

# The United States Court of Appeals for the Fifth Circuit

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No. 24-30399

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STATE OF LOUISIANA, *by and through its Attorney General, Elizabeth B. Murrill*; LOUISIANA DEPARTMENT OF EDUCATION; STATE OF MISSISSIPPI, *by and through its Attorney General, Lynn Fitch*; STATE OF MONTANA, *by and through its Attorney General, Austin Knudsen*; STATE OF IDAHO, *by and through its Attorney General, Raul Labrador*; SCHOOL BOARD OF WEBSTER PARISH; SCHOOL BOARD OF RED RIVER PARISH; SCHOOL BOARD OF BOSSIER PARISH; SCHOOL BOARD SABINE PARISH; SCHOOL BOARD OF GRANT PARISH; SCHOOL BOARD OF WEST CARROLL PARISH; SCHOOL BOARD OF CADDO PARISH; SCHOOL BOARD OF NATCHITOCHE PARISH; SCHOOL BOARD OF CALDWELL PARISH; SCHOOL BOARD OF ALLEN PARISH; SCHOOL BOARD LASALLE PARISH; SCHOOL BOARD JEFFERSON DAVIS PARISH; SCHOOL BOARD OF OUACHITA PARISH; SCHOOL BOARD OF FRANKLIN PARISH; SCHOOL BOARD OF ACADIA PARISH; SCHOOL BOARD OF DESOTO PARISH; SCHOOL BOARD OF ST. TAMMANY PARISH; ALL PLAINTIFFS,

*Plaintiffs – Appellees*

*versus*

UNITED STATES DEPARTMENT OF EDUCATION; MIGUEL CARDONA, *in his official capacity as Secretary of Education*; OFFICE FOR CIVIL RIGHTS, *United States Department of Education*; CATHERINE LHAMON, *in her official capacity as the Assistant Secretary for Civil Rights*; UNITED STATES DEPARTMENT OF JUSTICE; MERRICK B. GARLAND, *in his official capacity as the Attorney General of the United States*; KRISTEN CLARKE, *in her official capacity as Assistant Attorney General for the Civil Rights Division of United States Department of Justice*,

*Defendants – Appellants*

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SCHOOL BOARD RAPIDES PARISH

*Plaintiff – Appellee*

*versus*

UNITED STATES DEPARTMENT OF EDUCATION; MIGUEL CARDONA, *in his official capacity as Secretary of Education*; CATHERINE LHAMON, *in her official capacity as the Assistant Secretary for Civil Rights*; UNITED STATES DEPARTMENT OF JUSTICE; MERRICK B. GARLAND, *in his official capacity as the Attorney General of the United States*; KRISTEN CLARKE, *in her official capacity as Assistant Attorney General for the Civil Rights Division of United States Department of Justice*,

*Defendants – Appellants.*

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Appeal from the United States District Court  
for the Western District of Louisiana  
USDC Nos. 1:24-CV-567, 3:24-CV-563

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**BRIEF OF *AMICUS CURIAE***  
**133 FEMALE ATHLETES, COACHES, SPORTS OFFICIALS, AND**  
**PARENTS OF FEMALE ATHLETES IN SUPPORT OF APPELLEES**

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**CERTIFICATE OF INTERESTED PERSONS**

State of Louisiana, *et al.*,

Plaintiffs-Appellees,

v.

**No. 24-30399**

United States Department of Education, *et al.*,

Defendants-Appellants.

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Undersigned counsel is unaware of anyone with a financial interest in this case.

*/s/ William Bock III*

Attorney of Record for 133 Female Athletes,  
Coaches, Sports Officials, and Parents of  
Female Athletes

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**INTEREST OF AMICI CURIAE<sup>1</sup>**

*Amici* are 133 female<sup>2</sup> athletes, parents of female athletes, coaches and sports officials.<sup>3</sup> *Amici* hail from all levels of sport from high school to college and from professional to Olympic sport. They all understand the unfairness of men competing against women and the psychological stress and physical dangers arising from men competing in women’s sports. *Amici* have sought and received consent from all parties to this appeal to file this brief.

*Amici* include: (i) Martina Navratilova, 59x Grand Slam Champion in Tennis; (ii) Jennifer Sees, NCAA track and field athlete, high school track coach, and parent of a NCAA soccer player; (iii) Summer Sanders, Olympic Gold Medalist; (iv) Courtney DeSoto, mother of a high school female athlete; (v) Jill Sterkel, Olympic swimmer, world record holder, and University of Texas head swim coach; (vi) Pam Etem, Olympic rower; (vii) Madisan Debos, NCAA track athlete; (viii) Laura Wilkinson, Olympic and World Champion in diving and

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<sup>1</sup> In accordance with Federal Rule of Appellate Procedure 29(a)(4)(E), counsel affirms that the undersigned counsel authored this brief, that no counsel for any party authored this brief in whole or in part, and that no party, party’s counsel, or person other than the amicus curiae, its members, or its counsel, contributed money that was intended to fund preparing or submitting this brief.

<sup>2</sup> As used herein the terms “female” “male” “woman” “man” “women” “men” and “girls” and “boys” are used to refer to members of the female or male sex without regard to gender identification.

<sup>3</sup> Athletes, coaches, and family members are identified in **Attachment A** to this Brief.

parent; (ix) Donna de Varona, Olympic Gold Medalist, world record holder, Olympic broadcaster and long-time Title IX advocate; (x) Evie Edwards, cyclist, mother of an elementary-age female cyclist; (xi) numerous NCAA, Olympic, and Paralympic female athletes; and (xii) other coaches, parents and sport officials.

*Amici* demonstrate, by describing their painfully lived experiences, that female athletes across the country, at all levels of sport, are losing hard won access to equal opportunity and safety in sports that used to be protected by a settled understanding of the transcendent importance of relevant sex-linked differences between males and females competing in sport. Due to the inherent sport performance advantages that males have over females, women are increasingly being pushed aside and permanently and irrevocably losing opportunities for which they have sacrificed through countless years of hard work. The implications for future generations of girls and women of these real changes in the administration of women's sports that are largely driven by an incorrect interpretation of Title IX are dark and dystopian.

By bringing their names, voices, and personal stories to this Court's attention, *amici* lodge with this Court a plea on behalf of thousands of women and girls: that the federal government should not be permitted through regulatory fiat to redefine "sex" and "women" and to thereby write out of existence women's right to a level playing field and fair and safe competition in scholastic sports.

## SUMMARY OF ARGUMENT

Growing numbers of women and girls have experienced the humiliation and damage of being forced to compete in the women's sports category against men who identify as transgender. *Amici's* experiences as athletes, coaches, officials and parents of female athletes demonstrate that females are uniquely and adversely affected when they are forced to compete against males in sports. Their testimony based on hundreds of years of combined experience at all levels of sport show unequivocally that females and males cannot fairly compete against each other in competitive sports and that the psychological harm suffered by females forced to compete against males is significant and irreparable. Females across the Nation and at all levels of sport are suffering real harm and threats to their fairness, dignity, safety, and equal opportunity under the law. This Court should affirm the district court's order rejecting a new Title IX Rule that will only increase the harms being faced by women in sport.

## ARGUMENT

### **I. WOMEN ARE HARMED WHEN FORCED TO COMPETE AGAINST MEN IN SPORTS**

#### **A. Georgia Senate Hearings on 2022 NCAA Division I Women's Swimming and Diving Championships**

A special committee of the Georgia Senate is currently conducting hearings regarding the 2022 NCAA Division I Women's Swimming and Diving Championships at which trans-identifying male Lia Thomas (formerly Will



Thomas) a previous member of the University of Pennsylvania Men’s Swimming Team was permitted by the National Collegiate Athletic Association (NCAA) and Georgia Tech University to compete in the women’s National Championships and to share a locker room with some 300 women swimmers and divers without the NCAA or Georgia Tech University informing the women in advance that a 6 foot four inch male with fully intact male genitalia would be using the women’s locker room during the Championships.

On August 27, 2024, five courageous women, Kylee Alons (North Carolina State University), Grace Countie (University of North Carolina), Riley Gaines (University of Kentucky), Reka Gyorgy (Virginia Tech University) and Kaitlynn Wheeler (University of Kentucky), who among them have won more 65 NCAA All American honors, testified before the special Georgia Senate Committee regarding the unfairness and emotional toll resulting from a single male swimmer competing in the 2022 NCAA women’s championships.<sup>4</sup> Unless permanently enjoined, the proposed Title IX Rule at issue would lend the imprimatur of federal law to the discrimination and harms experienced by these women.

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<sup>4</sup> The videotaped testimony of these women can be viewed at: <https://www.legis.ga.gov/schedule/senate/AQIARgAAExpEc5CqZhHNm8gAqgAvxFoJAGeQLC1kSDdlixjC7EHFmflAAAJaYgAAANZQGGA2fqFiaHBHrewZqJ2eET4ABFxyqioAAAAuAAADGkRzkKpmEc2byACqACGGA2fEWgMAZ5AsLWRIN0iLGMLsQcWZ8gAAAlpiAAAA>

In 2022 Thomas won an NCAA women's championship in the 500-yard freestyle event in which he had been only the 65th ranked male in the country when on the University of Pennsylvania men's team. At the 2022 NCAA Women's National Championships Thomas achieved first team All American honors (*i.e.*, a top eight finish) in all three events he entered, displacing women in each event. Even worse for some was that the first time many of the women competitors learned that Thomas would be using the women's locker room was when he entered the locker room and began undressing in front of them while many of these women were in various stages of undress, including some who were fully nude, without their consent or opportunity to protect themselves, trammeling their right to a safe space in which to undress and depriving them of bodily privacy.

For some of the country's top collegiate swimmers the experience of competing against a man in a women's championship was deeply disorienting and emotionally painful. Thirty-one-time All-American swimmer Kylee Alons testified that she was "still grieving it" more than two years later.

Twenty-two-time All-American Grace Countie recalled that the pressure of competing in the national championship against a male with such enormous physical advantages caused her to start "shaking" and to become "so nauseous I thought I was going to throw up." It "was the only time in [her] swimming career that [she] had ever cried before a race." She spent her time pre-race "sitting in the

ready room trying to convince myself that what I was going to experience was normal.” When she dove into the pool she “black[ed] out” and could not execute her race plan, she merely went through the motions.

Another aspect of the trauma for these women was that the NCAA decision to authorize a male to compete against them communicated powerfully that they lacked worth as women. They were shocked to experience that they could be stripped of their right to compete solely against other women and told they had to compete against physically stronger men and submit to a man depriving them of opportunities for which they had worked their entire lives, that were understood to be reserved for women.

University of Kentucky swimmer Riley Gaines described it, “a cruel, traumatizing, psychological experiment that pretends that it’s fair and just and compassionate for a man to take from women, that pretends it is normal for a man to be given access to a woman’s safe spaces, and that requires women to accept it all without saying anything lest they hurt the feelings of the man.” She said it was as if the collegiate women swimmers were being told, “[i]gnore the threat of men, ladies. Don’t worry if a guy follows you into the bathroom. Abandon your instincts that something is off. Loosen your boundaries, stay quiet and take your pants off anyways, get undressed, and stay quiet. That’s the message that we received.”

**1. Enormous performance advantage enjoyed by a mediocre male when competing against elite female athletes**

In the 500-yard freestyle final Thomas beat University of Virginia swimmer Emma Weyant by more than a body length. Emma Weyant is one of the best and most technically proficient female swimmers in the world, a two-time Olympic silver medalist in the 2021 (Tokyo) and 2024 (Paris) Olympic Games. Kylee Alons testified that, “Thomas was not a technically proficient swimmer and had only qualified for the NCAA Championships because of the physical advantages he possessed as a man.” Nevertheless, because Thomas was allowed to compete against Weyant, Thomas “stole the championship celebration from her, a moment for which Emma had worked her whole life.” When competing as a male Thomas was unable to even qualify for the NCAA Championships. However, competing against women he won All American honors in all three events in which he competed, including in the 200-yard freestyle, an event in which he had not even been ranked among the top 550 male NCAA swimmers.

Thomas prevented multiple women from receiving All American honors. One of these swimmers was Reka Gyorgy, a Virginia Tech University swimmer and Olympian from Hungary who in addition to the Olympics had represented her country in multiple European Championships. Thomas displaced Reka from an All-American honor in the 500-yard freestyle event at Reka’s last collegiate swim meet. Reka explained, “[b]efore 2022 I never had to prepare myself mentally to

swim in competition against a man who is physically bigger and much stronger than I am. This isn't something you can realistically prepare for or compete with because it simply is not a fair match.”

Reka wrote a letter to the NCAA to explain how unfair allowing men to compete against women is. Yet, she never received a response back from the NCAA. Reka testified, “I know many who competed against Thomas are still afraid to speak up. Unfortunately, women are bullied and harassed if they speak up to defend women’s spaces from male intrusion. The bullying can be especially bad on college campuses. But even though a man beat me in the pool and even though I know some will criticize me and try to suppress my voice, I have decided I am going to fight this new and dangerous philosophy of stealing women’s opportunities to give them to men.” Kylee Alons said, “[l]ooking back, I can see even more clearly the injustice of hundreds of women being required to suppress our feelings to validate the feelings of one man.”



Photo 1: The podium at the 2022 NCAA Women’s Swimming and Diving Championships where a male won and took the place of Reka Gyorgy.

**2. Women's rights to sex separated spaces and bodily privacy are violated by rules which permit men to use women's locker rooms and showers**

Women swimmers at the 2022 NCAA National Championships testified to being traumatized by the presence of a 6-foot four-inch male with fully intact male genitalia in the women's locker room. Kaitlynn Wheeler recalled the first time she learned that a man had been given access to the women's locker room:

Suddenly, the usual buzz of conversation in the locker room noticeably shifted to one of discomfort, awkwardness, and fear. I turned around, exposed and bare, while still inching up my racing suit, only to see a very large 6'4" man just 10 feet from me. I realized it was Lia Thomas. I was completely shocked and caught off guard. I immediately reached for my towel. He put his belongings down near me and proceeded to pull down his pants and begin changing in front of me.

I was stuck in the most uncomfortable position of my life, with only half of my racing suit pulled up in the presence of a naked man. This felt far from a normal experience – it felt extremely wrong. I glanced around at the other girls and saw that they too were covering themselves, trying to huddle on the opposite side of the locker room as far away from Thomas as they could get in that small space. I returned to inching my racing suit up my torso as quickly as I could manage. As soon as I could, I left the locker room, still in shock at what I had just witnessed, with every fiber of my being crying out in mental torment and humiliation. I have never felt more violated and betrayed than I did at that moment.

Riley Gaines wrote a letter to Georgia Tech University President Angel Cabrera explaining the continuing trauma being experienced by women whose privacy was not respected or protected in the locker rooms at the Aquatics Center on the campus of Georgia Tech University:

There is one question that has come back to me over and over again over the last two years since I visited your campus as a 21-year old college student in 2022: “Why didn’t you protect me?”

There are images in my mind that I cannot erase. I wish that I could erase these images, that day after day make me feel less safe as a woman. They repeat in my mind late at night when I’m alone, when I’m walking a City street by myself at night, whenever I feel vulnerable, those images come back and the same question comes to my mind, “Why didn’t you protect me?” . . .

Your Georgia Tech University officials knew a naked adult man with full male genitalia was being authorized by Georgia Tech to share a locker room with hundreds of college-age women who would themselves be naked, unable to hide, unable to protect our privacy. This was intentional. This was premeditated. It was sexual harassment, and it happened right here, in the capitol city of the State of Georgia. . . Let me be clear. I label this as sexual harassment because me and the . . . hundreds of other 18–22-year-old college girls were not asked for our consent and we did not give our consent to being exploited and exposed to a 6’4” fully naked man. Because you did nothing, that man walked into our women’s locker room at your university and saw me undressed down to full nudity. . .

The experiences of the women swimmers at the 2022 NCAA Division I Swimming and Diving Championships vividly demonstrate the gross unfairness and denial of equal opportunities arising from allowing men to compete on women’s sports teams.

**B. Macy Petty, Former NCAA Volleyball Player**

While in high school, I competed in club volleyball tournaments across the country with hopes of being recruited to a college volleyball team. At one of these tournaments, with several college recruiters watching, I had to play against a boy in a girls’ volleyball tournament. While trying to evaluate our skills, the recruiters

instead watched this athlete repeatedly slam the ball in our faces. Because the girls' volleyball net heights are different from boys', this athlete was competing on a net 7.5 inches shorter than he should have as a male. As an athlete, this was humiliating; as a woman, I was horrified to see a boy so easily steal the right to play in brackets that were designed specifically to make volleyball safe and competitive for female bodies. I thought this was a mistake everyone could see, and it would never happen again. However, this has not been the case. For the last two years male volleyball athlete Blair Fleming has competed for the NCAA Division I San Jose State University women's volleyball team.

**C. Lauren Miller, Professional Women's Golfer**

Ever since a golf club was placed in my hand at six years-old, I've dreamed of playing professional golf, playing on the Ladies Professional Golf Association (LPGA) Tour and ultimately winning titles. My aspirations led me to pursue golf wholeheartedly, which allowed me to earn an athletic golf scholarship to Mississippi State University and eventually Southern Methodist University for my COVID-year of eligibility. Five years and two masters later, I was ecstatic to make my childhood dream a reality, and in September of 2023, I began my professional golf career.

My first attempt to qualify for the LPGA Tour fell short, and as a result, in January of 2024, I was playing on a mini professional tour in Florida trying to claw



my way up the ranks. Though a win here does not equate to a win on the LPGA Tour, a win at any level in golf is meaningful. It's a sport where the greatest only win ten percent of the time.

I was on the cusp of my first win as a professional –and my first since high school – when I found myself in a sudden-death playoff against a trans-identifying male player, Hailey Davidson. Over the course of the tournament, I saw clearly the natural advantages Davidson was able to utilize (e.g. club-head speed, distance, grip/forearm strength) and frankly, it was infuriating.

After tying the first playoff hole, Davidson beat me on the second hole and claimed the title. This was a tough loss to swallow, but it was a loss that should have never happened had LPGA and USGA officials chosen to prioritize fairness, integrity, and biological realities over inclusion. At the professional level, the difference between winning and losing is more than just a trophy. I lost out on money and points that could have helped me earn starts on a bigger professional golf tour. This is certainly not what my six year-old self envisioned professional golf to be. It is time to right this wrong and protect women's sports for this generation and the next.



Photo 3: A male, Hailey Davidson, takes the women's title at NXXT Golf Tournament.

**D. Hannah Arensman, Professional Women's Cycling, Cyclocross National Champion**

I was born into a family of athletes. Encouraged by my parents and siblings, I competed in sports from a young age, and I followed in my sister's footsteps, climbing the ranks to become an elite cyclocross racer. Over the past few years, I have had to race directly with male cyclists in women's events. As this has become more of a reality, it has become increasingly discouraging to train as hard as I do only to lose to a man with the unfair advantage of an androgenized body that intrinsically gives him an obvious advantage over me, no matter how hard I train.

I have decided to end my cycling career. At my last race at the recent UCI Cyclocross National Championships in the elite women's category in December 2022, I came in 4th place, flanked on either side by male riders awarded 3rd and 5th places. My sister and family sobbed as they watched a man finish in front of me, having witnessed several physical interactions with him throughout the race.

Additionally, it is difficult for me to think about the very real possibility I was overlooked for an international selection on the US team at Cyclocross Worlds in February 2023 because of a male competitor.

Moving forward, I feel for young girls learning to compete and who are growing up in a day when they no longer have a fair chance at being the new record holders and champions in cycling because men want to compete in our division. I have felt deeply angered, disappointed, overlooked, and humiliated that the rule makers of women's sports do not feel it is necessary to protect women's sports to ensure fair competition for women anymore.



Photo 4: Hannah Arensmen misses the podium while a male takes her place.

**E. Taylor Allen, West Virginia High School Basketball Player and Track Athlete**

I am a high school track and basketball athlete, and my goal is to play basketball in college. When girls are forced to play against boys in sports, it

can turn into a scary situation because boys are built differently, they're rougher, and they have testosterone that we don't have. Even boys at my school who are on their own JV team — whether they're first string or whether they usually sit on the bench — are still really good, and as girls, we're afraid to go against them because they are rougher and built differently than us. On top of the playing field being turned into a scarier environment, having a boy change in the locker room with girls is uncomfortable for us — specifically for the girls on my team who go to sports to get away from an unsafe environment. Now they have to face that again in a space that was supposed to be all girls. If we allow boys to identify as girls and play on our teams, we experience a higher likelihood of injury, an unsafe environment in our locker rooms, and the probability of losing playing time and our spots on teams. None of this should be taken away from girls.

**F. Courtney DeSoto, Parent of High School Track Athlete**

I am the parent of a daughter who ran varsity track in a public school in California. A male freshman joined the women's team a few years ago and ran varsity track, winning every race while the girls watched in bewilderment. This same individual used the girls' locker room to change and shower. The girls were so uncomfortable that some stopped using the locker room themselves anymore. Complaints and concerns for the girls were made to school and district administration, but no one is willing to say anything because our state laws and

legislators will not protect our daughters. I have a younger daughter who is also interested in sports, but I am concerned for the future of all our girls.

**G. Jarrod Jacobi, Father of High School Ski Athlete**

My daughter lives in a school district where alpine ski racing is a varsity sport. On March 5-7, 2023, the CA/NV Interscholastic Ski & Snowboard Federation (CNISSF) state finals for ski athletes occurred at Northstar (Tahoe). Forty-to-50 schools were represented, with about 200 athletes in total. My daughter worked hard all season and qualified to represent her high school that year.

I was riding the chairlift with her when she told me that the overall winner of the slalom race the day before, who placed third in grand slalom later that day, was “trans.” My daughter has a kind, supportive heart, but we must consider the young ladies down the line (her included) who were displaced in standings by a biological male. How might they feel? What if a few more biological males compete in the women’s division next year, and the year after that, more? Or she does not qualify for state because she lost out to a biological male; or didn’t get a college scholarship for the same reason? These are not hypothetical questions; this is where we are headed unless sane people, not afraid to point out the obvious, speak up and take a stand.

These kids – they are kids – live in the world adults have created. I don't blame the winning athlete; this is a failure at the administrative level and higher. I'll point out the obvious: you ruin women's sports by allowing males to compete in women's sports. Speaking for parents of female athletes, are we just expected to "come to terms" with this? No amount of hormone therapy or re/deconstructive surgery will change the biological, muscular, and skeletal differences between those born with XX and those born with XY chromosomes. The assumption is that when my daughter competes in the women's division, she competes against other biological females. She is not in a co-ed or open division.

It is one thing to read about these things happening in other places; it is quite another to witness it firsthand. This injustice to young women should not continue anywhere.

## **II. FAILING TO ACCOMMODATE ENDURING BIOLOGICAL DIFFERENCES BETWEEN MALES AND FEMALES RESULTS IN INTOLERABLE HARM TO GIRLS AND WOMEN IN SPORT**

### **A. Females and Males do not Experience or Compete in Sports in the Same Way, as the Framers of Title IX Recognized**

As the examples above illustrate, after the point at which sports teams are separated by sex due to physical and performance differences between males and females, women and girls experience significant losses, including emotional trauma and being deprived of fair competition and safety in sport when required to compete against males. The psychological trauma experienced by women required

to compete against males is the result of the intuitive and commonsense recognition that there is a point in time, typically marked by male puberty but sometimes even earlier, when women and girls can no longer realistically, fairly, and in many instances safely, compete against males.

As athletes, coaches, and spectators of sport, we know there is a clear and obvious physical difference between boys and girls. We know the physical development of boys – beginning in utero – results in a performance difference between boys and girls. We see this play out in sports and physical activity at every age and every level.

Physical fitness tests and records for youth sports showcase a measurable performance gap between males and females at virtually every age and sport.<sup>5</sup> On average males have performance advantages not limited to: height, body mass, skeletal structure, strength, muscle quality, center of gravity, limb length ratios, and cardiovascular performance. The impact of any amount of male puberty and androgenization greatly increases these male performance advantages.

As athletes, coaches, and parents of female athletes, we know this because we live it. We see and understand that the average age at which male athletes will

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<sup>5</sup> See, e.g., age group standards in USA swimming reflective of male advantage at every age, distance and stroke, available at: <https://www.usaswimming.org/docs/default-source/timesdocuments/time-standards/2024/2021-2024-national-age-group-motivational-times.pdf>.

beat the world records of women in sports like track and field is 14-15 years of age. The use, weight, and design of sports equipment such as bikes, balls, bats, javelins, discs, and swimsuits, as well as playing fields and net heights reflect these biological differences between boys and men and girls and women and are designed to optimize the competition.

At every level, we are aware that less skilled, less determined males can frequently beat higher level female athletes because of innate physical differences in the sexes. The premise of equal opportunity motivating Title IX is that physical and developmental differences do not mean that girls and women are less worthy of participating, competing, and winning in sport. Title IX's requirement that females deserve equal opportunities to those of males was enacted with full appreciation for the necessity of sex separated sport to ensure equal opportunities for women.

**B. The Psychological Harm Experienced by Females Forced to Compete Against Males in Women's Sports Conflicts with the Premise of Title IX**

When women and girls are asked to compete against male athletes, they are asked to ignore biological reality, the reality that defines female physical bodies. They are asked to pretend there is no inequality or hardship in competing against male development that began in utero and accelerated at puberty resulting in enduring differences in muscle structure, bone structure and density, response and



reaction times, and reproductive influences, such as monthly cycles and possible pregnancy.

Requiring women to ignore these physical realities is unrealistic and itself a form of sex discrimination if not outright abuse. It communicates to female athletes that female bodies do not matter enough to be recognized as unique and to be celebrated for their uniqueness. A message of second tier status for women is received when girls and women are told that rules in their sports do not need to be fair, that female bodies need not have equal representation on a playing field and that males with inherent biological advantages must be accepted within women's sports.

A girl who loses her place or her chance to compete and must watch a male take a place that was set aside for "girls" not only has to deal with a loss; she must also deal with the psychological trauma that comes from knowing that the transaction was not just, fair, or equal and that a girls' spot was given to a male. The girls around her will watch a male receive a place that was once understood to be set aside for a girl. This is psychological torture for women and girls. Women and girls understand that such transactions mean that the fair and equal treatment of their biological sex is not recognized to be important.

The lesson that girls and women need not be protected or safe in their own sports is a dangerous one. It teaches girls that their competition is not important

enough to demand rigorous integrity and fairness. Girls are forced to experience that a males' demands are more important than theirs and must be fulfilled at the girls' expense. The damage this causes is incompatible with the equal opportunities for the sexes guaranteed by Title IX.

**C. Equating Gender Identity with Sex Harms Women Participating in Sex Separated Sports**

Due to the equal opportunity mandate of Title IX women and girls had begun to believe that the measured and known performance gap between males and females did not have to be viewed as a stamp of male superiority but should rather be understood as physiological and biological divergence between equally valued members of society.

Females had come to appreciate that their innate differences from males did not disqualify them from equal dignity and fair treatment. Title IX previously guaranteed that scholastic sport was one place where males and females had an equal opportunity to enjoy their innate physical traits not as limits but as differences worth celebrating. However, the Department of Education's new Rule will lead to the destruction of equal opportunity for women in scholastic sports, diverting female opportunities to males and impugning the dignity and worth of female athletic accomplishments.

Pursuant to Title IX, women's scholastic sports were to be a place where 50% of the population could finally be included and seen as worthy of the title,

“champion”; where they could be held up as valuable members of school teams and society. Now, the Nation is being told that fair and equal sports opportunities for women and girls are unnecessary, or at least that equal opportunities for women must be sacrificed in those instances where a male chooses to identify as a female.

The realization that a law written to protect women is being turned against females to benefit a class of men, and that females are not being treated with the same respect and honor as men, cuts deep into the psyche of women. Women experience the proposed modifications to Title IX as unequal treatment, the stripping of rights, the loss of rewards, and the erasure of fair and equal representation. Women athletes are receiving a message that their bodies are only good enough if they can compete with a man whose biology does not match their own.

Women see and hear the rule makers, and some courts, suggesting that a purpose of women’s sports is to make a male athlete feel welcome and honored regardless of the impact of his participation on female athletes. Female athletes are told that “there are only a few” male athletes who want to compete against women, and so females should step aside and make room for them.

However, as the above examples make clear, there is, in fact, a continuous flow of men seeking to compete against women at every level from elementary schools through college sports and the Olympics and Paralympics. There is no

place where women are safe from men seeking to take their places in sport, and the D.O.E.'s new rule is sure to increase a continuous stream of men in women's sports into a torrent.

The women's sports record books are being rewritten with male names. Female accomplishments are being erased, name by name. When women compete in races against men and on teams with men, females know they are being asked to support the premise of male dominance. Girls and women hear the message loud and clear that it is a female's job to give in and not to demand fair and equal treatment.

Each stage of a girls' sports development path provides the opportunity to play – from granting her the last spot on the team to winning first-place on the podium. These experiences – which start at a young age – create inspiration, self-belief, resilience, and confidence – things every girl should be able to seek fairly and with equal opportunity in comparison to her male counterparts.

We know the names of women like Martina Navratilova, Donna DeVarona, Laura Wilkenson and so many others precisely because pathways and opportunities for females have for years been protected by Title IX and women have not faced a sustained threat of male competitors in women's sport. However, the D.O.E.'s Rule threatens all of this progress for women.

**CONCLUSION**

Every day that girls' and women's equal opportunity in sports is denied, is a day in which girls and women are deprived of vital chances to grow, excel and win. The district court's injunction protecting the rights of women under Title IX should be upheld.

Respectfully submitted,

*/s/ William Bock III*

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*ATTORNEYS FOR AMICI CURIAE*

133 Female Athletes, Coaches,

Sports Officials, and Parents of Female

Athletes

September 25, 2024

**CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 5,581 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

This brief also complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 365 in 14-point Times New Roman font.

*/s/ William Bock III*

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*ATTORNEYS FOR AMICI CURIAE*

133 Female Athletes, Coaches,

Sports Officials, and Parents of Female

Athletes

**CERTIFICATE OF SERVICE**

I hereby certify that on September 25, 2024, I electronically filed the foregoing *Brief of Amicus Curiae 133 Female Athletes, Coaches, Sports Officials, and Parents of Female Athletes in Support of Appellees* with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

*/s/ William Bock III*

\_\_\_\_\_  
William Bock III

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Indianapolis, IN 46204  
Phone: (317) 692-9000

# ATTACHMENT A



**Brianna Alexander\*<sup>1</sup>***Cyclist***Catrina Allen\****World Champion –Professional Disc Golf***Taylor Allen***West Virginia High School Athlete – Basketball and Track***Kylee Alons\****31-time All-American, 5-time ACC Champion, Olympic Trials Semi-Finalist, and 2-time NCAA Champion – North Carolina State University***Diana Anglin-Miller***NCAA Champion and Cheerleading Gym Owner, Coach, and Judge***Hannah Arensman\****Professional Cyclist***Allison Arensman\****Professional Cyclist***Sarah Powers Barnhard***Professional Volleyball Player, Current Coach***Cindy Bater***Rowing National Team Athlete, Coach, and Educator***Lauren Belden\****High School Cross-Country and Track Athlete***Russell Belden\****Father of a High School Cross-Country and Track Athlete***Katie Blankinship\****NCAA Swimming Athlete – Roanoke College*

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<sup>1</sup> \* An asterisk by a name indicates that the athlete has personally faced a male in sports competition, played on the same team as a male, or is closely related to a woman who has personally faced this.

**Marianne Bosco\***  
*Fencing Athlete*

**Bonnie Brandon**  
*6x All-American Swimmer, University of Arizona*

**Carol Brown**  
*U.S. Women's Olympic Rowing Team 1976, 1980, 1984*

**Mariah Burton Nelson**  
*Former Professional Women's Basketball Player*

**Monika Burzynska\***  
*NCAA Swimmer, Penn Athlete*

**Frank Busch**  
*Former National Team Director of USA Swimming (5-time Olympic Coach)*

**Paula A. Cabot**  
*Former Director of Education & Research, Women's Sports Foundation; Rugby Player*

**Tom Coffey**  
*Former AAU Women and Girls Track Coach and California Interscholastic Track Coach*

**Kathy Smith Connor\***  
*U.S. National Team Member and Mother of Daughter who Competed in the 2022 NCAA Swim Championships*

**Grace Countie\***  
*22 time All-American, 12x first-team All-American, 6-time UNC School Record Holder, Olympic Trial Semifinalist – University of North Carolina*

**Catherine Curtis**  
*Archery Coach*

**Madisan Debos\***  
*NCAA Track Athlete*

**Courtney DeSoto\***

*Mother of a Female High School Track Athlete*

**Donna de Varona**

*Olympic Gold Medalist, World Record Holder*

**Jade Dickens**

*USA Powerlifting Athlete*

**Sonni Dyer**

*Division I Collegiate Head Coach & Director of Triathlon, Queens University  
6x Women's D2 Triathlon National Champs, 2x Women's D1 Triathlon Runner-Up,  
3x Olympic Alumni*

**Ellie Eades**

*NCAA Tennis Athlete – University of Kentucky*

**Evie Edwards\***

*Cyclist, Mother of Elementary Age Female Cyclist*

**Stephanie Elkins**

*Olympian – Swimming*

**Ainsley Erzen**

*NCAA Soccer and Track & Field Athlete, Member 2024 NCAA Division I Indoor  
Track and Field Championship Winning Team – University of Arkansas*

**Patricia Spratlen Etem**

*U.S. Women's Olympic Rowing Team 1980, 1984*

**Ellis Fox**

*NCAA Swimming and Diving Athlete – Texas A&M University*

**Kelly Funderburk**

*Olympian – Artistic Gymnastics*

**Tom Funderburk**

*NCAA Champion – Men's Golf, Husband of Female Olympian*

**Dianna (DeeDee) Fussner\***

*Pro Masters Disc Golf*

**Riley Gaines\***

*12-time All-American Swimming, tied Lia Thomas in the 200 free at the 2022 NCAA Swimming & Diving Championships*

**Lori Garrison**

*NCAA athlete – Softball*

**Shawna Glazier\***

*Cyclist, Triathlete*

**Pamela Behrens Golding**

*Olympian*

**Annie Grevers**

*U.S. National Team – Swimming*

**Bruce M. Guthrie**

*US Speedskating Level 2 Coach, Co-Founder, Coach, The Whatcom Speed Skating Club, 2024 Long Track Ice Speed Skating National Champion, Men's 60-64 Age Category*

**Reka Gyorgy\***

*Olympian – Swimming, missed finals by one placement at NCAA Swim Championships in the 500 free where Lia Thomas won first place*

**Jan Harville**

*Olympian, Olympic Coach, Former NCAA Head Coach – Rowing*

**Rena Hedeman\***

*Mother of Female Rowing Athlete*

**Destani Hobbs**

*Former USA Weightlifting Level 1 Coach and USA Weightlifting Affiliated Member/Athlete*

**Nancy Hogshead**

*Olympic Gold Medalist*

**Sarah Hokom\***

*World Champion – Professional Disc Golf*

**Ceci Hopp St. Geme**

*National Team – Track; NCAA Champion 3000m*

**Vicki Huber-Rudawsky**

*2x Olympian, 8x NCAA Champion, Track and Cross-Country*

**Jen Hucke**

*2x NCAA Champion in Volleyball, Stanford*

**Patti Hupp**

*USATF Level 2 Certified Track and Field Coach, USTFCCA Technical Certified Coach, ALTIS Certified Coach*

**Jarrood Jacobi\***

*Father of a Current High School Female Ski Athlete*

**Rhi Jeffrey**

*Olympic Gold Medalist – Swimming*

**Lacey John**

*Olympic Silver Medalist, NCAA Woman of the Year*

**Raime Jones\***

*NCAA athlete – Swimming, lost a finals spot in Ivy League Championships to Lia Thomas*

**Scott Jones\***

*Father of Female NCAA Athlete*

**Margot Kackzorowski\***

*Current NCAA Swimmer, University of Pennsylvania Athlete*

**Samantha Keddington\***

*Former Professional Disc Golf Athlete, missed payout qualification by one placement won by a male, Current Coach*

**Danielle Keen\***

*Professional Disc Golf*

**Ronda Key\***

*Disc Golf Athlete*

**Alexandra Kleinfehn**

*USA Powerlifting Athlete*

**Holly Kruchoski\***

*Cyclist*

**Jess Kruchoski\***

*Husband of Female Athlete who competed against a male*

**Jocelyne Lamoureux-Davidson**

*Olympic Gold Medalist – Hockey*

**Monique Lamoureux-Morando**

*Olympic Gold Medalist – Hockey*

**Lisa Larsen-Rainsberger**

*1985 Boston Marathon Champion, Former 5 Mile, 15k, 10 Mile, 30k American Record Holder*

**Donna Lopiano**

*6x National Champion, Former AD University of Texas*

**Valerie McClain**

*U.S. Women's Olympic Rowing Team 1980, 1984*

**Riona C. McCormick**

*Current Rowing Athlete*

**Nanea Merryman\***

*NCAA Volleyball Athlete – Cedarville University*

**Cynthia Millen**

*Former NCAA Swim Official, Former USA Swimming National Official, Former International Paralympic Swim Official*

**Lauren Miller\***

*Current Professional Women's Golfer, Former Collegiate Golfer*

**Cynthia Monteleone\***

*Masters Track Athlete, Mother of Female Track Athlete, both of whom competed against male athletes*

**Julianna Morrow\***

*NCAA Swimming Athlete – Roanoke College*

**Lily Mullens\***

*NCAA Swimming Athlete – Roanoke College*

**Linda Muri**

*Rowing, 3x World Champion, 17x National Champion, Holder World Best Time, Collegiate National Champion and World Champion Coach*

**Martina Navratilova**

*59x Grand Slam Tennis Champion*

**Sarita Nori\***

*Mother of Female Rowing Athlete*

**Mary I. O'Connor**

*U.S. Women's Olympic Rowing Team 1980*

**Keri Phebus Olson**

*NCAA Champion – Tennis, Mother of Female Athlete*

**Jan Palchikoff**

*U.S. Women's Olympic Rowing Team 1976,1980*

**Connie Paraskevin**

*USA Olympian – Speed Skating and Track Cycling*

**Abigail Pearson\***

*Mother of two Female Athletes who have been forced to compete against males*

**Kate Pearson\***

*NCAA Swimming Athlete – Roanoke College*

**Macy Petty\***

*NCAA athlete – Volleyball*

**Mary T. Plant**

*Olympic Gold Medalist and World Record Holder Swimming*

**Lori Post\***

*Mother of NCAA Female Swimmer who competed against Lia Thomas*

**Susanna Price\***

*NCAA Swimming Athlete – Roanoke College*

**Dennis Pursley**

*5x Olympic Coach, American Swimming Coaches Association Hall of Fame*

**Joy Rako\***

*Former NCAA Division III Track and Field Athlete*

**Lynn Silliman Reed**

*1976 Olympic Bronze Medalist – Rowing*

**Kelly Rickon Mitchell**

*1980 & 1984 Olympic Rowing Athlete*

**Genoa Rossi**

*Current NCAA Water Polo Athlete, U.S. Jr. National Team*

**Kim McGinnis Russell**

*International Lacrosse Coach, USVI Women's National Team*

**Linnea Saltz\***

*NCAA Track and Field Runner, 3x Big Sky Conference Champion*

**Summer Sanders**

*Olympic Gold Medalist*

**Alison Santa Ana**

*Mother of High School Softball and Cross-Country Athlete*



**Cris Santa Ana**

*Father of High School Softball and Cross-Country Athlete*

**Samantha Santa Ana**

*High School Softball and Cross-Country Athlete*

**Carter Satterfield\***

*NCAA Swimming Athlete – Roanoke College*

**Halle Schart\***

*NCAA Swimming Athlete – Roanoke College*

**Jennifer Sees**

*NCAA Pole Vaulter, Current High School Track Coach, Mother to a Signed NCAA Soccer Player*

**Jeri Shanteau**

*National Champion, U.S. National Team member – Swimming*

**Sharon Shapiro**

*NCAA Champion and U.S. National Team – Women's Artistic Gymnastics*

**Sandy Shasby\***

*Family Member of a Female Athlete*

**DeNee Shepherd\***

*Professional Disc Golf*

**Bre Showers**

*NCAA Champion – Artistic Gymnastics*

**Anne Simpson**

*NCAA Rowing Athlete*

**Bronwyn Sims**

*Athlete, Girls and Women's Gymnastics Coach*

**Lori Stenstrom**

*National Champion, Former American Record holder, Mother of Female Athletes*

**Steve Stenstrom**

*NFL Quarterback, Father of Female Athlete*

**Jill Sterkel**

*Olympian – Swimming, Former University of Texas Head Swim Coach*

**Tracy Sundlan**

*5x Olympic Coach, Manager, and Administrator – Track and Field*

**Barry Switzer**

*Super Bowl Champion, NFL and NCAA Head Football Coach*

**Becky Switzer**

*Olympic and NCAA Coach – Women’s Artistic Gymnastics*

**Maya Tait\***

*NCAA Rowing Athlete*

**Inga Thompson**

*Olympian – Cycling*

**Alison Townley**

*Past Associate Executive Director, Women’s Sports Foundation*

**Hollister (Holly) W. Turner**

*Past Associate Executive Director, Women’s Sports Foundation*

**Leanne Venema\***

*Mother of Female NCAA Swimmer*

**Eric Venema\***

*Father of Female NCAA Swimmer*

**Vincent J. Ventura**

*Coach 1984 Women’s Olympic Single Sculler: Charlotte Geer, Silver Medal, Co-Founder and Head Coach New York Athletic Club Women’s Rowing Team 1996-2012, Former Member US Rowing High Performance Committee, US National Team Coach: 1979, 1980, 83,84, 85, 88*

**Diane Vreugdenhil**

*Olympian – Rowing*

**Sue Walsh**

*Olympian – Swimming, Coach, Sports Official*

**Claudia Westholder**

*NCAA Swimmer, Mother of Female Athlete*

**Max Wettstein**

*Father of U.S. Olympic Skateboard Team Member*

**Kaitlynn Wheeler\***

*All American, NCAA Qualifier and Silver Medalist, SEC Team and Relay Champion*

**Val Whiting**

*National Champion, WNBA*

**Laura Wilkinson**

*Olympian and World Champion – Diving, Mother of Female Athlete*

**Sippy Woodhead**

*Olympian, World Record Holder – Swimming*

**Sara Younger-Merrill**

*Masters Athlete, Rowing*

**Jacqueline Zoch**

*1976 Olympic Rowing Medalist*