inconsistent with principles of equality and equal opportunity— to open women's or girls' sports to only men or boys who might struggle in all-male competitions. Our culture and our courts have never endorsed that approach. Rather, they recognize separate women's and men's categories, based on biological sex.

IV. The Ruling Below Conflicts With This Long-Settled Approach.

In the last decade or two, some have voiced strong objections to sex-based distinctions in sports. There has been an increasing awareness of the concept of "gender identity"—a person's interior sense of being a man or a woman (or both, or neither), which may or may not correspond with the person's physical or biological sex characteristics.

In many areas of public life, distinctions based on either sex or gender identity are properly regarded as immaterial. In these areas, there is no direct conflict between protecting the rights of women (defined by biology) and protecting the rights of transgender people (defined by gender identity). For instance, a transgender person's right to vote on the same terms as any other citizen—or to own property, or to make contracts, or to exercise various other rights—normally does not conflict with any biological woman's right to do the same.

A conflict arises only in the few important areas where society still recognizes the need to reserve separate spaces and programs for women—such as sports. In these areas, those advocating for transgender rights have increasingly argued that gender identity should *replace* biological sex as the eligibility criterion. Admittance to women's restrooms, or dormitories, or sports teams, it is said, should be based (in whole or in part) on gender identity *instead of* biological sex. In other words, the argument goes, those spaces and programs are *not* to be reserved for biological females anymore. They must also be open to people with biologically male characteristics who identify as female.

Sometimes this argument is made on a categorical or near-categorical basis. That is, proponents of transgender rights sometimes argue that access to women's spaces or events should be determined exclusively or predominantly by a person's interior gender identity, with no or relatively little consideration of the person's biological characteristics. Other times, the argument is made on a more case-by-case basis.

Some biological males who identify as transgender, it may be said, are more similar for athletic purposes to biological girls or women than to other biological males, and so must be allowed to participate in girls' or women's athletics. This case presents that latter situation: although the plaintiffs are biologically male, they contend (and the Ninth Circuit held) that their particular individual characteristics make girls' athletics the better category for them.

But both the categorial and the case-by-case versions of the argument seek to discard biological sex as the eligibility criterion for women's sports. They differ only in what they propose as a replacement criterion. The categorical argument proposes that, instead of biology, eligibility should be determined solely or mostly by a person's interior sense of gender. By contrast, the case-by-case argument proposes that biological sex be jettisoned in favor of other biological criteria that supposedly will do a more precise job of ensuring competitive fairness and safety. On this account, biological sex is simply too crude a measure of athletic performance to justify using it as an eligibility criterion. It is better, the argument goes, to determine eligibility through some measurement of a putative athlete's hormone levels and perhaps certain other bodily characteristics.

That is what the Ninth Circuit panel held in this case. The premise of the holding below is that biological sex does not "bear a genuine relationship to athletic performance and competitive advantage." App. 18A. Instead, said the panel, athletic performance and competitive advantage can be more precisely determined with reference to "factors[ ]such as levels of

circulating testosterone." *Ibid.*; *see id.* 24A-25A, 47A, 50A-51A. According to the courts below, using these supposedly more precise criteria would allow competition in women's or girls' sports by people who are biologically male, but "who are too young to have gone through male puberty" or "who have received puberty-blocking medication" or "who … have received sustained hormone therapy to suppress their circulating testosterone levels." *Id.* at 19. These supposed scientific developments, said the panel, have rendered it impossible to justify women's sports without impermissibly "relying on overbroad generalizations about the different talents, capacities, or preferences of males and females." App. 49A.

In other words, the Ninth Circuit held that with respect to sports, distinctions based on biological sex are obsolete and antiquated. Under the panel's logic, the Constitution now prohibits separate women's and men's sports events, and apparently instead requires separate "low testosterone" and "high testosterone" sports events.

V. This Court Should Grant Review.

This holding below—that distinctions based on biological sex are outdated and have become unnaceptably imprecise—is not tenable either factually or legally.

As a factual matter, even the Ninth Circuit's description of the scientific evidence shows that replacing sex distinctions with "testosterone level distinctions" would be extraordinarily rash. The panel's preferred testosterone-based eligibility criterion is extremely novel—as the panel acknowledged,

it has largely been developed "[i]n the last few years." App. 49A. And the panel's preferred standard is very far from certain or settled. Quite the contrary, the opinion below expressly "recognize[s] that the research in this field is ongoing and that standards governing transgender participation in sports are evolving." *Ibid.* The panel even cautioned that "future cases may have different outcomes if the evolving science supports different findings." App. 50A. That is not a remotely sufficient basis on which to cast aside many decades, if not centuries, of cultural and legal consensus that separating athletic competitions based on biological sex is wholly appropriate and warranted.

Rather, the at-best-unsettled and developing state of this scientific and social evidence confirms that the debate over eligibility for women's sports belongs in the democratic and political processes. No one doubts that, in some contexts at least, the Constitution *permits* public or private actors to experiment with alternative criteria to determine eligibility for activities or facilities that were previously reserved for a certain biological sex. Many States, and many more private organizations, are trying exactly that. As the panel acknowledged below, developments in the evidence are causing many of these organizations to "tighten[] their transgender eligibility policies" as time has gone by. App. 49A. Simultaneously, Senator Barto, the other *amici*, and many other States and organizations have deemed it better to stick with long-established biological sex criteria for these purposes. In a scientifically and culturally debated area, this variety of approaches is precisely what our Constitution contemplates. It certainly does not contemplate judges casting aside biological-sex categories that predate the

Constitution based on nothing more than a few years' worth of tentative, rapidly-changing research results.

Perhaps more importantly at the certiorari stage, the Ninth Circuit's attempt to move beyond biological sex is wholly incompatible with this Court's settled holding that, in certain limited contexts, the "enduring" physical differences between the sexes *are* a proper basis for legislative distinctions. *Virginia*, 518 U.S. 533 (1996). As just explained, the evidence is not remotely sufficient for the courts to declare that heretofore-acceptable sex distinctions have now become obsolete and unconstitutional. But in all events, any determination in that regard should come from this Court and this Court alone, not from a Court of Appeals panel.

*

The plaintiffs and the Ninth Circuit in this case, of course, are not the only ones who wish to replace biological sex criteria for women's sports. A vigorous public debate on that very topic is underway. As this case illustrates, the crux of the debate is whether notions of biological sex are outdated and should be replaced with different eligibility criteria that, in light of developments in science and political opinion, are alleged to be more precise and equitable.

But this Court's precedents make clear that this debate should be conducted in the same forum as any other debate over purported scientific and political developments: in the political and legislative processes. In certain limited contexts including athletics, biological sex has served as the established and constitutionally acceptable eligibility criterion for many decades. The choice whether to move away from

that criterion, in whole or in part, is committed to the states or to private actors. It is not compelled by the federal Constitution.

Moreover, "this Court has consistently upheld statutes where the gender classification is not invidious, but rather realistically reflects the fact that the sexes are not similarly situated in certain circumstances." *Michael M. v. Superior Ct. of Sonoma Cnty.*, 450 U.S. 464, 469 (1981). There is no serious dispute that, with respect to athletic competitions, women and men "are not similarly situated." This recognition has been the foundation of the unprecedented modern success of American women's sports. *Amici* firmly believe that casting it aside would be catastrophic for women's equal opportunities—and in all events, is a question that the Constitution commits to the political process rather than the courts.

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

CONCLUSION

The petition should be granted.

Respectfully submitted,

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