No. 24-43

In the
Supreme Court of the United States

STATE OF WEST VIRGINIA, et al.,

Petitioners,

v.

B.P.J., by next friend and mother,
HEATHER JACKSON,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF OF *AMICI CURIAE* L.V., J.S., S.P., AND EMPOWERED COMMUNITY COALITION, UA IN SUPPORT OF PETITIONERS

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INTEREST OF AMICUS[1]

Amicus L.V. is a high school girl who suffered unwelcome sexual conduct when a male student, claiming to be "trans," showered fully undressed next to her and three other freshman girls in the girls' locker room. Having gone through this traumatic experience, L.V. is concerned that her experience will be repeated throughout the nation if schools are required to allow biological males into girls' intimate spaces.

Amici J.S. and S.P. are female high school students who have personally experienced loss of privacy, academic penalties, and harassment when their school required them to share a girls' locker room with a male student. They were forced to choose between exposing themselves while changing or being penalized for missing class. Their experiences underscore the importance of sex-separated facilities to allow female students to participate fully and equally in educational activities, including athletics, without compromising their dignity.

Empowered Community Coalition, UA, is an unincorporated association of 105 parents with school-aged children in the Elkhorn Area School District in Wisconsin. A middle school male student who identifies as a girl recently sued the District to gain access to the girls' bathrooms and locker rooms, based

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[1] As required by Supreme Court Rule 37.6, Amicus states as follows: No counsel for a party authored this brief in whole or in part. No counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than Amicus or its counsel made such a monetary contribution.

on a flawed interpretation of Title IX that mirrors the Fourth Circuit's reasoning in this case. The members formed the association and participated in that litigation to show that they and their young children have significant safety and privacy concerns if their children are forced to share facilities with members of the opposite sex. They have an interest in this case because redefining the word "sex" in Title IX has implications far beyond the sports context, including with respect to sex-separated spaces.

As female students and parents of students, many of whom do or will participate in sports, Amici also have a strong interest in preserving safety and fairness in girls' sports. They have witnessed or experienced what occurs when males are given access to girls' intimate spaces. Amici oppose any radical transformation of Title IX that eliminates the long-standing practice of separate sports teams and facilities for boys and girls. Amici urge the Court to reverse the Fourth Circuit.

SUMMARY OF ARGUMENT

The Fourth Circuit's decision, and decisions like it, are harming young girls throughout the nation. This amicus brief makes three brief points. First, the Fourth Circuit's decision is egregiously wrong: Title IX explicitly permits sex-separated sports to protect safety and fairness in girls' sports, and it has for decades. Second, the Fourth Circuit's flawed interpretation of Title IX has implications beyond the sports context; some lower courts have applied similar reasoning to force schools to give males access to girls' bathrooms and locker rooms. Indeed, girls in the Seventh Circuit have been dealing with this for eight years. This Court should take the opportunity to

correct those errors as well. Third, allowing males to access girls' bathrooms and locker rooms has and will continue to harm young girls, as illustrated by Amici's real-world experiences.

ARGUMENT

I. Title IX Explicitly Permits Sex-Separated Sports Teams.

Congress enacted Title IX to guarantee that female students in the United States have equal access to the benefits and opportunities available to male students. To that end, Title IX has long explicitly permitted sex-separated sports. The regulations implementing Title IX expressly allow school districts to "sponsor separate teams *for members of each sex*." 34 C.F.R. § 106.41(b). (emphasis added). At the time the regulations were adopted, "sex" undisputedly referred to "biological sex." Indeed, "the overwhelming majority of dictionaries" at the time "defin[ed] 'sex' on the basis of biology and reproductive function." *Adams v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791, 812 (11th Cir. 2022) (listing the definitions from various dictionaries).

Both Congress and this Court have clarified several times that "sex" refers to biological sex. Just one year after Congress passed Title IX, this Court stated that "sex" is "an immutable characteristic" determined by "birth." *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973). Congress used the phrases "one sex" or "both sexes" throughout Title IX, illustrating that it was referring to biology, not some ambiguous and ill-defined social concept like gender identity. And "Title IX was enacted in response to evidence of pervasive discrimination against women with respect

to educational opportunities." *McCormick v. Sch. Dist. of Mamaroneck*, 370 F.3d 275, 286 (2nd Cir. 2004). In short, the history of Title IX clearly indicates that it was enacted with a biological binary in mind.

In light of that plain text and history, the Fourth Circuit's decision is clearly wrong. The Fourth Circuit effectively concluded that Title IX *prohibits* what it explicitly *permits*—separating sports by biological sex. If that decision is correct, "the world is truly upside down." *Cf. Otto v. City of Boca Raton*, 981 F.3d 854, 866 (11th Cir. 2020). And Title IX will have been re-written entirely by judicial fiat. It will mean that school districts in the Fourth Circuit must allow any male student who asserts a female gender identity to play on the girls' sports team.

Upholding the decision by the Fourth Circuit would continue to undermine the integrity and fairness of girls' sports. If every male student who seeks to play on a girls' sports team may do so, it will impact students from kindergarten through higher education in potentially every state. This Court should not allow the desires of a few students who assert a different identity to trump the rights and opportunities of female student-athletes throughout the country. As a practical matter, this is an all-or-nothing proposition. Either sports can be sex-separated, or every student who asserts a transgender identity must be permitted to play on whatever team they want; in which case sex-separated sports will cease to exist. That is precisely why Title IX has long contained a blanket rule authorizing "separate teams for members of each sex." 34 C.F.R. § 106.41(b). This Court should reverse the Fourth Circuit and correct this obviously incorrect interpretation.

II. This Court Should Also Clarify That Title IX Does Not Require Giving Males Access to Girls' Facilities.

This case has implications beyond the sports context. The Fourth and Seventh Circuits have applied similar reasoning to hold that schools must allow males to access girls' bathrooms and locker rooms—even though, as with sports, Title IX regulations explicitly permit sex-separated facilities. 34 C.F.R. § 106.33 ("A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex."). Given the overlap in reasoning, this Court's decision will likely affect whether sex-separated bathrooms and locker rooms can continue to exist, which, until recently, was an "unremarkable—and nearly universal—practice." *Adams*, 57 F.4th at 796. This Court should not leave the nation guessing as to how its decision applies to bathrooms and locker rooms, but should take the opportunity to call out and correct lower court decisions that eliminate privacy and safety for girls in intimate facilities.

The Fourth Circuit's reasoning does not stop with athletics but inevitably carries over to bathrooms and locker rooms as well. The main premises of its Title IX holding were that "discrimination based on gender identity *is* [inherently] discrimination 'on the basis of sex' under Title IX," Pet. App. 39a, and that, to comply with Title IX, schools must ignore biological reality and treat transgender students as if they are whatever sex they identify with, Pet. App. 40a–41a. In support of those propositions, the Fourth Circuit relied heavily on its earlier ruling in *Grimm v. Cloucester Cnty. Sch. Bd.*, 972 F.3d 586 (4th Cir. 2020), which held that Title IX requires schools to allow males to access girls' facilities. Thus, the Fourth

Circuit itself recognized that the sports issue goes hand-in-hand with bathrooms and locker rooms.

This flawed interpretation is not confined to the Fourth Circuit, either. For nearly eight years, school districts in Wisconsin, Illinois, and Indiana have been burdened by the Seventh Circuit's decision in *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034 (7th Cir. 2017), which adopted the same faulty interpretation of Title IX to compel bathroom access based on a student's self-asserted gender identity. *A.C. by M.C. v. Metro. Sch. Dist. of Martinsville*, 75 F.4th 760 (7th Cir. 2023) (reaffirming *Whitaker*).[2] Like the Fourth Circuit, the Seventh Circuit reasoned that "discrimination based on transgender status is a form of sex discrimination" prohibited by Title IX. *Martinsville*, 75 F.4th at 769.

Multiple other courts have disagreed with this analysis, such that there is now an entrenched circuit split on this issue. *Adams*, 57 F.4th at 811–17 (11th Cir. 2022) (en banc) (holding that Title IX permits sex-separated facilities); *Roe v. Critchfield*, 137 F.4th 912,

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[2] School districts in the 7th Circuit have repeatedly attempted to distinguish *Whitaker* and *Martinsville* and/or have asked the Court to overrule those cases. Most recently, in *D.P. v. Mukwonago Area Sch. Dist.*, a 7th Circuit panel initially "decline[d] the invitation to overrule *Whitaker* and *Martinsville*," even though "th[e] panel agree[d]" they were wrongly decided. 140 F.4th 826, 833 (7th Cir. 2025). After this Court's decision in *United States v. Skrmetti*, 145 S.Ct. 1816 (2024), however, the panel vacated its opinion and called for briefing on whether to overrule those cases in light of *Skrmetti*. Order on June 30, 2025, 2025 WL 1794428. But before the Court could rule, the plaintiff moved to vacate the injunction, and the panel dismissed the appeal as moot—over the vigorous objection of the school district. Order on August 26, 2025, Dkt. 87, Case No. 23-2568.

926–31 (9th Cir. 2025) (same); *see also Bridge v. Okla. State Dep't of Educ.*, 711 F. Supp. 3d 1289, 1297–99 (W.D. Okla. 2024) (same).

And this Court has already unanimously rejected the Fourth and Seventh Circuits' rationale when it affirmed an injunction of the Biden administration's recent Title IX rule, which was based on the same underlying premise. *Dep't of Educ. v. Louisiana*, 603 U.S. 866, 867 (2024) ("[A]ll Members of the Court today accept that the plaintiffs were entitled to preliminary injunctive relief as to … the central provision that newly defines sex discrimination to include discrimination on the basis of sexual orientation and gender identity.").

The bathroom and locker room issue is not going away. It may even reach this Court later this term—certainly by next term.[3] Because the analysis overlaps so heavily, this Court should not let the bathroom and locker room issue continue to fester and leave the nation guessing as to how its decision applies to that context. Instead, it should specifically call out and overrule *Grimm*, *Whitaker*, and *Martinsville*. Anything less will allow further harm to young girls, especially in the Fourth and Seventh Circuits.

III. The Fourth and Seventh Circuits' Re-Write of Title IX Causes Real-World Harm to Girls' Safety and Privacy.

Because this Court's decision will affect (and may even resolve) the bathroom and locker room issue, the

[3] *E.g.*, *A.C. v. Metropolitan Sch. Dist. of Martinsville*, Case No. 25-1094 (7th Cir.) (Appellee's brief filed Sept. 3, 2025); *Doe v. South Carolina*, Case No. 25-1787 (4th Cir.) (Appellant's brief filed Aug. 27, 2025).

ongoing harms to girls from eliminating sex-separated facilities are directly relevant to this Court's consideration. And, as "has been widely recognized throughout American history and jurisprudence," sex-separated facilities exist to "protect[ ] [ ] students' privacy interest in using the bathroom away from the opposite sex and in shielding their bodies from the opposite sex." *Adams*, 57 F.4th at 804–05. This is especially important in K–12 schools, where "children 'are still developing, both emotionally and physically.'" *Id.* (quoting *Grimm*, 972 F.3d at 636 (Niemeyer, J., dissenting)). Indeed, this Court recognized the point with respect to *college students* in *United States v. Virginia*, noting that "[a]dmitting women to VMI would undoubtedly require alterations necessary to afford members of each sex privacy from the other sex in living arrangements." 518 U.S. 515, 550 n.19 (1996).

This is also a "major safety concern." *Bridge*, 711 F. Supp. 3d at 1297. Under the Fourth and Seventh Circuits' interpretation, "any biological male c[an] claim to be transgender and then be allowed to use the same restroom or changing area as girls." *Id.* L.V's experience, in particular, illustrates that this not just a hypothetical concern, but a real problem that will continue to cause anxiety and fear for young girls until this Court weighs in.

A. L.V.'s Story Illustrates the Danger of Allowing Boys in Girls' Showers.

Amicus L.V. is currently a senior in high school in the Sun Prairie Area School District in Wisconsin.[4] On March 3, 2023, when she was a freshman, she and three other freshman girls participated in a swim unit as part of their first-hour physical education class. After the class, they entered the girls' locker room to shower and change for class. Upon entering, they noticed an 18-year-old senior male student in the area containing lockers and benches. This student was not in their first-hour physical education class. While L.V. and the girls were surprised to see this student in the girls' locker room, they had a general idea that he identified as transgender and had used the girls' bathrooms before. They were uncomfortable, but they proceeded to the shower area without interacting with the student.

Per their usual practice, the girls rinsed off with their swimsuits on. As they began to shower, however, the male student entered the shower area, announced, "I'm trans, by the way," and then completely undressed and showered fully naked across from L.V. and right next to one of the other girls. He was initially facing towards the wall, but eventually turned and fully exposed himself to the four girls. They were shocked and caught off guard, closed their

[4] What follows is the subject of an ongoing Title IX complaint with the Department of Education, as explained further below. L.V. also submitted an affidavit recounting this story in *Doe v. Elkhorn Area Sch. Dist.*, Dkt. 63-6, No. 24-CV-354 (E.D. Wis., filed Feb. 27, 2025).

eyes, and tried to leave the showers as quickly as possible.

The incident was eventually reported to the district, which failed to properly address it. L.V. was *never* contacted throughout the process. She was never interviewed or offered supportive measures. After L.V.'s mother contacted the principal and superintendent, the principal apologized but offered no concrete steps to prevent a recurrence. Several weeks later, the district doubled down, circulating guidance *allowing* males to use the girls' locker rooms, and making female students responsible to seek privacy. On June 14, 2023, WILL filed a Title IX complaint[5] with the U.S. Department of Education Office for Civil Rights (OCR) on behalf of L.V. OCR opened an investigation[6] in November 2023, but the investigation is still pending, with no resolution.

L.V. is concerned about any interpretation of Title IX that would allow what happened to her to happen to other girls across the country. Young girls should not have to shower with boys, feel anxious every time they enter the locker room or hear the showers turn on, or fear unwelcome sexual conduct when they use the locker room or bathroom. L.V. has an interest in this litigation because she does not want what she experienced—or worse—to become the norm in schools, pre-K through higher education.

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[5] https://will-law.org/wp-content/uploads/2023/06/2023-06-14-SPASD-OCR-Complaint-FINAL-w.-Exhibits-A-E68.pdf

[6] https://will-law.org/wp-content/uploads/2023/11/OCR-Opening-Investigation-SPASD66.pdf

B. J.S.'s and S.P.'s Experience Shows That Many Girls Are Uncomfortable Changing in Front of Boys.

Amici J.S. and S.P. are high school students in Wisconsin. In early December 2024, at Westosha Central High School, they began their second-trimester physical education class.[7] Female students were required to change into gym clothes in the girls' locker room. But Westosha also permitted a male student who identified as transgender to use the girls' locker room. Many girls felt uncomfortable changing in his presence, but there were only a few available toilet stalls to change privately. This created a crowded and uncomfortable environment and forced some girls to choose between changing in front of him and exposing themselves or being late for class.

On December 9, 2024, J.S. first encountered the male student in the locker room. She was extremely uncomfortable and texted her mother for guidance. Her mother contacted the school administration, requesting immediate intervention. The only options the school offered her were to leave a message or send the office assistant to the gym class to "handle it." The mother chose the latter option, trusting that school officials would remove the male student from the girls' locker room. No meaningful action was taken and the male student continued using the girls' locker room.

S.P. raised similar concerns with her father on the same day, who likewise contacted the school. The

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[7] The story recounted here is also the subject of a Title IX Complaint filed with OCR. https://will-law.org/wp-content/uploads/2025/03/Westosha-Central-High-School-District-Title-IX-Complaint-FINAL.pdf

administration's response mirrored that to J.S. No solution was provided.

The ongoing presence of the male student caused both J.S. and S.P. to experience distress and embarrassment. J.S. attempted to wait for one of the few private stalls but received tardies for being late to class. She eventually told her mother she would not attend gym class if the male student continued to use the locker room, yet he continued to do so. When J.S. sought to avoid the male student by waiting in the general girls' bathroom, a teacher admonished her, accused her of skipping class, and followed her to the classroom, creating further anxiety and fear of discipline.

S.P. also attempted to wait for a private stall, but the delays caused her to be late for class. Although her father later excused some absences, S.P. received an "F" in the class. Both students felt anxious, reluctant to attend class, and experienced significant emotional distress due to the male student's presence in the girls' locker room.

On December 19, 2024, J.S.'s mother demanded answers from the school regarding its policy and whether accommodations would be offered to protect the female students' privacy. The principal responded that he was working on a solution "in the best interest of all students," signaling concern for the male student rather than the safety of female students. The next day, Westosha sent a school-wide email dismissing concerns, stating that "there is not and has not been a credible threat to anyone," effectively ignoring the serious privacy violations experienced by J.S., S.P., and the other female students in the gym class.

During winter break, on December 30, 2024, the district sent a letter to all families asserting that its investigation found "no evidence of inappropriate locker room behaviors" and that steps had been taken to ensure students felt safe and comfortable. In reality, no meaningful steps were taken to address the female students' distress. Teachers continued to scold students for objecting to the male student's presence and penalize students who sought privacy. S.P.'s parents ultimately removed her from the district due to the ongoing harm.

Although J.S.'s mother later received a separate email stating that the male student would be moved to an alternative area, the student was still present in the girls' locker room when students returned after Christmas break. J.S. was verbally harassed by the male student, who called her "a bitch," prompting her mother to report the incident to the Sheriff's Department and the School Resource Officer. The SRO indicated he was unaware that a biological male had been using the girls' locker room, contrary to the district's claims that the matter had been "reported" and "investigated."

On March 20, 2025, WILL filed a complaint with the U.S. Department of Education's Office for Civil Rights against the Westosha Central High School District for sex discrimination. *Supra* n.7. That complaint remains pending.

The experiences of J.S. and S.P. show that being forced to change in the presence of a male student causes anxiety and embarrassment for many young girls. Their stories highlight the impact on students when schools fail to protect basic privacy in intimate spaces like locker rooms.

C. The Coalition Proves That Many Parents and Children Have Safety and Privacy Concerns.

The Elkhorn Area School District is currently facing a lawsuit brought by a biological boy who wants to use girls' bathrooms and locker rooms based on his self-declared gender identity. *Doe v. Elkhorn Area Sch. Dist.*, No. 24-CV-354 (E.D. Wis., filed Mar. 21, 2024). Even though the plaintiff already had access to multiple gender-neutral restrooms, the district court granted a preliminary injunction—based on *Whitaker*—forcing female students to share facilities with him.

The Empowered Community Coalition is an association of 105 parents, all with children who are or were in the school district. The Coalition formed to participate in the case and oppose opening the girls' facilities to boys. They submitted declarations to show how eliminating sex-separated facilities would affect them and their children. Multiple of their daughters (5th and 6th graders) expressed fear and anxiety about using the bathroom or locker room if a male, transgender student had access to the girls' facilities; one stopped using the bathroom alone, and another now tries to avoid the bathrooms altogether. *Doe v. Elkhorn Area Sch. Dist.*, No. 24-CV-354, Dkts. 51-1 ¶¶ 3–4, 51-2 ¶¶ 3–8, 51-3 ¶¶ 3–4, 51-4 ¶¶ 5–9, 51-5 ¶¶ 2–3, 51-6 ¶¶ 2–3, 63-2 ¶ 3, 63-5 ¶¶ 3–4, No 2:24-CV-354 (E.D. Wis., filed Aug. 1, 2024, and Feb. 27, 2025). After the District Court granted a preliminary injunction, multiple members changed schools or withdrew their children from the district, at great cost to themselves. Dkts. 63-3 ¶¶ 1–15; 63-4 ¶¶ 1–7, No 2:24-CV-354 (E.D. Wis., filed Feb. 27, 2025).

* * * * *

These real-world stories underscore the stakes of the case before this Court. If the Fourth Circuit's reasoning is affirmed, such that schools must allow male students to access girls' facilities, these harms will continue unchecked. This Court should hold that "sex" means "sex" in Title IX, and clarify that its ruling protects *both* girls' opportunities in sports *and* their privacy in intimate spaces.

CONCLUSION

Amicus respectfully urges this Court to reverse the decision by the Fourth Circuit Court of Appeals.

Dated: September 19, 2025.

Respectfully submitted,

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